

“Unique Slovak Anti Shell Companies’ Law Transparency of beneficial ownership”

“Key-note speech” - Prof. Paola Severino

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Distinguished Authorities, dear colleagues and friends, good morning.

It is really a great pleasure for me to convey the key-note speech at this seminar.

First of all I wish to thank the Slovak Chairmanship for hosting this important event, as well as for the support it has provided so far in pushing forward my agenda as Special Representative.

Allow me then to stress something which may appear evident, but it remains very important. The OSCE, which I represent here, attaches great importance to the fight against corruption. That has been reflected in several decisions at the highest level of the organization, as it is believed that serious and effective counteraction should be carried out within the framework of multilateral co-operation. Indeed, in the international landscape, a number of organizations, from the OECD to the Council of Europe to the United Nations – just to name a few examples – are offering a valuable contribution to concerted efforts of the international community to counter effectively the phenomenon of corruption. Yet, after having served almost two years under the flag of OSCE Chairmanships, I have grown more and more convinced that, within the international struggle against corruption, OSCE has a unique role to play.

Indeed, the added value of the Organisation in the international fight against corruption lies first and foremost in the core mission of the OSCE – to promote and strengthen security. The OSCE has always pursued an approach to security which makes it uniquely placed to counter the spread of corruption, in itself a serious challenge to security if not an overt security threat. This challenge, in fact, is best addressed through the cooperative, holistic approach which the OSCE advocates. Moreover, the OSCE is based on dialogue, respect and cooperation among equals – and for the international fight against corruption to succeed ownership of the countries concerned, as well as respect for the peculiarities which characterize the situation of each country, are essential.

Today, we are focusing on the theme of transparency, and one of the questions that are being raised today is how and why to increase corporate transparency across the world.

Without anticipating the discussions that will take place on this topic during the following sessions, I take this opportunity to remark one topical issue that is evoked in the question that I've just made reference to: the need for pursuing a global approach to the promotion of good governance and the fight against corruption.

The international community, in fact, has the fundamental responsibility of guaranteeing sustainable economic development. This must take into account essential needs: fight against corruption, as an essential step to foster fair competition, and contrast to the accumulation of illicit capital, in a framework of respect for human rights and protection of the economic legal standards.

In pursuing these objectives, repression is certainly critical. I think, in particular, of the confiscation and recovery of assets in the fight against profit-driven crime, but also of the use of innovative para-repressive tools of an administrative nature such as the takeover by the State of companies "polluted" by organized crime, a measure emerging as of recently in Italy.

However, I have been voicing for years my heartfelt conviction that the real winner for good public governance lies in enhancing prevention and incentive mechanisms for "compliant" economic subjects.

And this through the implementation of tools that guarantee an integrated approach to the issue in question, taking into account the need to prevent not only events of potential criminal relevance, but also more simply the phenomenon of maladministration. Allow me to add that the principles behind the "Anti shell companies' law" appear to be fully in tune with my reasoning.

It is then essential to promote these regulatory processes at the international level through inter-state cooperation. Today's event is a clear step in the right direction.

International public governance, in particular, should foster the approximation of national laws on prevention and repression in the fight against corruption and all forms of tort law in the public and private sectors. Indeed, today there is a need for greater uniformity in the regulation of the commercial sector, which is essential for the creation of a common level playing field for all actors.

Only in this case can economic operators actually compete in the absence of orderly gaps and misalignments between legislations.

This aspect, indeed, is really crucial.

In the absence of such international harmonization of rules, in fact, the commitment of a single system to set-up effective regulatory anti-corruption apparatus risks generating the adverse counter-effect of diverting the investments of companies, which might prefer to allocate their resources elsewhere.

So the real challenge of the international community will be to avoid similar governance problems, and this precisely because interconnected economic environments can only presuppose interconnected and coordinated "rules of the game".

In this regard, in my opinion, a change in the communication strategies is also essential. And the OSCE can play a relevant role in that regard.

It has to be appreciated in fact that these instruments put in place are not a burden, but an important opportunity for both public administration and private companies.

The message must be that being a compliant company, for example as to the transparency requirements, brings competitive advantages, vis-à-vis competitors who do not respect the rules. This is particularly true in a long-term vision.

Discussing about transparency brings along the need to delve into another crucial issue in the international discourse on corporate governance: the extraordinary evolution of new technologies. True, technological advances are a great opportunity, particularly in the domain of public and private transparency. At the same time, they often represent a challenge for public authorities, which have to face complex regulatory choices, as well as the threat of innovative criminal approaches favoured by the creation of grey

zones of unregulated dynamics as facilitated by the technological advancements.

The new phenomena described above entail the need to imagine an equally original, innovative approach to law-making, which will be a driving theme of today's discussions.

Firstly, it is necessary to set up a transnational normative system of prevention and repression, since these illicit conducts do not know boundaries.

Then, the challenge of cyber-laundering must be tackled with the same weapons of advanced technology.

These are just some ideas, that I have picked up to let us grasp the complexity of the issue which public authorities face.

However, it should not be forgotten how the role of corporate governance in the private sector has become increasingly important in recent years.

The world of private governance has not failed its responsibilities. To the contrary: it has performed a commendable task in the transnational dissemination of best practices of good corporate governance: just think of the different tools that exist today at international level for the principles of corporate social responsibility.

Private self-regulation, moreover, has played a central role in spreading the culture of compliance and of transparency, as an indispensable mechanism for the prevention of offenses and illicit phenomena within complex organizations.

Moreover, it has to be noted that, from a cost-benefit perspective, the expenses incurred by companies to introduce corporate compliance functions are more than offset by the benefits obtained in terms of

minimizing the legal risk of non-compliance. Which brings us back to the message that being a compliant economic subject pays off. Not only to contain legal risks, but also to prevent reputational damage to the company. Before closing my intervention, I wish to recall once again what is at stake in the promotion of good governance and the fight against corruption: our own security, as corruption and lack of public governance are challenges which can undermine the security of both citizens and States, as well as the relations between States; it is the cause of serious malfunctioning of governments and institutions, striking at the very heart of the social compact; it is a distortion of the level playing field which prevents the optimal allocation of resources between producers and consumers, sapping legality, predictability and confidence. It is a crime as old as human kind itself; which has evolved throughout the centuries, and with modern technology has become all the more elusive and critical; and all the more important to tackle it.

In this endeavor, we are dealing with political, cultural, communication and regulatory challenges. A long, tricky and bumpy road, indeed.

However, opportunities for dialogue as the one today and the work of relevant international platforms such as the OSCE shall contribute – I am confident – to achieving winning solutions.

Thank you