

Wednesday 19 January 2000

### 3. Second report by the Committee of Independent Experts

A5-0001/2000

#### European Parliament resolution containing Parliament's observations on action to be taken on the second report of the Committee of Independent Experts on reform of the Commission

*The European Parliament,*

- having regard to the second report of the Committee of Independent Experts of 10 September 1999 (Analysis of current practice and proposals for tackling mismanagement, irregularities and fraud, Volumes I and II),
  - having regard to the EC Treaty and in particular Article 276 thereof,
  - having regard to its decisions of 17 December 1998<sup>(1)</sup> and 4 May 1999<sup>(2)</sup> on not granting discharge in respect of the implementation of the budget for the financial year 1996,
  - having regard to its resolution of 14 January 1999 on improving the financial management of the Commission<sup>(3)</sup>,
  - having regard to its resolution of 23 March 1999 on the resignation of the Commission and the appointment of a new Commission<sup>(4)</sup>,
  - having regard to its resolution of 19 January 2000 containing Parliament's recommendations to the Commission on introducing protection under criminal law of the Union's financial interests<sup>(5)</sup>,
  - having regard to the Interinstitutional Agreement of 25 May 1999<sup>(6)</sup> between the European Parliament, the Council of the European Union and the Commission of the European Communities concerning internal investigations by the European Anti-Fraud Office (OLAF),
  - having regard to the report of the Committee on Budgetary Control and the opinions from the Committee on Legal Affairs and the Internal Market, the Committee on Employment and Social Affairs and the Committee on Regional Policy, Transport and Tourism (A5-0001/2000),
- A. whereas, following the resignation of the Commission in March 1999, the confidence of European citizens in the process of European integration and the European institutions must be restored,
- B. whereas the Commission must be able to fulfil its role on the basis of clearly defined political priorities and a corresponding organisational structure,
- C. whereas, in view of the increasingly complex demands placed upon it, the Commission's financial and human resources must be managed in a modern and efficient manner,
- D. whereas it is responsible for ensuring that European taxpayers' money is well spent and, with the other Institutions of the Union, must do everything in its power to prevent and combat fraud and irregularities,
- E. whereas, under Article 276 of the Treaty, and in particular paragraph 2 thereof, the Commission shall submit any necessary information to the European Parliament upon the latter's request,
- F. whereas on 15 November 1999 its Bureau instructed the Secretary-General to consult the Legal Service with a view to determining what should be done with the archives of the Committee of Independent Experts,
- G. whereas Parliament and its Committee on Budgetary Control have signalled many of the issues raised in the two reports of the Independent Experts and addressed them in various reports and resolutions,

<sup>(1)</sup> OJ C 98, 9.4.1999, p. 194.

<sup>(2)</sup> OJ C 279, 1.10.1999, p. 114.

<sup>(3)</sup> OJ C 104, 14.4.1999, p. 106.

<sup>(4)</sup> OJ C 177, 22.6.1999, p. 19.

<sup>(5)</sup> Texts adopted at that sitting, Item 1.

<sup>(6)</sup> OJ L 136, 31.5.1999, p. 15.

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1. Welcomes the second report of the Committee of Independent Experts on Commission reform and thanks the members of the Committee for their work;
2. Recalls that the Independent Experts were asked to limit their second report to recommendations on reform and did not, therefore, seek to address specific allegations of fraud, mismanagement or nepotism;
3. Asks the President of the Commission to take into account and implement Parliament's recommendations in its reform programme;
4. Asks the Commission to submit a complete list of the documents made available to the Committee of Independent Experts, and to forward these documents to its competent committee responsible on request;
5. Calls on the Council to forward in good time a comprehensive recommendation to Parliament on the discharge procedure so that Parliament is able to give full consideration to its conclusions;
6. Considers that transparency is essential with a view to achieving sound and efficient management and therefore urges the Commission to
  - (a) create a public registry of incoming documents on the basis of clearly defined criteria,
  - (b) introduce standardised procedures for archives in all Directorates-General,
  - (c) answer all requests for information from the public within the shortest possible timeframe,
  - (d) educate all staff in working methods that allow for transparency and make public insight into their work possible,
  - (e) ensure that all public documents are readily available via internet,
  - (f) examine the possibility of partial release when information is classified as confidential;

***Improving financial management and control – direct management***

7. Urges the Commission to undertake the complete overhaul of the Financial Regulation recommended by the Court of Auditors and the Committee of Independent Experts in the direction as outlined by these bodies, and to draw up a proposal for a new Regulation without delay;
8. Considers that the new Financial Regulation should concentrate on essential principles, while detailed rules should be contained in separate regulations relating to each Institution;
9. Reminds the Commission that Article 279 of the EC Treaty lays down an independent role and an independent sphere of responsibility for the financial controllers and that a revision of the Financial Regulation can be carried out only on the basis of that Treaty provision;
10. Calls on the Commission, in connection with the revision of the Financial Regulation, to follow the recommendations put forward by the Court of Auditors in its Opinion No 4/97 <sup>(1)</sup>, particularly the recommendation that the Financial Controller should be allocated a new role; points out that the Court of Auditors recommended that the procedure involving the granting of prior approval by the Financial Controller should not simply be abolished but, instead, that the Financial Controller should be left free to decide when to exercise this right to carry out *ex ante* checks on the basis of risk analyses and when it is possible not to do so;
11. Calls on the Commission to:
  - (a) establish and apply transparent rules governing contracts, subsidies and outsourcing, and to set up a central database for contracts and contractors, including full information on the ownership and management of firms party to any contract,
  - (b) phase out the use of so-called Technical Assistance Offices in their present form and, together with the budgetary authority, develop alternatives to them that can be properly controlled, draw up clear rules on the funding of non-governmental organisations and give consideration to the setting up, in a publicly accountable manner, of Commission implementing agencies,

<sup>(1)</sup> OJ C 57, 23.2.1998, p. 1.

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- (c) ensure that, when Commission activities are contracted out, the highest standards of openness and transparency are applied,
  - (d) publish separate annual reports and accounts for each Directorate-General,
  - (e) secure the independence of personnel responsible for financial control within the directorates-general and their protection from hierarchical pressure; the award of contracts and outsourcing must be based on a tendering procedure under which the exercise of any discretion by the Commission is subject to clear rules which are readily amenable to review by the Court of Justice,
  - (f) phase out the system of *ex ante* financial control and decentralise it in a manner compatible with Opinion No 4/97 of the Court of Auditors, minimising the number of hierarchical levels involved in financial management; in so doing, use should be made of the possibility laid down in Article 24 of the Financial Regulation of financial controllers subordinate to the Commission's Financial Controller being seconded to the individual directorates-general,
  - (g) ensure that financial control staff are properly trained and qualified, and that officials at all levels are held accountable for their actions within the context of the hierarchical structure,
  - (h) establish a new independent audit service under the authority of the President of the Commission, to be headed by a highly qualified and experienced member of the auditing profession. This vacant post should be filled in accordance with the procedure laid down in Article 29 of the Staff Regulations;
12. Believes that the Internal Audit Service should act under the responsibility and authority of the President of the Commission, independently of any other Commission service. It should above all be a diagnostic tool in the hands of the President, enabling him/her to identify structural and organisational weaknesses in the Commission. The competencies, objectives, powers and status of this Service should be set out in a basic founding document (a 'charter');
13. Considers that the President of the Commission should present to the Commission each year an annual report of the Internal Audit Service, outlining its activities, principal findings and the action taken, or to be taken, by the President as a result. This report should be made public;
14. States that it would be helpful if the Court of Auditors were able in its Statement of Assurance to indicate with greater precision which sectors, systems and procedures, and, in the case of shared management, which Member States, are mainly affected by errors, and the nature of the errors concerned;
15. Takes the view that the duration of the contradictory procedure between the Court of Auditors and the Commission (and other 'auditees') should be considerably shortened. The process should not assume the nature of a negotiation on the severity or otherwise of the Court's observations but seek only to establish the facts. The underlying purpose of the Court's audits should be to identify the remedial management action required in the Commission to address the issues identified by the Court;
16. Considers that the Council should give greater political priority to the preparation of its annual recommendation to Parliament on discharge, as this would reinforce the political status of the prime institutional mechanism whereby the Commission is held accountable for financial management;
17. Considers that the Council and Parliament should be bound by the principle of budgetary discipline to take into account the resource requirements attached to any policy initiative they request from the Commission. The Commission should be able to refuse to assume any new tasks for which administrative resources are not available and cannot be provided through redeployment;
18. Considers that the management of Community programmes, and in particular all questions of financial management, are the sole responsibility of the Commission. Committees composed of Member State representatives should not therefore be empowered to take any decision relating to the ongoing financial management of programmes. Any risk that national considerations might affect financial management at the expense of sound financial management criteria should be excluded;
19. Calls on the Commission to impose a time-limit on the contradictory procedure of internal audits of one month;

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20. Considers that, until a new system of internal control and internal audit is fully in place, the Internal Audit Unit of Directorate-General Audit must continue to exist and have an independent role *vis-à-vis* the other parts of DG Audit;

21. Calls on the Commission to establish an Audit Commission in which the analyses, assessments and proposals made on the basis of the *ex post* internal audit may be reviewed and the implementation thereof determined;

22. Considers that the Commission, or a Member whom it has empowered to act, must be debarred from acting as authorising officers;

***Improving financial management and control – shared management***

23. Calls on the Commission and Member States to ensure that the EAGGF Clearance of Accounts unit can work independently and without being subject to any inappropriate external or internal influence or pressure; calls on the Commission to

- (a) ensure a more stringent application of existing Regulations,
- (b) make full use of its right of on-the-spot controls in the Member States for accounting and compliance clearance and exclude from the certified accounts those amounts relating to accounting errors and underlying transactions which are irregular,
- (c) ensure, through more rigorous clearance of accounts procedures, the correct use of Community funds and the recovery of any funds misused,
- (d) introduce time-limits in the Financial Regulation for each step in the clearance of accounts procedures,
- (e) seek to reduce the length of time taken in the clearance procedure by reducing the number of steps and in particular the number of distinct occasions which Member States have to comment on proposed recoveries and the Commission's observations leading to them,
- (f) pay particular attention to the area of export refunds differentiated by destination and ensure that guarantees are recovered in full when frauds are uncovered;

24. Similarly calls on the Commission to devote additional resources to controlling spending from the Structural Funds, notably by increasing preferably unannounced checks in the Member States both in number and quality, in accordance with all applicable legal provisions; calls for greater use of financial corrections in the area of the Structural Funds and calls upon the Commission to make the use of these corrections more visible through an annual synthesis report comparable to that presented under the clearance of accounts procedure; calls for an end to the practice of excess spending declarations by Member States and clear rules on changes to, and the replacement of, non-eligible projects;

25. Believes that its political control of the structure, design and implementation of the Structural Funds has to be reinforced; draws attention to the existence of the Code of Conduct between Parliament and the Commission which guarantees that Parliament will be consulted on the basic issues relating to the future implementation of regional and structural policies and that any document or report which Parliament needs in order to be able to perform its democratic tasks of parliamentary control will be made available to it at a sufficiently early stage;

26. Calls on the Commission and the Member States to study their information systems which are used to exchange data on the implementation of the structural actions; advocates that these systems be improved in order to be able to guarantee effective administration and supervision at all levels of management;

27. Considers that increased co-operation between the European Court of Auditors and its national counterparts would lead to a higher detection rate of irregularities;

28. Calls on those Member States which have not already done so to give national Courts of Auditors the right to conduct audits into the use of European funds;

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29. Asks the Commission to undertake a study to consider the development of harmonised accounting and auditing procedures in all Member States;

30. Calls on the Commission to reinforce its cooperation with Member States as regards the protection of the Union's financial interests;

***Strengthening the fight against fraud, corruption, mismanagement and nepotism***

31. Believes that the institutions and Member States must work to create a modern administrative culture in which fraud, corruption, mismanagement and nepotism cannot thrive; that in order to achieve this in the Commission, the following are essential: a clear example set by Commissioners and senior managers, professional training for all staff instilling respect for professional ethics, binding rules on financial management and control, and the existence and enforcement of a functioning system of sanctions which incorporates appropriate safeguards for the rights of the defence;

32. Believes that the independence of OLAF *vis-à-vis* the Commission in particular must be and remain a fundamental point of principle if the organisation is to play its role, which is substantially of criminal investigation, fairly and effectively;

33. Believes that OLAF must earn the respect, and thus wholehearted cooperation, both of EU institutions and personnel and of Member States' investigative and judicial authorities through ensuring that its inquiries are — and are seen to be — independent, rigorous, objective, procedurally correct, reasonably rapid and ultimately productive of results;

34. Believes that OLAF must possess adequate human resources to deal with its case-load at least as effectively as an equivalent Member State service. It should also be ensured that certain lacunae in the staffing of OLAF are remedied, notably through the recruitment of adequate specialist expertise, beyond its core investigative personnel, in the fields of (a) auditing, especially 'forensic accountancy', (b) information technology, (c) prosecution and (d) judicial procedures in Member States. All OLAF staff should moreover be selected strictly on the basis of their suitability for OLAF's purposes, which should preclude any 'automatic' transfer of OLAF staff to the new organisation;

35. Asks the Commission to draw up, as part of its forthcoming communication on reform, a procedure for officials whose conscience persuades them of the need to expose wrong-doings encountered in the course of their duties; considers that such a procedure should include a mechanism whereby, when it has not been possible to resolve concerns within a reasonable period of time, including through recourse to OLAF, officials would have the right to address, in confidence, an external authority such as the European Ombudsman; calls on the Commission to base its proposal on the experience gained with similar procedures concerning whistle-blowers in countries such as Sweden, the United Kingdom and the United States; at the same time considers that the rights of officials accused of wrongdoings must be protected, as they may have been falsely accused;

36. Considers that, whilst fair, accessible and effective whistleblowing provisions are necessary, they should never be regarded as an alternative to good, responsible management;

37. Notes that the long-standing provisions in the Financial Regulation and the Staff Regulations concerning officials' financial liability for the damage their actions cause have proved ineffective; recommends, therefore, that the enforcement of these provisions should no longer be left to internal Commission bodies, but that instead this task should be allotted to an external body, such as the European Court of Auditors or the European Court of Justice; calls on the Commission to put forward the requisite legal texts establishing a corresponding chamber in the Court of Auditors or the Court of Justice to deal with disciplinary procedures for budgetary irregularities;

38. Calls on those Member States which have not yet done so to ratify the 1995 Convention on the Protection of the European Communities' Financial Interests, noting that they undertook to do so by the middle of 1998 and emphasising that such ratification will become pointless once the Commission has submitted a proposal for a Community act;

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39. Draws attention to paragraph 5 of its resolution of 7 October 1998 on the independence, role and status of the Unit for the Coordination of Fraud Prevention (UCLAF)<sup>(1)</sup> in which Parliament, by a two-thirds majority of its Members, called on the Commission to put forward, on the basis of Article 280 of the EC Treaty, proposals for regulations to replace the unratified conventions and additional protocols;

***Upholding standards in European public life***

40. Welcomes the introduction of a code of conduct for Commissioners, a code of conduct for Commissioners and departments, and the announcement of a Commission decision on a code of good administrative behaviour; believes that all codes should be made legally binding; instructs its competent committee to draw up a report on these codes of conduct with a view to ensuring that the principles of merit and managerial capacity in particular are clearly included in them for purposes of appointment and promotion;

41. Calls on the Commission to adopt, in the form proposed by the European Ombudsman, the Code of Good Administrative Practice for EU officials in their relations with the public;

42. Calls for the individual political responsibility of Commissioners to be enshrined in the Treaties;

43. Considers that the code of conduct for Commissioners should redefine the concept of collective responsibility to encompass not only a prohibition on calling into question decisions adopted by the college, but also the right and the obligation of Commissioners to keep themselves fully apprised of the activities their colleagues;

44. Considers that clear rules should be established regarding the criteria applicable in connection with the appointment of individuals to Commissioners' cabinets, with a view in particular to eliminating the possibility of favouritism based on personal relationships. Full transparency as to any personal relationship between a Commissioner and a member of his/her cabinet must be ensured;

45. Considers that Commissioners who use undue influence to favour fellow nationals or wider national interests in any sector for which they are competent are in serious breach of their obligation of independence, and should be subject to an appropriate sanction;

46. Considers that the Commission must establish clear internal guidelines — to be made public — designed to ensure maximum openness and transparency regarding acts and decisions of the Commission once taken and the processes by which they were arrived at;

47. Considers that the rights and obligations of officials to report instances of suspected criminal acts and other reprehensible behaviour to the appropriate authorities outside the Commission should be established in the Staff Regulations and the necessary mechanisms put in place. The Staff Regulations should also protect whistleblowers who respect their obligations in this regard from undue adverse consequences of their action;

48. Considers that any Commissioner who knowingly misleads Parliament, or omits to correct at the earliest opportunity inadvertently erroneous information provided to Parliament should be expected to offer his/her resignation from the Commission. In the absence of an offer of resignation, the President of the Commission should take appropriate action;

49. Welcomes the decision of the Members of the new Commission to renounce a number of special privileges traditionally granted to them and calls upon the Commission to codify this new practice, so as to make it applicable beyond the mandate of the present Commission;

50. Considers that Membership of the Commission is wholly compatible with ordinary membership of a political party; takes the view that Members of the Commission should at all times maintain their independence and neutrality;

51. Notes that, although the Committee of Independent Experts only considered management practices at the Commission, other Institutions could benefit from some of its recommendations; accordingly instructs its competent committee to consider and report on the need for improvements to Parliament's prevailing internal rules, administrative procedures and management practices;

<sup>(1)</sup> OJ C 328, 26.10.1998, p. 95.

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52. Instructs its Secretary-General and its Committee on Constitutional Affairs, within their respective remits, to bring forward proposals for the necessary formal and practical arrangements (including changes to Parliament's Rules of Procedure and, in particular, to Annex VII thereto), to guarantee Parliament's unfettered rights under Article 276 of the EC Treaty and to introduce appropriate general procedures for handling documents of a necessarily confidential nature;

53. Calls on the Commission to bring forward proposals for the classification of documents and to consider other ways — drawing on the experience of the relationship between the executive and the legislature acquired in Member States — in which full transparency with Parliament can be respected whilst minimising the risks of prejudicing on-going court cases or violating the rights of individual staff members, etc.;

54. Considers that an independent 'Committee on Standards in Public Life' should be created by inter-institutional agreement to provide advice on ethics and standards of conduct in the European institutions;

55. Considers that the existing set of legal provisions and rules governing the conduct of Members of the European Parliament (including those contained in the Rules of Procedure) must be supplemented as soon as possible by Statutes for Members and their assistants after agreement with Parliament;

#### ***Ensuring responsibility and accountability in European political and administrative life***

56. Recalls that the Commission is accountable to the European Parliament. To this end, it is under a constitutional duty to be fully open with Parliament, providing it with the complete, accurate and truthful information and documentation necessary for Parliament to carry out its institutional role, notably in the context of the discharge procedure and in connection with committees of inquiry. Access to information and documentation should only be refused in exceptional, duly motivated circumstances and in accordance with procedures agreed between the institutions;

#### ***Modernising human resources policy***

57. Notes the steps already taken by the Commission to modernise its personnel policy, including the proposed changes to its internal social dialogue and the implementation of new principles governing the appointment of senior officials;

58. Calls on the Commission to carry out a comprehensive reform of human resources policy comprising, *inter alia*, the following elements:

- (a) reform of the system of open competitions, including a shift of emphasis from the testing of factual knowledge to the testing of skills, as well as increased scope for specialist recruitment, particularly in the spheres of audit, bookkeeping and accounting,
- (b) access for candidates to their corrected test papers, in accordance with the most recent recommendations of the European Ombudsman,
- (c) an end to all forms of discrimination in accordance with Article 13 of the EC Treaty,
- (d) evaluation and training as an ongoing process throughout officials' careers, making compulsory specific skills training a requirement for promotion to a higher grade and for transfer to a specialist post,
- (e) a transparent promotions procedure based on merit, including internal competitions as a means of promotion from one grade to the next if a vacant post exists,
- (f) increased, programmed staff mobility within the Commission and between the Commission and other European institutions and exchanges of European officials and expert national officials on temporary secondment,
- (g) a procedure for dealing with professional underperformance that is distinct from the disciplinary procedure,
- (h) reform of the disciplinary procedure, ensuring more continuity in the membership of the disciplinary board while introducing a significant independent external element,

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- (i) maintaining the principle of an independent, impartial European civil service,
- (j) training and professional conversion should be seen as an ongoing process, starting with the probationary period and forming a regular, compulsory element throughout an official's career. The Commission should step up the financial resources allocated to training measures,
- (k) empowerment of staff requires that everyone's duties should be clearly defined and that the efforts made and the results obtained by each official in carrying out the duties allocated to him are recognised, encouraged and rewarded,
- (l) decentralisation plays an important role in enhancing the sense of responsibility felt by staff. However, the tasks that are decentralised must be clearly defined and effective. Thus the practice of creating or maintaining posts with no real responsibilities (or corresponding workload) should be regarded as contrary not only to the rationality and effectiveness of the system but also to the principle of empowerment,
- (m) the system of open competitions for the recruitment of Commission staff should be thoroughly reviewed, since the number of candidates has increased considerably over time and the procedures followed have proved inadequate,
- (n) a reform of the staff reports and promotions system is necessary in order to restore the credibility of the selection process and the career structure. To that end there is a need to strengthen the assessment culture, review the form of the reports and simplify their headings, draw up more specific and balanced assessment criteria, award more clearly differentiated marks and provide more detailed comments with better justifications, and encourage more active and responsible participation by the officials concerned;

59. Believes that the overall pay and benefits package for officials must be attractive and competitive as regards the overall level of remuneration, but that the structure of the package is in need of modernisation;

60. Calls for a fundamental review of the system of allowances, in particular the expatriation allowance;

61. Calls on the Commission to ensure that officials' performance is assessed on a regular basis throughout their careers; considers that excellence must be rewarded and that where it occurs, systematic under-performance by officials — to the extent that it cannot be dealt with through retraining or by other effective means — must result in the termination of their employment contract;

62. Reminds the Commission that any changes to the Staff Regulations will be directly applicable to all EU Institutions and therefore calls on the Commission to establish a high-level interinstitutional dialogue on the reform process; this interinstitutional dialogue should aim, *inter alia*, at eliminating unjustified derogations from the Staff Regulations applied in the Court of Justice with regard to the recruitment and promotion of certain officials;

### **Implementation of the reforms**

63. Calls on the Commission to incorporate the proposals contained in this Resolution in the communication it is due to present in February 2000, including a timetable for their implementation, and to present annual progress reports to Parliament; invites the Commission's Vice-President for Reform to report to the Committee on Budgetary Control on a regular basis;

64. Instructs its Committee on Budgetary Control and, in so far as the matter falls within its terms of reference, its Committee on Legal Affairs and the Internal Market to prepare a report on the final Commission proposals on the reform of the Commission and to ensure that Parliament's recommendations are coherently implemented;

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65. Instructs its President to forward this resolution to the Commission, the Council and the Court of Auditors.