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The resignation of the European Commission

The European Commission resigned as a body on 15 March 1999 following the publication of a report on fraud, mismanagement and nepotism in the Commission by a Committee of Independent Experts. A few individual Commissioners were criticised, while the Commission as a whole was found to have lost political control over the use of Community funds and the appointment of staff.

This paper looks briefly at the conclusions of the report and at the implications for the EU of the resignation of the Commission. It also considers existing measures aimed at combating fraud in the EU and the British Government's views on the Commission and its anti-fraud measures.

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Summary of main points

Following the publication of a report by a Committee of Independent Experts on 15 March 1999 entitled *Allegations regarding Fraud, Mismanagement and Nepotism in the European Commission*, the Commission as a whole resigned. At a press conference after a three-hour meeting of the Commission, its President, Jacques Santer, announced that the twenty Commissioners had decided unanimously to resign. “They thus assume their responsibility in keeping with their undertaking to take action on the findings of the inquiry”.¹ This unprecedented act has left the European Union without its ‘executive’ as it confronts a number of important issues, including the negotiations on enlargement of the Union to the East, the future financing of the Union, the *Agenda 2000* programme (reform of the Common Agricultural Policy in particular) and the trade dispute with the United States over bananas.

The Commission will have to be reappointed in order for the European Union to continue to function and in the meantime the Commission will continue in a caretaker role in accordance with Article 144 of the Treaty.

The Commission was subjected to a motion of censure over allegations of fraud in January 1999, but Members of the European Parliament (MEPs) voted against dismissing the entire body of Commissioners. A subsequent EP Resolution called for a committee of independent experts to look into specific allegations of fraud, mismanagement and nepotism, the conclusions of which Mr Santer pledged to respect. Had the Commission not agreed to resign on 15 March, the likelihood is that this time a motion of censure would have been carried in the European Parliament with the same effect.

The implications for the EU of the mass resignation are potentially serious, and the Commission’s credibility, as it continues to represent the EU in international fora, risks being seriously undermined as a result of the Committee’s report into its activities and failures.

¹ *Times*, 16 March 1999.

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I The Committee of Experts' Report on Fraud, Mismanagement and Nepotism in the European Commission, 15 March 1999

A. The Report

In its Report the Committee defines fraud as “intentional acts or omissions tending to harm the financial interests of the Communities”. Mismanagement is defined more broadly with reference to “serious or persistent infringements of the principles of sound administration and, in particular, to acts or omissions allowing or encouraging fraud or irregularities to occur or persist”. Nepotism is used to refer to “favouritism shown to relatives or friends, especially in appointments to desirable positions which are not based on merit or justice”.² The Report looks at a few selected areas of Commission activity: tourism, the Med programmes³, ECHO, the Leonardo da Vinci programme⁴, the Commission Security Office, nuclear safety, and allegations of favouritism.

Although the Committee's report does not find that any individual Commissioners had benefited from fraudulent dealings involving Community funds, it concludes that there were

instances where Commissioners or the Commission as a whole bear responsibility for instances of fraud, irregularities or mismanagement in their services or areas of special responsibility.⁵

The Commission President, Jacques Santer, Vice-President Manuel Marín and Commissioner for education and training, Edith Cresson, were singled out for particular criticism. Others, including Monika Wulf-Mathies and João de Deus Pinheiro, were criticised for helping friends to obtain jobs in the EU

Tourism

Here the Committee found that Commissioners had tried to implement a policy without sufficient resources or effective control, in spite of clear warnings of this situation.

² Report, pp11-12

³ Programmes for strengthening political and economic co-operation with the Southern Mediterranean countries.

⁴ A five-year vocational training programme.

⁵ Report, p.137.

MED

The Committee discovered “irregularities, conflicts of interest and a lack of control”, to which Commissioner Marín had reacted quickly but having failed to monitor the implementation of the programme in the first place.

ECHO

The findings concerned staffing. The Committee found staff employed in ECHO (the overseas aid office) not in accordance with the Staff Regulations of Officials. Fraud and irregularities in ECHO had been the subject of an enquiry by UCLAF, the Community fraud unit (see below), although Commissioners Marín and Bonino claimed to be unaware of this.

Leonardo da Vinci

Commissioner Cresson failed to act in response to “known serious and continuing irregularities over several years”.⁶ Other findings concerned poor control over audits, poor communications and internal control mechanisms.

Security Office

Jacques Santer acted quickly after fraud allegations were made, but had not acted upon audit results in 1993 which, unchecked, allowed a “state within a state” to develop.

Favouritism

Allegations were made against Commissioners Cresson, Wulf-Mathies, Pinheiro, Liikanen, Marín and Santer. The Committee found no justification for the allegations of favouritism levelled at the Commissioners Liikanen, Marin and Santer.

B. Jacques Santer's Response

In a statement to the press on 16 March, Jacques Santer defended the reputation of the Commission, saying:

1. The report considers a small number of specific cases which have recently attracted criticism from the European Parliament. The cases are analysed in great detail and, while the findings reveal certain malfunctions and one instance of favouritism, I would point out that there is no suggestion that any Member of the Commission was involved in fraud or corruption or stood to gain personally.

⁶ Report page 138.

2. I note that on the basis of a tiny number of cases of fraud and malfunctioning, which did indeed merit criticism, the Committee's report paints a picture of total absence of responsibility on the part of the institution and its officials. This picture is distorted. I consider the tone of the report's conclusions to be wholly unjustified.

3. I do not accept that four years of work, during which this Commission has achieved its full policy programme, can be reduced to six cases of irregularities, four of which date back to before 1995. I would also have hoped that the Committee of Independent Experts might have attached appropriate significance to the very substantial reforms carried out by this Commission since 1995 and the ambitious programme announced to Parliament last January.

4. The Commission's decision yesterday was a political act. We have taken our responsibilities, even if we judge the report to be unbalanced. Sometimes criticism can be salutary; we must use this crisis as a catalyst for deep and lasting reform in all the European institutions. I am hopeful that this crisis will help to re-establish the smooth functioning of the institutions.⁷

⁷ From Commission website at <http://europa.eu.int>

II Appointment of a New Commission

The Commission is not due to stand down until January 2000. In the normal course of events the Commission President would have been nominated at the European Council in June 1999. His/her appointment would have had to be confirmed by the European Parliament in July 1999 as one of its first acts after the elections in June. The other Commissioners would have been nominated by the Member States at the European Council in December 1999 and their appointments would also have been subject to confirmation by the EP before 23 January 2000, when the new Commission was due to take office.

The Commission which resigned collectively during the night of 15-16 March 1999 had been appointed for a five-year term from the beginning of 1995 under the rules of the Treaty establishing the European Community, as amended by the (Maastricht) Treaty on European Union. One of the complications in the present situation is that significant changes to the rules for appointing the Commission were made by the Amsterdam Treaty of 1997, but have not yet entered into force. However, the last ratification of the Treaty is expected to take place shortly and the likelihood is that the Commission will be replaced under the new rules which appear in renumbered Article 214 of the revised treaty.⁸

The treaty rules do not deal explicitly with a mass resignation of the whole Commission other than in response to a vote of censure by the European Parliament.⁹ However, in the event of either a vote of censure leading to resignation as a body, or of a series of individual resignations, the Treaty is clear in establishing that the replacements will serve only for the remainder of the Commissioners' unexpired term in office, in this case until January 2000. The Treaty also provides that, in the event of a vote of censure and mass resignation, the Commissioners "shall continue to deal with current business until they are replaced in accordance with Article 214". The German Presidency of the EU has already confirmed that it expects the outgoing Commissioners to carry on in a caretaker role, pending their replacement or reappointment.

The new system under Article 214 is that the 15 Member States begin the process by nominating a candidate for the presidency of the Commission "by common accord". In the past it has sometimes proved quite difficult to achieve common accord and the outgoing President, Jacques Santer of Luxembourg, was a compromise candidate agreed by the European Council in 1994 after a prolonged period of disagreement.

The next stage is for the agreed nomination to be submitted to the European Parliament for its approval. Before the changes agreed as part of the Amsterdam Treaty the European Parliament was to be consulted, but had no power of veto until the whole Commission had been nominated. It has been anticipated that the change would tend to

⁸ Cm 3780, p 203

⁹ new article 201, formerly article 144

make the choice of President of the Commission more subject to party political considerations because the European Parliament would be voting on the appointment of an individual rather than on a balanced political package.

If the European Parliament should decline to approve the candidate for President of the Commission put forward by the Member States, then the implication is that the Member States will have to agree on a new nomination, which could be a fraught process. If the European Parliament approves the nominee, then the next stage is for the prospective President of the Commission to participate in the selection of the remaining members of the Commission along with the Member States. Again, the key phrase is “by common accord”, i.e. the nominations made by individual governments could be vetoed by any other government, or by the prospective President. It is possibly unlikely that governments would actively veto each others’ nominations, because this could quickly lead to deadlock between them, but the prospective President of the Commission could exercise considerable influence over the selection, because he would already have a majority vote in the European Parliament behind him and would be sensitive to the feelings of the European Parliament when it came to the whole Commission being submitted for approval. One of the main intentions behind the changes introduced at Amsterdam was that the President should be in a position to exert more influence over the membership of his future team.

Once all the nominations have been agreed by the Member State governments and the prospective President of the Commission, the whole prospective Commission is to be submitted to the European Parliament for a vote of approval and only after this can it be formally appointed “by common accord” by the governments of the Member States.

Before the adoption of the Amsterdam Treaty there was much discussion of the possibility that the Commission would become smaller and more streamlined. In the end, measures to limit the size of the Commission as the EU becomes larger were agreed in principle, but were to be postponed until enlargement actually takes place. The agreement contained in a Protocol to the Treaty¹⁰ is that following the next enlargement the Commission will comprise only one representative from each Member State (at present 5 larger Member States, including the UK, provide two Commissioners each), subject to there also being agreement on the vexed question of weighted voting in the Council of Ministers. Once the number of Member States exceeds 20 it is also agreed that there will be a further review of the whole position.

It is now most unlikely that any of these things will have happened before a new Commission is due to begin its term in 2000.

¹⁰ Cm 3780, p 88

III Allegations of Fraud

In 1995 allegations of fraud in the EU were made by the Conservative MEP, Edward McMillan-Scott. Two officials were charged for allegedly defrauding the Community's European Year of Tourism project of some £3 million. In November 1995 the Court of Auditors refused to certify the EU's annual accounts after discovering that nearly £3 billion was not properly accounted for. By late 1996 the EP was becoming concerned at the Commission's slow response to the fraud allegations and threatened to freeze 10 per cent of Commissioners' salaries. The Commission set up a task force to look into the allegations and in early 1997 the Finnish Commissioner for the budget, personnel and administration, Erkki Liikanen, announced a plan to abolish nepotism in the Commission and improve financial controls.

Early in 1998 the Commission's anti-fraud unit UCLAF (see below) revealed that some £600 million of its humanitarian aid budget between 1993 and 1995 could not be accounted for. £1.5 million of this had been intended for refugees from the genocide in Rwanda and Burundi. This had only come to light years later, allegedly because the Commission did not inform the Court of Auditors when irregularities in the aid programme were first noticed in 1994. In March 1998 the EP again delayed agreement on the EC budget, pending pledges from the Commission to deal with the allegations.

The Humanitarian Office (ECHO) of Italian Commissioner, Emma Bonino, was also singled out for misuse of EU funds going back to the 1980s, when the Spanish Commissioner, Manuel Marín, was responsible for humanitarian funds. Views as to where the money has gone vary. Some reports maintain that money intended for field workers in areas of conflict and crisis was spent hiring extra bureaucrats in Brussels instead.¹¹ while others say that the money was not necessarily "misspent" or "wasted" but "that no one can trace where it went".¹² It was also reported that documents relating to aid expenditure had been destroyed at ECHO. By October 1998 the French press was reporting on cronyism in the education and training department of the French Commissioner, Edith Cresson.

The main source of information on many of the allegations was a report by Paul van Buitenen, who was employed at the financial control unit at the Commission but was suspended after publishing a report on the alleged fraud.

In response to the allegations and in order to avoid threats by German MEPs to table a motion of censure, the Commission President, Jacques Santer, pledged in a speech to the European Parliament on 6 October 1998 to set up an independent fraud investigation office that would operate outside the remit of UCLAF. However, in December 1998 the

¹¹ *Sunday Times*, 11 October 1998.

¹² *Daily Telegraph*, 9 October 1998.

EP refused to discharge the EC budget and more MEPs favoured dismissing the whole Commission. The EP adopted a Resolution at its plenary session on 14 January 1999, which called:

... 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, to report by 15 March [1999] on their assessment in the first instance of the College of Commissioners.¹³

Mr Santer promised an eight-point plan to eradicate fraud in a policy of “zero tolerance”, including an end to nepotism and unlimited access to documents by a special EP committee.

The EP Greens were the first to react to the allegations but the vote of censure under Article 144 of the Treaty was tabled by the Socialist Party in the EP and took place on 14 January 1999. This was regarded as a tactic to force a vote of confidence in the Commission. Although it was assumed that the motion would not be carried, the margin in favour of dismissing the Commission was perhaps greater than expected. A two-thirds majority was needed to dismiss the Commission. The motion was defeated by 293 votes to 232, although the vote in favour, 42 per cent, was the highest ever recorded for a censure motion against the Commission.

The following extract from an EP Press Release gives details of the vote, with the names of UK MEPs:

British members voting for the censure motion were from the Liberals James Moorhouse (London South and Surrey East), Robin Teverson (Cornwall and West Plymouth) and Graham Watson (Somerset and North Devon), then Jim Nicholson (Northern Ireland, I-EN), Hugh Kerr (Essex West and Hertfordshire East, Greens) and Conservatives, Bryan Cassidy (Dorset and East Devon, EPP) Giles Chichester (Devon and East Plymouth, EPP), John Corrie (Worcestershire and South Warwickshire, EPP), James Elles (Buckinghamshire and Oxfordshire East, EPP), Caroline Jackson Wiltshire North and Bath, EPP), Edward McMillan-Scott (North Yorkshire, EPP), Roy Perry (Wight and Hampshire South, EPP), James Provan (South Downs West, EPP), John Stevens (Thames Valley, EPP), Sir Jack Stewart-Clark (Sussex East and Kent South, EPP), Robert Sturdy (Cambridgeshire, EPP).

Three British Socialists, Alexander Falconer (Mid Scotland and Fife), Alf Lomas (London North East), and Alex Smith (South of Scotland), also voted in favour of censure along with numerous German PES members. Liberal

¹³ EP Minutes, 14 January 1999.

group leader Pat Cox voted in favour of censure along with two other Irish members Nuala Ahern (Leinster, Greens), Patricia McKenna (Dublin, Greens).¹⁴

A five-member Committee of Independent Experts (the “committee of the wise”) was designated by Parliament's Conference of Presidents, i.e. the leaders of the political groups, at a meeting on 27 January 1999. This followed consultations with the Commission and was in accordance with the resolution of 14 January 1999, which the EP had adopted by 319 votes to 157 with 54 abstentions. At a press conference following the meeting, the President of Parliament, José María Gil-Robles, explained that the committee's first report would seek to establish to what extent the Commission, as a body, or Commissioners individually, bore specific responsibility for the problems referred to above. The report would be submitted to the President of Parliament and the President of the Commission and made public following an extraordinary meeting of the Conference of Presidents. When asked by journalists how Parliament would react if the report pointed the finger at individual Commissioners and they did not resign, Mr Gil-Robles said:

If a committee of this nature reached conclusions of that kind, the individuals concerned would be well advised to consider their position. Should they not do so, Parliament would have to decide how to respond, for example by considering whether or not to table another censure motion.

A second report would be drawn up at a later date and would deal more specifically with existing procedures for the awarding of contracts and for the Commission to follow up allegations of fraud.

Mr Gil-Robles explained that the committee would work under conditions of strict confidentiality and complete independence. Staff who were called to appear before, or who wished to give evidence to, the committee would not be bound by the obligations of discretion and confidentiality laid down in Article 214 of the Treaty and Articles 17 and 19 of the Staff Regulations. Clearly, however, such immunity would apply only where information was given to the committee and not where it was divulged in letters sent outside the Committee.

The Commission, said Mr Gil-Robles, had undertaken to give the committee of experts any documents it requested, including those being examined by UCLAF. The Committee's working methods would be up to the members of the committee to decide for themselves, although it was desirable that conclusions should be reached by consensus. To ensure its complete independence, the committee would have no contact with MEPs or the media while it was conducting its investigations. The Members of Committee of Independent Experts are as follows:

¹⁴ EP PR 14 January 1999.

Ms. Inga-Britt Ahlenius : Auditor General of the Swedish National Audit Office (since 1993). Head of the Budget Department in the Ministry of Finance (1987-1993). Chairman of the Governing Board of the European Organisation for Supreme Audit Institutions (1993-1996). Swedish.

Mr. Juan Antonio Carrillo Salcedo: Former member of the European Court of Human Rights (1985-1990) and of the European Commission of Human Rights (1979-1985). Professor of International Law at the University of Seville. Spanish.

Mr. Pierre Lelong: Member, then President, of the European Court of Auditors (1977-1989). President of Chamber at the French Court of Auditors since 1994. French.

Mr. André Middelhoek: Former member, then President, of the European Court of Auditors (1977-1996). Director-General for the Budget, Finance Ministry, Netherlands (1969-1977). Dutch.

Mr. Walter Van Gerven: Former Advocate-General at the EU Court of Justice (1988-1994). Professor at the University of Louvain. Lawyer. Belgian.¹⁵

IV The Functions of The Commission

The resignation of the Commission under the present circumstances is particularly serious because the credibility of the EU depends to a large extent on the integrity and independence of the Commissioners; also because of their role in the EU's institutional structure and in the international arena. The Commission's functions could be summarised as follows:

- With a few exceptions, the Commission has the sole formal right of initiating legislation;
- Management and administrative role in most areas;
- Guardian of the Treaties and the *acquis communautaire*; the 'conscience' of the Community in proposing ideas and recommendations;
- Mediation: the Commission mediates among the Member States and between the Institutions;
- The Commission is the representative of the EU in third countries and in international organisations.¹⁶

¹⁵ From EP *Europa* website.

¹⁶ Based on summary by G.Edwards and D.Spence, *The European Commission*, 1997.

V Existing Anti-Fraud Measures

A. Court of Auditors

Provisions governing the role and membership of the European Court of Auditors (ECA) are set out in Articles 188a-c of the EC Treaty. The Court of Auditors is the EU institution responsible for overseeing the finances of the Union and the bodies established by it. The Court consists of 15 members, one from each Member State, assisted by a staff of around 500. It operates autonomously with regard to the other EU institutions and the Member States, which helps it to maintain objectivity in its auditing of the accounts. The bodies subject to audit by the Court are: the EU institutions, national, regional and local administrations involved in the management of EU funds, and recipients of Community aid in general in the Member and non-member states.

The Court, which has been called the "financial conscience" of the EU, checks that revenue and expenditure comply with the relevant legal provisions in accordance with EU budgetary and accounting principles. It also checks the soundness of financial management by looking at the extent to which objectives have been achieved, and at what price.

The Court carries out both documentary and on-the-spot audits at the EU institutions, in the Member States and also in non-member state recipients of EU development aid. Its observations on the management of Community finances during the preceding financial year are collated in its annual report which is published in the *Official Journal of the European Communities*. The annual report indicates in particular areas in which improvements are possible and desirable. The annual report is published every November and considered by the European Parliament with regard to its decisions on the discharge of grants, on the recommendation of the Council of Ministers, to the Commission for its budgetary management. The replies of the institutions to its observations and recommendations are appended to the report.

Court audits have revealed established and potential irregularities and fraud in the administration of EU funds, and these have been brought to the attention of the relevant bodies, with additional indications concerning the ambiguities or failings in the relevant control procedures that have allowed these anomalies to happen. This has been particularly applicable in the case of agricultural subsidies and grants.

B. UCLAF, the EU Anti-Fraud Unit

The EU anti-fraud unit is known by its French name as the *Unité de Coordination de la Lutte Anti Fraude* or UCLAF.

The Commission decided on 14 October 1987 to co-ordinate action to combat fraud against the Community budget. The unit went into operation on 1 July 1988 under the

direct authority of the Commission President. It set itself three targets: increasing co-operation with the Member States, strengthening and developing Community instruments for combating fraud and enhancing the effectiveness of Community operations.¹⁷ On 21 December 1988 the Commission adopted a plan of action setting out the broad policy lines for combating fraud and the new unit's work programme.

Since 1994 the unit has functioned on the basis of the EU's present anti-fraud strategy.¹⁸ and in 1995 it was restructured in order to improve its anti-fraud activities. Below is an extract from the unit's Internet website:

The 'Unité de Coordination de la Lutte AntiFraude' (UCLAF) was created in 1988 following the recommendations of a Commission report concerning means by which the fight against frauds on the Community budget could be intensified. UCLAF is part of the Secretariat General, and reports to the Swedish Commissioner Mrs Anita Gradin.

The primary duty for the fight against fraud remains the responsibility of the individual Member States, who are responsible for the front line enforcement and verification work which is essential in deterring, discovering and stopping fraud. Every Member State is obliged under the terms of Article 209a (Maastricht Treaty) to take the same measures to counter frauds on the Community budget as they do to protect their own financial interests.

UCLAF is responsible in the Commission for all aspects of the fight against frauds on the EU budget. UCLAF's operational mission is primarily to support Member States where they need co-ordination with other Member States and the relevant services of the Commission.

UCLAF fulfils its operational mission mainly by investigation into suspected fraud cases with the aim of both establishing the sums at risk to be recovered and preparing a case suitable for submission to public prosecutors in the Member States. While UCLAF has the power to request that investigations be carried out by the competent services of the Member States involved, UCLAF may also take the lead in an investigation, while maintaining co-operation with the Member States concerned. This course of action is taken when the investigation cannot be carried out effectively without co-ordination with other Member States; for example, where elements of an important fraudulent operation appear to exist in various Member States simultaneously, or where evidence has to be obtained outside the Community.

Furthermore, UCLAF can and does assist Member States in focusing their verification and control efforts on high risk sectors and areas of activity based on past experience of frauds in these areas, and ongoing information gathering efforts. This information is transmitted to government officials with anti-fraud responsibilities in the Member States by means of training seminars, often

¹⁷ *XXII General Report on the Activities of the European Communities 1988.*

¹⁸ See COM(94)92 final

undertaken in co-operation with Directorates-General with a specific interest in the budget area under discussion.

To collect and analyse this information, UCLAF maintains a database of information regarding suspected frauds under enquiry by the Commission (pre-IRENE), as well as a database of investigation cases reported to the Commission by the Member States (IRENE) which holds over 20,000 cases mainly reported to UCLAF within the last years. In addition, the Customs and agricultural services have a direct means of communication between themselves and with UCLAF thanks to the SCENT computer network, which greatly facilitates co-operation.

However, UCLAF has no independent criminal investigative powers i.e. the power to arrest and question suspects, to search premises and seize documents, or to compel potential witnesses to attend and answer questions or supply documents. This remains the domain of the Member States, who are obliged under the provisions of Article 209a paragraph 1 of the Maastricht Treaty to take the same measures to counter fraud affecting EU financial interests as they do for their own national budget.¹⁹

UCLAF is located in Directorate F of the Commission General Secretariat. According to the original Commission report to the Council on “tougher measures to fight against fraud affecting the Community budget”²⁰, the unit would initially consist of a team of 10 officials, including 5A grades (policy development and administration) under the authority of an A/2 official (one of the highest Commission administrative grades). The unit has expanded and reorganised into three operational units (EAGGF Guarantee Section and agricultural imports, structural funds and other areas, and own resources), with one horizontal support unit (general matters, co-ordination, intelligence and legal questions). The heads of the sections are as follows:

Director Per Brix Knudsen

Advisers Siegfried Reinke, Philip Kermode

1. Co-ordination and general policy

Claude Lecou

2. Intelligence, information and evaluation of legislation

Vacant

3. Structural funds and other areas

Jean Jacques Chamla

¹⁹ <http://europa.int/search97cgi/>

²⁰ CONS DOC 9392/87, 6 November 1987.

4. Trade in agricultural products

Jacques Poncet

5. Agriculture: common market organisations

François Beullens

6. Own resources

Joaquim Geraldes Pinto ²¹

C. Sound and Efficient Management 2000 Initiative

This initiative was launched in 1995 with the aim of improving financial management by the Commission and the Member States.²² The initiative addresses the following areas:

- Better expenditure forecasting and budgeting;
- Improved programme evaluation;
- Efficient collection of revenue;
- Better budget forecasting for the CAP;
- Simplification of CAP regulations;
- Clarification of the eligibility for Structural Fund aid;
- Improved audit and control of Structural Fund expenditure by Member States.

D. Latest Commission measures

While the Committee of Experts was still deliberating, the President of the European Commission announced a new initiative on 3 March 1999 which was described in the following terms by a Commission press release:

The European Commission has politically agreed on two Codes of Conduct governing the behaviour of EU Commissioners and their relations with the Commission's departments. "I intend this to be a milestone on the road to building a genuine European political and administrative culture", President Jacques Santer declared. "This is a first for the Commission", he underlined. "I intend Commissioners to operate in full political and economical independence ». The two Codes will be formally adopted next week with a further Code governing the professional conduct of Commission officials. The three documents form part of the preparation of "Tomorrow's Commission". They also respond to commitments given by President Santer to the European Parliament at the beginning of the year.

²¹ *Vacher's European Companion*, No. 106, December 1998.

²² Details provided in the Auditor General's report on the Court of Auditor's Annual Report for 1996, HC 679, 1997-98.

VI British Views on EU Fraud

The previous British Government had been an energetic supporter of measures to control fraud in the EU. In its White Paper on the 1996 Intergovernmental Conference (IGC), paragraph 63 on Fraud and Financial Management stated:

The Government has played a leading role in forcing this issue onto the European agenda. We secured significant changes in the Maastricht Treaty to enhance the powers of the European Court of Auditors and the European Parliament in the fight against such waste and mismanagement (most of which occurs at the level of the Member State rather than in the Community institutions). There is much work in hand in this area, including the recent signing of a major convention on fraud against the Community budget.²³

In May 1997 the new Labour Government put forward a memorandum on fraud and financial mismanagement to the 1996 Intergovernmental Conference (IGC).²⁴ The proposals were for further revisions to the Treaty to strengthen the powers of the Court of Auditors, including provisions to allow the Court to obtain the information it needs to fulfil its Treaty duties and an enforcement mechanism to be enshrined in the Treaty. In addition to the publication of the annual report of the ECA, the Government proposed that the Statement of Assurance of the ECA should also be published, as these were “the two key documents informing decisions on budget discharge”. The Government also proposed the inclusion of a Treaty article “enabling effective action by the Commission to remedy the impact on the Community of misapplication of Community monies by Member States”. A new Article should “establish the principle that Member States should make good the budget for sums misapplied”.

The Prime Minister has emphasised the Government’s support for strict anti-fraud measures, and in response to a parliamentary question on 15 March, Mr Blair replied:

The Government believe that there must be a policy of zero tolerance to fraud and have consistently supported the European Commission in initiatives to fight fraud against the EC budget.

At the January ECOFIN Council, ... the Chancellor called for a strong, independent head of fraud investigations, reporting to an independent management board. These ideas are being used in discussions currently taking place on how to strengthen internal fraud investigations. Following this, the Government offered practical assistance to the Commission, specifically offering to share UK experience of best practice on codes of conduct for behaviour in public life. I am pleased to say that this offer was welcomed and officials have been in contact to take this forward. It is among the issues that will be covered in

²³ Cm 3181, *A Partnership of Nations*, March 1996.

²⁴ CONF/3921/97, 26 May 1997.

joint training with Commission officials and officials from other Member States starting in September of this year.

The Government have not submitted a memorandum to the European Commission regarding countering fraud at EU level.²⁵

In its report on *European Community Finances: Statement on the 1998 EC Budget and measures to counter fraud and financial mismanagement*, the Treasury emphasised its commitment to “measures intended to strengthen resource management by the Community Institutions.”²⁶ The report continued:

This includes measures to improve the value-for-money of expenditure from the Community budget, to increase the transparency and accountability with which the Community manages taxpayer’s money, and to minimise the opportunities for fraud against the Community’s financial interests.

During the UK Presidency of the EU in January–June 1998, the Government organised a discussion within ECOFIN (Economics and Finance Council) to look at all aspects of Community finance. The Council subsequently reached a common position on specific amendments to the Community’s Financial Regulation.

The National Audit Office (NAO) report on the *General Budget of the European Union for 1997 and Related Developments*²⁷ looked at the ways in which the Community institutions have tackled financial fraud and mismanagement of funds. It concluded:

- It is important that the Commission and the Member States, including the United Kingdom, keep up the pressure on effective implementation of the Sound and Efficient Management 2000 initiative;
- Many of the reforms proposed in the Agenda 2000 initiative seek to tackle issues of concern raised by the Court, such as changes to the Common Agricultural Policy aimed at simplifying schemes so that they can be more easily and effectively managed and the risk of fraud reduced. The Commission and Member States need to implement the reforms agreed under Agenda 2000 rapidly and effectively so that they result in the desired improvements in financial management;
- It is important that the convention on the protection of the European Communities’ financial interests and the associated protocols should be ratified as soon as is practicable by all Member States, including the United

²⁵ HC Deb, 15 March 1999, cc440-1W.

²⁶ Cm 3937, April 1998.

²⁷ HC 279, 1998-99, 12 March 1999.

Kingdom, so that more effective action can be taken to pursue and repress fraud across all areas of the European union Budget;

- The weaknesses in the Commission's existing arrangements for combating fraud and irregularity, which have been highlighted by the Court and the European Parliament, are of serious concern. Better arrangements are needed for combating fraud and corruption involving European Union Institutions;
- The United Kingdom Government has a strong record of supporting and contributing to improved financial management of Community funds and should keep up the pressure for reform through the Council of Ministers and its other links with the Community.

VII The European Commission discussed at Westminster

The circumstances which led to the appointment of the Santer Commission during 1994-5 caused political controversy in the House of Commons. The then Prime Minister, John Major, explained to the House on 27 June 1994 why, at the Corfu summit meeting of the European Council he had first promoted the candidacy of Sir Leon Brittan to be the new Commission president and then vetoed the candidacy of the Belgian Jean-Luc Dehaene. His handling of the issue was criticised by the acting Leader of the Opposition, Mrs Margaret Beckett and the leader of the Liberal Democrats, Paddy Ashdown.²⁸ Mr Santer emerged later as a compromise candidate for the presidency.

The current allegations concerning mismanagement and possible fraud at the heart of the European Commission were raised on 13 January 1999 during an Opposition Day debate on Europe initiated by the Liberal Democrats:

Mr. Bruce: We need greater accountability on the part of European institutions. It is true that problems in Europe are often much exaggerated by those who have an alternative agenda, but I accept that problems exist, such as the current fraud issues, and that they must be dealt with firmly. We on the Liberal Democrat Benches have reason to be proud that the European Liberal Democrats are leading the way in trying to bring accountability to Europe and to the Commission. If commissioners have failed to act effectively against fraud, Liberal Democrats believe that they should be held to account. We have no hesitation in saying that they should leave their jobs and name and identify those who we think should resign. Nobody should be beyond democratic accountability.²⁹

²⁸ HC Deb 27 June 1994 cc553-9

²⁹ HC Deb 13 January 1999 c 375

For the Conservatives, David Heathcoat-Amory said:

I am afraid that fraud and mismanagement are endemic in the European Union at all levels, and in the European Commission in particular. The European Court of Auditors produces a report every year itemising the scandalous waste and mismanagement of the European Union budget. I raise the matter now because of the debate that is taking place in the European Parliament and tomorrow's vote. I noted that the problem is not new but the present revelations are interesting because they have come not from the European Commission, the Court of Auditors or member states, but from a Dutch official who blew the whistle and was promptly disciplined by his employer, the European Commission.

My point is relevant to the debate because last year the British presidency had an opportunity to do something about fraud and mismanagement. Indeed, at its start exactly a year ago, the Prime Minister and the Treasury announced that that was a British priority. Yet again a huge gap has opened between what the Government said and what they did, between the rhetoric and the reality. For instance, spending on anti-fraud measures fell last year...(...)

The reason for all this is that the Government are so anxious to fit into the European Union scene that they do not want to be accused of doing anything that might discredit the EU. We are well past that. The days when it could all be covered up so as not to startle the public are long past. The public know perfectly well what is going on and want something done about it. The European Parliament socialist group is manoeuvring to keep individual Commissioners from being singled out and asked to resign.³⁰

Winding up the debate, the Minister of State for Europe (Joyce Quin) commented:

Many hon. Members mentioned the real problem of fraud in the European Union. I was somewhat disappointed at the party politics that were played on the issue. As a former Member of the European Parliament, I know that British MEPs from different parties have played an important role in tackling fraud issues. Lord Tomlinson has played a prominent role in bringing those issues to the fore and taking a hard line with the European Commission on them.³¹

The issue of possible corruption in the European Commission was raised again at business questions on 21 January 1999:

Mr. Alan Clark (Kensington and Chelsea): Will the right hon. Lady confirm that it is not too late to put into next week's business an urgent debate on the corruption of EC Commissioners? Her right hon. Friend the Prime Minister dismisses any criticism of the EC Commission by attributing to those who make it a desire to pull out of the whole show immediately, but enormous sums of taxpayers' money have been misappropriated by individual commissioners, in

³⁰ 13 January 1999 cc 382-3

³¹ Ibid c 410

particular by the French commissioner Madame Cresson. It is to be hoped that in such a debate right hon. and hon. Members on both sides of the House would be rather less docile than those who followed the instructions of the Prime Minister in the European Parliament last week.

Mrs. Beckett: I fear I cannot undertake to find time for a debate on that matter in the near future. Nor do I share the right hon. Gentleman's rationale for having such a debate. My perception is that the European Parliament and, indeed, representatives from many parties in that Parliament have expressed great concern and taken a tough line on fraud. Certainly this Government have done so. Those representatives emerge from last week's events with a strengthened means of scrutiny. I do not doubt that they will use those means and, if necessary, return to the subject.³²

Mrs Beckett later added, in response to criticism of Labour MEPs and the decision of the European Parliament on 14 January 1999 not to censure the Commission:

There is a reform plan. We utterly condemn, as anyone must, any suggestion of fraud, corruption or incompetence and have supported measures to deal with them. As for the attempt to pretend that what happened resulted solely from the actions of Labour representatives in the European Parliament, he should know that members of his party saw the sense of our representatives' actions and voted with them.³³

Once the decision had been taken to establish the "Committee of the Wise", the Government declined to comment on specific allegations made about particular members of the European Commission on the grounds that the matter was under investigation.³⁴

The Prime Minister made a statement to the House on the European Commission on 16 March. He supported the two British Commissioners, Sir Leon Brittan and Neil Kinnock, who, he believed, "should carry on".³⁵ He said that a new President and Commission:

... should be the opportunity to push through root-and-branch reform of the Commission, its mandate and its method of operation. ... The new President of the Commission must be a political heavyweight, capable of providing the Commission with leadership and authority.³⁶

Mr Blair suggested ways in which the Commission might be reformed:

In the short term, reform must include at least the following: a complete overhaul of the approval and auditing procedures for financial control; a new system for

³² 21 January 1999 c 1024

³³ c 1025

³⁴ HC Deb, 26 February 1999 c 493w

³⁵ HC Deb, 16 March 1999, c 887

³⁶ Ibid.

financial management and spending programmes; an entirely new procedure for the awarding of contracts for the provision of services with a new management system to oversee it; reworking of the whole disciplinary procedure so that staff in the Commission know exactly what is expected of them and what will happen if they fall short of those expectations; and a new system of accountability in the bureaucracy of the Commission so that each individual holding a position of responsibility is fully accountable for the budget and the measures that he or she manages.

In addition, we also need an entirely new framework for fighting fraud and financial irregularities. We have long been advocates of the appointment of an independent fraud investigation office which has full access to documents and officials, and the powers that it needs. That appointment should now be made.³⁷

The leader of the Opposition, William Hague, asked the Prime Minister to call for an emergency summit “within days, to restore public confidence in European institutions”.³⁸ He also asked Mr Blair to consider Commission reforms, including:

... a binding code of conduct for the appointment of senior officials to prevent personal appointments by Commissioners and to stamp out nepotism in the Commission; an agreement that the European Parliament should be able to sack individual Commissioners who are guilty of misconduct; strengthened and publicly available declarations of financial interest by Commissioners and by their senior staff; and the immediate introduction of a systematic career management system for senior Commission staff, so that they rotate between responsibilities, as would be normal in any other Administration [?].³⁹

Menzies Campbell, for the Liberal Democrats, called for radical reform of the EU institutions with a “set of clear political rules by which to manage the affairs of the European Union” and a constitution for the EU.⁴⁰

VIII Conclusion

The EU cannot function effectively without the Commission, so it is clear that a solution must be found in the near future to the current crisis. The former Commission will remain in place as an interim measure but it is unlikely that the Member States or the European Parliament will want it to remain until January 2000. It is also not yet clear whether the whole Commission will be re-appointed or just some of the posts. A clearer picture will emerge over the next few days or weeks. Meanwhile the EU must tackle a

³⁷ cc 887-888

³⁸ c 888

³⁹ cc 888-9

⁴⁰ c 891

number of crucial issues, for which it needs strong and credible leadership. The enlargement negotiations are under way but there are still many issues to settle. The need for institutional reform has become more critical in the light of the present situation. The reform of the Common Agricultural Policy as part of the *Agenda 2000* programme is highly sensitive, and there have been fundamental differences between the French and German governments. The budget negotiations and the future financing of the Union have been controversial, with the new German government objecting to the UK abatement. The EU is embroiled in a trade dispute with the United States over banana quotas, with both sides lodging complaints at the World Trade Organisation.⁴¹

While all of these issues must ultimately be resolved by the Member States acting in the European Council and the Council of Ministers, it has been the role of the Commission to propose, facilitate and, finally, to implement solutions. With a weak or lame-duck Commission much of the normal business of the European Union will be put on hold, while the energies of the Member States could be absorbed in repairing the damage, rather than in carrying forward the planned European agenda.

⁴¹ See Research Paper 99/28, *The Trade Dispute between the EU and the USA over Bananas*, 13 March 1999.