Committee of Independent Experts: First report on allegations regarding fraud, mismanagement and nepotism in the European Commission (15 March 1999)

First report on allegations regarding fraud, mismanagement and nepotism in the European Commission (15 March 1999)

[…]

9. Concluding remarks

9.1. The Committee's mandate and the scope of its inquiries

9.1.1. The primary task of the Committee of Independent Experts, as defined in its terms of reference, is to '*seek to establish to what extent the Commission, as a body, or Commissioners individually, bear specific responsibility for the recent examples of fraud, mismanagement or nepotism raised in Parliamentary discussions*'.

9.1.2. In order to fulfil this mandate, the Committee has examined in detail a number of specific cases, all of which, to a greater or lesser extent, are in the public arena and have been raised in parliamentary discussions. During the brief lifetime of the Committee, a number of other cases which merit further examination have been brought to its attention, some very recently. It has not been possible within the time at the disposal of the Committee to investigate such cases for the purposes of this report. The following conclusions are therefore based exclusively on the material contained within the body of the report and do not refer to any extraneous information. If possible under the terms laid down by Parliament for the second phase of the Committee's work, it will take the opportunity to look more closely at additional material in its second report.

9.1.3. In this report, the Committee has, for reasons of confidentiality, generally avoided naming individuals: only legal entities or Commissioners currently in office, whom the Committee has interviewed, are identified by name.

9.2. Responsibility of the Commission and of individual Commissioners

General observations

9.2.1. Throughout its series of hearings, and during its examination of the files, the Committee has observed that Commissioners sometimes argued that they were not aware of what was happening in their services. Undoubted instances of fraud and corruption in the Commission have thus passed 'unnoticed' at the level of the Commissioners themselves.

9.2.2. While such affirmations, if sincere, would clearly absolve Commissioners of personal, direct responsibility for the individual instances of fraud and corruption, they represent a serious admission of failure in another respect. Protestations of ignorance on the part of Commissioners concerning problems that were often common knowledge in their services, even up to the highest official levels, are tantamount to an admission of a loss of control by the political authorities over the Administration that they are supposedly running. This loss of control implies at the outset a heavy responsibility for both the Commissioners individually and the Commission as a whole.

9.2.3. The Committee did not encounter cases where a Commissioner was directly and personally involved in fraudulent activities. It found, however, instances where Commissioners or the Commission as a whole bear responsibility for instances of fraud, irregularities or mismanagement in their services or areas of special responsibility. Furthermore, the Committee found no proof that a Commissioner had gained financially from any such fraud, irregularity or mismanagement.

9.2.4. In the ***TOURISM case***, the Committee found that the Commission and the successive Commissioners responsible bear joint responsibility for formulating and attempting to implement a policy for which resources were not available and over which it was exceedingly difficult to exert effective control. They must also bear responsibility for failing to react over a lengthy period to clear warning signals that serious problems had arisen in the Tourism Unit. The Commissioner responsible for personnel in the previous Commission must take responsibility for failure to ensure appropriate disciplinary sanctions in respect of one of the two officials primarily concerned. Finally, the Commission as a whole is responsible for delaying a positive response to requests for the waiver of official immunity in respect of three senior officials for over two years, for an excessively lenient attitude towards the management failings and poor judgment of the Director-General of DG XXIII and for consistently failing to inform the European Parliament as to the true state of affairs over many years.

9.2.5. In the ***MED case***, the Committee found that Mr MARÍN, the Commissioner responsible, acted swiftly and correctly in response to the discovery of irregularities, conflicts of interest and a lack of control. The main criticism addressed to Mr MARÍN is that he allowed too long a period to elapse between the detection of problems by the Court of Auditors and the launching of an administrative inquiry (20 months). The Commissioner who preceded Mr MARÍN must bear greater responsibility in that he presided over the creation of the management structures which subsequently gave rise to the situation described above. His fault is one of omission: failing adequately to monitor the implementation of the MED programme in circumstances of high risk. The Commission as a whole deserves serious criticism (as in other cases under review) for launching a new, politically important and highly expensive programme without having the resources — especially staff — to do so.

9.2.6. In the ***ECHO case***, the main responsibility at the level of the Commissioners concerns the issue of staffing. Mr MARÍN was informed of the presence in ECHO of staff not employed in accordance with the Staff Regulations of Officials and, notwithstanding the fact that he gave written instructions to the contrary, was nevertheless persuaded to tolerate this situation over several years, mainly as a result of the absence of any response to his repeated requests for additional staff. This exposed ECHO to the fraud and irregularities which occurred. There is, however, no suggestion that Mr MARÍN was aware of any fraud. During the investigations which followed, Mr MARÍN and Mrs BONINO stated that they were not aware of the subject of the UCLAF inquiry. However that may be, this resulted in a prolonged delay before the facts emerged and remedial measures were taken. Here, too, the Commission as a whole must be held accountable for the fact that a major policy initiative was launched without the service concerned, ECHO, being given the means to implement the policy.

9.2.7. In the ***LEONARDO case***, Commissioner CRESSON failed to act in response to known serious and continuing irregularities over several years, starting with the audit of the predecessor programme by DG XXII in 1994 and followed by further reports by DG XXII and DG XX. In the case of the DG XX audit of 1998, she shares responsibility with the Financial Controller for failure to finalise audit reports prepared by DG XX upon which action could have been taken. More generally, the Commissioner responsible must assume wider responsibility for the lax control exercised by DG XXII over the Technical Assistance Office and for the poor communication and internal control mechanisms within the Commission services concerned. Mrs CRESSON further bears serious responsibility for having failed, though in full possession of the facts, to inform the President of the Commission, and through him, the European Parliament, of the problems in implementing Leonardo I when the latter had to take a decision whether or not to approve Leonardo II. Finally, the Commission as a whole is again open to criticism for the underresourcing phenomenon which is at the root of the need to delegate public-sector responsibilities to outside consultants.

9.2.8. In the ***SECURITY OFFICE*** case, the Commissioner responsible, Mr SANTER, acted swiftly after the allegations of fraud appeared in the press. This said, audit results as early as 1993, if followed up by the then President, might have enabled the nature of the problems in the Security Office to be identified much earlier.

The prime responsibility of Mr SANTER in this case is that neither he, who is nominally responsible for the Security Office, nor his private office, took any meaningful interest in the way it operated. As a result, no supervision was exercised, and a ‘state within a state’ was allowed to develop, with the consequences set out in this report.

9.2.9. In the ***NUCLEAR SAFETY case***, the principal accusation made by the Committee, one which applied to the Commission generally and to successive Commissioners, is the failing common to several of the cases examined, namely undertaking a commitment in a new policy area without the Commission possessing all the resources to carry out its task.

Allegations of favouritism examined by the Committee

9.2.10. As regards the ***CASES OF FAVOURITISM*** by individual Commissioners it examined, the Committee found the following:

— in the case of Mrs CRESSON, the Committee found that the Commissioner bears responsibility for one instance of favouritism.

She should have taken suitable steps to ensure that the recruitment of a member of her staff who would be working closely with her was carried out in compliance with all the relevant legal criteria. Subsequently, she should have employed that person to perform work solely in the Community interest.

— In the case of Mrs WULF-MATHIES, the Committee found that she used an inappropriate procedure to recruit a person to join her personal staff and carry out work of Community interest.

— In the case of Mr PINHEIRO, the Committee found that the procedure by which his brother-in-law was recruited was correct and that the work that the latter carried out was of Community interest. Nevertheless, the Committee believes that a Commissioner should under no circumstances recruit a close relation to work in his or her Private Office.

— In the other cases, the Committee found no justification for the allegations of favouritism levelled at Commissioners LIIKANEN, MARÍN and SANTER.

9.3. Assessment in the light of standards of proper behaviour

9.3.1. The Commission, and Commissioners, must act in complete independence, in the general interest of the Community, and with integrity and discretion on the basis of certain rules of conduct. These, as the Committee pointed out at the outset of its report, are part of a core of ‘minimum standards in public life’ accepted in the legal orders of the Community and the Member States. The Committee found instances where no irregularity, let alone fraud, could be discovered, in the sense that no law and/or regulation had been infringed, but where Commissioners allowed, or even encouraged, conduct which, although not illegal per se, was not acceptable.

9.3.2. This is the case, clearly, where favouritism is found. Very often, the appointment of an individual numbered among the close friends, or the ‘entourage’, of a Commissioner to a well-remunerated position in the Commission, or the granting of an equally well-remunerated consultancy contract, contravenes existing rules. This occurred where the person concerned was recruited into a staff category for which he lacked the qualifications required. However, even where no such irregularity occurs and no rules are infringed, Commissioners should abstain from appointing spouses, close family relations or friends, even those with appropriate qualifications, to positions for which an open competition/tender procedure has not been held. In such instances, there should at all events be at least an obligation of disclosure in the course of the appointment.

9.3.3. The principles of openness, transparency and accountability (see above, para. 1.5.4.) are at the heart of

democracy and are the very instruments allowing it to function properly. Openness and transparency imply that the decision-making process, at all levels, is as accessible and accountable as possible to the general public. It means that the reasons for decisions taken, or not taken, are known and that those taking decisions assume responsibility for them and are ready to accept the personal consequences when such decisions are subsequently shown to have been wrong. For instance, calls for tender should be much more open and transparent: any bidder should be in a position to know why his bid was not chosen and why another one found favour.

9.3.4. The Committee found that the relationship between Commissioners and directors-general did not always meet this standard. The separation between the political responsibility of Commissioners (for policy decisions) and the administrative responsibility of the director-general and the services (for the implementation of policy) should not be stretched too far. As stated above, it is the opinion of the Committee that Commissioners must continuously seek to be informed about the acts and omissions of the directorates-general for which they bear responsibility and that directors-general must keep their Commissioners informed of all major decisions they take or become aware of. This requirement of mutual information implies that Commissioners must be held to know what is going on in their services, at least at the level of the Director-General, and should bear responsibility for it.

9.3.5. In the same spirit, the Committee would stress that it is imperative for all those working in the Community Institutions to understand that no strategy of cover-up may ever be considered acceptable. No information may be withheld from other institutions, such as Parliament, or other officials — Commissioners especially — when they are called upon to play a role in the decision-making process. This applies equally to information which has not yet been entirely subjected to what are often lengthy contradictory procedures (as in the case of audit reports). Such information must be shared at an early stage, of course under cover of confidentiality, with the officials, services, directorates or Commissioners who need to have full knowledge of the facts in the light of the decisions to be made or to be prepared.

9.4. Reforms to be considered

9.4.1. Starting from the early 1990s, the Commission has seen its direct management responsibilities increase substantially. It has been transformed from an institution which devises and proposes policy into one which implements policy. At the same time, its administrative and financial culture, the sense of individual responsibility among its staff and awareness of the need to comply with the rules of sound financial management have not developed at the same speed. The senior hierarchy in particular remains more concerned with the political aspects of the Commission’s work than with management. Although the Santer Commission has taken a number of steps to speed up the change of thinking required, the shortcomings which remain were clearly revealed to the Committee by its consideration of the specific issues relating to direct management by the Commission.

9.4.2. Most of the Commissioners heard by the Committee invoked the shortage of human resources as the main reason for the use of mini-budgets, TAOs and other forms of external assistance and the recruitment of auxiliary staff. However, the Commission can put forward whatever proposals it sees fit with regard to its Establishment Plan when it submits its preliminary draft budget to the budgetary authority. This is why the Committee felt that the excuses referring to the shortage of human resources were at odds with the decisions taken by the Commission itself to continue the policy of austerity budgets since 1995.

9.4.3. No one disputes that, in recent years, the Commission has had to deal with many new challenges, such as the preparations for successive enlargements, humanitarian crises and the problem of refugees, the crisis involving mad-cow disease, etc.

In the light of its new management tasks, the Commission had a duty to set priorities, something which it failed to do, preferring to use Community funds (sometimes illegally) to ensure a match between the objectives to be achieved and the resources to be employed. The use of outside assistance (TAOs and others) demonstrates the fact that the Commission has failed to tailor its human resources to its needs (redeployment, filling of vacant posts).

9.4.4. The Committee takes the view that the Commissioners had a collective responsibility to adopt a joint stance on the human resources problems noted by individual Commissioners in order to avoid undermining the integrity of the European public service, a process which has gone hand in hand with the moral and economic damage denounced by the Commission's internal audit services, the supervising institutions (Court of Auditors and Parliament) and, finally, the press.

A mismatch with serious consequences

9.4.5. The problems encountered in connection with each of these cases can be traced back to the mismatch between the objectives assigned to the Commission, in the context of the new policy laid down by the Council and Parliament, on a proposal from the Commission, and the resources which the Commission has been able, or has chosen, to employ in the service of that new policy.

9.4.6. The redeployment of existing staff proved impossible for a number of reasons: the compartmentalisation of the directorates-general, the existence of as many fiefdoms as there are Commissioners and the commonly-held feeling that a change of posting at the behest of the appointing authority without the consent of the official concerned could be equated with a punishment. An increase, in the Commission's operating budget, in the appropriations for auxiliary staff might have offered a partial solution.

9.4.7. The Committee of Experts found no evidence of any attempt by the Commission to assess in advance the volume of resources required when a new policy was discussed among the Community Institutions.

9.4.8. The Committee has not had time to consider staff management or any changes which might be made to the Staff Regulations. However, it notes that a number of Commissioners have, unprompted, expressed their conviction that no genuine improvement in the way the Commission works will be possible without in-depth consideration of these points.

9.4.9. As regards organisational methods, the same picture of an inability to anticipate requirements emerges: the Commission did not try to lay down in advance how each new policy would have to be implemented and to make the necessary arrangements accordingly. It reacted as each individual problem emerged, without a guiding philosophy and with no overall view of the situation, on the one hand, by recruiting temporary or agency staff, and, on the other, by subcontracting tasks out to the TAOs.

9.4.10. The contracts for the provision of services were often awarded under questionable circumstances, a situation encouraged by the vagueness and the scattered nature of the texts governing the award of contracts and the weakness of the ACPC.

Control mechanisms

9.4.11. This brings us to the central issue: why were the control and audit mechanisms not adequate to rectify these problems in good time?

9.4.12. In connection with most of the cases under consideration, the external auditor (the Court of Auditors) produced reports which were clear and to the point (for example in 1992 and 1996 on tourism policy and in 1996 on MED and ECHO). However, only one of the two arms of the budgetary authority (Parliament) gave them proper consideration.

9.4.13. Within the Commission, the internal audit and control mechanisms failed to work effectively. The Committee regards this as a central issue. In order to analyse it, a clear distinction must be drawn between auditing and a priori control.

9.4.14. A priori control is embodied in the approval procedure, for which DG XX is responsible; this procedure, as currently employed within the Commission, is very ineffective. Most of the irregularities highlighted by the Committee stemmed from decisions to which Financial Control gave its approval.

9.4.15. Internal auditing is carried out by a small unit within DG XX. As the Committee has noted, its work is generally satisfactory. However, not all the cases which warrant consideration are dealt with in good time. It is not capable of masterminding the operations designed to remedy the situation. It is more and more common for UCLAF, which is not part of DG XX, to be asked to carry out purely internal Commission inquiries in competition with the internal auditing unit, undermining the latter's authority.

9.4.16. A priori control and internal auditing are activities which employ completely different techniques and address completely different concerns. The arrangement whereby they have been kept together within the same directorate-general should be reviewed. Internal auditing must play an effective supporting role in the service of the Commission so that the latter can exercise its responsibilities. With that aim in view, the human resources allocated to internal auditing should be greatly increased. In addition, internal auditing must take place independently.

9.4.17. In general, the contradictory procedures which are part and parcel of internal auditing take too long and allow scope for any conclusions to be watered down. They should therefore be governed by strict rules: once a binding time-limit, of between one and two months, has passed, a department which has been audited and which has not responded to a preliminary audit report should be given to understand that the audit report will be published without its reply.

UCLAF

9.4.18. UCLAF's position within the Commission, as one of the bodies responsible for combating fraud and irregularities, is less than clear. UCLAF must not act as an internal auditing service: the majority of its staff do not have the requisite professional skills. At present, there seems to be competition between the two internal auditing services. Parallel to, but distinct from, internal auditing, UCLAF must carry out its own specific task. That consists of considering, inside and outside the Commission, on the basis of audit reports (starting at the pre-report stage) or other available sources of information, all situations in which the protection of the Communities' financial interests is at stake, preparing the files to be forwarded to the judicial authorities of the Member States and then monitoring the entire proceedings.

9.4.19. As the Committee's consideration of the cases in question has shown, UCLAF does not operate exactly in this way. Its intervention sometimes slows the procedures down, without necessarily improving the end result.

Administrative and disciplinary inquiries

9.4.20. Administrative inquiries are informal procedures which the Commission often employs, particularly if senior officials are involved, in order to bring irregularities and cases of fraud to light. Such inquiries are generally entrusted to a serving director-general, sometimes to a group of three such officials. Although it recognises the value of gathering in this way a solid body of evidence possibly with a view to disciplinary proceedings, the Committee warns against over-frequent recourse to such procedures and urges caution in the way they are used, particularly as they have often been started too late and taken too long, sometimes producing little in the way of results. They may sometimes even act as a deterrent to the opening of disciplinary proceedings.

9.4.21. Disciplinary proceedings are rare, although the Committee has noted that they have recently been increasing in number. It encountered cases were they should have been initiated, but were not. This concerns, in particular, very senior officials to whom Article 50 of the Staff Regulations (retirement in the interests of the service) has been applied, generously and without hesitation, enabling them to depart with

their reputation intact and a comfortable pension.

9.4.22. Secondly, disciplinary proceedings often come too late in the day and are slow. This remark chimes in with those made above concerning the weaknesses of financial control, internal auditing, UCLAF, administrative inquiries and the confusion between these activities. It is difficult to identify individual responsibilities within the Commission and its departments.

9.4.23. Finally, disciplinary boards propose penalties which are too lenient and which the appointing authority is reluctant to increase, as it is entitled to do. The Committee considers that the circumstances preventing the Administration from putting its case to disciplinary boards should be reviewed, along with the very complex scale of penalties provided for by the Staff Regulations.

Responsibility

9.4.24. The Commission does not have a simple, rapid and practical internal financial procedure to establish individual responsibility for the irregularities, and the instances of fraud which may result, perpetrated by its own officials. The Committee noted this shortcoming in most of the cases it considered. It would therefore be desirable if the audit reports were to focus more systematically, in their conclusions, on the assessment of individuals' performance. Should that assessment go against the official concerned, an independent administrative committee, including a representative of the internal auditing unit, could propose suitable action to the appointing authority.

9.4.25. The responsibility of individual Commissioners, or of the Commission as a body, cannot be a vague idea, a concept which in practice proves unrealistic. It must go hand in hand with an ongoing process designed to increase awareness of that responsibility. Each individual must feel accountable for the measures he or she manages. The studies carried out by the Committee have too often revealed a growing reluctance among the members of the hierarchy to acknowledge their responsibility. It is becoming difficult to find anyone who has even the slightest sense of responsibility. However, that sense of responsibility is essential. It must be demonstrated, first and foremost, by the Commissioners individually and the Commission as a body. The temptation to deprive the concept of responsibility of all substance is a dangerous one. That concept is the ultimate manifestation of democracy.