

CLAUDIA GIUSTOLISI*, TOMMASO SICA**

A CONFERENCE ON INTERNAL CONTROLS IN LISTED COMPANIES

(Consob – Grandangolo Conference, Rome, May 21st 2019)

Presentation of the Research Center “*Centro di ricerca interdipartimentale sul diritto europeo della banca e della finanza: Paolo Ferro Luzzi*”

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1. The Research Center and its objectives

On Tuesday 21 May 2019 at the Consob auditorium in Rome a conference was held on “Internal Controls in Listed Companies,” organized by Consob together with the “*Centro di ricerca interdipartimentale sul diritto europeo della banca e della finanza: Paolo Ferro Luzzi – Grandangolo*,” established by Roma Tre University.

The conference was an opportunity for the Director of the “*Centro di ricerca interdipartimentale sul diritto europeo della banca e della finanza: Paolo Ferro Luzzi – Grandangolo*,” Professor Concetta Brescia Morra, to present the new Research Center and its various purposes. Professor Brescia Morra recalled that the first meeting of 6 May of the Board of Directors of the newly founded “*Centro di ricerca interdipartimentale sul diritto europeo della banca e della finanza: Paolo Ferro Luzzi – Grandangolo*” took place at the Roma Tre University’s Law Department.

The dedication to Professor Paolo Ferro Luzzi is particularly significant, since

* Post Doctoral Researcher, Università degli Studi di Siena.

** PhD Candidate in Private Law, Roma Tre University.

it refers not only to a “*Maestro*” who is thus honored, but also leads back to his legacy – as a pioneer in the areas of bank and finance law and corporate law – regarding the impact of regulatory innovations, especially of European law, on the economy and on the rights of individuals and enterprises.

The project of a Research Center aims precisely at the stable and coordinated investigation of the interactions between law and economics, inevitably in an interdisciplinary perspective; it is promoted by three Departments of Roma Tre University – the Law Department, the Political Sciences Department and the Business Economics Department – and it seeks to provide the Research Center with its own regulatory, organizational and management autonomy.

Promoting a dynamic synergy of knowledges seems to be one of the most important aspects in the activity of the Center, and not only at the technical level. A social-economic analysis is, in fact, crucial to the impact factor study of lawmaking, as it is also dealing with the related problems in terms of public and private governance at the Italian, but above all, European and international level.

In addition, the Research Center intends to move in the direction of policy, meaning that the research it undertakes will not merely focus on the reasoned recognition of existing material, but it can legitimately aspire to provide advice about the legislative reforms in progress. We should also consider the historical moment in which the Research Center is founded, particularly with regard to the crisis of the European Institutions, often accused of an exclusively economic-financial approach, lacking the legitimization of shared values.

The purpose of the Research Center is therefore to create a regular forum of debate between Italian and European academics involved in different thematic areas and between representatives of public institutions, authorities and relevant bodies. The Research Center also looks towards the internationalization of Roma Tre University, as a place to train young researchers.

Lastly, we are facing a path of extreme scientific, cultural but also social-political and economic importance, in conformity with the mission of Roma Tre University and the Departments involved.

2. The “Internal Controls in Listed Companies” Conference

The “Internal Controls in Listed Companies” conference aimed at taking stock of the most important legal issues revolving around the function of the internal control system in listed companies. The conference was well structured into a first morning session, followed by a round table and a second afternoon session. The opening and the presentation were entrusted to Professor Anna Genovese, a Member of Consob, who was pleased to welcome some of the most important Italian scholars participating in the event. She also highlighted the relevance of such a crucial topic in guaranteeing a uniform regulatory framework.

The first morning session began with the meaningful presentation of Professor Piergaetano Marchetti, who first wanted to remember his friend and colleague Ferro Luzzi. Professor Marchetti then reconstructed the current regulations regarding the internal control system, underlining how legislation on the topic is not completely exhausted but deals with a constant evolution due to the events. The problem, according to Professor Marchetti, is the dearth of autonomous regulations of the alternative systems. Moreover, his speech analyzed the structural and functional characteristics of the internal control system, as well as the disclosure obligations. Lastly, Professor Marchetti analyzed the regulations of the Italian traditional and alternative systems of corporate governance.

His speech was followed by the presentation of Dr. Maria Letizia Ermetes who, as a Consob delegate, provided a series of data on the activity carried out through internal controls. Dr. Ermetes examined first the development of the regulations of the Board of Auditors in the Consolidated Law on Finance. Then, she illustrated some data about both the composition and the functions of the Board of Auditors. In the end, she analyzed the dialogue between Consob and the Boards of Auditors, hoping for an even greater collaboration.

The following speaker to take the floor was Professor Mario Stella Richter, who dealt with the topic of the individual subjective requisites of the members of the internal control bodies in listed companies. In particular, Professor Stella Richter analyzed the requirements of professionalism and independence of the members of the internal control body, the peculiar position of the auditors of the group and the characteristics of the one-tier board system. His speech ended with an in-depth analysis of the self-assessment of the control body.

The last speech of the first session was delivered by Professor Andrea Zoppini, who discussed the adequacy of supervision over compliance with the principles of correct administration and the adequacy and functioning of the administrative and accounting organizational structure. He also examined the business-judgement rule and its possible effects within our system.

The second part of the morning section started with a speech of Professor Marco Maugeri, aimed at observing the role of the supervisory body in the regulation of transactions with related parties.

He called for the renewal of the Consob Regulation no. 17221 of 12 March 2010, in accordance with the new EU Directive no. 2017/828 (SHRD II), recently adopted in Italy with Legislative decree no. 49/2019.

This speech was followed by a round table, coordinated by the Consob Member Dr. Carmine Di Noia. Besides Dr. Simone Scettri, a representative of the association of auditors, some members of the supervisory body of listed companies took part: Rosalba Casiraghi (Eni), Enrico Laghi (Acea), Carolyn Adele Dittmeier (Generali), Simone Scettri (Assirevi), Rossella Locatelli (Intesa Sanpaolo) and Sergio Duca (Enel). The debate was particularly interesting, as the members of the supervisory bodies addressed the most critical issues that they concretely found in the application of the norms. The dialogue was especially focused on what should be deemed as an irregularity to communicate to Consob, according to Consolidated Law on Finance.

The afternoon session started with a speech held by Professor Carlo Angelici, who analyzed the relationships between the administrative functions and the control functions in the traditional system and in the two-tier board system, also focusing on the challenge of the resolutions of the supervisory body. He analyzed the exchange of information between the control body and the administrative body in the traditional system and in the two-tier board system. Professor Angelici also examined the challenge of the resolutions of the Board of Auditors and of the control body in the two-tier board system.

The presentation of Professor Roberto Sacchi reviewed the complaints made by minority shareholders to the Board of Auditors. He explained the requirements that auditors must respect after complaints are filed and he suggested the extension of the regulation of complaints to the directors of companies. In conclusion, he analyzed the complaints in the one- and two-tier board systems.

Professor Giovanni Strampelli focused on the relationship between the supervisory body and shareholders. He showed the difficulties originating from the contact between directors and shareholders and the problems regarding the engagement of institutional investors.

Lastly, Lawyer Salvatore Providenti, as a former Head of Legal Advice in Consob, illustrated the precedents regarding Consob sanctions on the violation of supervisory duties and failure to report irregularities to Consob, according to Article 149 of the Consolidated Law on Finance. Starting from concrete cases, he analyzed the relationship between Article 149, sections 1 and 3 of the Consolidated Law on Finance and their possible evolution following the introduction of the EU Directive SHRD II.

The last presentation was given by Professor Umberto Tombari, who dealt with the issue of the control function of non-executive directors in listed companies. In particular, he analyzed the personal and financial relationships between the auditors, the company and the other companies of the same group. Moreover, he underlined the substantial role of the guidelines of the *Consiglio Nazionale dei dottori commercialisti* concerning the estimate of payments to auditors.