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TRACE

International anti-bribery Workshop

Ughi e Nunziante Law Firm

Carlton Hotel Baglioni

Milan 22 of june 2004

Problematical Italian corruption-preventive (and anti-corruption) law:

Interferences of Italian corruptions phenomena in the good development of the Civil Administration and their negative repercussions in the economy of our Country are still unresolved and the basic questions are always the same:

Is it necessary a new law or it is enough the existing one? What kind of legislative intervention could be relevant in order to determine a correct corruption – preventive system?

Those questions recall the analogous ones stressed by the Italian Parliament about the different subject concerning corporate and banking crimes after the alarming events connected to Parmalat and Cragnotti's cracks.

The National Council of Economy and Work (CNEL) has underlined a lot of times that there is a link between a good Civil Administration and financial and economical legality .In the documents produced about the possibility to find preventive systems against corruptions phenomena,CNEL indicates in the following points an order of development of a legislative action:

a) Making responsible the Public Leadership also in the expense.
b) Public (Civil) interest joint - stock corporations (S.p..A.)have to adopt mandatories resolutions concerning transparency of negotiations prices.
c) Creation of a new organization of essential Offices for the economical-financial legality from State-Property to Internal revenue, from Customs to National and Local Contract offices, from Taxation justice to Development Cooperation.

Bassanini legislation –XIII legislature- effectively prosecuted an aim of readjustment and simplification of administrative –law as a priority to reach concrete controls and transparency in the procedures.

On the other hand National bank (Banca d'Italia) Governor Mr.Fazio and General State Accounting Department 's interventions on this subject confirm the necessity of much more homogeneity and transparency in the ministerial trading

system respectful of the critical evaluations of Accounting Court about the persisting of private treaty, incompatibility with European Union Regulations, not made public contracts etc….

There are also, – in the illustrations made by CNEL, National Bank (Banca d'Italia) and Confindustria about the proposal concerning preventive and anti-corruption controlling systems and/or economical and financial illegality-, indications concerning the enterprises splitting up in order to reassemble interests and to facilitate a direct dialogue with Institutions; indications concerning the adoption of ethical codes operated by State operating enterprises; indications concerning the enterprises managers qualification with executive powers directed by boards of directors and auditors; other indications concern the determination of controls on external society very often utilized for "slush funds" that feed the illegal circuit ,the abolition of internal finance companies(especially in main groups)essentially directed to a division that allows financial movements not controlled by Board of Directors and by banking activity rules.

These last observations have been object of a first, serious attempt of adopting ,in our system, international models of "Corporate Governance". To those models is inspired the Draghi Reform (D.Lgs.58/1998)-whose accomplishment decrees are still waiting to be emanated. To that reform is associated ,as for the enterprise of public relevancy, a pressing necessity of an effective controlling system as a guarantee for third parts and associates and also as a prevention of all kinds of responsibility hypothesis concerning the enterprises and its legal

representatives ;goal of this reform is the previously analysed transparency of the Public administration in actuation of Constitutional article n. 97.

About this point I have to mention Legislative Decree n. 231 8 june 2001 which introduced in our system the responsibility of Government Bodies and societies for administrative illegal activities connected to crimes committed from people representing the same Government Bodies or societies, as the State is responsible for damages caused by unfaithful public officials.

In this necessary confluence between crimes against public administration's preventive mechanism and "enterprise criminality", typical expression of new juridical schemes placed by "globalization" and "new economy", it is clear the need of the creation of "fraud prevention"'s system that recall concepts expressed in the beginning of this relation analysing hypothesis of corruption-prevention.

Specifically I'm talking about the prevision of specific protocols directed to:

1) A rigid planning of Government Body decisions about crimes to prevent;
2) An indication of optimal modes of financial resources management qualified to avoid the commission of crimes;
3) A prevision of information obligations to the organism pre-placed to control the perfect running and observation of the models;
4) A definition of an "acquittance proof" for the Government Body when it has shown the respect of all protocols in control of the responsible for the illegal behave.

After “tangentopoli” a lot of work has been done on the necessity to build preventive legislative systems. The 31st of may 1993 during a Confindustria Assembly,Mr.Fazio,Governor of Italian Bank affirmed that “Corruption manifestations in the relationship between enterprises and public sphere have swallowed the expense ,damaged the perfect running of the market , hindered the suppliers and best products selection .The entity of this improper taxation, that ultimately falls upon citizens ,is seriously shocking”.

Was clear that those words are referred to sad news about the so-called “environmental corruption” damaging the economy of the Country through a mortification of market rules and economical competition, damaging State finances swelling prices of contracts and services, widening the public expense and the public debt, damaging citizens becoming a real additional tax.

Reference to “after tangentopoli” becomes again actuality in 2003/2004 with the explosion of Cirio/Parmalat scandals and, under another point of view, the scandal concerning Bank 121.

In this occasion has been revealed the contradiction of XIVth legislature law reform concerning the falsification of the account decriminalisation and concerning the reduction of in-corporations control contained in the corporations law reform. The new proposals examined by the Parliament produce an understandable tendency toward a “Counter-reformation” recognized as useful from the Economy Minister itself.

At this point I'll try to represent the difficulty that has been recorded (at least in Italy) in the construction of law –systems and organisms qualified to furnish corruption-preventing instruments.

Here comes to mind a peculiar legislative experience I lived in the XIIIth legislature in Parliament when I was vice-president of a "Special Commission for the examination of law projects containing corruption prevention and anti-corruption measures"(from 1996 to may 2001).

This Commission was instituted by a decision taken from the at the time Chamber of Deputies president Mr. Luciano Violante ,decision following the report written by a committee composed by Professors Mr.Sabino Cassese,Mr.Luigi Arcidiacono and Mr. Alessandro Pizzorno. Substantially, following this report, the Special Commission should have been drowning up law projects compatible with parliament's proposals ruling economical crimes and ,generally including a preventive activity.

I'll tell soon that the mentioned commission has been developing a long,

complex ,articulated work but has recorded the completion of only one law (n.97 /2001)with a relation signed by myself, concerning the relationship between criminal process and disciplinary procedure as well as the effects of a penal final judgment toward public administrations dependant.

The exiguous balance of this legislative activity shows itself that even though there are heavy consequences toward the public interest it is difficult to commit to a written law the complex mechanisms of prevention of illegal activities ,and it

demonstrates also the effects of an excessively "supporting of civil rights" culture.

It is worthy anyway to summarize the values expressed in this work made by the Italian Parliament coherently with the Lima Conference about the world wide hypothesis of corruption.

a)Fields where corruption and other crimes against public administration. are more incisive

A first kind of this incidence is the public administration's petition for goods and services offered by privates .

In this field corruption finds an expression through the payment of a price which is superior to the minimum acceptable one offered from the private person. This one extends the illicit to the accountancy (book-keeping) and to the slush funds falsifying balance sheets and altering each correct procedure.

Another kind of public activity exposed to the risk of corrupted transactions is linked to the distribution, operated by public government bodies, of private works done, resources or services .

This is for example the field connected to releasing of building licences, concessions , subsidized loans, medicines inclusion in the hand-book, state-properties sales.

Third kind of public activity where could emerge corruption occasions is connected to administrative or fiscal controls. This is a phenomenon that reveals

some bad administration systems and that takes advantage of the legislation's excessive stratification and complexity.

As revealed from numerous investigations, privileged places where corruption takes place are some "sensible" field of Italian administration such as public markets, local authorities ,public services licences, planning and realizations of public contracts, international cooperation, urbanistic, crossing areas between public and private.

Once we have understand these points we can generically deduce a list of reasons producing corruption. These are:

1) The State intervention extent;
2) The excessive proliferation of rules and consequent amplification of administrative discretionary power ;
3) The negative effects of some aspects of local autonomy and of administrative devolution
4) The Political financial support intended as a necessity to be part of a series of "lobby operations".
5) The very often obsolete character of administrations procedures.
6) The lack of an efficient technical body in the public administrations.
7) The controls system did not reach a full efficiency even if the Accounting Court has been working properly.

8) Some distortions in the economical system and the weakness of some enterprises structures. Those elements produce a general petition of political-administrative protection from the entrepreneurs.

From the previously listed indications can be traced an indication of corruption-preventive solutions. A reference scheme could be the following one:

a) Law simplification and reorganization in order to avoid uncertainness about the way each single subject is ruled through an excessiveness of obligations and fulfilments for private negotiations;

b) Transparency of privatization procedures and administrative activities based on private regulations.

c) Transformations of a series of bureaucratic obstacles into few and essentials duties clear and rigoureus with a system of unified controls

d) Regulation of the lobbying activities having as a reference frame the United States law which rules the "lobbying contacts". Recently ,during a working mission I directed in Washington as President of the Chamber of Deputy Advisory Committee for Authorizations (Giunta per le Autorizzazioni),I could verify the real rigorousness of this system and the determined and authoritative work of the "ethics committee" in Parliament.

e) Effectiveness of a conflict of interests discipline with a necessary readjustment of Parliament Members causes of incompatibility and ineligibility.

f) A wide and incisive revision of political appointments disciplines.

g) Reinforcement of professionalism of technical state bodies.

h) Promotion of behaves codes with disciplinary relevancy of violations in order to protect the fundamental principles of independency , impartiality and protection of the external image of the administration.

i) Discipline of the activity following the termination of employment.

j) Transparency and control over the contract activity operated by the public administration .It is necessary to avoid that a “private” is obliged to follow “preferential paths”. Yet , in the public operas field there is very often a confusion between planning functions and those functions in charge for the execution of the opera.This confusion creates a precarious financing system and an elevated risk of contentious with the public administration. Talking about the procedures of assignations for public administrations contract works, it is necessary the realization of

executive specific and trustable projects and the involvement of a wide and greatly qualified audience.

k) Use of the inquiries made about the contractors in order to realize crossing controls ,through fiscal assessments and verifications about balances regularity :this technique facilitate the verification about illicit creations of not recorded funds.

l) A verification of the truthfulness of guarantees and insurance or banking fidejussions unifying the data –controls centers.

These and other observations represent the gap of the Italian law system concerning corruption prevention and economical discipline.

A lot of other countries demonstrate a great functioning capability. United States, a part from what told above about the “lobbies”, reserve to each Federal or State Agency whole bodies of inspectors with results strictly connected to sanctions whose enforceability can be realized on the working relationships itself even if there isn’t a penal condemnation.

In many confrontations I had in Australia I could verify the importance of the role covered from some independent authorities. Relevant is the ICAC (Independent Commission against corruption) answering only to the Parliament ,which prevents intervening in the

public offices ,examining law and procedures that could open doors to illegality .For specific cases ICAC can use a real Task Force.
In England similar functions has the Committee concerning the public life standard".
In Italy the AntiTrust Authority and the Authority controlling the Public Administration contracts work heavily but they don't have intervention powers which should be effective under a preventive point of view.

Concluding:

From this necessarily reduced examination of the vulnerable points of the economy and the State Apparatus is priority to consider scarcely effective the legislative work in those fields also for the framed interventions. We need to create organic and complex intervention systems giving space to the organization of rules as Consolidation Acts with a wide attention dedicated to the prevention of illicit phenomena .This subject cannot be anymore relegated within the limits of a symbol or as a deontological and disciplinary argument because into a Democracy this is the fundamental basis for the salvation of the economy.

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