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REPORT

on action to be taken on the second report of the Committee of
Independent Experts on reform of the Commission

Committee on Budgetary Control

Rapporteur: Michiel van Hulten

<i>Symbols for procedures</i>	<i>Abbreviations for committees</i>
<p>* Consultation procedure majority of the votes cast</p> <p>**I Cooperation procedure (first reading) majority of the votes cast</p> <p>**II Cooperation procedure (second reading) majority of the votes cast, to approve the common position majority of Parliament's component Members, to reject or amend the common position</p> <p>*** Assent procedure majority of Parliament's component Members except in cases covered by Articles 105, 107, 161 and 300 of the EC Treaty and Article 7 of the EU Treaty</p> <p>***I Codecision procedure (first reading) majority of the votes cast</p> <p>***II Codecision procedure (second reading) majority of the votes cast, to approve the common position majority of Parliament's component Members, to reject or amend the common position</p> <p>***III Codecision procedure (third reading) majority of the votes cast, to approve the joint text</p> <p>(The type of procedure depends on the legal basis proposed by the Commission)</p>	<p>I. AFET Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy</p> <p>II. BUDG Committee on Budgets</p> <p>III. CONT Committee on Budgetary Control</p> <p>IV. LIBE Committee on Citizens' Freedoms and Rights, Justice and Home Affairs</p> <p>V. ECON Committee on Economic and Monetary Affairs</p> <p>VI. JURI Committee on Legal Affairs and the Internal Market</p> <p>VII. INDU Committee on Industry, External Trade, Research and Energy</p> <p>VIII. EMPL Committee on Employment and Social Affairs</p> <p>IX. ENVI Committee on the Environment, Public Health and Consumer Policy</p> <p>X. AGRI Committee on Agriculture and Rural Development</p> <p>XI. PECH Committee on Fisheries</p> <p>XII. REGI Committee on Regional Policy, Transport and Tourism</p> <p>XIII. CULT Committee on Culture, Youth, Education, the Media and Sport</p> <p>XIV. DEVE Committee on Development and Cooperation</p> <p>XV. AFCO Committee on Constitutional Affairs</p> <p>XVI. FEMM Committee on Women's Rights and Equal Opportunities</p> <p>XVII. PETI Committee on Petitions</p>

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At its sitting of 17 September 1999 the President of Parliament announced that the Conference of Presidents had authorized the Committee on Budgetary Control to draw up a report on the action to be taken on the second report of the Committee of Independent Experts. At its sitting of 17 January 2000 the President of Parliament will announce that he had authorized the Committee on Legal Affairs and the Internal Market, the Committee on Employment and Social Affairs and the Committee on Regional Policy, Transport to draw up an opinion.

At its meeting of 13 October 1999 the Committee on Budgetary Control appointed Mr Michiel van Hulten as rapporteur.

The Committee discussed the report at its meetings of 23 November 1999, 7 December 1999 and 10 January 2000.

At the last meeting it adopted the motion for a resolution by 15 votes to 2, with 2 abstentions.

The following were present for the vote: Theato chairman; Bösch, van der Laan, Blakvice-chairmen; van Hulten rapporteur; Camre (for Hyland), Casaca (for Hollande), Dell'Alba, Elles (for Costa), Fabra Vallés., (for Jean-Pierre, pursuant to Rule 153(2)), Kuhne, Maaten (for Di Pietro, pursuant to Rule 153(2)), McCartin (for Khanbhai), Morgan, Pomés-Ruiz, Rühle (for Turmes), Staes, Stauner and Zappalà (for Langenhagen, pursuant to Rule 153(2)) .

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 are attached to this report.

The report was tabled on 11 January 2000.

The deadline for tabling amendments will be indicated in the draft agenda for the relevant part-session.

MOTION FOR A RESOLUTION

Resolution of the European Parliament 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, Volume I & II);

- having regard to the EC Treaty and in particular Article 276 thereof;

- having regard to its decisions of 17 December 1998¹ and 4 May 1999² 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 1999³ on improving the financial management of the Commission following the refusal of the 1996 discharge;

- having regard to its resolution of 23 March 1999⁴ on the resignation of the Commission and the appointment of a new Commission;

- having regard to its resolution of January 2000⁵ on the legal protection of the EU's financial interests,

- having regard to the Interinstitutional Agreement of 25 May 1999⁶ between the European Parliament, the Council of the European Union and the Commission of the European Communities concerning internal investigations conducted 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;

¹ OJ C 98/99, 9.4.1999, p. 194.

² OJ C 279/99, 1.10.1999, p. 114.

³ OJ C 104/99, 14.4.1999, p. 106.

⁴ OJ C 177/99, 22.6.1999, p.19.

⁵ Theato report on introducing protection under criminal law of the Union's financial interests to be adopted during the same plenary session.

⁶ OJ L 136/99, 31.5.1999, p. 15.

- 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 the European Parliament 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 Parliament's Bureau authorised 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 the European 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;
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 transmit these documents to its competent committee on request;
 5. Calls on the Council to ensure a timely and 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 4/97⁷, 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;
 - 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;

⁷ OJ C 57/98, p. 1.
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- e) secure the independence of personnel responsible for financial control within the directorates-general and their protection from hierarchical pressure;
 - f) phase out the previous 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;
 - 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. States that it would be helpful if the Court were able in its Statement of Assurance ('DAS') 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.
13. 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.
14. Considers that the Council should give greater political priority to the preparation of its annual recommendation to the European Parliament on discharge, as this would reinforce the political status of the prime institutional mechanism whereby the Commission is held accountable for financial management.
15. 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.
16. 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.
17. Calls on the Commission to impose a time-limit on the contradictory procedure of internal audits of one month;

18. 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-a-vis the other parts of DG Audit;
19. 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;
20. 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

21. 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.
22. 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;

23. Believes that the European Parliament's 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;
24. 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;
25. Considers that increased co-operation between the European Court of Auditors and its national counterparts would lead to a higher detection rate of irregularities;
26. 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;
27. Asks the Commission to undertake a study to consider the development of harmonised accounting and auditing procedures in all Member States;
28. 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

29. Believes that the institutions and Member States must work to create a modern administrative culture in which fraud, 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, general awareness-raising on issues of financial management and control, and the existence of a functioning system of sanctions;
30. 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;
31. 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;
32. 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;

further takes the view that the procedure must make provision for an assessment as to whether the whistle-blower has acted properly and honestly, in the light of the circumstances and interests at stake: in this connection, it should also be examined whether he or she has first complied with internal procedures, whether he or she sought to gain any personal advantage, whether the public interest argument was sufficiently strong and whether he or she acted in good faith;

33. Considers that, whilst fair, accessible and effective whistleblowing provisions are necessary, they should never be regarded as an alternative to good, responsible management;
34. 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 on the Court of Auditors or the Court of Justice to deal with budgetary discipline;
35. 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;
36. Draws attention to paragraph 5 of its resolution of 7 October 1998⁸ on the work of UCLAF 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 to replace the unratified agreements and additional protocols;
37. Considers that, in order to improve the effectiveness of the fight against fraud, a new legal framework must be introduced, in accordance with the three-stage procedure recommended by the Committee of Independent Experts, for the prosecution and punishment of criminal offences involving the financial interests of the European Communities; notes that, in accordance with the general principles of international and Community law, the first stage is a matter for the Community authorities, the second stage falls exclusively within the remit of the Member States, while the third stage requires a change to the Treaty; calls on the Commission to submit to the next Intergovernmental Conference a proposal in respect of the elements of the three-stage procedure which require a change to the Treaty;
38. Calls on the Commission to present without delay a proposal, in accordance with the first stage of the procedure recommended by the Committee of Independent Experts and on the basis of Article 280 of the EC Treaty, for the appointment of a European Public Prosecutor who would have the power to prosecute criminal offences committed by Members and officials of EU institutions and bodies and involving the financial interests of the European Communities; considers that it should be the task of that Public Prosecutor to direct the relevant inquiries conducted by the European Anti-Fraud Office (OLAF) and to facilitate the prosecution of such criminal offences before the appropriate national judicial authorities; takes the view, further, that scrutiny of the Public Prosecutor's activities should be entrusted to an EU court (Court of Justice or Court of First Instance);

⁸ OJ C 379/1998, 7.12.1998, p.40.

Upholding standards in European public life

39. 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;
40. 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;
41. Calls for the individual political responsibility of Commissioners to be enshrined in the Treaties;
42. 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 each Commissioner to keep him/herself fully apprised of the activities of every other Commissioner and to take action in this respect as necessary, for example by having frank and open discussions with other Commissioners both inside and outside the college;
43. 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;
44. Considers that The Commission must establish clear internal guidelines – to be made public – designed to ensure maximum openness and transparency as to acts and decisions of the Commission once taken and the processes by which they were arrived at;
45. 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;
46. 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;
47. 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;
48. Considers that Membership of the Commission is wholly compatible with ordinary membership of a political party; takes the view, however, that Members of the European Commission must not hold office in a political party, given that Members of the Commission should at all times maintain their independence and neutrality;
49. 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;

50. 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.;
51. Considers that an independent standing ‘Committee on Standards in Public Life’ should be created by interinstitutional agreement to formulate, supervise and, where necessary, provide advice on ethics and standards of conduct in the European institutions. This Committee on Standards should approve the specific codes of conduct established by each institution;
52. 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 completed as soon as possible by Statutes for Members and their assistants;

Ensuring responsibility and accountability in European political and administrative life

53. 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

54. 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;
55. 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 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, other European institutions, international organisations and local/regional/national administrations;
- 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;
- i) 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;
- j) Mobility should be encouraged and no exceptions should be made. It should be made compulsory to change posts at the end of a given period of time. This means that flexibility is a quality which is valued and rewarded in terms of promotion. Furthermore, mobility should be an essential precondition for duties involving leadership or management of staff.;
- 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. Decentralisation should not become synonymous with confusion. The process of decentralisation must be accompanied by a reinforcement of programming and internal coordination and genuine leadership must be exercised;

- m) The practice under which ‘other servants’ of the Commission - in particular, temporary staff - have ‘permanent temporary status’ should be brought to an end. Temporary staff should be appointed to permanent posts, which would oblige them under the Staff Regulations to leave within three years. At the same time, the list of temporary posts should be gradually reduced;
 - n) 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;
 - o) 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 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. ;
56. Believes that, while the overall pay and benefits package for officials must remain attractive and competitive as regards the overall level of remuneration, the structure of the package is in need of modernisation;
57. Calls for a fundamental review of the system of allowances, including in particular the expatriation allowance;
58. 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; furthermore calls on the Commission to increase the scope for external recruitment, in particular for senior management posts;
59. 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 as a matter of urgency and with a deadline for completion;

Implementation of the reforms

60. 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 European Parliament’s Committee on Budgetary Control on a regular basis;
61. Asks its Committee on Budgetary Control 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;
62. Instructs its President to forward this resolution to the Commission, the Council and the Court of Auditors.

EXPLANATORY STATEMENT

1. Introduction

On 14 January 1999, the European Parliament adopted a resolution on improving the financial management of the Commission, calling in its first paragraph for “a committee of independent experts to be convened under the auspices of the Parliament and the Commission with a mandate to examine the way in which the Commission detects and deals with fraud, mismanagement and nepotism, including a fundamental review of Commission practices in the awarding of all financial contracts”¹. A Committee of Independent Experts was set up on 1 February under the presidency of Mr. André Middelhoek, former President of the European Court of Auditors. The Committee presented its first report on 15 March 1999. The Committee concluded: “It is becoming difficult to find anyone who has even the slightest sense of responsibility”.² On 16 March the Commission tendered its resignation.

Following the resignation of the Commission, the European Parliament adopted a resolution containing the mandate for the Committee’s second report:

“[The European Parliament] looks forward to the second report by the Committee of Independent Experts containing a more wide-ranging review of the Commission’s cultures, practices and procedures and in particular its concrete recommendations for strengthening these procedures and any other appropriate reforms to be considered by Commission and Parliament; this Report should deal amongst other issues with procedures in existence for the awarding of financial contracts and of contracts for interim and temporary staff to implement programmes, with procedures for following up allegations of fraud, mismanagement and nepotism (detection and treatment), and with the treatment by the Commission of cases of fraud, mismanagement and nepotism involving staff; this report must be finished by the beginning of September 1999.”³

The Committee presented its second report on 10 September 1999.

2. The Committee’s recommendations

The Committee’s second report contains 90 recommendations, divided over 6 chapters, which deal with the following areas:

- Direct management
- Shared management

¹ OJ C 104/99, p.106.

² Point 9.4.25 of the report.

³ OJ C 117/99, p.19, paragraph 4.

- The Control Environment
- Fighting fraud and corruption
- Matters relating to staff
- Integrity, responsibility and accountability in European political and administrative life

The Committee calls for, *inter alia*:

- A complete overhaul of the Financial regulation
- Improvements to the EAGGF Clearance of Accounts procedure
- A strengthening of structural fund spending controls within the Commission and by Member States
- The decentralisation of financial control and the setting up of a new Independent Audit Service
- The establishment of a European public prosecutor's office for the prosecution and punishment of criminal offences involving the financial interests of the European Communities
- Reform of the Commission's personnel policy, including reform of the disciplinary procedure
- Codes of conduct for Commissioners, their private offices and officials

3. Steps undertaken by the new Commission

Speaking to the European Parliament on 21 July Commission President-designate Prodi stated that his aim was "to transform the Commission into a world-class administration that leads by example. Our watchwords at every stage will be transparency, accountability and efficiency". He announced that reform was already under way in a number of areas:

- "The Commission bureaucracy is being streamlined and rationalised and the number of departments cut.
- Commissioners will be housed in the same building as their departments.
- Commissioner's offices (*Cabinets*) will be smaller and more multi-national: I intend to ensure that the Head or Deputy Head of each Cabinet will be a non-national, and that each Cabinet will include at least three nationalities.
- The rules on senior appointments will be tightened and made more transparent.
- There will be greater internal mobility for senior Commission staff.
- Commission departments will be identified by short, understandable names instead of numbers.
- A new, reinforced media and communications service has been created to ensure that the Commission's policies are communicated professionally to reach all European citizens."⁴

Mr. Prodi announced that further steps would be taken in the light of the recommendations of the Committee of Independent Experts. He undertook to keep Parliament fully informed. It should be noted that the Commission has since acted on all of the points outlined by Mr. Prodi. In a symbolic but nevertheless significant gesture, Commissioners also voluntarily renounced their entitlement to the tax free purchase of alcohol, tobacco, petrol and consumer goods. A strategy

⁴ See Verbatim report of sitting of Wednesday, 21 July 1999, the English version of the speech is available in the Internet:

<http://europa.eu.int/comm/commissioners/prodi/speeches/designate/21079>

paper on reform prepared by Vice-President Kinnock was agreed by the Commission on 16 November, which sets out an ambitious agenda for reform. Vice-President Kinnock has made it clear that he will present a Commission communication on reform by February 2000, and that a preliminary draft will be available for discussion by mid-January.

4. The reform process

The overall aim of the reform process must be to create a strong, honest European public administration, equipped to carry out its tasks in an effective and efficient manner; an administration in which officials are provided with the means to carry out their tasks and are held fully accountable at all levels, an administration that recognizes and rewards merit, and encourages officials to develop their full potential. In order to achieve this, action is required in four areas.

a) Improving financial management and control

First, financial management and control within the Commission must be improved. One of the main problems identified by the Committee of Independent Experts is a lack of clear rules governing contracts, subsidies and outsourcing. Tasks are contracted out to private firms, often as a way of circumventing statutory limits on staff numbers. Transparent rules must be established, and a central database for contracts and contractors should be set up, not least in order to enable Parliament to carry out its budgetary control tasks. While private firms and NGOs must continue to play their part, the Commission must take greater responsibility for their work. The setting up of Commission Executive Agencies, charged with implementing specific policies, should also be considered. A second problem is the lack of an adequate financial control mechanism. The Commission's Directorates-General must be made fully responsible for their own expenditure, including financial control. They must publish their own annual accounts, so as to enable a clear identification of problem areas, and set annual targets for reducing fraud and irregularities. In return for this greater degree of autonomy, managers must be made fully and personally responsible for their actions. A new Independent Audit Service must be set up to ensure the proper functioning of the system.

b) Strengthening the fight against fraud, mismanagement and nepotism

Second, the fight against fraud, mismanagement and nepotism must be strengthened. Most fraud against the Community budget is committed in Member States. Rather than pointing the finger at Brussels, Member State governments must take adequate measures to ensure that the Community funds for which they are responsible are well spent. Why have most Member States not ratified the Convention on the Protection of the Financial Interests of the Union? Why do national Courts of Auditors not co-operate more closely with their European counterpart? It is clear that without adequate measures, headlines about fraud will continue to dominate the news, and Member States will have only themselves to blame. But action must also be taken at the European level. Firstly, by creating an administrative culture in which fraud, corruption and nepotism cannot thrive. This requires a clear example to be set by Commissioners and senior staff, as well as adequate training for all officials. Secondly, by reinforcing the existing mechanisms for dealing with fraud. OLAF, the European anti-fraud office set up earlier this year, must be placed under the direction of an independent European public prosecutor, whose job will be to prepare for prosecution by national courts criminal offences committed against the financial interests of the Union by Members and officials of the European Institutions.

c) Upholding standards in European public life

Third, standards in European public life must be upheld. The political crisis which led to the downfall of the Commission earlier this year clearly demonstrated the need for unambiguous and enforceable rules of conduct. A number of codes have since been introduced. In a speech in the Hague on 19 November 1999 Vice-President Kinnock announced new measures for the protection of whistleblowers, including the possibility for whistleblowers to address an external authority if their complaints are not adequately dealt with within the Commission or by OLAF.

The European Institutions should follow the example of a number of countries (most notably the United Kingdom) and institute a Committee for Standards in Public Life, with a mandate to give advice on professional ethics and rules of conduct in the European institutions. Crucially, reforms must not be limited to the Commission. Parliament in particular must also consider the need for improvements to its internal rules, administrative procedures and management practices. While it has recently agreed to allow OLAF to carry out inquiries involving MEPs and Parliament staff, much remains to be done to improve the financial probity of the Parliament, most notably as regards the system of MEP allowances.

d) Modernising the Commission's human resources policy

Finally, the Commission's human resources policy must be modernized. The Commission is right when it states in its recent strategy paper: "Creating an improved environment in which staff can fulfil their personal and professional potential is the best means of ensuring the improved performance of the Commission as an organization. The revision of our personnel policy should therefore be comprehensive and cover recruitment and all aspects of career development (...)"⁵. The Commission's existing human resources policy is no longer suited to the requirements of a modern, multinational organization. The social dialogue has often acted as a brake on reform and its overhaul is long overdue. A career with the European institutions must become more attractive. Too many new officials are leaving their jobs after just a few years. Merit must be recognized and rewarded. Specific skills training should be a sine qua non for promotion to a higher grade. The promotions procedure must be made fairer and more transparent. And last but not least, the pay and benefits package must be reviewed. Not, as some Member States would like to see, in order to cut officials' salaries. A high quality public administration requires high quality people. But it is necessary for the package to be modernized. It must become more flexible, and more responsive to labour market conditions. It must be rid of some of its more outdated elements. And it must deal with the legitimate concerns of the general public.

5. Implementation

The Commission communication due to be presented in February must contain a clear timetable for reform, and Parliament must be kept informed of progress made on an annual basis. Over the last few years, the discharge procedure has become an increasingly important tool in Parliament's efforts to make the Commission more accountable. Parliament must now ensure that the reform plans set out by the Commission are implemented in a comprehensive manner, and without delay. Speaking in the Hague on 19 November, Mr. Kinnock said that if reform had not begun to take effect by the beginning of 2003, he would have to wonder whether his job was still worthwhile. With a new Commission and a new Parliament up and running, the momentum for reform is as strong as it has ever been (and possibly ever will be). Enlargement of the Union

⁵ Some strategic reform issues, Communication from Neil Kinnock to the Commission, SEC(1999) 1971/2, p. 5.

is just a few years away. Now is the time for Europe's institutions to put their own house in order.

OPINION

(Rule 162)

for the Committee on Budgetary Control

on action to be taken on the second report of the Committee of Independent Experts on reform of the Commission (report by Michiel van Hulten)

Committee on Legal Affairs and the Internal Market

Draftsman: Stefano Zappalà

PROCEDURE

At its meeting of 30 November 1999 the Committee on Legal Affairs and the Internal Market appointed Stefano Zappalà draftsman.

It considered the draft opinion at its meetings of 13 December 1999 and 10 January 2000.

At the latter meeting it adopted the following conclusions unanimously, with 2 abstentions.

The following were present for the vote: Willi Rothley, vice-chairman and acting chairman; Eduard Beysen, Rainer Wieland, vice-chairmen; Stefano Zappalà, draftsman; Maria Berger, Charlotte Cederschiöld, Raina A. Mercedes Echerer, Francesco Fiori (for Kurt Lechner pursuant to Rule 153(2)), Marie-Françoise Garaud, Evelyne Gebhardt, The Lord Inglewood, Ioannis Koukiadis, Ole Krarup, Klaus-Heiner Lehne, Donald Neil MacCormick, Toine Manders, Luis Marinho, Véronique Mathieu, Hans-Peter Mayer, Manuel Medina Ortega, Bill Miller, Claude Moraes, Francesco Musotto (for Gerardo Galeote Quecedo pursuant to Rule 153(2)), Antonio Tajani, Diana Paulette Wallis, Joachim Wuermeling, Christos Zacharakis, François Zimeray.

BACKGROUND/GENERAL COMMENTS

The Committee on Legal Affairs and the Internal Market expresses its satisfaction with the second report of the Committee of Independent Experts and commends its work. The Committee would add that it appreciates the efforts which the Commission itself has made to date in order to tackle its problems.

As far as the report drawn up by Mr van Hulten for the Committee on Budgetary Control is concerned, the Committee on Legal Affairs and Internal Market suggests the following amendments concerning matters falling within its terms of reference.

CONCLUSIONS

The Committee on Legal Affairs and the Internal Market calls on the Committee on Budgetary Control, as the committee responsible, to incorporate the following amendments in its report:

Amendment 1

Add the following sentence to point 9(a): “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;”

Reasons

This amendment is self-explanatory.

Amendment 2

Amend point 9(g) to read: “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;”

Reasons

This amendment is self-explanatory.

Amendment 3

Amend point 9(h) to read: “establish a new Independent Audit Service under the authority of the President of the Commission, (words in brackets deleted) to be headed by a highly qualified and experienced member of the auditing profession, recruited specifically for this task;”

Reasons

The amendment is designed to ensure that the Audit Service is truly independent by providing that it is answerable to the President, rather than the Vice-President, of the Commission.

Amendment 4

Amend point 20 to read: “Believes that the institutions and Member States must work to create a modern administrative culture in which fraud, mismanagement and nepotism cannot thrive; in order to achieve this in the Commission, the following are essential: a clear example set by Commissioners and senior managers, vocational 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;”

Reasons

First, vocational training must emphasise professional ethics. Secondly, it is insufficient to “raise awareness”: binding rules are needed in the fields of financial management and control. Thirdly, the problem with the former situation was not so much the absence of a disciplinary procedure, but the fact that it was rarely enforced. Lastly, it is important to emphasise that any system of sanctions must safeguard the rights of the defence, as the Court of Justice has consistently held.

Amendment 5

Paragraph 21 – van Hulten report

21. Deleted.

Justification: Confidence in the new independent anti-fraud unit, OLAF, should not be shattered from the outset by the creation of a further mechanism to act alongside it.

Amendment 6

Paragraph 22 – van Hulten report

22. Deleted.

Justification: Neither the European Court of Justice nor the European Court of Auditors may enforce provisions.

Amendment 7

Paragraph 25 – van Hulten report

25. Deleted.

Amendment 8

Delete point 26.

Reasons

The idea that a “high-level official” should have “unlimited jurisdiction” in respect of criminal offences alleged to have been committed by Members and officials of EU institutions and bodies – which, on the face of it, would also cover Members of the European Parliament – “without the obstacle of official immunity or confidentiality” is preposterous and would make a mockery of the Protocol on Privileges and Immunities. That an official, no matter how high his rank, could waive the immunities conferred by the Protocol and compel Members of the institutions and staff members to breach duties of confidentiality would be unlawful, unconstitutional and, in the final analysis, counterproductive. For instance, it is pointless suggesting in point 21 that

whistleblowers should have the “right to address, in confidence, an external authority such as the European Ombudsman” if the external authority could be compelled to breach that confidence by a mere official.

Amendment 9

Amend point 29 to read: “Considers that Membership of the Commission is compatible with membership of a political party”.

Reasons

To state that “Membership of the Commission is wholly compatible with membership of a political party and full participation in its activities” unduly fetters the powers of the European Parliament to vet the nominee President and Members of the Commission prior to their appointment. Moreover, this statement is incompatible with point 7.16.6 of the Independent Experts’ report.

Amendment 10

Amend point 34(a) to read: “modernisation of the system of open competitions so as to ensure that staff with the skills and specialisations required by the institutions can be recruited rapidly without incurring unnecessary expenditure, while maintaining the requisite degree of impartiality and objectivity of recruitment;”

Reasons

The institutions’ record in recruiting staff with specialist skills is not good. Recent problems with an open competition for Commission staff provides more than enough evidence that the traditional open competition needs rethinking.

Amendment 11

Paragraph 34(e) – van Hulten report

- (e) 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;

Amendment 12

Add the following point 34(h): “the principle of an independent, impartial European civil service should be maintained”.

Reasons

The advantages of an independent civil service at European level are self-evident.

Amendment 13

Amend point 35 to read: “Believes that, whilst the overall pay and benefits package for officials must be attractive and competitive as regards the overall level of remuneration, the structure of the package might warrant reviewing.”

Reasons

To state that the pay and benefits package must “remain” attractive and competitive, suggests that it already is attractive and competitive. This is not invariably the case, as witness the institutions’ difficulties in recruiting staff with particular skills and qualifications. The assertion “the structure of the package is in need of modernisation” is meaningless in the absence of any details of what is meant by “modernisation”.

Amendment 14

Delete point 36. The “fundamental review of the system of allowances ...” is covered by point 35.

Amendment 15

Paragraph 37 – van Hulten report

37. 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 underperformance by officials – to the extent to which it cannot be dealt with through retraining or by other effective means – must give rise to disciplinary proceedings; (remainder deleted)

Amendment 16

Add to point 38: “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;”

Reasons

It is at least debatable whether there is any objective justification for recruiting lawyer-linguists at grade LA 6 and promoting law-clerks on the basis solely of their age. The resources that would be made available by recruiting such staff at the more realistic grades in force in the other institutions could be usefully employed in providing the Court with the additional posts which it so badly needs.

Amendment 17

Paragraph 40 – van Hulten report

40. Asks 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;

OPINION
(Rule 162 of the Rules of Procedure)

for the Committee on Budgetary Control

on action to be taken on the second report of the Committee of Independent Experts on the reform of the Commission (report by Michiel van Hulten)

Committee on Employment and Social Affairs

Letter from the committee chairman to Mrs Diemut R. Theato, chairman of the Committee on Budgetary Control

Brussels, 15 December 1999

Dear Mrs Theato,

The Committee on Employment and Social Affairs considered the above subject at its meeting(s) of 30 November 1999 and 14 December 1999.

At the last meeting it adopted the following conclusions by 20 votes to 13, with 2 abstentions⁹:

I. Introduction

At the beginning of September the Committee of Independent Experts presented its second report on reform of the Commission. In contrast to the first report by the group, which focused on concrete allegations of mismanagement, irregularities and fraud, the new report – in accordance with the mandate given by the European Parliament - deals with the functioning of the Commission in general. Most of the 270-page report is devoted to administrative procedures relating to contractualisation between the Commission and third parties, control-mechanisms and instruments to combat fraud.¹⁰

Most of the shortcomings identified by the Experts' report and the recommendations made are general in nature, and are best dealt with at the level of the budgetary control committee. However, the following three aspects are of particular importance to the EMPL committee.

⁹ The following were present for the vote: Rocard, chairman; Menrad, vice-chairman; Ainardi, Andersson, Bullmann, (for van den Berg), Bushill-Matthews, Cappato (for Bigliardo pursuant to Article 166(3)), Cercas Alonso, Crowley, Damiao, De Rossa, Désir (for Hughes), Dover (for Aviles Perea), Ettl, Fatuzzo, Figueiredo, Flautre, Ghilardotti, Gillig, Gorostiaga, Atxal, Helmer (for Cocilovo), Howitt (for Weiler), Jensen (for Ducarme) Jöns, Kauppi (for Kratsa), Koukiadis, Laguiller, Lambert, Lynne, Oomen.Ruijten (for Smet), Perez Alvarez, Pronk, Reis, Saifi, Schmid, Skinner, Stauner (for Mann), Stenzel (for Glase), van Hulten (for Thorning-Schmidt pursuant to Rule 166(3)) and van Lancker.

¹⁰ It also contains sections about staff policy and ethics of European administration which, however, pose more questions than they give answers.

1. Technical assistance (chapter 2.3. of the report¹¹)

The recent past has seen a steady expansion of the use of external technical assistance by the Commission. Unfortunately, in several cases technical assistance offices (TAO) have been involved in allegations of fraud and mismanagement which have caused serious damage to the public image of the European Commission. In contrast to the European Parliament, which makes it very clear in the current budgetary procedure that it wishes the Commission to dismantle all external technical assistance, the independent experts do not call into question the need for external technical assistance. The report recognises that outsourcing of some of the Commission's tasks is justified on grounds of efficiency, expediency and cost. Also, the zero-growth staff policy, combined with the continuous expansion of the Commission's tasks, has forced the Commission to turn to external human resources, and there is little likelihood that this will change in the immediate future.

The term TAO corresponds to very different realities. TAOs operating under budget lines falling within the competence of the EMPL committee range(d) from medium enterprises responsible for the implementation of a whole community programme (as was the case with LEONARDO) to a part-time contract for one person responsible for maintenance of a web-site (EURES).

The independent experts are right to conclude that there is an urgent need a) to define the tasks which can be contracted-out, b) to improve the quality of contracts with TAOs and c) to enhance control mechanisms; the European Parliament has an important role to play in this respect. As part of the budgetary authority, it needs to insist on maximum transparency with regard to the use of external technical assistance – the group's recommendation to restrict the financing of TAOs to part B of the budget, which would open their use to scrutiny by the EP, goes in this direction; but the EP will also need to define what kind of external technical assistance it can accept with regard to scope, volume and beneficiaries (Commission or third parties).

It is evident that the task of defining the clear framework for external technical assistance cannot be entirely left up to the Parliament's committees on budget and budgetary control. The specialised committees would also need to be closely involved. Needless to say that a new policy to gradually decrease technical assistance would need to be facilitated by an increase in Commission staff unless the skills and flexibility of Commission staff can be improved.

2. The structure of the budget (chapter 2.1. of the report)

The Committee of Independent Experts calls for a thorough reform of the Financial Regulation, which in the Experts' view is outdated, and has been only poorly adapted to the size and diversity of the tasks which the Commission is now required to perform. The Committee also draws attention to the fact that the distinction made in the budgetary nomenclature between administrative appropriations (Part A) and operating appropriations (Part B) has become blurred over the years, leading to a lack of transparency and confusion. As no legal basis is regarded as necessary to entering appropriations in Part A, it is not surprising that this part has become a refuge for the financing of subsidies which have no legal basis, in particular to special interest groups.

The EMPL committee has not called into question the use of Part A as a means of funding for interest groups (although it has never had recourse to this possibility itself); a glance at Title A-3

¹¹ The present paper cannot go into the details of the report's findings. The reader is kindly requested to consult the relevant chapters of the group's report for more detailed information;

of the budget, however, shows serious incoherence: Both the choice of organisations receiving funding under Part A and the financial envelopes attributed to them seems to be random. There is an evident need to define clear rules on eligibility in this respect. In a much broader context, a discussion needs to be launched about the eligibility of interest groups in general. In fact, it can be argued that specific interest groups, as for example, in the social field, play an important role as intermediaries and providers of expertise in specific policy areas and should therefore be eligible for limited funding regardless of a specific legal base.

3. Structural Funds (Chapter 3.1. of the report)

The Committee of Independent Experts highlights several weaknesses in the management of the Structural Funds, in particular with regard to financial control, eligibility of projects and the Commission's efforts to guarantee the respect of the principle of additionality. Most of the criticism, however, is not new, as it is drawn from earlier Court of Auditors' reports. Although the experts acknowledge the Commission attempts to clarify the distribution of responsibilities under the new Structural Fund Regulation¹², they remain sceptical as to whether the Structural Funds' reform will remedy the problems encountered in the past: Although the experts criticise the Commission's laxity in enforcing the provisions of the Structural Funds' regulations, it becomes quite obvious that the ultimate responsibility for most of the malfunctioning lies within the Member States. The experts particularly criticise the insufficient control mechanisms at Member States' level and Member States attempts to undermine eligibility rules by means of systematic over-declaration of eligible expenditure and project substitutions. Whereas the experts are right in calling upon the Commission to enhance its control mechanisms, there is no doubt that a decisive improvement in the management of the Structural funds can only be brought about if the Member States take their own responsibilities more seriously.

Budgetary control problems

The Committee on Employment and Social Affairs wishes to add a comment that does not relate directly to the observations made by the Committee of Independent Experts but which nevertheless is highly relevant to the subjects it deals with.

As a basic democratic principle, and in the light of the irregularities that led to the setting up of the Committee of Independent Experts, the European Commission and the European Parliament are entirely justified in their approach and have an overriding duty to ensure the highest levels of transparency in the use of European public funds and to improve financial controls in this area.

This fact, which is fully recognised by the Committee on Employment and Social Affairs, should not

II. Conclusions

The committee on employment and social affairs therefore calls upon the leading committee on budgetary control to include the following conclusions in its report:

¹² Regulation (EC) No 1260/1999 of 21 June 1999, OJ L 161, 26.6.1999, p. 1.

1. calls upon the European Council and Commission to set up, together with the European Parliament, a formal dialogue with all relevant services and parliamentary committees with a view to adopting an interinstitutional agreement on the eligibility, including definition of the legal framework, structure and mandate of external technical assistance;
2. calls upon the Commission and its committee on budgets to define clear eligibility rules for funding of special interest groups in part A of the budget; further calls upon the Commission to present an option paper on the funding of the civil dialogue under the general budget of the European Union;
3. urges the Committee on Budgetary Control to examine closely the drawbacks linked to the excessively rigid nature of financial controls *ex ante* and, in order to compensate for this, to boost the means and procedures relating to financial control *ex post*;
4. calls upon the Commission to provide Parliament on a monthly basis with data on the execution rates of all budget lines, including specified execution on technical assistance under section III, part B;
5. calls on the Member States to rigorously respect the provisions of the Structural Fund regulations and calls upon the Commission to reinforce checks in the Member States both in number and quality relation to the execution of the budget, including specified execution on technical assistance.

Yours sincerely,

Michel Rocard

OPINION

(Rule 162)

for the Committee on Budgetary Control

on the Second report of the Committee of Independent Experts (report by Michiel van Hulten)

Committee on Regional Policy, Transport and Tourism

Draftsman: Brian Simpson

PROCEDURE

At its meeting of 13 October 1999 the Committee on Regional Policy, Transport and Tourism appointed Brian Simpson draftsman.

It considered the draft opinion at its meetings of 24 November 1999 and 13 December 1999.

At the latter meeting it adopted the following conclusions unanimously.

The following were present for the vote: Konstantinos Hatzidakis, chairman; Emmanouil Mastorakis, Helmuth Markov and Rijk van Dam, vice-chairmen; Brian Simpson, draftsman; and Pedro Aparicio Sánchez (for Danielle Darras), Rolf Berend, Emmanouil Bakopoulos, Theo Bouwman, Philip Charles Bradbourn (for Sir Robert Atkins), Luigi Cocilovo (for Martin Callanan), Gerard Collins, Raffaele Costa, Alain Esclope, Giovanni Claudio Fava, Fernando Fernández Martín (for Sérgio Marques), Jean-Claude Fruteau (for John Hume), Mathieu J.H. Grosch, Ewa Hedkvist Petersen, Elisabeth Jeggle, Dieter-Lebrecht Koch, Brigitte Langenhagen (for Karla Peijs), Arlene McCarthy, Erik Meijer, Rosa Miguélez Ramos, Camilo Nogueira Román, Juan Ojeda Sanz, Wilhelm Ernst Piecyk, Samuli Pohjamo, Reinhard Rack, Carlos Ripoll I Martínez de Bedoya, Isidoro Sánchez García, Marieke Sanders-ten-holte (for Elspeth Attwooll), Gilles Savary, Jürgen Schröder (for Dana Rosemary Scallon), Elisabeth Schroedter (for Josu Ortuondo Larrea), Renate Sommer, Margie Sudre, Johannes Swoboda (for Ulrich Stockmann), Maurizio Turco, Luckas Vander Taelen (for Reinhold Messner) and Mark Francis Watts.

BACKGROUND/GENERAL COMMENTS

On 10 September 1999, the Committee of Independent Experts published its Second Report on the reform of the Commission. The Committee on Regional Policy, Transport and Tourism is mainly concerned with Chapter 3 on Shared Management, and Recommendations 28-34. Agriculture and the Structural Funds are the main areas of joint management between the Commission and the Member States. These two policy areas account for over three-quarters of the EC budget.

Your draftsman welcomes the Second Report of the Committee of Independent Experts as a very important study on shared management for the Structural Funds. The European Parliament should use the report positively as a tool for improvement.

The Committee of Independent Experts points out that shared management is not explicitly defined in Community legislation. The Regulations on the Structural Funds simply define the respective roles and tasks of the Commission and the administrative authorities of the Member States. Political and funding responsibility for the Structural Funds is shared between the Commission and the Member States. It should be remembered, however, that shared management is not a form of delegated responsibility. According to Articles 211 and 274 of the EC Treaty, ultimate responsibility for ensuring application of Community policies and budgetary implementation rests with the Commission. Nevertheless, according to Article 280 of the EC Treaty, Member States shall take the same measures to counter fraud affecting the financial interests of the Community as they take to counter fraud affecting their own financial interests. In addition, the Member States shall co-ordinate their action aimed at protecting the financial interests of the Community against fraud.

In its Second Report, the Committee of Independent Experts sought to answer the following questions concerning shared management: 1) Do the Council regulations which establish the various management arrangement take sufficient account of the Commission's indivisible responsibility for implementing the budget and ultimate executive responsibility? 2) In the areas of shared management do the practices of the Commission and the Member States reflect the respective Treaty articles?

SHARED MANAGEMENT IN THE STRUCTURAL FUNDS

During the programming period 1987-1988 the total amount available under the Structural Funds was doubled, and in the period 1994-1999, it was doubled again. In the next programming period 2000-2006, the Structural Funds account for some EUR 220 billion, i.e. one third of the financial perspectives. The size of the Structural Funds clearly indicates that the practical implementation of the Funds must be in the hands of the Member States but makes it even more essential that there be thorough financial monitoring by both Commission and Parliament.

In 1997 the Commission administered some 1500 programme documents relating to the Structural Funds. Some of these concerned measures belonging to the 1989-1993 period, which had not yet been closed. At the same time, the Member States were responsible for the administration of some 500.000 Structural Funds' projects. Having a smaller number of programmes and projects would facilitate administration of documents, enable larger allocations to be made per programme, free personnel to control tasks, and facilitate monitoring of the implementation of measures. Under the new Regulations on Structural Funds, the number of separate programming documents will eventually be reduced.

As the Committee on Independent Experts rightly points out, the Court of Auditors affirms that the 'estimated' rate of substantive errors in the budgetary sector devoted to the Structural Funds is higher than the corresponding rate for the budget as a whole. This has to change. The main reasons for this are inadequate financial control and accounting systems and the lack of complete or accurate data. Much of the responsibility lies with the Member States as most of the errors occurred at local, regional or national level. Nevertheless, the Commission must put more pressure on the Member States to establish effective administrative systems, which guarantee compliance with Community criteria.

The Commission has been very generous in extending the deadlines for commitments and payments at the request of the Member States. At the same time, underutilisation has been a problem in certain programmes and certain regions, due to delays in adopting programmes.

The Committee of Independent Experts criticises the fact that for Structural Funds the ceiling of

expenditure in each Member State is also a target. This may put pressure on the national administrations to find, and the Commission to accept, sufficient projects to attain the predetermined levels of expenditure in each Member State. Under the new regulations, performance reserve of 4% of each national allocation will be held in reserve at the beginning of the period. At mid-term, the Commission, in close co-operation with the Member State in question, will allocate the reserve to those programmes which are performing best. The performance reserve, even though it is smaller than originally foreseen by the Commission, is expected to be an incentive for the Member States to perform better in programming.

NEW PROVISIONS FOR STRUCTURAL FUNDS 2000-2006

The new General Regulation on the Structural Funds (1260/99) covers all the principles common to the Structural Funds: priority Objectives, programming methods, financial management, evaluation and control. The new practical arrangements for financial management should follow the principles underlying the reform of the system for implementing the Structural Funds: decentralisation, simplification, greater cost-effectiveness and checks. This is something to keep an eye on.

The new General Regulation on Structural Funds indicates more clearly that the responsibility for financial control lies primarily with the Member States. The Committee of Independent Experts considers that the new Regulation does clarify responsibilities but is hesitant about whether or not in practice, it leads to better control. That will be determined by how it is implemented.

RECOMMENDATIONS BY THE COMMITTEE OF INDEPENDENT EXPERTS

The Committee of Independent Experts considers that although Regulation 1260/99 brings clarity in certain areas, it also strikes the wrong balance between Member States and Commission responsibilities and powers in others. The Committee of Independent Experts proposes therefore the strengthening of control within the Commission and reinforcing the checks in the Member States by the Commission. The Committee also considers that only one Directorate General should have responsibility for the new Objectives 1 and 2. The use of diverse national rules to determine project eligibility should be monitored by the Commission. The Commission should refuse to accept over-declaration for reimbursement from Member States. The Member States should present their claims in a transparent and detailed way and inform the Commission of all project substitutions and their value.

The Committee of Independent Experts proposes that unless the abovementioned reforms are implemented, the Commission should take the initiative by preparing a distinct legislative proposal.

CONCLUSIONS:

The Committee on Regional Policy, Transport and Tourism calls on the Committee on Budgetary Control, as the committee responsible, to incorporate the following points in its report:

1. Notes the recommendations on the Shared Management in the Structural Funds presented in the Second Report of the Independent Experts;

2. Believes that the European Parliament's 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 Parliament at a sufficiently early stage;
3. Acknowledges the efforts made by the Commission in the framework of the SEM 2000 reform programme to improve the management and control of the Structural Funds; Welcomes the decisions adopted to introduce data sheets on eligible expenditure, rules on financial control operations in the Member States and internal guidelines for the Commission on the application of net financial corrections; Urges the Commission to implement the necessary reforms indicated by the Committee of Independent Experts, if necessary through a fresh legislative proposal integrating the recent reform of the regulations on the Structural Funds;
4. Considers it necessary to introduce penalties in the event of failure to apply the additionality principle on the part of Member States which cut their public spending on regional policy in the light of Community funding;
5. Calls on the Member States to take their due responsibility in financial management and control in accordance with decentralised procedures administered jointly by the authorities involved;
6. Calls on the Member States to improve their system as regards notification of fraud and irregularities;
7. 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;
8. Calls on the Commission to monitor application of Regulation 2064/97 with regard to control systems, requiring the Member States to submit a statement on the controls carried out before the final payment is made, a condition which was not met at the end of the past programming period 1994-99;
9. Considers it necessary to introduce some kind of penalties for Member States which fail to apply the Structural Funds to the eligible regions, particularly under Objective 1, devoting them instead to centralised policies which are alien to the purposes of the Objective itself;
10. Calls for inspection systems which would make it genuinely possible to check the reliability of the declarations of expenditure submitted by the Member States, together with clear guidelines on corrections and replacements for non-eligible projects; Calls on the Commission to reject excess spending declarations by the Member States.