

Statement by Mr. Clemente Mastella,  
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*Rome, 21 November 2007*

*Secretary-General, Ministers, High Commissioner, Authorities, ladies and gentlemen,*

I would like to extend to you all my warmest welcome to Italy.

I am pleased that the OECD and many delegations have been able to accept our invitation to celebrate this important Conference here in Rome at the prestigious headquarters of the Higher Police Academy.

The decision to host in Rome the celebration of this 10<sup>th</sup> Anniversary is first and foremost an informal homage to the OECD's efforts to combat bribery.

This is a field in which fundamental values are at stake, such as the transparency of economic activities, which is essential for the orderly growth of our national communities, and also the inseparable link between development and legality, which means that the vigilant protection of the rule of law must be a key a policy priority for our time.

The OECD's action has contributed to safeguarding these values through its untiring and effective work to combat corruption.

We can appreciate the effects of this work in the progressive alignment of national legislation with more advanced standards, promoted by the continual monitoring of the action of individual countries. This has improved the quality of their administrative and judicial performance and above all has broadly promoted a new cultural and political awareness, resulting in policies that include the need for a radical response to the problem of corruption, both as it affects individual countries and in its international dimension.

In this regard, I must point out that this traditional division is becoming increasingly less valid as the growth of international trade and the enlargement of markets with uniform legal systems expand the number and scope of opportunities available to operators, some whom invariably try to subvert economic competition through illegal dealings.

Prime Minister Prodi has already fully expressed the Italian Government's determination and its overall action in this field.

For my part, I would like to draw your attention today to the results of my Ministry's most recent activities, particularly in the legislative field, in which the Government has acted decisively to improve the general effectiveness of judicial action and to promote initiatives specifically targeted at combating corruption.

Our key aim has been to bring Italian law rapidly in line with the guidelines set by international organisations and take concrete action to prevent and prosecute illegal practices.

In this regard, I would firstly like to mention the Bill approved by the Council of Ministers on 5 April 2007 on the streamlining and rationalising of the criminal process, which is currently being examined by Parliament. This measure is aimed at ensuring that the criminal justice system operates within rapid and reliable time frames, while strictly respecting the rights of defendants.

This is a provision of a general nature that focuses on a key aim to which I have devoted – and will continue to devote – much of my work as Minister for Justice, but it will also have a major impact on the quality of the criminal justice system's response to practices of bribery in international transactions.

The implementation of a flexible and rational procedural system that delivers rapid outcomes is in fact an essential condition for the success of the global combat against corruption.

The Government's legislative initiative has also been designed to create specific anti-corruption tools.

The first of these that I should mention – and I would like to emphasise that it is directly derived from the OECD’s efforts to promote Phase 2 of the peer review procedure – is the Bill approved by the Council of Ministers on 12 October 2007, which is aimed at reforming the framework governing crimes against the public administration and also incorporates the principles established by the Strasbourg Convention on Corruption of 27/1/1999.

This Bill also provides for a new offence of “corruption” that replaces the many existing offences with one that more accurately reflects the actual kind of criminal activity commonly encountered in international business transactions and that is more in line with the general feeling of social disapproval of corrupt behaviour.

Through this choice we have sought to simplify the legal framework by defining more clearly the characteristics of the conduct that we intend to prosecute, thereby also simplifying the process of gathering evidence in investigations and using it to obtain convictions in trials.

We have sought to include in this offence all types of behaviour that, among the wide range of possibilities encountered, correspond to the essential paradigm that must be targeted, i.e. the subjection of a public official to a private interest in exchange for undue payment that not only alters the performance of the official’s duties but also undermines the equal footing of private actors and the fair competition between them that is the key to efficient markets and the foundation of the rule of law.

The text approved by the Council of Ministers also introduces a definition of a public official and a person responsible for a public service that is more closely in line with the OECD Convention the 10<sup>th</sup> Anniversary of which we are celebrating today, and also defines more clearly in Italian law the concept of exercising an “externally” derived public power, or a power deriving from another State or from an international organisation.

Lastly, as proof of the Italy’s renewed commitment and the Government’s growing awareness, I think that it is not of secondary importance that the Bill provides for considerably more serious sanctions than those originally imposed by the criminal code. Corruption will be punishable by

a maximum sentence of ten years' imprisonment, coupled with the confiscation of all proceeds derived from the crime, and not only the amount of the bribe.

In short, this is an initiative that, by ensuring an approach that is more effective and more in line with international instruments, will enable the criminal system to combat corruption more forcefully, reflecting the greater awareness of civil society and the effectiveness required by our country's international obligations.

Another step has been taken that underscores Italy's full and determined adherence to the principles of the Strasbourg Convention of 27/1/1999. I am referring to the Government's declaration of 19 June 2007 through which our country formally joined the "*Group of States against Corruption*" established within the Council of Europe to ensure the continuous mutual monitoring of the Member States' activities to combat practices of corruption.

In fact, it would be impossible for a single State to undertake this commitment alone. The international nature of corruption means that an international approach is the only one possible, since the isolation of one State weakens them all.

I believe that the mechanisms of mutual monitoring and co-operation are so central that they should come into play even prior to the judicial phase, particularly in the legislative drafting phase in each State, and in the organisation of the respective systems.

For this reason, for us the accession to the "*Group of States against Corruption*" is not merely the acceptance of to a binding international obligation, but reflects our determination to participate actively in the mutual monitoring of States that constitutes its rationale and purpose.

With another Bill we have launched the implementation of the Civil Law Convention on Corruption, signed in Strasbourg on 4.11.1999 in the Council of Europe, which provides for compensation of third parties who suffer damage as a result of acts of corruption. This measure takes into account the particularly harmful nature of these types of crimes, which by undermining the legality of economic development processes prevent fair and free competition

from generating its beneficial effects, such as favouring the most efficient market players and holding down the prices of goods and services.

The Bills have been drafted in close consultation with the courts, civil society and businesses.

For this method, which is based on a fundamental strategy of drawing on a broad range of contributions and competencies, we owe a debt of thanks to the OECD, which has promoted it with conviction and disseminated its practice and culture. The goal, then, is to adapt the relevant legislative instruments in a context of close and continuous international co-operation and sharing of the contributions of all stakeholders.

In line with this basic orientation, other specific legislative initiatives are being taken. The first is the ratification of the 2003 UN Convention against Corruption in a Bill approved by the Council of Ministers on 17 May 2007, which extends the offence of corruption to behaviour, including at the international level, aimed at “obtaining or maintaining an economic or financial activity” and provides for the enforcement in Italy of measures to recover the proceeds of corruption issued by the judicial authorities of other States.

Italian law already contains all the enforcement instruments provided for by the UN Convention, but its ratification also has great practical significance as it makes us part of a vast international community in which illegal profits cannot be concealed. In addition, the concept of corruption introduced into the text of the Convention and the preventive action required of or recommended to Member States define a concept of transparency that also includes relations between private parties and the action of large companies when they come into contact with users. There is no reason why this sector, in which most market players are active and in which great injustices are committed, should be totally exempt from the strict standards and ethics that are rightly required of the public sector.

No legal provision, however wise and well crafted, can be considered to be good if it is not effectively enforced. In the light of this principle, we have adopted the bill that introduces, with the joint investigation teams, one of the most effective international investigation tools, in accordance with the Brussels Convention of 29 May 2000 and the European Framework Decision of 13 June 2000.

This is an important step towards an increasingly effective implementation of the basic principle of judicial and investigative co-operation, which has now become an asset shared by the international community.

In addition, since we are aware of the international nature of criminal activities, it would not be serious to maintain investigation systems that cannot operate in all situations in which corruption occurs. The globalisation of crime is a generalised process, but for economic crimes it is expanding faster than the globalisation of markets because the mobility of persons is compounded by the mobility of their illegal profits.

Consequently, this initiative is not only aimed at contributing to the effectiveness of the entire enforcement system, but is also meant to show the Government's determination to renew, in agreement with its partners, Italy's traditional role of making proposals and acting as a driving force within the European Union and all relevant international fora, as is clearly shown by the ongoing activities being pursued in all fields by Prime Minister Prodi and the Italian Government under his guidance.

I would like to conclude this report, which I have sought to base on concrete data on our activity, by mentioning the even more recent initiatives that show the extent to which Italy's effort is now fully being deployed. Firstly, there is the approval by the Council of Ministers on last October 30 of a Bill on criminal legislation on accounting fraud, which is aimed at punishingly more severely one of the most widely used preparatory tools for corrupt activities, and secondly, the approval just a few days ago, again by the Council of Ministers, of a Bill ratifying the Second Additional Protocol to the Brussels Convention on the protection of the European Communities' financial interests.

This latter Bill fully implements all the various contents of this Second Protocol, such as the liability of legal persons for crimes of corruption and money laundering committed for their benefit or through them, confiscation of the proceeds of such crime and judicial co-operation, with the specific provision that the exchange of personal data among States shall be supervised by the European Commission.

The common purpose of these last measures is obvious, i.e. to ensure that Italian law is fully compliant with the standards required by the European Union and to complete the system rationally so that there are no loopholes that might allow illegal activities to be carried out profitably with impunity.

We shall soon be facing the challenge of the Third Phase of the project established ten years ago, to which we must commit ourselves with determination and confidence, involving the various players in the field, each of which has specific characteristics and can contribute great value added through different kinds of knowledge and viewpoints.

It is also for this reason that we are pleased to be hosting this session of Prosecutors and Experts, whose co-operation should be consolidated and become an ongoing method. We are observing with special interest the stabilisation of the anti-corruption network among prosecutors, which is a basic tool for ensuring the rapid horizontal dissemination of investigation techniques and typologies of illegal behaviour as these are developed in the various co-operating States.

Lastly, action will be taken to strengthen and broaden judicial co-operation so that the overall legal system will be able to respond in a way that is sufficiently rapid, streamlined and complete to be able to combat the insidious illegal activities that must be detected and prosecuted.

Lastly, steps will also be taken in Italy to create the appropriate legal, investigative and administrative synergies. In this regard, it is essential to promote the fundamental work of the High Commissioner against Corruption, which is the ideal point of convergence for all the competencies and national departments responsible for anti-corruption activities. With its analytical capabilities, it will be able to suggest better prevention strategies and will play a decisive role in promoting the objective of an economy that is not corrupted by the devious activities of dishonest elements.

Italy will not fail to deploy all its energies and make a coherent and comprehensive effort to achieve these goals.

We believe in fact that the sharing of these types of goals with other States will produce results that go beyond the immediate aim adopted as a common objective. We live in a time of change and uncertainty, in which the mobility of goods and persons is so vast, rapid and unpredictable as to be bewildering, causing concern for the future and sometimes fear.

We believe that the creation of an ideal area, extending over a significant portion of the world, in which the same goals are pursued, the same values are shared and the same means are used to protect them, is the best guarantee of a future in which our idea of democracy, personal freedom and economic freedom will not be distorted and undermined.

It is for this reason that we view the OECD Convention and its complete implementation as a milestone in the creation of an international legal system that we can all support fully and under the protection of which we can build a future of peace and development.

I shall now give the floor to the Vice-President of the Constitutional Court, Professor Giovanni Maria Flick, who as Minister for Justice at that time signed the OECD Convention on behalf of Italy. His presence with us today has a great symbolic value for me, for it is the tangible sign of the continuity and determination with which Italy seeks to interpret, both today and tomorrow, its membership in the Convention.

I would like to thank you all once again for your participation and to extend my best wishes for productive work.