

Committee of Independent Experts

FIRST REPORT

on

**Allegations regarding Fraud, Mismanagement and
Nepotism in the European Commission**

(15 March 1999)

The following blank pages have been deleted from the document:

4, 6, 8, 16, 29, 37, 55, 69, 71, 91, 93, 98, 106, 108, 122, 136.

Table of contents

	Page
Procedural page	5
1. INTRODUCTION	
1.1. The Mandate	9
1.2. Independence and status of the Committee	10
1.3. Scope of the inquiries	11
1.4. Nature of reprehensible acts	11
1.5. Standards of proper behaviour	12
1.6. The issue of responsibility	13
2. TOURISM	
2.1. Legal framework and budget allocations	17
2.2. Organisational structure	18
2.3. Chronology of events and detection of irregularities	19
2.4. Disciplinary measures	22
2.5. Euroconseil	26
2.6. IPK-ECODATA	29
2.7. The problems encountered by the Commission	31
2.8. The management of the crisis	32
2.9. Conclusions	33
3. MED PROGRAMMES	
3.1. Introduction	37
3.2. Chronology	39
3.3. Legal considerations: the delegation of powers and the failure to issue calls for tender	47
3.4. Lack of staff at the Commission: an inadequate argument	48
3.5. The issue of the conflict of interests	48
3.6. Bad management, irregularities or fraud?	50
3.7. The Commissioners' role and responsibility	51
3.8. The responsibility of the Commission as a body	52
4. ECHO	
4.1. The 'ECHO Affair': case history	55
4.2. Issues arising	59
4.3. Conclusion: responsibility of Commissioners	66

5. LEONARDO DA VINCI	
5.1. Introduction	71
5.2. The Programme, the Technical Assistance Office (TAO) and the contract .	71
5.3. Audit findings of DG XXII's own audit unit concerning the Leonardo/Agenor TAO	73
5.4. Audit findings by DG XX, Directorate-General for Financial Control.	75
5.5. Further Proceedings in the Commission.	80
5.6. Parliament in ignorance	83
5.7. Professor Reiffers' mission	85
5.8. Conclusions	88
6. THE SECURITY OFFICE	
6.1. Introduction	93
6.2. The sequence of events.	93
6.3. Observations on the environment within the Security Office	98
6.4. Allegations regarding the tender procedure for the new Security Services contract (1997).	100
6.5. Conclusions	102
7. NUCLEAR SAFETY	
7.1. Regulatory and budgetary framework.	107
7.2. Organisational structure	108
7.3. The report of the Court of Auditors.	109
7.4. Delegations of responsibilities	109
7.5. The contracts	111
7.6. Project implementation and follow-up	115
7.7. Conclusions	117
7.8. Commissioners' responsibilities	118
8. ALLEGATIONS OF FAVOURITISM	
8.1. Mrs Cresson	121
8.2. Mr Liikanen	128
8.3. Mr Marín	129
8.4. Mr Pinheiro	130
8.5. Mr Santer	131
8.6. Mrs Wulf-Mathies.	131
9. CONCLUDING REMARKS	
9.1. The Committee's mandate and the scope of its inquiries	135
9.2. Responsibility of the Commission and of individual Commissioners.	135
9.3. Assessment in the light of standards of proper behaviour.	138
9.4. Reforms to be considered	139
ANNEX 1	Specific cases examined (other than favouritism): Commissioners and Services responsible
	143
ANNEX 2	Directorates-General and services of the Commission
	144

On 14 January 1999 the European Parliament adopted its resolution on improving the financial management of the Commission, calling *inter alia* for a committee of independent experts to be convened under the auspices of the Parliament and the Commission' (B4-0065, 0109 and 0110/99).

On 27 January 1999 the Conference of Presidents of the European Parliament considered and approved a "Note on the Committee of Independent Experts", fixing the composition and terms of reference of the Committee of Independent Experts.

At the same meeting, the President of the Commission gave his agreement to the composition and terms of reference of the Committee of Independent Experts.

In a letter to the President of the European Parliament dated 1 February 1999, the President of the Commission confirmed the agreement of the Commission to the composition and terms of reference of the Committee of Independent Experts.

On 2 February 1999 the Committee of Independent Experts held its initial meeting and appointed Mr André MIDDELHOEK as its chairman.

On 15 March 1999 the Committee submitted its first report to the President of the European Parliament and the President of the European Commission.

°
° °

The members of the Committee of Independent Experts are:

Mr André MIDDELHOEK (Chairman)
Mrs Inga-Britt AHLENIUS
Mr Juan Antonio CARRILLO SALCEDO
Mr Pierre LELONG
Mr Walter VAN GERVEN

1. INTRODUCTION

1. INTRODUCTION

1.1. The Mandate

1.1.1. At its plenary sitting of 14 January 1999, the European Parliament adopted a resolution on improving the financial management of the European Commission.

Paragraph 1 of this resolution reads:

‘Calls 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 on the College of Commissioners;’

1.1.2. The request in the European Parliament resolution that the Committee ‘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’ refers obviously to an examination of Commission procedures and practices in relation to specific cases rather than to an in-depth investigation of the merits of each case. Such an investigation would indeed imply a repetition of the examination of many of the Commission’s activities already undertaken by the competent bodies such as Parliament’s Committee on Budgetary Control, the Commission’s Financial Control departments (DG XX) and UCLAF.

1.1.3. Moreover, such an approach would have run the risk of interfering in ongoing investigations carried out by the competent authorities within the framework of disciplinary or penal proceedings against Community officials or third parties. This Committee is not entitled, nor does it intend, to intervene in such proceedings. With this in mind, it refrained from hearing private parties, even on a voluntary basis, since that could jeopardise pending or future proceedings before the courts and would have obliged the Committee to follow procedural rules which are beyond its remit.

1.1.4. The European Parliament’s Conference of Presidents at its meeting of 27 January 1999 adopted a note on the Committee of Independent Experts which stipulates under point 6 (Terms of reference), paras.1 and 2:

‘There is only very limited time available for the drawing up of a first report (March 15 deadline, according to the resolution).

The first report could seek to establish to what extent the Commission, as a body, or Commissioners individually, bear specific responsibility for the recent examples of fraud, mismanagement or nepotism raised in Parliamentary discussions, or in the allegations which have arisen in those discussions.’

1.1.5. The Conference of Presidents’ stated aim for the first report - ‘to establish to what extent the Commission, as a body, or Commissioners individually, bear specific responsibility’ - focuses attention on the Commission as a body and on individual Commissioners rather than on the

Commission's administrative services. That said, the close interrelationship between the Administration and the Commissioners themselves was taken into account by the Committee where necessary. However, since it falls within the Committee's mandate to examine the way in which the Commission detects and deals with fraud, mismanagement and nepotism which, clearly, also includes reprehensible acts committed by the Commission's administrative services, the Committee will have to take account of the conduct of the Administration and its officials in the cases under review.

1.1.6. In accordance with the resolution and detailed mandate outlined above, the Committee's first report will limit itself to giving its considered view on the question of the 'specific responsibility' of the Commission as a body and of Commissioners individually in a range of specific cases. It will do so on the basis of the criteria and methodology set out below.

1.1.7. For its second report, the Committee envisages a more wide-ranging review of the Commission's culture, practices and procedures within the context of the issues arising in its first report.

1.2. Independence and status of the Committee

1.2.1. According to point 6 of the Conference of Presidents' note, para. 3, referred to above, the Committee shall *be free to decide on the organisation of their work and the internal distribution of their tasks.* This freedom is understood not only to denote independence in organisational matters but also to give a free hand in the definition of approach to be taken, the questions to raise and the nature of the conclusions to be drawn.

1.2.2. The Committee is not constituted under the Treaties or any other regulation governing the European institutions and is thus neither a Community institution nor a Community agency. It is certainly not a Community court and has no formal investigative power. Further, its authority is vested in it by virtue solely of an agreement between the Commission and Parliament that (i) all relevant documentation the Committee wished to look at would be made available and (ii) that the staff of the institutions would be exempted from all secrecy obligations imposed on them by Staff Regulations.

1.2.3. The Committee therefore regards itself as a temporary advisory committee operating by consent and drawing its authority from the resolution of Parliament and the commitment of both Parliament and the Commission to support its work and to recognise its findings.¹

1.2.4. The Committee therefore seeks neither to 'judge' in the judicial sense of the word nor to give 'instructions', but rather to offer a (legally or politically) non-binding evaluation of the Commission's, and Commissioners', conduct in the cases under consideration.

1.2.5. Throughout its mandate the Committee has been completely independent. Though established 'under the auspices' of the European Parliament and the Commission, it was guided by the principle of impartiality vis-à-vis these two institutions and sees itself as answerable only for the exercise of its mandate and accountable to no party other than the general public.

¹ See letter from the President of the Commission to the President of the European Parliament dated 1 February 1999.

1.2.6. In practical terms, the Committee applied conditions of confidentiality to its work in order to avoid any interference from outside.

1.3. Scope of the inquiries

1.3.1. Given the extremely limited time available for its first report, the Committee restricted its task to the consideration and evaluation of a limited number of cases.

1.3.2. Though such selectivity arguably bears the risk of leading to partial (i.e. incomplete) conclusions, the Committee took the view that each case selected at this stage for close consideration was in itself sufficient to produce meaningful conclusions in the context of the mandate assigned to the Committee, which is to comment on the Commission's procedures and practices for the detection of and for dealing with fraud, mismanagement and nepotism. The cases have been selected on the basis of recent parliamentary discussions, as was suggested in the Conference of Presidents' note concerning the mandate of the Committee. The fact that other areas of activity have not been examined should not, however, be taken to mean that they are necessarily clear of justified allegations.

1.3.3. As regards the cases it selected for scrutiny, the Committee did its utmost to obtain information which was as sound and as substantiated as possible. It emphasises, however, that it did not seek 'proof' in the judicial sense of the word. On the basis of available reports and documentation as provided by the relevant authorities and confirmed through interviews and other sources, it based its judgment on credible information, which was either not contested or could be verified by the Committee itself within its limited powers.

1.4. Nature of reprehensible acts

1.4.1. The European Parliament's resolution refers to 'fraud, mismanagement and nepotism' as the reprehensible acts in respect of which the Committee is asked to examine how the Commission detects and deals with them.

1.4.2. *Fraud* refers to intentional acts or omissions tending to harm the financial interests of the Communities. It encompasses irregularities in establishing documents committed intentionally, non-communication of information, and misappropriation of funds which are designed to obtain illegal financial or other benefits at the expense of the Community's financial interests .

1.4.3. Mismanagement is a broader concept. In the view of the Committee, it refers in general 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. Such

infringements may be committed intentionally but will consist, more frequently, in negligent behaviour, or lack of care, in the exercise of public management functions.³

1.4.4. *Nepotism* is a different (and non-legal) concept. In common usage it refers to favouritism shown to relatives or friends, especially in appointments to desirable positions which are not based on merit or justice⁴.

1.4.5. In the Committee's view, it follows from the above that, taken together, the notions of fraud, mismanagement and nepotism point to various categories of reprehensible conduct, namely:

- (i) irregularities, i.e. infringements of Community or applicable national rules if committed intentionally, in which case they will often involve fraud or result from serious negligence;
- (ii) fraudulent, i.e. intentional behaviour by act or omission (including corruption) intended to obtain an illegal benefit at the expense of the Community's financial interests;
- (iii) ethically reprehensible behaviour, such as making public appointments, awarding contracts, or recommending individuals for rewards and benefits (even where no fraud or irregularity is committed) on the basis not of merit but of favouritism shown to family, friends or other relations;
- (iv) serious or persistent infringements of the principles of sound administration.

1.5. Standards of proper behaviour

1.5.1. It is obvious that the categories mentioned above overlap, and that it is not easy (nor necessary for the Committee) to distinguish between them in any given case. The distinction is made here only to serve as an indication of the standards which the Committee wishes to apply. These standards are based on the Committee's understanding of the requirements of proper behaviour in the exercise of public office and the need for compliance with the highest standards of conduct in European public administration. These standards apply above all to the Commissioners and the members of their private offices. As custodians of the respect in which the European institutions as a whole must be held by the public at large, such high standards

³ For the purpose of comparison, the European Ombudsman defines 'maladministration' (the term used in Article 138e of the EC Treaty, establishing the office of Ombudsman) as follows:
(source: <http://www.europarl.ep.ec/ombudsman>)

'Maladministration means poor or failed administration. This occurs if an institution fails to do something it should have done, if it does it in the wrong way or if it does something that ought not to be done. Some examples are:

- administrative irregularities
- unfairness
- discrimination
- abuse of power
- lack or refusal of information
- unnecessary delay.'

⁴ Compare Oxford English Dictionary and Petit Robert

imply that no opportunities for, or appearances of, possible conflicts of interest must be created which would jeopardise the public image of the Commission or the Community as a whole.

1.5.2. The Committee is conscious of the fact that - in the absence of specific rules or codes of conduct - the very concept of standards of proper behaviour entails grey areas of assessment. The Committee believes nonetheless that there exists a common core of 'minimum standards', in addition to rules laid down in black and white, which binds holders of high public office, such as the Commissioners and the members of their private offices. The higher the office, the more demanding those standards are in requiring the holders to conduct themselves properly in appearance and behaviour.

1.5.3. Article 157 of the EC Treaty states, in paragraph 2, that 'the Members of the Commission shall, in the general interest of the Community, be completely independent in the performance of their duties... In the performance of their duties, they shall neither seek nor take instructions from any government or from any other body. They shall refrain from any action incompatible with their duties... [T]hey will respect... their duty to behave with integrity and discretion as regards the acceptance, after they have ceased to hold office, of certain appointments or benefits.' This latter duty of integrity and discretion is one which undoubtedly also applies, even more so, while Commissioners are in office.

1.5.4. The rules of conduct which are part of the common core of 'minimum standards' referred to above may be defined as follows:

- acting in the general interest of the Community and in complete *dependence*, which requires that decisions are taken solely in terms of the public interest, on the basis of objective criteria and not under the influence of their own or of others' private interests;
- behaving with *integrity* and *discretion* and - the Committee would like to add - in accordance with the principles of *accountability* and *openness* to the public, which implies that, when decisions are taken, the reasons for them are made known, the processes by which they were taken are transparent and any personal conflicting interests are honestly and publicly acknowledged.

Only by respecting those standards will it be possible for holders of high office to have the authority and the credibility enabling them to offer *leadership* which they are required to give.⁵

1.6. The issue of responsibility

1.6.1. The stipulation in the European Parliament's resolution that it is for the Committee 'to examine the way in which the Commission detects and deals with fraud, mismanagement and nepotism' is to be seen in connection with the stipulation in the Conference of Presidents' note that the Committee shall 'seek to establish to what extent the Commission, as a body, or Commissioners individually, bear specific responsibility'. The reference in the resolution to the way in which the Commission detects and deals with fraud, mismanagement and nepotism indicates that the emphasis of the Committee's examination is to be placed on mismanagement

⁵

Compare with the 'Seven principles of public life' as set out in the first report on Standards in Public Life of the UK Nolan (now Neill) Committee, 1995, p.14.

on the part of the Commission, as a body, or of the Commissioners individually, as stated in the note of the Conference of Presidents. It is therefore the essence of this Committee's task to look into the practices of the Commission aimed at detecting and dealing with fraud, mismanagement and nepotism committed (possibly) by Members of the Commission itself as well as (more often) by officials working in the Commission, or by third parties working on behalf of, or under contract to, the Commission. And indeed, as the individual cases examined below demonstrate, *poor or failed administration* by the Commission, as a body, or by individual Commissioners and members of their private offices in detecting and dealing with fraud, mismanagement or nepotism, covers the bulk of the allegations made and examined by the Committee. That does not mean that the Committee did not also have to deal with a few allegations of nepotism by Members of the Commission itself, although there were no allegations of fraud or corruption.

1.6.2. Reprehensible conduct of the Commission as a body, or of Commissioners individually, and more particularly (as we have seen) mismanagement in detecting or dealing with fraud, mismanagement or nepotism perpetrated by the administrative services of the Commission and by third parties working for the Commission, obviously involves the responsibility of the Commission as a whole, or of individual Commissioners. The responsibility that this Committee is dealing with concerns ethical responsibility, that is responsibility for not behaving in accordance with proper standards in public life, as discussed above (para.1.5.1.). Such responsibility must be distinguished from the political responsibility of the Commission dealt with in Article 144 of the EC Treaty, which is to be determined by the European Parliament, and from the disciplinary responsibility of individual Commissioners dealt with in Article 160 of the EC Treaty, which is to be determined by the Court of Justice, on application of the Council or the Commission⁶. That does not, however, prevent the institution concerned, when determining political or disciplinary responsibility, from basing its assessment in part on the findings of the Committee concerning the collective or individual behaviour of the Commission or of Commissioners.

⁶

It must be distinguished from the non-contractual liability provided for in Article 215, second paragraph, of the EC Treaty, which the Community may incur as a result of damage caused by its institutions or its servants in the performance of their duties.

2. TOURISM

2. TOURISM

INTRODUCTION

2.0.1. The tourism file is the oldest of the files which calls the Commission's actions into question. It began in 1989 with the launch of the European Year of Tourism (EYT). In 1999, 76 bodies or individuals were the subject of criminal proceedings in the Member States or of additional inquiries within the Commission. This file gave rise to severe criticisms of the Commission's management by the European Parliament and the Court of Auditors as well in a number of press reports.

2.0.2. Because of the number of proceedings involved, the Committee of Independent Experts has given detailed consideration to three specific matters which have not been dealt with in sufficient depth or with the appropriate care: disciplinary measures and the contracts with Euroconseil and IPK.

2.1. Legal framework and budget allocations

2.1.1. In the wake of the resolutions adopted by the European Parliament and the Council in 1983 and 1984 on a Community tourism policy, then of the European Parliament resolution of 22 January 1988 on the promotion and financing of tourism, the Commission proposed to the Council an action programme designed to highlight the economic significance of tourism in the Community and to integrate tourism policy more closely into other Community policies.

2.1.2. On 21 December 1988, the Council designated 1990 as European Year of Tourism (Council Decision 89/46/EEC). That decision laid down that the Commission, in consultation with a Steering Committee, would take the measures required for the implementation of the action programme, with particular regard to the coordination of private and public tourism organisations in the Member States. For their part, the Member States would be responsible for pre-selecting the projects and monitoring their implementation. They were also required to report to the Commission.

2.1.3. Article 3 of the Council Decision provided for a budget of ECU 5 million for the organisation of the European Year of Tourism. To that amount was added ECU 0.8 million to cover administrative costs. At the same time, ECU 7.5 million was entered in the budget to fund activities, especially studies, in the tourism sector. Those activities began in 1990 and continued in 1991 and 1992.

2.1.4. On 13 July 1992, the Council adopted a three-year action plan to assist tourism (covering the period from 1 January 1993 to 31 December 1995) (Council Decision 92/421/EEC) which entrusted the Commission with the implementation thereof and its coordination with the various Community policies through the directorates-general concerned. The Commission was to be assisted by a committee consisting of representatives of the Member States and chaired by a representative of the Commission. In the light of the opinion of that committee, it would adopt measures which would apply immediately.

2.1.5. The volume of Community funds required for the implementation of the plan was estimated at ECU 18 million.

2.1.6. This action plan constituted the final decision adopted in this field.

2.1.7. Other Community policies, covering, for example, the social sector, the environment, transport, the trans-European networks, research, training and education, cooperation and cultural activities, were endowed with budgets designed to finance projects having an impact on tourism.

2.1.8. In all, according to the Court of Auditors' Special Report No 3/96, apart from the appropriations allocated to EYT, the budgetary authority granted:

- ECU 15.9 million for actions to assist tourism from 1989 to 1992
- ECU 1.750 million to promote Europe as a holiday destination in third countries
- ECU 21.7 million from 1993 to 1995 for the plan of action to assist tourism

i.e. a total of ECU 39.350 million.

2.2. Organisational structure

2.2.1. From 1988 to 1995, the Commissioners with special responsibility for tourism were:

- from 1989 to January 1993: Mr Cardoso e Cunha
- from January 1993 to January 1995: Mr Vanni d'Archirafi
- since January 1995: Mr Papoutsis.

2.2.2. With regard to both direct actions and the coordination of indirect actions, responsibility for implementation of tourism policy lay with DG XXIII - Directorate A: Action to assist enterprises and improve the business environment.

2.2.3. Within Directorate A, a unit was set up with specific responsibility for the implementation of Community tourism policy. According to the Establishment Plan in force in June 1990, that unit had the following staff: 1 A3, 2 A7-A4, 1 B and 1 C, i.e. five officials, five auxiliary staff members (three A category and 2 C category), three detached national experts and one member of staff recruited from an employment agency. In order to offset the impact of a lack of staff in the unit, the firm Euroconseil was selected after a call for tenders to take responsibility for the technical management of European Year of Tourism from May 1989 to October 1990.

2.2.4. The authorising officers responsible for the commitment of expenditure were the Director-General and the Director of Directorate A, the other directors and the assistant to the Director-General being authorised to sign payment orders. Day-to-day management of the appropriations, i.e. the preparation of commitments of expenditure and payment orders, the checking of invoices, etc., was carried out by a B category official from the Tourism Unit and by a unit headed by an official in the same category under the direct responsibility of the Director-General. In practice, the assistants to the Director and to the Director-General were closely involved in the management of the appropriations allocated to tourism policy.

2.2.5. The Steering Committee provided for in the Council's resolution was set up and met from March 1989 to February 1991. Local committees, which were not provided for but were deemed to be essential to the success of EYT, were also set up in each Member State. In actual fact, decisions were taken bilaterally, with the Steering Committee being simply informed thereof.

F A C T S

2.3. Chronology of events and detection of irregularities

2.3.1. In order to carry out the tasks entrusted to the Commission by the Council, DG XXIII issued:

- calls for tenders which, except for the consultancy contracts with Euroconseil, generally related to contracts for studies, with particular regard to statistics. Like all calls for tender, they were subject to the financial provisions applicable, i.e. the Financial Regulation, its implementing provisions and the Commission's internal rules, the contracts being subject, in accordance with their nature and amount, to strict rules for tendering with a view to ensuring the transparency of the operations, equal treatment for bidders and sound financial management. Selections were made by the authorising officer and the managing services, after consultation of the ACPC and subject to the approval of the Financial Controller. However, the Court of Auditors' report submitted in September 1992 refers to serious irregularities and unjustified payments, not least in connection with actions subject to strict procedures (see the Euroconseil file);
- calls for proposals for specific actions subsidised from the Community budget. This procedure is not covered by any rules and concerns subsidies.. It enables interested associations and individuals to apply for a subsidy and obliges the authorising officer's staff to compare requests with each other.

2.3.2. In fact, DG XXI above all granted ad hoc subsidies to projects put forward, unsolicited, by the recipients of the subsidies and which were not covered by a call for proposals. This instrument was used on a massive scale for EYT and involved half the projects for the period 1991-1992, then a quarter for the action plan.

2.3.3. However, according to the Court of Auditors' Special Report No 3/96, in the context of the action plan the selection procedure carried out on the basis of a call for tenders and a call for proposals opened in 1994 suffered from technical problems, with particular regard to the registration of bids, while the procedure introduced in 1995, although an improvement on its predecessors, was not able to guarantee equal treatment of bidders on a regular basis.

2.3.4. At the same time, the Head of the Tourism Unit, as the Court of First Instance confirmed in the judgment it handed down on 19 March 1998 in Case T-74/94, knowingly and persistently engaged in unauthorised outside activities which completely negated guarantees of his independence and were such as to give rise to serious conflicts of interest in the performance of his duties ... seriously neglected his duty, as senior official called upon, within the institution, to perform important managerial duties in a specific, sensitive, sector, to act responsibly, independently and with integrity and ... by deliberately and continuously failing to inform the Commission of the real nature of his activities and the links which he had formed with companies operating in the sector covered by his own duties within the Commission, committed a serious breach of his duty of loyalty to the institution and furthermore, in so doing, infringed Article 12

of the Staff Regulations of Officials. Those breaches caused serious damage to the image, reputation and interests of the Commission (paragraph 178 of the judgment).

2.3.5. In other words, the Head of the Tourism Unit was engaging in unauthorised external activities in his sphere of responsibility, giving rise to embezzlement, corruption and favouritism.

2.3.6. Another grade A4 temporary staff member in the Tourism Unit, a former detached national expert, was involved in one of the national committees responsible for identifying projects eligible to receive Community funding, a process for which he himself was responsible at Community level. Furthermore, according to the audit carried out by the Commission in July 1998, another detached national expert was also involved in a conflict of interests of the same type during the EYT programme.

The warning signals

2.3.7. Since 1989, three written questions subsequently withdrawn, have been tabled by a Member of the European Parliament on the management of EYT and the selection of Euroconseil and certain aspects of the contract.

2.3.8. On 9 April 1990 the European Parliament expressed its concern at the management of the project and possible irregularities relating to activities undertaken under EYT and called on the Court of Auditors to deliver an opinion.

2.3.9. In June 1992, the Chairman of the European Committee on Tourism wrote to the Commission to complain about the Head of the Tourism Unit, who was alleged to have favoured the selection of an extremely dubious firm called Demeter. After consulting the Head of the Unit, the Director-General and the Director concerned in DG XXIII took the view that the approach was designed to discredit a competitor and decided to disregard the letter.

2.3.10. On 30 September 1992 the Court of Auditors' report requested by the European Parliament identified irregularities in the procedures followed for the award of contracts and their implementation, the granting of subsidies and the use thereof, failure to respect the budgetary and accounting rules and, in general terms, criticised the financial management of the European Year of Tourism as a whole. Furthermore, the report noted the inadequacy of the Financial Controller's checks from the point of view of both the commitment of expenditure and the disbursement of payments.

2.3.11. Those signals should have alerted not only the Commissioner and the Director-General responsible, but also, where appropriate, the Commission as a body as to the management of tourism policy. Nothing of the sort. It was not until the second half of 1993 that DG IX revealed the existence of serious problems in the Tourism Unit.

Internal inquiries within the institution and referral to the courts

2.3.12. In March and April 1993 DG XXIII carried out an internal inquiry and, in July, asked for assistance from DG XX - Financial Control. From mid-1993 onwards, the internal inquiry was extended to cover all of DG XXIII. *It resulted in the identification of irregularities which had occurred since 1989 that were likely to give rise to recovery orders and to the risk of fraud.* After discussion with the Secretariat-General and DG IX - Personnel and Administration) the

appointing authority decided to transfer the Head of Unit in the interests of the service with effect from 15 March 1994.

2.3.13. The file was forwarded on 8 July 1994 the Commission's coordination unit for the prevention of fraud (UCLAF) which, given the nature of the presumed irregularities (fraud and corruption), immediately started investigating the matter with a view to possible legal proceedings. UCLAF joined some of the audit missions carried out in the Member States by DG XX.

2.3.14. In December 1994 on the basis of that information, the Commission referred the matter to the French and Belgian courts in order to have a preliminary inquiry started in France and judicial investigations opened in Belgium, where appropriate. In February 1995, a Member of the European Parliament lodged a complaint with the Belgian judicial authorities, and in March 1995, the Greek judicial authorities were asked to start preliminary inquiries.

Sanctions

2.3.15. On 22 June 1995 the Director-General of DG IX, acting in his capacity as appointing authority, dismissed the Head of Unit without reduction or abolition of pension rights in accordance with the opinion of the Disciplinary Board adopted unanimously on 23 May 1995. On 28 July 1995, he terminated the contract of the temporary staff member with effect from 1 August 1995, departing from the unanimous opinion of the Disciplinary Board of 30 June 1995 recommending that the authority entitled to conclude recruitment contracts punish the person involved by ordering a relegation in step.

Further inquiries at an internal level and in the Member States, and information from the audit bodies

2.3.16. In February and November 1995 with a view to furthering their inquiries, the Belgian judicial authorities requested waiver of immunity in respect of certain officials and Commission authorisation to interrogate others. After carrying out the standard verification procedure, the Commission granted their request for waiver of immunity and lifting of the professional security requirement.

2.3.17. In April 1996, pursuant to Article 6 of Council Decision 92/421/EEC, the Commission submitted to Parliament a report drawn up by an outside firm on the evaluation of the Community action plan to assist tourism (1993-1995). That report gave a critical analysis of the decisions taken and the guidelines followed, but noted, nevertheless, that a number of projects had been successfully implemented.

2.3.18. In June 1996 the Belgian judicial authorities requested waiver of immunity in respect of the Director-General of DG XXIII, the Director responsible for tourism policy and a member of their staff. DG IX requested additional justification, and the Commission as a body replied on 12 September that it was not in a position to approve that request. According to the Commission, the reasons put forward by the Belgian Public Prosecutor were insufficient, and the internal inquiries had not revealed any reasons why waiver of immunity should be granted. On 16 October, 1996 the Commission, acting in its capacity as appointing authority, applied Article 50 of the Staff Regulations of Officials (retirement in the interests of the service) to the Director-General of DG XXIII. That decision took effect on 1 December 1996

2.3.19. In November 1996 the Court of Auditors submitted its Special Report No 3/96 on tourism policy and the promotion of tourism. In December 1996 the new Director-General of DG XXIII set up a task force involving DG XX, DG XXIII and UCLAF with the aim of reviewing all the issues relating to tourism.

2.3.20. In June 1997 the Commission acted as private party supporting the Public Prosecutor in legal proceedings against the Head of Unit, and in November 1997, the Belgian authorities renewed their request for waiver of immunity in respect of the Director-General, the Director and a member of their staff. The Commission approved their request on 13 November

2.3.21. In 1998 DG XX resumed the inquiries it had begun in 1993; on the basis of the De Luca and Wemheuer reports, the European Parliament adopted two critical resolutions (A4-0040/98 and A4-0049/98) on the follow-up measures taken by the Commission in the tourism sector and on its attitude to the presumed cases of fraud and irregularities.

2.3.22. On 14 July 1998, the task force set up by DG XXIII published an audit of the past management of tourism policy, addressed to the European Parliament and the Court of Auditors, which showed that 236 cases of undue payment had been identified and 193 recovery orders issued for a total of ECU 3.1 million. Another 24 recovery orders representing a total of ECU 1.3 million were being drawn up; the remainder - amounting to ECU 0.4 million - constituted various cases requiring further investigation or relating to a situation where the recipient no longer existed (associations, etc.). Finally, 61 recipient had repaid ECU 0.56 million. As regards the period 1990-1995, the task force audit estimated excess payments at ECU 4 million out of ECU 31.4 million concerning 718 actions entered on the expenditure side. In most cases, excess payments resulted from fraudulent activities. In 1998, the actions concerned 76 bodies or individuals who, in some cases, were facing legal proceedings in the Member States, the others requiring further investigation.

2.3.23. The number of cases being queried demonstrates, after the event, the extent of the irregularities and the risks of fraud.

2.3.24. Investigations are still being conducted by the judicial authorities of the Member States.

2.3.25. At the end of this chronology of events, reference should be made to the passivity of the committees set up by the Council Decisions of 21 December 1988 and 13 July 1991. Those committees, consisting of representatives of the Member States and chaired by the representative of the Commission, were supposed to be consulted by the Commission on the implementation of the action programmes in the tourism sector. Within the context of EYT, the committee was informed of the decisions taken by DG XXIII in conjunction with the local committees. It was not consulted in advance. As for the committee set up under the 1993-1995 action plan, its role is never referred to.

2.3.26. The same comment applies to the Member States which, as part of EYT, were responsible for identifying the projects and monitoring their implementation, with the requirement that they should report to the Commission. However, the Member States failed to identify a large number of irregularities and instances of fraud subsequently brought to light by the Commission.

2.4. Disciplinary measures

2.4.1. The irregularities noted in the management of the tourism-related projects concerned errors of administrative, budgetary and financial management as well as instances of fraud and misuse of Community funds. The investigations concluded that, within the Commission, the Head of Unit and his temporary staff member were largely responsible for the instances of fraud and misuse of Community funds.

The case against the Head of Unit

2.4.2. Unbeknownst to the appointing authority, and while he was in charge of the Tourism Unit, the Head of Unit retained an interest in several companies, either directly as a manager or by transferring his shares to close relatives (his partner or her mother) or by accommodating companies at his place of residence. The companies involved were Immoflo, Lex Group and Dynamique (Greece) and Groupe Dynamique (Belgium), two of which participated in Community programmes and received subsidies as a result.

2.4.3. The Head of Unit also made significant ineligible payments to OI-Pliroforiki, granted subsidies exceeding the Commission's obligations in extremely dubious - not to say extraordinary - conditions of legal and financial certainty to Demeter and Etoa, granted unsubstantiated subsidies, artificially inflated the subsidy budget for WES with a view to funding a subcontractor that he had appointed himself, without any services being provided in return, granted subsidies to contractors claiming false status or using false identities, and amended the budget for the subsidy granted despite the failure of Wainfield Consultants to complete the project, etc.

2.4.4. It was during the second half of 1993 that DG XX uncovered problems in the management of the Tourism Unit. Early in 1994, a press report pointing the finger of suspicion at the Head of Unit, which had appeared in Greece in July 1993, was brought to the attention of his superiors.

2.4.5. On 15 March 1994, the Head of Unit was transferred in the interests of the service.

2.4.6. Subsequently, disciplinary proceedings were instituted against him. The timetable of those proceedings was as follows:

12 July 1994:	Notification to the official concerned that disciplinary proceedings were being instituted against him
20 July 1994:	Hearing
3 August 1994:	Suspension from duty on half-pay
4 December 1994:	Restoration of full salary but maintenance of the suspension, since no decision had been taken in his case
8 December 1994:	Further hearing
22 December 1994:	Referral to the Disciplinary Board
9 March 1995:	Disciplinary Board suspended its proceedings so that light could be shed on the workings of the tourism sector
14 March 1995:	Official heard for a third time with a view to clarifying his links with a number of companies, links of which the appointing authority became aware only at the end of February
5 April 1995:	Forwarding by the appointing authority to the Disciplinary Board of an additional report
23 May 1995:	Opinion of the Disciplinary Board delivered unanimously recommending dismissal without forfeiture of pension rights.

1 June 1995:	Opinion notified to the official concerned
12 June 1995:	Final hearing by the appointing authority
22 June 1995:	Decision of the appointing authority to deem proven all the accusations it had referred to the Disciplinary Board and to dismiss the person concerned without withdrawal in whole or part of entitlement to retirement pension The official concerned was notified of that decision on 23 June 1995
1 August 1995:	Date on which the decision to dismiss the official took effect.

2.4.7. This case gives rise to two problems:

- . the time-lapse between the discovery of the instances of fraud and the decision to dismiss the official concerned, which was applied in respect of facts that had occurred from 1989 onwards
- . the leniency of the penalty imposed.

2.4.8. Roughly two years elapsed between the discovery of the instances of fraud by DG XX and the date when the official concerned was dismissed. Four months elapsed between the official's transfer and the appointing authority's decision to institute disciplinary proceedings, and five months between the first hearing and the referral of the case to the Disciplinary Board.

2.4.9. As regards the Disciplinary Board, it failed to comply with the time-limits laid down in Article 7 of Annex IX to the Staff Regulations of Officials: it delivered its opinion not at the end of March 1995, as it should have done, but only two months later, on 23 May 1995.

2.4.10. The Director-General of Personnel, as the appointing authority, did comply with the time-limits laid down in the Staff Regulations of Officials, but the disciplinary procedure proper lasted one year. Finally, it would have been possible for the decision to dismiss the official, notified on 23 June 1995, to take effect on that date, or at the latest on 1 July 1995, instead of being deferred to 1 August 1995, although the official concerned had been suspended from his duties for a year.

2.4.11. The tardiness of the procedure may be explained, firstly, by the complexity of the matter and the need to undertake an investigation and, secondly, by the cautious approach which the Community institutions are required to take in disciplinary matters in order to avoid the Court of First Instance overturning their decisions. Nevertheless, the Disciplinary Board should have stepped up the pace of its activities, and the appointing authority need not have waited for more than a month before imposing the penalty.

2.4.12. Given the seriousness of the accusations made against the official concerned, the Director-General of DG IV, as the appointing authority, could have:

- ignored the opinion of the Disciplinary Board and dismissed the Head of Unit, withdrawing his pension rights in full, or
- brought into play his liability under Article 22 of the Staff Regulations of Officials, pursuant to which an official may be required to make good, in whole or in part, any

damage suffered by the Communities as a result of serious misconduct on his part in the course of or in connection with the performance of his duties.

2.4.13. During his hearing by the Committee of Experts the Secretary-General of the Commission explained that

- the Commissioner with special responsibility for personnel, and the Commissioners in charge of the DG in which the officials concerned were employed, had been consulted on the penalties imposed before the appointing authority had adopted the relevant decision;
- the need to give very clear grounds for any decision to depart from the penalty proposed by the Disciplinary Board led the appointing authority to follow that opinion and not to impose a heavier penalty.

The Committee takes the view that that argument is not pertinent.

The case against the temporary staff member

2.4.14. The accusations made against this member of staff are similar to those levelled against his Head of Unit, but narrower in scope.

2.4.15. At issue are unauthorised outside activities in the tourism sector likely to damage the Community's activities, accepting airline tickets for his partner from a body with which he was working and whose documentation he was appraising for the Commission, thereby calling into question his independence and impartiality.

2.4.16. The timetable of the disciplinary proceedings is as follows:

29 June 1994:	Notification to the person concerned that disciplinary proceedings were to be opened against him and preliminary hearing
7 July 1994:	Decision to suspend the person concerned on half-pay
8 November 1994:	Restoration of fully salary but maintenance of the suspension
29-30 November and 6 December 1994:	Hearings
25 January 1995:	Referral to the Disciplinary Board
30 June 1995:	Opinion of the Disciplinary Board, notified to the appointing authority on 12 July, recommending relegation in step (A4 step 4 to A4 step 1)
28 July 1995:	Decision of the appointing authority to ignore the opinion of the Disciplinary Board and to terminate the temporary contract of the person concerned
1 August 1995:	Date on which the decision took effect.

2.4.17. The appointing authority took seven months, from the date of the hearing of the temporary staff member, to refer the matter to the Disciplinary Board, which then took five months to deliver an opinion. Unlike in the previous case, the appointing authority chose to depart from the opinion and increased the penalty with immediate effect.

2.4.18. On his departure, the temporary staff member received a sum of BEF 3 833 807, which breaks down as follows:

- amounted deducted as his contribution to the pension scheme plus the employer's contribution: BEF 1 720 955;
- compensation for termination of contract (Article 47 of the Conditions of Employment of Other Servants): BEF 1 964 838;
- amount in respect of leave not taken: BEF 270 870;

i.e. a total of BEF 3 955 663, from which amount BEF 122 856 was deducted in respect of settlement of remuneration and travel expenses.

2.4.19. The Commission paid its former temporary staff member a total of BEF 1 984 838 which was not due to him. The termination of a fixed-term contract without notice on disciplinary grounds differs from that of the fixed-term contract referred to in Article 47 and gives no grounds for the payment of the compensation for termination of contract. That interpretation was confirmed by the Commission's Legal Service in a note dated 8 July 1998. It would appear that, on the departure of the temporary staff member, DG IX asked for the Legal Service's opinion on this matter and, when it did not receive that opinion, decided that, in the absence of any specific rules precluding a derogation from the application of Article 47, the compensation for termination of contract was due to the person concerned, even in this case.

2.4.20. The temporary staff member should actually have received BEF 1 848 969 instead of BEF 3 833 807.

2.4.21. Consideration in parallel of these two cases - relating to the Head of Unit and to the temporary staff member - demonstrates the slowness of the investigations and of the work of the Disciplinary Board and emphasises the concern shown by the appointing authority towards the Head of Unit, to the extent that it did not depart from the opinion delivered by the Disciplinary Board and delayed the application of the decision, and towards the temporary staff member, to whom it applied the most favourable interpretation possible of the Conditions of Employment of Other Servants, although that interpretation was not compatible with the spirit of those Conditions, by paying him a total of BEF 1 964 838 which was not due to him.

2.4.22. Finally, during his hearing by the Committee of Independent Experts, Commissioner Papoutsis stated that he had not been informed of the penalties imposed on the Head of Unit and the temporary staff member and did not deem it necessary to give his views on those penalties. As for the Secretary-General, he informed the Committee of Experts that a recovery order had been issued with a view to recovering the sums paid unduly to the temporary staff member.

2.4.23. Despite the statements made by Commissioner Papoutsis, the Committee is not convinced that sufficient reorganisation efforts have been made, given the number of irregularities detected.

2.5. Euroconseil

2.5.1. In 1988, the Commission proposed to the Council an action programme to assist tourism and, with a view to its participation in the development of the projects, especially those connected with EYT, it decided to seek assistance from an outside consultant which would provide it with

the services of experts and qualified staff, premises and all the requisite infrastructure. That firm would also keep detailed accounts of the expenditure committed.

2.5.2. The predecessor of the Head of Unit referred to in point 2 drew up the file. The relevant Director in DG XXIII submitted the file to the Contracts Board and concluded the contract, monitoring of which he entrusted to his assistant, under his authority, frequently in conflict with the Head of Unit.

Calls for tenders

2.5.3. Three calls for tender were required before the co-contractor could be selected. The call for tenders, which was not published in the Official Journal despite the recommendations set out in the ACPC's Vademecum in force during that period, was sent to sixty firms. Six submitted bids. According to the report from the authorising officer to the ACPC, 'the tender from Euroconseil showed a clear understanding of the tasks to be undertaken and proposed a well-structured and imaginative approach to the work. They have office space available close to the Commission and can supply highly trained staff with experience in both tourism, management and office equipment at very competitive rates. The cost per day of the ain expert is between ECU 125 and ECU 200 (see Annex 4) which is the lowest quote received. The overall cost of the tender for the 7 months preparation phase in 1989 was ECU 285 833 and for the 12 months execution phase in 1990 was ECU 490 000.'

2.5.4. Because of the amount of the contract, the tender ought to have stipulated that a deposit be lodged, in accordance with Article 56 of the Financial Regulation in force until 1990. Furthermore, the tender specifications had provided for the assessment of the technical and financial capacity of the tenderers. This was not done.

Implementation and renewals of the contract

2.5.5. The first contract, covering the seven months from May to December 1989, complied with the tender specifications. Nevertheless, as from September 1989, the network of correspondents provided for in the Member States was abolished with the agreement of DG XXIII in order to increase the experts' unit rates. ECU 50 000 was paid for this network to the consultant, but the correspondents were not remunerated. In 1990, a new network was set up on the basis of a specific commitment for an amount of ECU 248 000.

2.5.6. Furthermore, no supervision of consultants was carried out (no records of attendance, for example), and, according to the 1992 report of the Court of Auditors, those consultants performed managerial duties incumbent on officials and played an important role in the selection and monitoring of projects.

2.5.7. The renewals of the contract for the period from 15 January 1990 to 15 June 1990, then that from 16 June 1990 to 31 January 1991, did not correspond to the terms of the original bid submitted by Euroconseil:

unit prices increased from ECU 200 in the original contract to ECU 370 in the first renewed contract and to ECU 440 in the second;

. a clause was inserted entitling the consultant to 20% of the amounts secured from any sponsors. That clause was likely to result in a conflict of interests for the consultant.

2.5.8. In so far as they involved substantial changes, the renewals should have been submitted to the ACPC, as provided for in the implementing provisions of the Financial Regulation, all the more so since the contract had been awarded principally on the grounds of the level of the daily rates applied to the experts. The ACPC's opinion would certainly have revealed the conflict of interests constituted by the clause concerning sponsorship.

2.5.9. As from 15 January 1990, the staff of the consultant involved in EYT occupied offices on the premises of the Commission, without paying rent for those offices, a breach of the terms of the tender specifications.

2.5.10. The unjustified payments made to Euroconseil under the terms of these contracts are as follows:

- . ECU 50 218 in respect of additional days not provided for in the technical assistance contract;
- . ECU 50 000 paid for the network of correspondents in accordance with the 1989 contract, although those correspondents did not receive the payments due;
- . ECU 125 000 in respect of the services of a communications company which was not paid.

Conflicts of interest

2.5.11. Apart from the clause concerning sponsorship, it appears that the consultant proposed his assistance, in return for payment, to an applicant for Community subsidies when he himself was responsible for registering applications and recommended projects to the Commission with a view to their being adopted. He also proposed to a supplier of promotional material for EYT that he would pay him royalties for the use of the logo which was the property of the Commission.

2.5.12. Even if Euroconseil received an amount lower than the one set out in the ACPC's opinion, it should be recalled that that contract had been terminated early in October 1990, i.e. three months before it expired, since the company was not longer solvent. If we bear in mind the unjustified payments, the clause relating to sponsorship and the failure to supervise the implementation of the contract, to the extent that neither the firm's staff nor the products were properly monitored, the budget devoted to that company cannot be said to have remained within the authorised limits.

2.5.13. DG XX's audit report dated 18 June 1998 indicates that consideration of the possibility of instituting disciplinary proceedings against the Commission officials who had concluded and implemented the contract with the consultant should be postponed pending receipt of the conclusions of the investigation conducted by the Belgian judicial authorities.

2.5.14. Since this matter did not fall within the remit of the dismissed Head of the Tourism Unit, it is regrettable that a thorough administrative inquiry was not launched immediately with a view to identifying possible instances of fraud and to establishing the responsibility of officials for the irregularities, including those at the upper level of the hierarchy (Director and Director-General) in respect of whom the Commission as a body acts as the appointing authority.

2.6. IPK-ECODATA

2.6.1. When the budget for the financial year 1992 was finally adopted, the European Parliament decided that an amount of at least ECU 530 000 would be used to support the establishment of an information network on ecological tourism projects in Europe.

2.6.2. On 26 February 1992 DG XXIII published in the Official Journal a call for proposals with a view to supporting projects in the field of tourism and the environment.

2.6.3. On 22 April 1992, IPK submitted a project for the creation of a database on ecological tourism in Europe (ECODATA). IPK, which would be responsible for the coordination of the work, proposed to cooperate with three partners: a French company, Innovence, an Italian company, Topconsult, and a Greek company, 01-Pliroforiki. There was no information in the proposal as to how the tasks would be allocated among the various companies

2.6.4. On 4 August 1992, DG XXIII granted EC530 000 to IPK as aid for the ECODATA project.

2.6.5. On 23 September 1992, IPK signed the relevant declaration.

2.6.6. In November 1992 the Head of the Tourism Unit invited IPK and one of its subcontractors, 01-Pliroforiki, to attend a meeting where, according to the testimony given by IPK to the Court of First Instance and not challenged by the Commission, the Head of Unit proposed that the bulk of the work and most of the subsidy be awarded to 01-Pliroforiki (paragraph 9 of the judgment).

2.6.7. At a further meeting held on 19 February 1993, IPK was asked to accept the participation in the project of SFT, a German company, which had not been referred to in the proposal for the project drawn up by IPK, since that company was active in an ecological tourism project known as ECOTRANS.

2.6.8. In paragraph 47 of the judgment it handed down on 15 October 1997 the CFI states the following: 'Even though the applicant has provided some evidence that one or more officials of the Commission did interfere in the project between November 1992 and February 1993 ...'.

2.6.9. On 12 March 1993 in a note to his Director-General, the Head of Unit pointed out that SFT had not put forward proposals in connection with the call for tenders concerning ECODATA, that the Commission did not have the right to impose its participation on an external partner, that SFT had received subsidies from the Commission in the past, that DG XXIII could not continue to subsidise the same persons indefinitely and that SFT had gone too far in exerting pressure on the Commission. He stated that, since he had been unable to convince his Director-General, and in accordance with the latter's instructions, he had orally requested IPK to include SFT in its project. According to allegations, SFT formed a powerful lobby in Germany in order to convince DG XXIII to pay over to it a majority of the Community funds or, should it fail in that aim, to cancel the project and the contract.

2.6.10. The Head of Unit included in his file on the irregularities committed by certain officials three documents (71-72-73) backing up his accusations.

2.6.11. IPK submitted an initial report in April 1993, followed by a second in July 1993 and a final report in October 1993. IPK also invited the Commission to attend a presentation of the work already completed, which took place on 15 November 1993.

2.6.12. By letter of 30 November 1993 the Commission informed IPK that the report on the ECODATA project showed that the work carried out in the period to 31 October 1993 did not properly correspond to that envisaged in the proposal of 22 April 1992 and that it could therefore not pay the remaining 40% of the contract. IPK expressed its disagreement by letter of 28 December 1993, whilst continuing to develop the project and present it to the public.

2.6.13. On 15 March 1994, the Head of Unit was transferred in the interests of the service.

2.6.14. On 29 April 1994, a meeting was held between IPK and ~~DG XX~~ on 3 August 1994, that DG informed the firm that no payment would be made in respect of the project. Following that decision, IPK brought an action before the Court of First Instance (Case T-331/94), an action which was rejected and is now the subject of an appeal.

2.6.15. Following the judgment handed down by the CFI on 15 October 1997, the director responsible for tourism policy wrote to suggest that the financial audit of the ECODATA project should be completed promptly. He pointed out that the sums to be recovered should be determined and drew attention to the fact that, when it carried out an audit on 24 September 1993, DG XX had noted that there were supporting documents to justify a Community contribution of only ECU 76 303, whereas ECU 300 018 had been paid over at the beginning of 1993. By letter of 10 November 1997 the same director referred the matter to UCLAF, asking for its views as to whether fraud had been committed in the IPK case.

2.6.16. The Commission's general audit of tourism measures, submitted on 14 July 1998, mentions the ECODATA affair only in connection with the judgment handed down by the Court of First Instance.

2.6.17. In connection with this case, the Committee regards it as regrettable that an administrative inquiry failed to determine the source and nature of any pressure exerted on IPK to accept SFT as a partner or 01-Pliroforiki as a virtually exclusive partner or to establish whether IPK's refusal to accept SFT prompted the decision by DG ~~XX~~ to withhold the payment of the balance of the financial assistance.

Accordingly, the responsibilities of each of the officials concerned, and in particular those of the Director-General, could not be determined, most notably as regards the pressure which may have been exerted on IPK.

REMARKS

2.7. The problems encountered by the Commission

Staff problems

2.7.1. The Commission proposed to the Council of Ministers the implementation of projects in which it intended to play an active role (for example EYT) without having the human resources needed to organise them.

2.7.2. The following staff problems were noted:

Numerically inadequate staff resources and differences in status among staff

2.7.3. Responsibility for managing Community tourism policy, i.e. firstly EYT and then the action plans, was entrusted to 11 persons subject to the Staff Regulations, one person recruited from an employment agency and an external consultancy. Most of these staff members could not be awarded contracts for periods longer than one year, renewable twice, unless they were appointed to a temporary post. In principle, the detached national experts and the consultants assist the institution in its work by providing expertise in a specific area, but responsibility for administrative and financial management rests not with them, but rather with officials. However, despite the differences in status which should have led their superiors to define and hierarchise the responsibilities of each category of staff, tasks such as the selection or supervision of projects, or even the preparation of answers to written questions by MEPs, were carried out by staff who were not officials or by the external consultancy.

Questionable appointments and postings

2.7.4. Persons appointed to a post at the level of a head of unit (A3), a director (A2) or a director-general (A1) must display the highest degree of competence, efficiency and integrity. In the case in point, the Head of the Tourism Unit clearly showed that he did not meet these criteria. *their part, the Director and the Director-General failed to exercise correctly their responsibilities as superiors and as authorising officers.*

2.7.5. The Committee of Experts wonders about the institution's ability to appoint or promote the best candidates and to earmark the 'right' person for the 'right' post. The appointment and posting of officials in grades A1 and A2 is the responsibility of the College of Commissioners.

Failure by officials to observe the requirement that they should be independent

2.7.6. The obligation to work completely independently and solely in the interests of the Community, the unifying force which should bind staff together, failed to act as a counterweight to the various forms of interference and the patronage which may result. That patronage gives those who accept it a feeling of impunity.

Instances of administrative negligence

2.7.7. The shortage of human resources and inconsistencies in their management were likely to produce *management weaknesses and errors* culminating in *conflicts of interest* and *fraudulent operations*.

2.7.8. Successive reports highlight *serious administrative shortcomings* incomplete files, belated notifications, inefficient registration of mail, vague invitations to tender and to submit proposals, inadequate and 'arranged' monitoring and assessment of projects, failure to carry out checks, etc.

2.7.9. The tourism file also raises the problem of the award of ad hoc subsidies falling outside the scope of tendering arrangements which entail advertising, the comparison of proposals with a view to ensuring equal treatment of tenderers and checks by the relevant control bodies. As the Court of Auditors has pointed out *ad hoc subsidies constitute a high-risk procedure* for the institution, because, even if they are awarded with the requisite degree of rigour and impartiality, they make mounting a defence against criticism difficult.

2.7.10. This also raises *the issue of the granting of approval* that all the irregular operations were given the green light by the internal control bodies, and even approval after the event in some cases. Finally, attention should be drawn to the problems DG XX - Financial Control - faces in auditing a sector when it has previously approved each of that sector's operations.

The role of the EYT Steering Committee

2.7.11. The EYT Steering Committee, comprising representatives of the Member States and chaired by the Commission, played a passive role. It agreed to be informed of the decisions taken by DG XXIII in conjunction with the national committees, even though the rules stipulated that it should be consulted in advance. Likewise, the Steering Committee for the implementation of the 1993-1995 plan does not seem to have played a significant role.

Failings on the part of the Member States

2.7.12. All or some of the Member States, which were responsible for supervising and implementing the project, disregarded the requirement to report to the Commission in the context of EYT.

2.8. The management of the crisis

The discovery and punishment of the irregularities

2.8.1. The Commission was *slow* in checking whether the accusations levelled against the Tourism Unit and its Head were well founded and in bringing the irregularities and instances of fraud to light. These *checks* were not only *belated*, but also *incomplete*, in that administrative inquiries were not conducted sufficiently quickly, and above all exhaustively, in connection with the Euroconseil and IPK cases. Moreover, the tourism file was only belatedly entrusted to UCLAF, in July 1994, and the IPK case was referred to it again in 1997.

Not all the blame for the slowness of the disciplinary proceedings rests with the Commission. It is also due in large part to the concern to protect the decisions taken against the criticisms

which would be made by the CFI should an action be brought. However, due emphasis should be given to the inadequate and tardy nature of the penalty imposed on the Head of Unit and the failings on the part of the administrative departments (DG IX), which led the institution to pay BEF 2 000 000 too much to a temporary member of staff.

2.8.2. The criticism which can be levelled against the College of Commissioners, and, in particular, the Commissioner responsible, is that of having protected the senior hierarchy by not ensuring that the inquiries were taken to their conclusion, given that members of that hierarchy might be involved, and of having waited several months before agreeing to the request from the Belgian authorities to waive the immunity of A2 and A1 officials. The institution resolved the problem involving the Tourism Unit by imposing disciplinary penalties on two persons and applying Article 50 of the Staff Regulations (retirement in the interests of the service) to the Director-General concerned.

2.8.3. The failure to bring into play at any time the financial liability, pursuant to the Financial Regulation and Article 22 of the Staff Regulations, of the officials involved in these irregularities can also be criticised.

Forwarding of the file to the judicial authorities and notification of the supervisory authorities

2.8.4. Once the evidence of fraud and irregularities had been gathered, the Commission referred the matter to the judicial authorities, since problems involving those authorities in the Member States are not its responsibility. *By that stage, the Court of Auditors and the European Parliament had already intervened.*

2.9. Conclusions

2.9.1. As regards the responsibilities of the College of Commissioners as a whole or individual Commissioners, whether the current College and the current Commissioners are concerned or those in office when the events took place:

- (i) to have proposed to the Council, in 1988, the implementation of projects actively involving the Commission's departments without having the requisite human resources. Given that the tourism sector has to deal with an exceptionally large number of undertakings and issues, in an area where the intangible nature of the services to be provided makes the management of contracts extremely difficult, the feasibility of a policy of distributing Community subsidies in this sector should have been examined more closely.
- (ii) to have failed, between April 1990 and July 1993, to take any action despite the serious warning signals constituted by the European Parliament's misgivings and the Court of Auditors' report of 30 September 1992.
- (iii) to have accepted, in June 1995, that the appointing authority, i.e. the Director-General of DG IX - Personnel and Administration - failed to increase the penalty proposed by the Disciplinary Board (Commissioners responsible for personnel and tourism - Mr Liikanen and Mr Papoutsis respectively).

- (iv) to have been slow, between September 1996 and November 1997, in agreeing to waive the immunity of the Director-General, the Director and a member of their staff and to have applied, in October 1996, Article 50 to a Director-General who had failed to exercise his responsibilities as a superior and an authorising officer and, possibly, exerted pressure on a firm in order to advance the claims of another firm.

3. MED PROGRAMMES

3. MED PROGRAMMES

THE FACTS

3.1. Introduction

The context

3.1.1. The MED programmes for decentralised cooperation with the countries of the Mediterranean began in 1992 after the Gulf War with Iraq. Their aim was to strengthen political and economic cooperation with the southern Mediterranean countries in order to counterbalance the aid given to the countries of Central and Eastern Europe. After a period of suspension, referred to below, they were resumed in April 1998.

3.1.2. Depending on which partners were involved, the MED programmes included five different programmes: MED-Urbs (regional authorities), MED-Campus (universities) MED-Invest (enterprises), MED-Avicenne (research centres) and MED-Media (media professionals).

3.1.3. The partners were in direct contact with each other without, as a rule, central government authorities being involved. Accordingly, the Commission, too, was unable to benefit from the administrative support of the Member States. Indeed, the main idea of the programmes was to avoid government structures altogether and channel the cooperation funds by means of subsidies to non-governmental organisations. The idea was to be 'close to civil society'.

3.1.4. The total multiannual budget for the MED programmes for the period 1992-1996 amounted to ECU 116.6 million, of which ECU 78 million had been committed when the programmes were suspended (decisions taken in October 1995 referred to below).

3.1.5. The Commissioner in charge of the programmes was Mr Matutes until the end of 1992; since 1 January 1993, they have come within the remit of Mr Marín.

The management structure

3.1.6. In general, the system's management structure was organised on four levels: 1 - the Commission; 2 - ARTM (Agency for Trans-Mediterranean Networks), which was responsible for the administrative and financial management of the five programmes; 3 - TAOs (Technical Assistance Offices), one for each programme and responsible for the technical supervision of the programmes; 4 - Projects (grouped in networks), of which there were 496 in all.

3.1.7. The Commitment Committee (management committee) - one per programme - consisted of representatives of the Commission, of ARTM and of the TAO concerned (which had no voting rights). It considered and approved payments.

3.1.8. ARTM had its registered office in Brussels and was subject to Belgian law, whereas FERE has its registered office in Paris and is subject to French law, and, finally, ISMERI has its registered office in Rome and is subject to Italian law.

3.1.9. As indicated in point 26 of the Court of Auditors' Special Report No 1/96 *The management of this new instrument was organised on the basis of two central features -*

subcontracting the management of the programmes to private bodies and the separation of administrative and financial duties from technical support - was adopted (sic). Administrative and financial duties were entrusted to the ARTM whilst technical support duties were entrusted to a different BAT, for each of the programmes. ... '.

3.1.10. ARTM was created on 24 September 1992 as an international philanthropic and scientific association under Belgian law.

Two members of its management board were also directors of two TAOs (FERE and ISMERI); they were replaced, at least formally, on 6 April 1995. In the past, they had acted as consultants to the Commission on numerous occasions. What is more, ISMERI held 15% of FERE's capital. The Commission attended meetings of the associations's Board of Directors as an observer.

3.1.11. As indicated in point 27 of the Court of Auditors' Special Report No 1/96 referred to above, '... *the ARTM's resources come exclusively from the contracts awarded to it by the Commission*'.

3.1.12. What we are dealing with here is a network of firms controlling the implementation of a policy, which was set up by external consultants on the initiative of the Commission. The financial and administrative management of the programmes was therefore entrusted to ARTM in 1992 on the initiative of the Commission (current Directorate-General IB - External Relations: Southern Mediterranean, Middle East, Latin America, South and South-East Asia and North-South Cooperation) - it even paid the registration costs - with no competitive tendering at all. Accordingly, ARTM was created and financed from scratch by DG IB on the basis of the private treaty procedure referred to in Article 58 of the Financial Regulation. There is no evidence whatsoever to suggest that the service managing the appropriations carried out any market research before arriving at the conclusion that there was no other organisation which possessed the requisite qualifications.

3.1.13. Although the initial contract between the Commission and ARTM was thus concluded by private treaty, ARTM submitted a successful bid in mid-1994. Accordingly, ARTM was awarded the contract (on 1 September 1994) after competitive tendering and after consultation of the ACPC.

3.1.14. ARTM was dissolved on 8 September 1997.

3.1.15. Technical monitoring of the networks and their projects was then entrusted to technical assistance offices (TAOs) TAOs constitute external structures with varying legal forms (such as non-profit-making organisations, foundations, agencies, limited liability companies, universities, etc.), providing the Commission with ongoing support in connection with the implementation of a Community programme, as a rule following an invitation-to-tender procedure.

3.1.16. Until mid-July 1994, the contracts awarded to TAOs under the MED programmes were also by private treaty.

3.1.17. ISMERI was entrusted with the MED-Campus programme and FERE with the MED-Urbs programme. Those two companies had previously prepared the MED-Urbs and MED-Campus programmes.

3.1.18. As regards the projects (of which there were 496 in all), the Court of Auditors noted in particular that ineligible expenditure was financed and that the award of contracts in response to a call for tenders was the exception rather than the rule.

3.2. Chronology

Origin: basic acts, establishment and appointment of the companies involved

3.2.1. On 29 June 1992, Council Regulation (EEC) No 1763/92 concerning financial cooperation in respect of all Mediterranean non-member countries was adopted. Article 6(1) thereof lays down that *'Measures referred to in this Regulation which are financed from the budget of the Communities shall be administered by the Commission'* In turn, Article 7(1) thereof lays down that *'The Commission shall be assisted by the MED Committee'* set up by Council Regulation (EEC) No 1762/92 adopted the same day.

3.2.2. On 24 September 1992, ARTM, an international philanthropic and scientific association was established by ISMERI-EUROPA, FERE CONSULTANTS, CLES EUROPEAN RESEARCH NETWORK and, lastly, a natural person on an individual basis. Those four (legal and natural) persons were the founder members. The legal framework used was the Law of 25 October 1919 granting legal personality to international associations. Such associations do not have registered capital.

Ultimately, as we have already seen, the Commission funded the founding of the association.

3.2.3. On 21 October 1992, DG IB adopted a framework document *setting out the conditions for the implementation of the MED-Urbs and MED-Campus programmes*. That document had been drafted by the appropriate unit but had not been formally approved by the Director-General, even though it was attached as an annex to certain contracts signed by that Director-General with ARTM. Nor did the Commission, as a body, approve the document. It states *'That Commission must therefore call on an external body for the decentralised implementation of the cooperation programmes; that a delegated management structure must be set up; that, at all events, the Commission must retain control over the operation; that TAOs will be selected in accordance with the procedures currently in force at the Commission; that following the decision taken by the Commission to provide finance since implementation in 1992 was a matter of urgency, and in order to ensure continuity between the setting up of the networks and the launch of their operations, the TAOs for the trial year will be those which drew up the programme for the Commission; and that ARTM is obliged to conclude contracts with an agency designated by the Commission or the agency which successfully tendered'* The document includes a *functional analysis of ARTM and the agency's administrative set-up*, with provision even for the members of the management board, plus the board's Executive Bureau, etc.

Another framework document, dated 15 January 1993, concerns the implementation of the MED-Urbs, MED-Campus and MED-Invest programmes.

3.2.4. On 12 November 1992, the head of unit responsible for the programmes submitted to the Commission's Legal Service, for an opinion, the contracts relating to the MED-Urbs and MED-Campus programmes, together with all the documents which set out the conditions for managing the activities covered by those programmes. That documents state *'that this is a new departure for DG I in respect of which Financial Control would like to have the backing of a prior opinion from the Legal Service'*.

3.2.5. On 25 November 1992, the private-treaty contract between the Commission, in the person of the Director-General responsible for North-South relations, and ARTM was signed; its purpose (Article 1) was *'to implement the financing decision taken by the Commission with respect to the MED-Urbs programme (support for cooperation between local authorities in Europe and in Mediterranean non-member countries)'*. This programme had earlier been formally adopted by the Commission by decision of 23 July 1992.

In Article 2 of the contract *'the Commission, as the principal authorising body, entrusted implementation of the decision to finance the MED programme to ARTM, whose obligations were covered by the contract. The contractor undertook to manage the programme by establishing, with a view to the distribution of the aid, contractual relations with 16 financed networks, a list of which was attached at Annex IV, and with the Technical Assistance Office, to manage the reserve funds on a proposal from the Commission, and to set up a system for monitoring financial and administrative management and a management control system'*.

Article 8 of the contract provided for annexes, including the Commission's financing decision concerning MED-Urbs, the terms of reference and the framework document setting out the conditions for the implementation of the programme.

Those terms of reference provided *'(1) that ARTM would receive and manage the entire amount of Community aid and, with that in mind, it would conclude contracts with the networks receiving Community aid and with a Technical Assistance Office, and (5) that ARTM would set up a system for monitoring the financial and administrative management of the networks taken individually and of the programme as a whole'*.

3.2.6. This was the first contract concluded between the Commission and ARTM, and it was followed by other, similar contracts (MED-Campus bearing the same date) in respect of all the MED programmes. The contract for MED-Invest was signed on 6 April 1993 and the one for MED-Media on 23 August 1993.

Until 1994, as has already been referred to, all the contracts were established by private treaty.

3.2.7. On 2 December 1992, the Commission's Legal Service took the view that *'control-related duties, or those involving the discharge of discretionary power within the framework of a genuine Community policy, including the implementation of the budget, may be carried out only by officials, stating that, as the provision of services was involved, the contract had to be awarded after an invitation to tender, where appropriate by duly substantiated private treaty. In this instance, the Legal Service wished to know what the grounds were for allowing the Commission to award the contract by private treaty with ARTM. The Legal Service was also very doubtful as to the involvement of the Commission and other institutions in ARTM's operations. As regards, lastly, the form of the contract, the Legal Service reserved the right to deliver its opinion when the final draft had been referred to it'*. That referral never subsequently took place; as we have seen, the contract had been concluded on 25 November 1992.

On 30 September 1993, the Commission's Legal Service noted *'the procedures for the implementation of ARTM's operating arrangements had been laid down by a Commission framework document dated 21 October 1992'*.

3.2.8. As regards technical assistance, the MED-Urbs programme was entrusted to FERE - via ARTM - on 14 December 1992. It was on that date that the contract was signed between ARTM and FERE Consultants for the provision of *'technical assistance with the implementation of the MED-Urbs programme'*. Article 2 thereof laid down that *'ARTM was in charge of the financial and administrative management of the programme and that it had entrusted the technical assistance aspect to FERE, which had been appointed by the Commission of the European*

Communities for the experimental phase of the programme, thereby ensuring continuity with the arrangements for the pilot projects making up MED-Urbs.

3.2.9 In its turn, MED-Campus was entrusted to ISMERI - via ARTM - on 21 December 1992. As in the case of ARTM, and until 1994, these contracts were awarded by private treaty.

The discovery of the problem by the Court of Auditors and the Commission's reaction

3.2.10. On 22 September 1995, the Legal Service of the Court of Auditors forwarded to Mr Karlsson, a Member of the Court, a legal opinion in which it came to the following conclusions: (a) *'that the delegation by the Commission of its management powers in respect of the MED programmes to the ARTM international association seemed irregular in that it breached Article 6(1) of the MED Regulation (Regulation (EEC) No 1763/92 referred to above) and breached certain rules governing the delegation of powers; and (b) that even if delegation were possible, it could only have been undertaken on the basis of a decision taken by the College of Commissioners since, if the Commission wished to delegate its powers to a body such as ARTM, it could only have done so on the basis of an express decision taken by the Commission as a body, and thus the very decision to entrust management of a Community policy to an external body constituted a 'decision of principle'.*

3.2.11. On 6 October 1995, the Court of Auditors informed the relevant Vice-President of the Commission (Mr Marín) of certain irregularities, with particular regard to the aspects concerning delegation and confusion of interests.

3.2.12. On 23 October 1995, Mr Marín's Chef de Cabinet, acting on the Commissioner's behalf, ordered the acting Director-General of DG IB not to extend the contract with ARTM, to make its management subject to certain supervisory measures, to prepare a new plan for the delegation of powers, to prepare a new invitation to tender and, possibly, to refer the issue of confusion of interests to the Belgian courts.

3.2.13. At a meeting with Mr Karlsson on 7 November 1995, Mr Marín said that he had become aware of the situation the previous October when he read a working document forwarded by the Court of Auditors.

Along the same lines, when interviewed in December 1997 as part of the administrative inquiry (to which we shall return below), the Director-General responsible referred to above contended that *'in the 'cabinet' the principal interest was in the Middle East peace process and that they were not aware of any specific problems until the interim report of the Court of Auditors was presented to them.'*

3.2.14. On 23 November 1995, Mr Marín informed Mr Karlsson of the measures taken: non-renewal of the two contracts with ARTM which were to expire in January 1996, carrying out of an audit of ARTM by DG XX, non-renewal of the contracts with the TAOs (TVE, FERE, CUD and ISMERI), conducting of an inquiry in order to establish possible internal responsibility and consideration of the action that might be taken against senior officers of ARTM.

3.2.15. On 23 February 1996, Commissioner Marín's Chef de Cabinet contacted the Director-General and reminded him of the request made on 23 October, referred to above, that *establish whether or not it was justified to bring legal proceedings before the Belgian courts against senior officers of ARTM and the TAOs which had benefited from decisions involving a conflict of*

interests. The Chef de Cabinet went on to say that the Vice-President had undertaken, in a letter to Mr Karlsson of 23 November the previous year, to shed light on this issue and accordingly, on behalf of Mr Marín, Vice-President, the Chef de Cabinet asked the Director-General to contact forthwith the Director-General of the Legal Service and, where appropriate, senior officials in UCLAF with a view to establishing at the earliest possible opportunity the position of the Commission on the action it might take against ARTM's senior officer. (The final part of the sentence was underlined in the original.)

3.2.16. On 18 March 1996, Mr Marín's Private Office drew the attention of the Director-General to the importance of this issue and asked him to speed up and complete the work designed to put into effect some of the measures announced (new plan approved by the Commission and possible prosecution).

The Court of Auditors' Report

3.2.17. On 30 May 1996, the Court of Auditors adopted Special Report No 1/96. The report felt that the Commission's transfer of powers to ARTM *'In view of the nature and scope of the powers conferred on the ARTM, what the Commission had actually done was to delegate its powers de facto to a third body, rather than sign mere service contracts'* had no legal basis, that the Commission had not taken a decision of principle on this issue, and that the relevant Directorate-General had not even waited for the opinion of the Legal Service before launching the programmes and had not informed the Financial Control Department before signing the initial contract with ARTM.

3.2.18. The report also states that *'Serious confusions of interest developed in the implementation of the MED programmes which the Commission failed to put an end to in a timely manner. ... The risks of such situations arising were evident from the outset and should have led the Commission to call the system itself into question. ... There was excessive recourse to private-treaty contracts, without proper tendering. Private-treaty contracts have permeated the whole structure of the MED programmes. This was one of the elements contributing to the development of conflicts of interests referred to above '*

3.2.19. To sum up, the major criticisms levelled by the Court of Auditors are: the delegation of powers to ARTM, the confusion of interests arising from the fact that TAOs were represented on its management board, the private-treaty contracts, and poor management and monitoring.

The action taken: administrative inquiries and Parliament reports

3.2.20. The report by the Commission's Financial Control Department, dated 8 July 1996, concerning an audit of ARTM concludes that *'the performance by ARTM of the management tasks assigned to them had been generally satisfactory ... Significant irregularities had been detected in the financial systems of DG IB, which substantially control the management of the programmes by ... selection of beneficiaries and contractors for all types of expenditure. Certain situations, including potential conflicts of interest, will be brought to the attention of UCLAF.'* The report on the TAOs drawn up by the same department reaches the conclusion that *'consideration should be given, in the management system of the MED programmes, to the following matters: - a detailed list of tasks that can be delegated and others that cannot be delegated should be prepared; - reimbursement of accommodation and subsistence expenses should be based on actual expenses incurred ...'*

Finally, the report by the Financial Control Department on the 'projects' takes the view that *'the controls performed have identified several matters ... these relate mainly to: improvement of contracts currently used (the advice of the Legal Service should be sought in each case); improvement of financial supervision: in this respect, the tasks of the programmes financial agency should be formalised by DG IB in a manual of procedures; the performance of control visits should not, as with ARTM, be neglected ...'*

3.2.21. On 17 July 1996, on a proposal from Mr Marín, the Commission adopted a communication on a *'general framework applicable to the decentralised Community programmes in Latin America, Asia and the Mediterranean'* which stipulates, inter alia, that only the Commission may decide to call in an external management body and that there must be a clear separation between technical and financial tasks and lays down the tasks which the Commission may not delegate. A second communication deals specifically with the system for the management of decentralised cooperation programmes in the Mediterranean area.

3.2.22. When he appeared before the European Parliament's Committee on Budgetary Control on 25 September 1996, Mr Karlsson acknowledged that the Commission had done everything in its power to remedy the shortcomings criticised without delay, at least as regards decision-making procedures.

3.2.23. On 16 January 1997, on a proposal from Mr Marín, the Commission approved four specimen contracts applicable to the decentralised cooperation programmes, setting out, in particular, provisions on the prevention of conflicts of interest, incompatibilities, confidentiality and penalties.

3.2.24. On 15 May 1997 UCLAF, the Commission's Anti-Fraud Unit, submitted a report dealing with ARTM and the MED programmes which took the view that *'in addition to confirming the comments made by the Court with regard to public contracts and conflicts of interest, the auditors - DG XX - had highlighted relatively wide disparities between the amounts paid by the Commission and the actual substantiated costs'* and that it should be borne in mind that the conclusions of the audits carried out by the Financial Control Department had led to the drafting of recovery orders (ECU 355 660 against ARTM, ECU 424 023 against FERE and ECU 1 204 582 against ISMERI).

The report stated that the amount in respect of ARTM *'had resulted from the submission to the Commission of artificially high invoices for staff costs, that these disparities had been regarded as the result of errors, rather than an attempt at deliberate overcharging'*; that, as regards the amount in respect of FERE, *'the facts brought to light, with the exception of the links with ISMERI'*, were not particularly serious, and, lastly, *'that with regard to ISMERI the documents it had submitted were vague and seemed to have been drawn up in order to 'substantiate' declarations intended as claims for the full amounts entered in the budget from the start'*.

As regards the internal investigations, the report noted that the consideration of documents and interviews *'had not brought to light facts likely to call into question the actions of officials in the exercise of their duties, at any level of management'* As regards the external investigations, however, they had led to *'requests for inquiries into companies by UCLAF's national liaison officers in Belgium, France and Italy with a view to detecting transfers of charges and profits and inquiries into the personal situation of their senior managers'*

As regards legal proceedings, *'in view of the full involvement of the Commission's departments (according to the Legal Service, the measures referred to by the Court of Auditors had been adopted with the knowledge and agreement of senior management at the Directorate for*

Mediterranean Affairs), it could not claim damages for any loss resulting from a failure to comply with the rules applicable to public contracts.

In conclusion, the report took the view that setting aside any external legal action, which would be limited in scope, mention should be made of the problems facing all the Commission's departments in justifying, in this context, the exclusion of the companies under investigation from future funding arrangements'.

3.2.25. The above-mentioned report follows on from another, very succinct, report, dated 20 November 1996 and entitled 'Summary Report', which concludes that there is no evidence to suggest that Commission staff knowingly committed crimes which represented a breach of the Staff Regulations. UCLAF asked the competent Belgium judicial authorities to assess the scope for criminal proceedings for a conflict of interests.

3.2.26. On 10 June 1997, at Mr Marín's request, a decision was taken to open a preliminary internal administrative inquiry. On 14 July 1997 the Secretary-General of the Commission, Mr Williamson, instructed the Director-General of DG XXII to carry out the inquiry.

3.2.27. The European Parliament's resolution of 17 July 1997 on Court of Auditors' Special Report No 1/96 calls on the Commission to forward to the judicial authorities of the Member States concerned all the details of the case for consideration of any possible legal implications. Parliament *'is astonished that the delegation by the Commission of its powers to ARTM, under the conditions described above, was done quite openly and that, for three years, no official found any reason to object' and 'regrets the length of time it has taken for the Commission to detect the extent of the problem within other Directorates-General'.*

3.2.28. The findings of the above administrative inquiry were notified on 28 July 1997. On one level, it is noted that *The explosion of political interest and budget allocations was just too much to handle, especially in the initiation stage of the programme ... It should be noted that all the relevant procedures were followed regarding financial management of contracts ... all insist that the work was done in a serious and professional fashion... proper procedures would appear to have been followed in project evaluation, selection and project list adoption after the advice of the MED Committee..'*

On another level, however, the view is taken in these findings that *in the need to get on with the job, there was certainly confusion of interest between project promoters, evaluation committee members and final contracting parties. Commission officials were involved in these exercises without proper guidance or control vis-à-vis their role and responsibilities. This 'culture' is well reflected in their seeing nothing wrong in participating as observers in Board meeting of ARTM ... In summary, a confusion of interest did exist against a background of virtually no management control or guidance. There was no code in terms of differentiation between Commission officials' roles and responsibilities and involvement of outside parties ... The 'management', rather than individual staff members surely bears prime responsibility ...'.*

3.2.29. On the same date, the interim report drawn up by the Commission's Secretariat-General on the 'management of the decentralised MED programmes' concluded that *'there was evidence of poor management but not of any fraud or intentional individual negligence on the part of officials'.*

3.2.30. On 30 July 1997, in a note to the Secretary-General, Mr Marín's Chef de Cabinet took the view that *it was in the interests of the Commission for all the facts to be duly established and for*

light to be shed on the conduct of the officials involved in this affair. That was the line which Commissioner Marín had taken as soon as he became aware of the matter. The Commissioner took the view that the conclusions set out in the report referred to above were provisional, and he was waiting, as determined by the Commission as a body and announced to the European Parliament, for the inquiries to be completed'.

3.2.31. On 18 September 1997, Mr Marín asked Mr Liikanen to ensure that *the interim conclusions (of the Director-General in charge of the inquiry) were supplemented by all the additional investigations necessary at the earliest possible date'.*

Accordingly, the Secretary-General entrusted an additional inquiry to a panel of three directors-general.

By letter of 17 October 1997, Mr Trojan, Secretary-General of the Commission, asked them *'to complete the inquiry with all the additional investigations necessary in order to obtain a full picture of the role of Commission officials in the MED Programme ... conversations with all the management staff operational in this field during the period 1991-5 will be indispensable'.*

3.2.32. On 13 October 1997, DG IB proposed that the programmes be resumed. On 10 November 1997, Commissioner Marín notified the conditions and procedures for the resumption of the MED programmes.

3.2.33. On 12 January 1998, the panel of directors-general referred to above adopted the findings of the internal administrative inquiry. They concluded that errors had occurred in the establishment of the management structure, errors for which the Director-General and Director concerned were specifically responsible, and in the day-to-day management and monitoring, for which the Head of Unit concerned was responsible.

They found no evidence of fraud carried out or personal profit made by officials. Accordingly, the facts were not deemed to be such as to require the taking of disciplinary measures; it was considered sufficient to bring them to the notice of the three officials concerned and ask them for their views.

It should be noted that, in the conclusions *'the panel was told that the immediate inspiration for this type of cooperation came from the Head of Unit concerned, late in 1991 and this was later backed by his superiors. The management construction was decided at services level in the sense that the framework document of October 1992 setting out the details of the construction was not submitted by the Directorate General to the Commission itself for authorisation or to other horizontal services for advice. Top management should have made sure that even though there was pressure to set up the programmes, sufficient monitoring and control mechanisms were established, in particular in view of the fact that the financial management was undertaken by a service outside the hierarchy of DG I. It is the opinion of the Panel that the responsibility for the management construction and related matters as far as the services level is concerned, primarily rests with the Director General ... the Director must take some share of the responsibility for mistakes made in the initial phase. The Head of Unit who proposed the structure and did not, in the circumstances set out above, take the initiative to obtain the views of other services on that structure, fully participated in the setting up of the construction'.*

On the other hand, the panel took the view that, *'contrary to the impression left by the Court of Auditors' report, powers for financial matters were not delegated to ARTM. Rather, all the preparatory administrative work was handed over to the ARTM whereas final decisions and payments were made by officials in the unit ... It is the opinion of the Panel that the responsibility for the mistakes rests primarily with the Head of Unit ... The Panel feels that consideration should be given to the expression of dissatisfaction as to the level of management performance*

in connection with the Med programmes to be addressed to the above persons ... The main originator of the Med programmes was the Head of Unit, who had been delegated the responsibility for their management by the Director General ... it appears that the Head of Unit invited a number of parties including FERE and ISMERI to form a non-profit-making organisation - ARTM -'.

3.2.34. It must, however, be emphasised that, in his letter to the panel dated 25 February 1998, the Head of Unit took the view *that was surprising that the Institution was turning against its staff, to which it had not only not given the resources required for them to carry out the duties with which it had entrusted them. The Commission had not provided either the regulatory framework or the procedures essential for the marking out, in administrative terms, of duties on what was completely new ground. For their part, the Unit's staff had carried out the duties required of them in total transparency-à-vis their superiors and all the departments concerned, including Financial Control'.*

3.2.35. On 6 March 1998, the Secretary-General sent to the former Director-General and Director responsible for the Mediterranean, and to the former Head of Unit responsible at that time for the decentralised programmes, a letter *which expressed dissatisfaction with [their] management performance in relation to the MED programme'.* That letter constitutes the sole criticism levelled directly at the officials concerned. It should be added that it was inserted only into the personal file of the last-named, i.e. the Head of Unit (the lowest-grade official).

3.2.36. On 3 April 1998, Mr Marín authorised the actual resumption of the MED cooperation programmes.

3.2.37. Recital J of the European Parliament resolution of 17 November 1998 on the MED programmes notes that a total of 16 technical assistance contracts were awarded, in ten instances without invitation to tender, i.e. by private treaty, that two of the four board members of ARTM were also managers of the two TAOs, which created a conflict of interests, and that Commission officials contributed to the creation of a system *which made proper management of Community funds impossible'* (recital P). *'It called on the Commission 'to forward the entire file ... on the MED affair to the judicial authorities in Belgium, France and Italy and not, as has been the case hitherto, only parts of the file'.*

3.2.38. On 15 January 1999, the Commission forwarded to Parliament the second progress report on the follow-up to the audit carried out by LUBBOCK FINE in respect of the projects. Accordingly, *'Commission audit work performed to date has identified 37 cases ... in respect of which recovery orders for a total of MECU 1.9 have or will be issued. The follow up of the MED projects review report, including second audits and issue of recovery orders required, will continue throughout the following weeks. An updated report on the situation of the follow-up will be issued by end of February 1999'.*

EVALUATION

3.3 Legal considerations: the delegation of powers and the failure to issue calls for tender

Delegation of powers

3.3.1. The facts set out hitherto demonstrate that ARTM was the creation solely of the Commission (which even paid the costs of setting it up), in particular via the framework document of 21 October 1992 referred to above. Furthermore, the administrative and contractual 'roots' of the entire management structure derive from this document, which was never formally approved.

3.3.2. However, the Commission's Legal Service warned the management service about the weaknesses and the risks of the entity starting up, with particular regard to the delegation of powers and the obligation to issue calls for tender. It should also be recalled that the initial contract between ARTM and the Commission was signed before the Legal Service had delivered its (very hesitant) opinion.

3.3.3. Given the nature and scope of the powers conferred on ARTM, what the Commission had actually done was to delegate its powers de facto to a third body, rather than sign mere service contracts.

3.3.4. This structure seems scarcely compatible with the basic Regulation (EEC) No 1763/92 and with the financial and judicial provisions applicable. As the Court of Auditors states in its Special Report No 1/96, the delegation of powers took place in the absence of any clear legal basis and without the Commission's having adopted at least a decision of principle on this issue.

Failure to issue calls for tender

3.3.5. Furthermore, both ARTM and the TAOs were appointed, at least in the initial phase, under private treaty arrangements controlled by the Commission. On 29 February 1996, a note from the Commission's Legal Service justifiably took the view that, according to the terms of the contract between the Commission and ARTM signed on 25 November 1990, *ARTM had no further contractual obligation to issue calls for tenders. A substantial item of expenditure financed from the Community budget therefore had not been covered by the safeguards sought by the public procurement Directives*.

3.3.6. Although the Commission assigned the administrative and financial management of the MED programmes to ARTM by private-treaty contracts from 1992 until December 1993, the agency did secure a new contract following an invitation to tender. As the Court of Auditors' report indicates, *The Commission issued an invitation to tender only when the conditions of equality between the applicants had definitively ceased to exist, even though that meant squandering the experience acquired over the previous two years. Furthermore, the 'brother' programmes subsequently launched as part of the peace process in the Middle East were also entrusted to ARTM by private treaty contracts as was the technical monitoring, for example, of a Peace programme concluded by private contract with FERE Consultants on 18 January 1995.*

3.3.7. If we apply the rules on competition, we see that this application is biased since the other candidates were treated unequally, given the prior knowledge and the information conveyed to the TAOs which were already working for the Commission.

3.3.8. To sum up, the Commission's departments failed in their duty to monitor the situation with regard both to the delegation of powers and to the issuing of calls for tender.

3.4. Lack of staff at the Commission: an inadequate argument

3.4.1. Directorate IB-A (Mediterranean Directorate) of the Commission's DG I had decided not to manage the programmes directly and had therefore entrusted 'technical management' (monitoring) and 'administrative and financial management' of the programmes to outside firms.

3.4.2. The reason given was that the Commission could not expect its staff to deal directly with the technical management and/or the financial management of the new programmes for decentralised cooperation in the Mediterranean because it did not have enough staff in the DG IB referred to above and in the Commission in general.

3.4.3. Although the situation as described does not justify the issue of the delegation of powers, while it does help us to understand it better in its context, the same cannot be said of the failure to issue calls for tender for the appointment of ARTM and the TAOs. Whatever the case may be, the lack of staff cannot under any circumstances justify the conflict of interests referred to, the central issue of this file and one which has no connection with the lack of staff referred to.

3.5. The issue of the conflict of interests

3.5.1. This conflict of interests appears in this file in many forms: firstly between Commission officials and ARTM, then between ARTM and the TAOs.

The 'explanations' given by the managers

3.5.2. In an internal document dated 28 September 1993 and drawn up by the unit concerned, it is acknowledged that *two of the founder members of ARTM - ISMERI Europa and FERE Consultants - had given the Commission technical assistance in the drawing up of the MED decentralised cooperation programmes (Urbs, Campus and Invest). During the pilot year, they then provided technical assistance for the MED Campus and MED Invest programmes. Given the deadlines laid down, the lack of resources and staff at the Commission, and bearing in mind, furthermore, their experience and the fact that no other more appropriate form of collaboration was available to the Commission for the early start-up of the programmes referred to above, DG I instructed ARTM to provide it with assistance in carrying out those tasks'.*

3.5.3. Another internal document states that *The reason why Fere and Ismeri were chosen to support the Commission in the setting up of the Med programmes was said to be that they were well known, as they had already worked for DGV ... Having done the preparatory work for the future Med programmes, the two firms were judged by DG I to be the best placed companies with the necessary know-how ... it was reasonable to contract directly with the same companies that had prepared the programmes for the running of the technical support function'.*

3.5.4. Lastly, the above-mentioned note of 27 September 1993 states that, as implementation of the Med programmes was sufficiently advanced, the presence of the above-mentioned consultancies (FERE and ISMERI) on the management board of ARTM was no longer justified, particularly since that could be a factor causing ambiguity.

3.5.5. Such 'explanations' are on no account acceptable, as the last paragraph suggests.

The situation created

3.5.6. We have seen that, as regards management of its MED programmes, the Commission delegated its management powers to the association ARTM, two of whose founding companies (FERE and ISMERI) were at the same time providing technical assistance for those programmes. Two management board members belonged simultaneously to the association and to the offices referred to above, giving rise to a manifest conflict of interest. Until April 1995, accordingly, those two ARTM management board members (out of a total of four) were also managers of two TAOs: FERE and ISMERI.

3.5.7. As noted in the Court of Auditors' report, two of the four ARTM management board members were, until April 1995, also managers of the TAOs (the firms FERE Consultants and ISMERI) responsible for monitoring the MED programmes. In point 56, it states *Once the Commission had realised the danger of this situation, it asked the managers of the BATs responsible for monitoring to resign from the ARTM's Management Board. The minutes of the meetings of the Agency's Management Board show how vigorously those concerned resisted the Commission's requests. Nearly a year and a half went by before they finally decided to step down, in circumstances which are questionable to say the least. Thus, the minutes of the meeting of 11 October 1994 of the Agency's Management Board show that the two administrators 'would resign if: - FERE Consultants were chosen by the European Commission to provide technical assistance for the MED-Invest programme, [or if] ISMERI Europa were reselected as the Technical Assistance Bureau (TAB) for the MED-Campus programme'. Furthermore, both of these managers asked to be able to propose a candidate of their choice to replace them in the event of their resignation. Once all of these conditions were fulfilled, both administrators resigned from the ARTM's Management Board in April 1995.'*

3.5.8. Finally, point 57 of the report states that *'In view of the seriousness of these findings, the Court immediately informed the Commission of them, so that it could take appropriate measures and examine, in particular, the need to take legal action against those responsible'*

3.5.9. However, the above 'historical' circumstances cannot justify the fact that FERE and ISMERI secured more than 60% of the technical assistance appropriations made available by the Community budget for the MED programmes, particularly since, because of their dual status, they were able to participate in the process of negotiating contracts concluded with themselves. The truth is that ARTM awarded contracts to TAOs by private treaty.

The involvement of Commission services

3.5.10. What is worse still, however, and shows even more clearly the absurd situation which had emerged is the fact that, as is indicated in a Commission Legal Service note of 13 March 1996, *'Commission officials were apparently present at ARTM meetings at which the choice of FERE*

and ISMERI was approved. The Legal Service simply commented that, because of the involvement of Commission services, it would appear difficult to win a court case against ARTM'

3.5.11. Examination of the file (in particular the framework document, the contracts between the Commission and ARTM and certain contracts concluded between ARTM and the TAOs, to which the Commission is a co-signatory) reveals that it is the Commission which dictated the choice of contractors to ARTM. From this we conclude that ARTM was obliged by the Commission to engage FERE and ISMERI, at least initially.

3.5.12. To sum up, and as Parliament's rapporteur rightly pointed out in his document of 4 July 1997 in preparation for the resolution on report No 1/96 of the Court of Auditors, *everything was completely out in the open right from the start. But it is exactly this that almost takes one's breath away. Your rapporteur has been unable to ascertain whether the original idea was conceived by a Commission official, but there is no doubt that Commission officials took an active and decisive part in bringing about the establishment of a system to administer the decentralised Mediterranean programmes which was almost bound to lead to a confusion of interests which would have serious consequences.'*

3.6. Bad management, irregularities or fraud?

3.6.1. While the fact that the files have been or may be forwarded to the competent judicial authorities (in Belgium, Italy and France) and the recovery of certain amounts may point to fraud, it must be realised that these moves relate only to the 'external' aspect, i.e. the private firms or entities which worked with the Commission.

3.6.2. Indeed, such a move, at least for the time being, does not concern officials at the Commission, since the inquiries conducted within the Commission found no proof of fraud involving officials.

3.6.3. However, we regard the conclusions of the administrative inquiries ordered by the Commission Secretary-General as most disappointing. As far as procedure is concerned, there are question marks also against the validity of 'administrative inquiries', a legal device not provided for in the Staff Regulations of Officials. Given the circumstances involved, Article 86 et seq. of the Staff Regulations should have been applied, at least in order to impose the least serious penalties ('written warning' or 'reprimand'). It should be pointed out that the letters sent to the officials concerned do not come under this legal framework.

3.6.4. As to the substance of the issue, they do not appear to shed sufficient light on the situation which had been created and on the actual responsibility of the various officials involved, particularly with regard to the founding of ARTM by FERE and ISMERI.

3.6.5. For instance, the UCLAF summary report dated 20 November 1996 on 'ARTM/MED programmes', containing three pages in all, reaches the conclusion *that with one exception (case now resolved), it did not appear that Commission staff required to have dealings with the ARTM managers and with the TAOs for the MED programmes had knowingly committed acts (criminal offences) contrary to the Staff Regulations'*

That report, albeit 'confidential', has not a single observation to make on the procedure followed, on the persons questioned or interviewed, or on the evidence on which it was based, etc. The

report in fact boils down to a mere, and very brief, account of the background to the case, of the Court of Auditors' report and of the relations between ARTM, FERE and ISMERI already described in the report.

Accordingly, that UCLAF text cannot be termed complete or detailed, and it provides no additional help in shedding light on the machinations within the Commission which led to the situation we are describing here. The conclusions of the final report, dated 15 May 1997, are not satisfactory in so far as they imply the status quo. Moreover, it has emerged that the requests for inquiries which were announced were no such thing because they were confined to a few items of information - and irrelevant information, to boot. At all events, should new facts be discovered which were not known when UCLAF carried out its investigation, the case ought to be reopened.

3.6.6. The administrative inquiry reports are also superficial. The results of the preliminary inquiry of 28 July 1997 (two pages this time!), requested by the former Secretary-General, Mr Williamson, are entirely unacceptable, if only because they were produced without even interviewing the former Director-General and Head of Unit with responsibility for the programmes. In terms of tone, this preliminary inquiry is, on occasion, tinged with a degree of irony with regard to the task asked *(it found all the people helpful, but curious as to the need for and the nature of the task I was undertaking!)*.

Nor do the results of the final inquiry of 12 January 1998, albeit more detailed, succeed in shedding light on the origins of the case and on establishing where genuine responsibility for bad management lay. Furthermore, it is surprising that the Head of Unit should be singled out as bearing virtually sole responsibility: *'It is the opinion of the Panel that the responsibility for the mistakes rests primarily with the Head of Unit ... The main originator of the Med programmes was the Head of Unit, who had been delegated the responsibility for their management by the Director General ...'* However, such observations are understandable only if there is no accountable chain of command. Very much contrary to the conclusions, the description of the circumstances in that inquiry argues in favour of the entire management chain bearing a heavy responsibility as a result of having entrusted the development and implementation of a programme to a mere head of unit. Accordingly, and to sum up, the conclusions are contradictory and clear-cut responsibility.

3.6.7. In spite of this, however, and unless there is proof to the contrary, the in-house Commission view is that this is a case of bad management (and not fraud), however obvious the former and however implausible the latter may appear. That 'bad management' stems from repeated failure to comply with the rules of the Financial Regulation (Title XV) with regard to competitive tendering and, in general, as has been seen, the lack of overall consultation within the technical services concerned (financial and legal) or the failure to take their opinions into consideration when putting a new policy in hand. That has produced a powerful tendency towards negligence and, to some extent, a willingness to dispense with procedures and even to forget fundamental principles concerning the award of contracts.

3.7. The Commissioners' role and responsibility

3.7.1. It should be pointed out that, once the Court of Auditors had drawn the attention of Mr Marín to the irregularities discovered in the second half of 1995, he took significant remedial action (reports were requested, programmes and contracts were halted or suspended, and a new framework was established, etc.).

3.7.2. With regard to the administrative inquiries' duration and results, whether or not they are convincing, and, in particular, the search for possible involvement of Commission officials, the Commissioner cannot be held responsible. However, we take the view that he could have asked much earlier for a formal inquiry into the circumstances of the case, given that 20 months elapsed after the first letter was forwarded by the Court of Auditors (October 1995), containing a working document on the MED programme audit, before the preliminary administrative inquiry opened (June 1997).

3.7.3. To sum up, it seems that direct responsibility for the structure of the policy on the part of the Commissioner currently responsible for the matter (Mr Marín) has to be ruled out. The only responsibility borne by Commission Marín in this case is general responsibility with regard to monitoring and supervising the areas coming within his terms of reference.

3.7.4. However, the Commissioner previously in charge seems to bear much more clear-cut and much greater responsibility. As we examined above, all the problems which have emerged date from 1991/92, when the issue arose.

3.7.5. The Commissioner responsible at the time is the Commissioner responsible for the launch of the programmes and for signing the main contracts.

3.7.6. At that time, the relevant Commission services - theoretically the programme managers - lacked clear instructions and an appropriate framework, which were all the more important in that a new Community policy was getting under way which opened up some civil service sectors to subcontracting to private companies (in spite of the opinions of the competent technical services, which, to say the least, were hesitant), a practice which inevitably expanded subsequently. Under the circumstances, a minimum degree of superintendence might have been expected of the Commissioner responsible; it was not forthcoming.

3.8. The responsibility of the Commission as a body

3.8.1. In 1992, the Commission was faced with a problem resulting from insufficient manpower. The Commission could perhaps have deployed its staff better.

3.8.2. An entirely new Community policy with a large budget, under which vital civil service tasks were delegated to the private sector without the Commission retaining sufficient control over the process, was put in place at a time when the Commission as a body was not specifically aware of it and had not effectively discussed it.

3.8.3. As is pointed out by the Court of Auditors' Report No 1/96, everything got under way without awaiting any decision of principle by the Commission and without waiting for, or following, the opinions of the relevant technical services (legal and financial), which were all the more important at what was assuredly a Community policy watershed.

3.8.4. The introduction and implementation of the MED programmes were thus marked by improvisation, haste and, indeed, incompetence, with grave consequences: irregular delegation of powers, failure to comply with competitive tendering rules and, above all, manifest conflicts of interest caused by the Commission services themselves.

4. ECHO

4. ECHO

4.1. The 'ECHO Affair': case history

ECHO: Introduction

4.1.1. ECHO, the 'European Community Humanitarian Office' was set up on 1 March 1992 to give the European Community a more specialised and effective means for providing aid in emergency relief situations. Experience of previous humanitarian emergencies had taught the Commission that its usual administrative mechanisms were too slow to provide assistance with the necessary speed, and, incidentally perhaps, they failed to give the Community contribution to disaster relief a visible dimension commensurate with its scale. ECHO is a directorate within the Commission under the administrative authority of the Secretary-General.

4.1.2. Initially under the responsibility of Commissioner Marín, and from 1995 under Commissioner Bonino, ECHO has responded to a series of well-documented emergencies in places such as Bosnia, Rwanda, Afghanistan and Colombia. During the first six years of its existence, it disbursed some ECU 3 500 million in aid. By and large, it has done so through partner organisations (NGOs and others).

Summary of the ECHO Affair

4.1.3. The ECHO case revolves around four contracts awarded in 1993 and 1994 for the provision of humanitarian aid operations in the former Yugoslavia and in the Great Lakes region of Africa. These were awarded to three companies: of those three, two were subsequently shown to be controlled under fiduciary arrangements by the third, based in Luxembourg, a company which, moreover, directly and through associates, had a long-standing relationship with numerous Commission services. It was established during 1997/8 that these contracts were entirely fictitious, in so far as none of the activities or purchases to be financed under the alleged contracts - and indeed subsequently reported to the Commission - existed in reality. The total sum involved, ECU 2.4 million, thus represents irregular expenditure.

4.1.4. It transpires that the money in question was used in part to finance a group of eleven staff (the *intra muros* 'external cell') working as a financial unit within the administration of ECHO in Brussels. These staff were legally employed by the contractors, but they were often proposed to them by ECHO on the basis of criteria which are not entirely clear. No indications exist that any of the staff were aware of the source of the funds used to pay them.

4.1.5. The staff expenditure does not however represent the entire amount concerned and investigations are yet to account for all the missing funds. Though some has been traced to specific bank accounts, the true purpose of at least ECU 600 000 remains unknown. Documentation relating to the four doubtful contracts was subsequently found to be missing.

4.1.6. The Commission has placed the matter in the hands of the Luxembourg judicial authorities for prosecution of its criminal aspects. One official of ECHO has been suspended, while disciplinary proceedings are under way in relation to two others. A further official, formerly of DG I, has also been suspended pending enquiries into questionable links with Perry Lux which arose during the ECHO investigation.

Outline chronology of events

Parent company	1.8.93 - 31.1.94	(ECU 540 000) }	
Subsidiary A.	1.12.93 - 30.11.94	(ECU 840 000) }	Dates of the contracts later investigated by UCLAF
Subsidiary B	1.1.94 - 30.6.94	(ECU 500 000) }	
Subsidiary A.	1.12.94 - 30.6.95	(ECU 541 080) }	
2.2.94	Sub-delegation by the Commission of responsibility for financing decisions concerning humanitarian aid to the Commissioner responsible. (Subsequently sub-delegated to the Director of ECHO.)		
9.2.94	Note from Mr Marín, Commissioner responsible for ECHO, to Mr Van Miert, Commissioner responsible for staff, requesting supplementary staff for ECHO.		
17.2.94	Note from Mr Van Miert to Mr Marín pointing out the need to dispense with 'submarine' employees (i.e. staff not employed in accordance with the Staff Regulations financed from operating appropriations) in accordance with the instructions of the budgetary authority and, hence, with Commission policy.		
18.2.94	Director of ECHO writes to deputy Chef de Cabinet of Mr Marín informing him of the current state of ECHO staffing, though with no reference to the 'external cell'.		
24.2.94	Reply from Mr Marín to Mr Van Miert stating <i>inter alia</i> that he has given the Director of ECHO instructions to apply strictly the Commission policy on staff and to dispense with 'submarine' staff.		
20.7.94	Activity Report from the contractor to the Director of ECHO (quoting the contract concerned and describing the activities of the 'external cell').		
1994-5	Frequent correspondence on ECHO staffing. (e.g. Note to Mr Liikanen, new Commissioner responsible for staff, from Mrs Bonino, new Commissioner responsible for ECHO, dated 13.2.95. Continuing presence of 'submarine' staff acknowledged at least until June 1995)		
28.7.95	Report of the 'General Inspectorate of Services' on the 'Functioning of ECHO' notes an excessive reliance on external staff and recommends the progressive reduction thereof.		
3.1.97	Audit of ECHO by DG XX praises 'the existence of an independent finance unit' though commenting on 'too heavy dependence on staff not employed in accordance with the Staff Regulations'.		
March/April 1997	Information received by UCLAF from 'reliable internal source' (whistleblower) casting doubt on the four contracts referred to above.		
12.5.97	Court of Auditors publishes Special Report 2/97. No mention of 'external cell', though critical of an excessive number of staff not employed in accordance with the Staff Regulations (para. 4.4.) and a 'lack of transparency' in their recruitment (para. 4.6.).		
May-Sept 1997	Preliminary UCLAF review of documentation		
24.6.97	Meeting between Director of UCLAF and Director of ECHO concerning UCLAF inquiries.		
Oct 1997	UCLAF inquiry formally opened		
14-17.10.97	UCLAF control visits to contracting companies (the two subsidiary companies) in Dublin.		

- 19.12.97 UCLAF mission report on above. Grounds for suspicion confirmed. Recommendation that the former Head of the financial unit be removed from financial responsibilities as a precautionary measure. *This report remains internal to UCLAF.*
- 27.1-4.2.98 UCLAF mission to the former Yugoslavia. Dispute between UCLAF and the Commissioner's private office concerning the appointment of an ECHO official to accompany the mission.
- 3.2.98 The former Head of the financial unit informs the former Director of ECHO of an UCLAF investigation into the dubious contracts.
- 4.2.98 The former Director of ECHO informs Mrs Bonino of the abovementioned note received from the former Head of the financial unit.
- 9.2.98 The former Head of the financial unit offers information to UCLAF on the fictitious contracts.
- 12.2.98 Mrs Bonino asks the Head of the financial unit not to do anything without referring to his own superiors first.
- 20.2.98 Mr Liikanen informed of the existence of an UCLAF inquiry by Mrs Gradin's Chef de Cabinet.
- 25.2.98 The former Director of ECHO informs Commissioners Marín and Bonino about a telephone conversation with the Director of UCLAF on the subject of the ECHO inquiry and a forthcoming meeting between them.
- 6.3.98 Exchange of letters between Commissioners Marín and Bonino, President Santer and Commissioner Gradin as to whether and when the Commissioners responsible for specific services must be informed about ongoing UCLAF inquiries.
- 9.3.98 The former Head of the financial unit requests details of expenditure under the four contracts from the owner of the parent contracting company with a view to an 'internal verification'.
- 11.3.98 The Director of ECHO submits a note to Mrs Bonino describing his contacts with UCLAF on the ECHO inquiry.
- 11-18.3.98 UCLAF interviews the former Director of ECHO, his former assistant (E259/N) and an administrator from the financial unit.
- 27.3.98 Mrs Gradin informs Mr Santer of UCLAF inquiries.
- 24.3.98 UCLAF initiates preparatory contacts with the Luxembourg judicial authorities.
- 6.5.98 UCLAF control visit to main contractor accompanied by ECHO official and Luxembourg official.
- 12.5.98 Main contractor notified under Commission internal 'Early Warning System' (to the effect that all payments by Commission services to it must be notified in advance to UCLAF).
- 15.5.98 UCLAF mission report on visit to former Yugoslavia.
- 18.5.98 UCLAF inquiry report setting out preliminary conclusions concerning fictitious character of four contracts and the involvement of four Commission officials; none of the money paid corresponded to its ostensible purpose (ECU 2.4 million), some of the money involved was used to finance the external cell, other funds were paid to identified companies and individuals for unknown purposes, some remains completely unaccounted for.
Report communicated to the Secretary-General, to Mrs Gradin's Chef de Cabinet (18 May), the Financial Controller, the Head of Legal Service

(19 May), Mr Santer, President of Commission (by the Secretary-General on 20 May), the Court of Auditors (25 May), Commissioners Bonino and Marín and the former and current Directors of ECHO (27 May). Document soon quoted extensively in the press.

- 19 & 29.5.98 The Director of UCLAF presents preliminary oral information to the Committee on Budgetary Control of the European Parliament (Cocobu).
- 2.6.98 Meetings between Mrs Bonino, Mrs Theato (Cocobu chair), Mr Bösch and Mr Fabra Vallés (Cocobu rapporteurs).
- 3.6.98 The Director of ECHO informs the owner of the main contractor that a special task force will attempt to reconstitute the financial documentation relating to the four contracts identified by UCLAF *This task force is never established.*
- 18.6.98 The Commission Secretary-General instructs the present and former Directors of ECHO to comment on contents of UCLAF report. (Mrs Gradin agrees to the procedure.)
- By 6.7.98 'Sufficient evidence' gathered to permit official forwarding of the file to the Luxembourg judicial authorities.
- Early July Series of interviews by the present and former Directors of ECHO of past and present ECHO staff concerning the proceedings leading to the UCLAF inquiry report of 18 May 1998.
- 10.7.98 Identification of payments to wife of former Head of the financial unit through main contractor (ostensible employment as translator). File formally forwarded to Luxembourg authorities (Letter from Secretary-General).
- 16.7.98 Suspension of the former Head of the financial unit, official responsible for ECHO financial unit. Disciplinary proceedings initiated.
- 20.7.98 The present and former Directors of ECHO communicate their critical replies to the UCLAF inquiry report.
- 24.7.98 Luxembourg authorities formally open judicial inquiry.
- 7.8.98 Director of UCLAF replies to observations of the present and former Directors of ECHO (Note of 24.7.98 to the Secretary-General)
- 26.8.98 Commission suspends all payments to contractor.
- 3.9.98 Cocobu rapporteur publishes first working document on ECHO case with questions to the Commission.
- 8.9.98 The Secretary-General requests inventory of all contractual obligations of the Commission to companies belonging to the group of the main contractor.
- 10.9.98 Suspension of payments extended to associated companies.
- 11.9.98 Debit note for ECU 540 000 sent to liquidator of main contractor.
- 14.9.98 Commission replies to Fabra Vallés working document of 26.8.98.
- 15.9.98 Opening of administrative inquiry into ECHO affair headed by the Director- General of DG XVIII.
- 25.9.98 UCLAF informs a former official of DG I that he is under investigation following the establishment of questionable links with the main contractor.
- 30.9.98 Second Fabra Vallés working document.
- 1.10.98 UCLAF meet investigating magistrate nominated by Luxembourg authorities.
- Former official of DG I suspended.

5.10.98	Luxembourg investigators visit the premises of main contractor.
6.10.98	File concerning former official of DG I forwarded to Luxembourg authorities.
23.10.98	Replies of Commission to second Fabra Vallés working document.
3.11.98	Cocobu rapporteur, Mr Fabra Vallés, invited by the Commission to view ECHO files, though without assistance (translation or secretariat).
9.11.98	Report of administrative enquiry finalised.
12-20.11.98	Opening of disciplinary proceedings against former Director of ECHO and his former assistant.

4.2. Issues arising

4.2.1. The following issues arise in connection with the series of events outlined above:

The Commission's reliance on outside consultants to carry out ECHO's tasks, and problems arising therefrom in ECHO.

Lateness of the Commission's response to the problems in ECHO.

Involvement of the Commissioners and their private offices in the course of the investigation.

Information to the European Parliament

Possible favouritism in the course of ECHO's activities

The Commission's reliance on outside consultants to carry out ECHO's tasks, and problems arising therefrom in ECHO.

Staffing situation in ECHO

4.2.2. ECHO was a new Directorate set up in 1992 to be responsible for the organisation and coordination of the Community's actions in the field of humanitarian aid. The following years saw the demands on it grow exponentially, without a corresponding increase in the staff available to it. Starting from scratch on the basis of a political initiative also meant that no well-established financial or organisational practices and procedures were in place, thus adding the usual teething troubles to what became a chronic lack of staff.

'Mini-budgets': an opportunity for fraud

4.2.3. Against this background, ECHO tended to seek ad hoc solutions to the staffing problem, by using an unusually high number of temporary/auxiliary staff members and by resorting to the use of 'mini-budgets', i.e. the financing of outside staff for internal administrative tasks from operating appropriations (part B of the budget). This practice was permitted by the budgetary rules until 1993, at which Point it was abolished by the budgetary authority. The Commission's services were then instructed, at the request of Commissioner Van Miert to various Commissioners, to desist from such operations as from 1993. Nevertheless, in the short term, ECHO (and, in all likelihood, other services) continued to employ outside staff financed from

both the administrative and, contrary to the new regime, operating parts of the budget to meet its staffing needs.

4.2.4. In the case of ECHO, the situation was different from other similar situations however, in that outright fraud was allegedly committed by the Head of Unit. That resulted in the four irregular contracts being used for the benefit of that official, without the knowledge - it may be assumed - of other officials. Apart from that aggravating circumstance, which is the subject of criminal and disciplinary proceedings, the central question is whether the continuing, and effectively tolerated, practice of using operating appropriations to finance staff represents a 'mere' administrative irregularity or something worse. Many of the key figures in the ECHO episode favour the former hypothesis. In essence, their argument is *onfoote majeure* in that, without such irregularity, and given the lack of adequate resources, it would be impossible to carry out the task, which, in the case of ECHO, is of the utmost importance. All things considered, the Committee would take the opposite view: *thz facto* tolerance of irregular employment practices represents a serious danger for the Commission in that it presents an opportunity for fraud and creates an institutional culture which is unacceptable.

4.2.5. The truth is that, if a 'system' is in itself inadequate, it invites irregularity. If, as is the case in the ECHO Affair, the mechanism involves outright fabrication, the practice shifts beyond the realm of the merely irregular, and the invitation is swiftly irresistible to the fraudster. Therefore, even if all the money paid went to pay for work done by 'submarines', the tolerance of such a system is wrong because the risk of fraud is too high.

4.2.6. Abuse of Commission employment practices may unfortunately not be a 'one-off' or restricted case. The contractors in this case showed a significant level of sophistication, one which does not suggest an occasional operation. The links between the companies involved were concealed by the use of fiduciary arrangements, and the financial flows were concealed by the use of offshore accounting. More 'traditional', but no less unacceptable, techniques were possibly deployed in establishing contacts with individuals - more or less willing, more or less aware of what was happening - to provide the contractor with the necessary cooperation 'on the inside' of the Commission.

4.2.7. Moreover, according to the same contractor's own publicity material, it has (or has had) contracts with 16 separate services of the Commission (not to mention with Parliament and Court of Justice). This information, moreover, (broadly confirmed by the Commission's own inquiries) necessarily fails to include contracts with companies whose link with the main contractor is real but disguised. Inevitably, even where the contracts concerned are themselves legitimate, these contracts must be considered 'at risk'.

4.2.8. The situation was aggravated in the case of ECHO by the questionable use which was made of the 'framework partnership agreement' ('contrat cadre de partenariat'). This instrument was created specifically for ECHO on a proposal from Mr Marín in 1993. It was designed to give ECHO the necessary flexibility in working with partner organisations in the humanitarian field in situations where urgency was the prime consideration. The model agreement of 28 April 1993 gave ECHO a completely free hand in the choice of its partners, stipulating simply that '...ECHO joins forces and works together with international, governmental and non-governmental organisations or other bodies involved in humanitarian aid, with the Member States of the

European Community and with non-member countries.⁷ The text goes on to say of the partner: 'Its mission is to come to the aid of people in danger, on an international scale and without discrimination by race, nationality, religion or political opinion, with the aim of saving human lives and relieving suffering' and 'It has considerable experience in humanitarian aid and offers services of a specialised nature.'⁸

4.2.9. Whether the several contractors which provided administrative services for ECHO (not only in the case of the four contracts in question) can be said to meet these criteria is extremely open to question. The decision in the ECHO affair to use the Framework Partnership Contract with commercial organisations providing services of a non-humanitarian nature is thus equally questionable, relying simply on the inclusion of the term 'other bodies' in the preamble. The dubious nature of the practice is emphasised by the fact that, when Mrs Bonino proposed revised rules to the Commission in March 1998, the words 'other bodies' involved in humanitarian aid were dropped, and the control/reporting requirements on partners increased.

Lateness of the Commission's response to the problems in ECHO

Time lapse before initial investigation

4.2.10. The first striking feature of the chronology above is the length of the time lapse between the signature and the implementation of the contracts alleged to be fictitious and the beginning of an UCLAF investigation. The first of the contracts ran from 1 August 1993; the first hint of suspicion arose nearly four years later, and then only when a whistleblower intervened. Regular management and control mechanisms thus failed to identify any anomaly in the contracts which, at the very least, were not used for their ostensible purpose. This occurred, moreover, in a situation where the presence of an external cell of eleven persons, complete with offices, equipment, etc., must have been clearly apparent to all ECHO staff.

Early indications

4.2.11. UCLAF enquiries began in May 1997, and the first consultations with the Director of ECHO relating to the four contracts took place on 24 June 1997. No preventive management action is demonstrated by the files at this stage within ECHO. Nor does any record exist of the Director of ECHO having informed the Commissioner responsible that an inquiry was in course.

Early UCLAF conclusions

4.2.12. Following a control visit to the two contracting companies in Ireland, UCLAF's internal mission report of 19 December 1997 recommended that the former Head of the financial unit be removed from a position of financial responsibility as a precautionary measure. Even if, as UCLAF maintains, he no longer occupied such a position, he was nevertheless still in an influential position within ECHO, able to take 'remedial' action in his own interests, and it is curious that as clear a recommendation as this was not communicated to anyone outside UCLAF.

⁷ Model Framework Partnership Contract: Preamble - 'ECHO'

⁸ Model Framework Partnership Contract: Preamble - 'The Partner'

The only credible explanation is that the Director of UCLAF preferred to maintain the confidentiality of the inquiry even vis-à-vis very senior Commission staff and Commissioners.

4.2.13. The UCLAF control mission to the former Yugoslavia at the end of January unambiguously confirmed the fictitious nature of the contracts under investigation. The management of ECHO and Mrs Bonino's private office were clearly aware of this investigation, thanks to the participation of an ECHO official. Nevertheless, no management action in respect of the official concerned is recorded within ECHO to address the situation.

4.2.14. Nearly two months elapsed between the completion of UCLAF's inquiry report on 18 May 1998 and the decision to place the matter before the competent judicial authorities, although the information in the UCLAF report already constituted a clear and at least partly substantiated allegation of fraud. Similarly, the former Head of the financial unit remained in his position until 10 July 1998, thereby having further time and opportunity to interfere with possible evidence.

ECHO internal investigation

4.2.15. The Secretary-General instructed the current and former Directors of ECHO to verify the contents of the UCLAF report on 18 June 1998. This led to a series of interviews with current and former ECHO staff (internal and external). These interviews with often junior staff, which largely concerned the possible involvement in, or knowledge of, the fictitious contracts on the part of the former ECHO Director, were conducted predominantly by the former Director himself. The question must arise as to (i) whether it was appropriate in principle for such an investigation to be conducted by one of the persons named in the UCLAF report (who thus in effect 'investigates himself'), and (ii) why the Secretary-General chose this course of action.

4.2.16. In these circumstances, and with the benefit of hindsight, the ECHO investigation therefore did little more than delay the commencement in September 1998 of the full administrative inquiry (see below), which, under an independent Director-General, covered essentially the same ground.

Disciplinary action

4.2.17. The former Head of the financial unit was suspended on 10 July 1998, the same day as the file was forwarded to the Luxembourg authorities. However, no administrative inquiry was launched concerning the other persons named (rightly or wrongly) in the UCLAF report until 14 September 1998. The resultant report was released on 9 November 1998 and led to disciplinary proceedings against two further officials shortly afterwards. Disciplinary action cannot ultimately be regarded as having been expeditious, even if it did follow rapidly on from the conclusion of the administrative report. In the event, on the central issue of whether two key officials had been aware of the fictitious nature of the four contracts, this well-documented report reaffirms the findings reported by UCLAF some six months previously.

Involvement of the Commissioners and their private offices in the course of the investigation

Awareness of staffing problems and the use of 'submarine' staff

4.2.18. Unquestionably, the Commissioners responsible for ECHO, Mr Marín until 1994, and Mrs Bonino thereafter, were aware (i) of the extremely difficult staffing situation in ECHO and

(ii) of the existence of staff within ECHO financed from operating appropriations. Both Commissioners made repeated, formal and explicit requests to the Commissioner responsible for personnel for the allocation of additional staff for ECHO. Though Mr Marín gave explicit instructions that the practice of using 'submarine' staff should cease (on 24 February 1994), there is no record of him having pursued the matter thereafter or having checked whether his instructions had been followed; the record shows that they were not. Indeed, the then Director of ECHO signed the last of the suspect contracts, which he himself acknowledges to have been a 'mini-budget' operation (though he denies knowledge of any associated fraud), after having received instructions to desist from using 'submarine' staff.

4.2.19. Pressed on this point by the Committee, Mr Marín declined to say that he 'turned a blind eye' to the presence of 'submarines', but he did indicate that the practice was understandable in the very difficult staffing circumstances of ECHO and that experience showed that periodic 'cleaning exercises' were (and remain) necessary in the Commission. Moreover, given that Mrs Bonino, the incoming Commissioner, was explicitly informed that 'submarines' were present, it is fair to suggest that the practice of employing such staff - albeit quite possibly for very 'honourable' motives - was tacitly tolerated at least until the last of the contracts financing the 'external cell' expired on 30 June 1995. Thereafter, ECHO obtained a supplement of regular staff and, although (unsuccessful) efforts were made to persuade the budgetary authority to provide staff under what is known as the 'Liikanen facility'⁹, functioned without 'submarine' staff.

Awareness of possible fraud

4.2.20. There is no indication that any Member of the Commission or any member of the private offices was aware of the existence of the fictitious contracts (as opposed to 'merely' irregular staffing arrangements) until after the beginning of the UCLAF investigation. The first hint in the files that Commissioner Bonino became aware of an UCLAF inquiry occurred on 4 February 1998, at which point the former Director of ECHO informed her of contacts he had had with the former Head of ECHO's financial unit, when an UCLAF inquiry into certain ECHO contracts in Yugoslavia had been discussed. Soon afterwards, on 20 February 1998, Mrs Gradin's Chef de cabinet informed Mr Liikanen and the Secretary-General confidentially - in connection with a promotion procedure - of the inquiry. At this point, Commissioners Bonino and Marín initiated a series of letters in which they referred to 'rumours' concerning fraud in ECHO and sought clarification from Mrs Gradin. Thereafter, on 25 February 1998, the information available to the two Commissioners became more explicit when the former Director of ECHO informed them of his contacts with the Director of UCLAF.

⁹ Hearing of Commissioner Marín (24 February 99).

¹⁰ Facility agreed by the budgetary authority allowing a set proportion of operating appropriations to be used for administrative expenditure, applied only to the Phare, Tacis and MEDA programmes (see remarks entered against the relevant budget items in 1997).

¹¹ The Committee received credible oral information suggesting that, as early as 1993, concerns had been notified to the private office of the Commissioner responsible at the time for personnel as to the activities of the official subsequently most implicated in the alleged fraud. These concerns were said to have been notified to the private office of the Commissioner then responsible for ECHO. It was further indicated that another Commissioner's private office had earlier opposed the same official receiving any financial responsibilities because of doubts concerning his previous activities. It has proven impossible to substantiate that information.

4.2.21. In the view of the Committee, however, it stretches credibility to suggest that the Commissioners in question remained completely in the dark as to the existence of an UCLAF inquiry (itself an indication of some suspicion of fraud) during the eight-month period from 24 June 1997, when the Director of ECHO first became aware of an UCLAF inquiry, until the February of the following year.

Intervention in investigations

4.2.22. Two specific allegations appear in the file concerning Mrs Bonino and her private office.

4.2.23. Firstly, the Director of UCLAF stated that Mrs Bonino's Chef de cabinet attempted to undermine and delay the UCLAF control mission to Yugoslavia by creating difficulties concerning the participation of an ECHO official, on the pretext that the matters under investigation were of a minor administrative nature. This 'interference', if it occurred, would not necessarily imply a wish to conceal a case of fraud but may be indicative of the view that (i) the matter was not of sufficient seriousness to merit an investigation, or (ii) that the inquiry should be conducted differently. In either case, it is clearly regrettable that UCLAF and the private office concerned viewed each other as antagonists in this affair. Moreover, for reasons of prudence, it is inappropriate for a private office to challenge the conduct of an UCLAF inquiry without being in full possession of the facts. However, there is merit in Mr Marín's and Mrs Bonino's contention that the Commissioners concerned should, in one way or another, be made aware at an earlier stage of the nature of involvement of officials in the services for which they are responsible in UCLAF investigations, obviously within the limits of the confidentiality that the investigation requires.

4.2.24. Secondly, UCLAF's records note that the former Head of the financial unit claimed to have been contacted directly by Mrs Bonino shortly after the Yugoslavia mission, asking him to take no action without first consulting her. UCLAF's records do not include the alternative interpretation of this contact (which is acknowledged to have taken place) which is that it was simply an instruction to an official to respect - rather than circumvent - the Commission's internal procedures for exchanges of internal correspondence.

4.2.25. It must be said, notwithstanding the formalised circumstances in which the abovementioned allegations were made, that they remain unilateral and subjective declarations and cannot be taken to constitute 'evidence' of interference.

Information to the European Parliament

4.2.26. Under Article 206 of the Treaty (concerning Parliament's power to file discharge), the mission 'shall submit any necessary information to the European Parliament at the latter's request'. Parliament has interpreted this article as including a right to be informed as to the existence and/or progress of inquiries into cases of fraud and corruption affecting the financial interests of the European Community.

4.2.27. At the outset, it should be said that the provision of information to Parliament by the Commission has not been spontaneous but driven by outside pressures. In the first case, the pressure came as a result of the leakage of the UCLAF inquiry report of 18 May 1998 to the press (it was even published virtually in its entirety); secondly, it came from direct and persistent questioning by the rapporteur for the Committee on Budgetary Control, Mr Juan Manuel Fabra

Vallés. In itself, on a restrictive reading of the Treaty, the Commission's failure to inform Parliament without good reason, while perhaps regrettable, is not an irregularity.

4.2.28. However, the rapporteur's subsequent requests to obtain the relevant UCLAF reports (even those already published in the press) were met with protracted refusals. Ultimately, a heavily censored version of the 18 May 1998 report and its annexes was made available to Parliament's rapporteur, but so heavy was the censorship, on the grounds of protecting the legal procedures in course, that the documents in question were completely incomprehensible. Finally, more than two months after the original request had been made, the Commission agreed that the rapporteur might visit the Commission's premises to view the documentation, without taking copies or notes. It was furthermore stipulated that he could not be accompanied by either an assistant or an interpreter. In the circumstances, he refused to view the documents under such conditions.

4.2.29. In contrast to this reluctance officially to provide information to the discharge authority, leaks of information play an important part in the ECHO affair. Firstly, the UCLAF inquiry report of 18 May 1998 itself was the subject of a leak to the press. It is presumably this leak to which Mrs Bonino alludes in a letter to Mrs Gradin dated 15 September 1998, referring to a 'surprising information meeting [which] may have taken place between UCLAF officials and EP members and officials, during which essential documents from ECHO file [*sic*] have been disclosed'. At the same time, other correspondence between private offices indicates that the leak in question came from one of the participants in a 'super-restricted' Commissioners-only meeting, leading to the first public appearance in the press of the name of the official most heavily implicated.

4.2.30. Similarly, a small extract from the internal UCLAF mission report of 19 December 1997, including the recommendation to remove the former Head of the financial unit from a position of financial responsibility, came into the hands of the EP rapporteur through unofficial channels.

4.2.31. The Committee has no interest in examining who leaked what to whom and when (the above are only examples), but it can at least conclude that the management of information and its provision to Parliament was not transparent.

'Internal transparency'

4.2.32. Closely related to the questions outlined above is the lamentably poor state of internal communication within the Commission. In the case of ECHO, the bulk of the correspondence between Commissioners revolves around the issue of when relevant information was made available to the Commissioners concerned and by whom. In fact, most information on the progress of the case was generated in the first instance (and protractedly thereafter) via various unofficial means: rumours, off-the-record briefings, misinformation, leaks and indiscretions, etc. Besides being an inefficient means of communication (preventing early remedial action), rumour inevitably distorts reality, thus giving rise to unnecessary antagonisms and sometimes wild accusations. It is to be hoped that the Commission's new guidelines on the dissemination of information on UCLAF inquiries will go some way to towards the introduction of a more transparent culture.

Possible favouritism in the course of ECHO's activities

Scope for abuse

4.2.33. One aspect of 'mini-budget'-type operations which do not set out clear criteria for the employment of staff under the contracts concerned is the opening they provide for 'patronage'. In the case of fictitious contracts, such as those in the ECHO case, which were ostensibly for operations in third countries, such criteria are absent by definition.

4.2.34. It is interesting to observe in the files that the correspondence in which ECHO requested the provision of staff from the contractors typically contains two parts: firstly, a formal letter requesting the provision of persons to fill specified functions at specified grades; second a series of names (with CVs if not previously supplied) of persons with matching qualifications. If, as was the case here, the contractor is compliant, the scope for abuse is clear.

Abuse in the ECHO case

4.2.35. In his declarations to UCLAF, the former Head of the financial unit stated that the then Director of ECHO 'controlled' all the appointments to the 'external cell'. He added that he himself made a relatively small number of recommendations. The Director's declarations contrast with this, suggesting that he played a role in no more than three cases, and then simply recommended names, without entering into terms and conditions. Either way, the issue of principle is the same.

4.2.36. Firstly, it cannot be healthy for personal interventions to play such a powerful role in the appointment of staff, especially when there are no checks against any objective criteria. Secondly, it is extremely difficult to know whether the acknowledged personal interventions (even less any which remain unacknowledged) represent 'favouritism' in the sense used in this report (*see paras.1.4.4-5*).

4.2.37. For example, the former Head of the financial unit makes no bones about having recommended (successfully) friends of his son. In itself, being a friend of an official's son does not and should not disqualify an individual from a job, and the signs are that the persons in question gave full satisfaction in their assigned roles. Nonetheless, it is impossible not to be uneasy about such personalised recruitment procedures which, although nominally in the private sector, are in fact for the exercise of public-sector tasks. The unease derives mainly from the sheer openness to abuse - the possibility it provides to 'place' friends and relations who do not possess the requisite qualifications or abilities, these being failings which are ultimately at the expense of the taxpayer (and, in ECHO's case, by the beneficiaries of humanitarian aid).

4.2.38. Further unease arises from the distortion in the 'level playing field' that such practices represent. Qualified people who do not belong to the 'charmed circle' find more and more barriers to entry, to their own detriment and to that of the public at large.

Involvement of Commissioners

4.2.39. However that may be, the Committee has seen no convincing evidence in the ECHO file that the Commissioners, or their private offices approved or knew of favouritism in their services. Hints in this direction occur in the files, but these have been checked by the Committee, including in interviews with the Commissioner concerned, and could not be substantiated.

4.3. Conclusion: responsibility of Commissioners

4.3.1. The various aspects of the case described above raise the question of the responsibility of the Commissioners concerned and/or of the Commission as a whole. That responsibility arises, as follows from all the considerations above, neither in respect of the fabricated nature of the four contracts involved, nor in respect of favouritism. It does arise, however, regarding the issue of tolerating staffing practices which are known, or should be known, to be irregular. In this respect, Mr Marín allowed the presence of 'submarines' to continue throughout the period during which he was responsible for ECHO. Mrs Bonino, however, upon taking over responsibility, acted to ensure that staff were no longer employed by ECHO after the expiry of the last outstanding contract in June 1995.

4.3.2. The issue, as the ECHO file shows better than any other file, is whether irregular staffing practices can be justified because of the contribution of the EU to humanitarian actions which respond to cases of extreme need. At the level of the Commissioners, the question is whether they followed up with sufficient rigour the general prohibition of irregular staffing practices as laid down, not only by the Commission as a body but also by the budgetary authorities. At the level of the Commission as a body, the question is whether it suffices to lay down such a prohibition without at the same time providing enough staff to enable the prohibition to take effect. This is a question which applies equally to the former and to the present Commission. It seems to the Committee that the responsibility of the Commissioners, and of the Commission as a whole, is involved on both scores: the Commission has not provided the staff and the Commissioners have not made it sufficiently clear, either to the Commission or to the other institutions, that they could not take responsibility for carrying out all of the tasks assigned to ECHO, or that the policy objectives imposed upon them could not realistically be implemented.

5. LEONARDO DA VINCI

5. LEONARDO DA VINCI

5.1. Introduction

5.1.1. The Committee chose this file for consideration because audits of the implementation of the Leonardo da Vinci programme and of its Technical Assistance Office (hereinafter referred to as TAO) have disclosed a wide range of alleged mismanagement, irregularities and possibly fraud and other breaches of criminal law.

5.1.2. Even though the various individual allegations against the Leonardo TAO would each have deserved thorough scrutiny, the Committee focused its attention on the treatment by the Commission and by the Commissioner responsible for the Leonardo da Vinci programme of the problems which arose. During the whole period under scrutiny, the Leonardo da Vinci file was under the responsibility of Commissioner Cresson and the Director-General of DG XXII.

5.2. The Programme, the Technical Assistance Office (TAO) and the contract

5.2.1. In 1995, the European Commission launched the Leonardo da Vinci programme. This had been formulated by Directorate-General XXII (responsible for matters concerning education, training and youth). It was created by means of Council Decision 94/819/EC, and its purpose was to implement a vocational training policy in support of initiatives conducted by the individual Member States. It was scheduled to cover a maximum period of five years (1995 - 1999) with appropriations allocated of the order of ECU 620 million.

5.2.2. Normally, such a programme would have been implemented by the Commission's services themselves. However, because of a lack of staff within DG XXII, and since it appeared impossible to redeploy the necessary staff from other services in the Commission, it was decided to outsource the implementation of the project to a 'technical assistance office' following a public call for tender.

5.2.3. On the basis of an open tender issued at the end of 1994, Agenor SA was awarded a five-year service contract to provide technical assistance, renewable annually, from 1 June 1995 to 31 May 2000. The TAO provides the Commission with technical assistance in managing some of the operations carried out under the Leonardo da Vinci programme. Decentralised operations are managed by the Commission without the help of the TAO. The main operations which the TAO helps to manage comprise several thousands of project proposals per year and involve complex processing procedures through a chain of operations leading to the selection of some 750 projects per year by the Commission.

5.2.4. The main actors for the implementation of the European professional training programme Leonardo da Vinci were thus DG XXII, under Commissioner Cresson, and Agenor SA, which was selected as TAO for the programme and headed by the former representative of the non-profit-making association CESI in Brussels, the leading shareholder in Agenor SA. Audits were undertaken both by an audit unit of DG XXII itself and by DG XX, the Directorate-General for Financial Control, responsible to Commissioner Gradin. Mrs Gradin was also

responsible for UCLAF which became involved as soon as allegations were raised regarding possible fraudulent actions and violations of criminal law.

5.2.5. As stated above, DG XXII entrusted the implementation of the programme to Agenor SA as Technical Assistance Office (TAO). Agenor SA is a French company composed of a number of shareholders from different Member States. However, its controlling shareholder is the French Group CESI (Centre d'Etudes Supérieures Industrielles).

5.2.6. CESI (Centre d'études supérieures industriels) is a non-profit-making association whose aims is to provide permanent training courses for senior management. Its Management Board consists, on the basis of equality, of Associations representing French management on the one hand, the two employers' organisations concerned and four major firms (Renault, Rhône-Poulenc, Banque Scalbert Dupont and IBM) on the other. CESI's Managing Director is Mr Jacques Bahry.

5.2.7. SISIE (Services Industrie Stratégie Internationale Environnement) is a limited company with a capital of FRF 3 000 000, whose aim is to provide consultancy services for businesses. Its major shareholders are the Schneider Group and EDF. Its Managing Director is Mr Nicolas Lebon.

5.2.8. It would appear that Mr Pineau-Valencienne is the Chairman of SISIE's Supervising Board (Mrs Cresson chaired the SISIE's Management Board before being appointed to the Commission), and that he was also an administrator of CESI where he represented the Metalworkers' Union.

5.2.9. As early as 1994, the Commission's DG XXII conducted an internal audit of the implementation of one of Leonardo's predecessor programmes, 'FORCE', also implemented by Agenor SA. The audit report contained a number of critical remarks about the networks and the products that had been established. It gave indications of double invoicing and unsatisfactory financial management. Another internal audit was done by DG XXII on a project managed by EWA, a Berlin-based subsidiary of CESI, which also revealed serious failings in financial management and control.

Obviously, the findings of these reports should have been taken into consideration by DG XXII when a decision on the award of the Leonardo TAO was taken.

5.2.10. The European Commission's DG XXII concluded a contract with Agenor SA on 13 June 1995 stipulating that the organisation would set up the administrative infrastructure required for the provision of assistance to DG XXII with respect to the start-up and follow-up of the Leonardo da Vinci programme. This contract stipulated inter alia the following requirements and obligations:

The Organisation shall provide technical assistance to the Commission for the period referred to in Article 2 of the current contract with regard to the implementation of the Leonardo Programme.

.....

The Commission retains sole responsibility for the implementation of Council decisions and, in particular, for the liquidation of financial contributions committed to the execution of such decisions.

.....

The payment made by the Commission for the services rendered by the Organisation shall be based on the work programme and budget and personnel plan agreed by the Commission.

.....

The Organisation shall be responsible for the recruitment and general terms and conditions of employment of the employees required for the execution of the work programme. For this purpose, the Organisation shall inform the Commission of the general terms and conditions of employment and of the names and salary conditions of each of the employees employed by the Organisation for the execution of the work programme set out in this contract.

.....

The Organisation shall obtain the prior permission of the Commission for any change and/or any recruitment at managing level.

The Organisation may make amendments to the Personnel Plan with the prior agreement of the Commission

The Organisation shall obtain the prior approval of the Commission for any item of equipment of furniture charged to heading II (running costs) of Annex III to the present contract, and shall make an appropriate record in its accounts and inventory.

The Organisation shall obtain prior permission of the Commission for the purchase of goods and services relating to the execution of the present contract, where such goods or services will entail costs in excess of ECU 10.000 during the contract period.

.....

This contract shall be governed by the general terms and conditions applicable to contracts awarded by the Commission of the European Communities, which are contained in Annex I to this contract and which the Organisation declares it has read and agrees to.

In addition to any auditing procedures required by the Organisation's own procedures, the Commission and the Court of Auditors of the European Communities shall be entitled, for the purpose of carrying out audits, to have access to all books, documents, papers and records kept by the Organisation.....'

5.3. Audit findings of DG XXII's own audit unit concerning the Leonardo/Agenor TAO

5.3.1. A first internal audit of the Leonardo/Agenor TAO was carried out by DG XXII's audit unit from 1 June 1996 to 31 May 1997 into the first year of operation (1995/6) of the Leonardo/Agenor TAO and was published within DG XXII by October 1997. On the basis of this audit report, which disclosed a number of critical elements, UCLAF already established a list of items which might indicate serious irregularities and/or fraud. In a later note (2633) from UCLAF dated 17 April 1998, a copy of which was submitted to DG XX, it requested the inclusion of these items in the framework of DG XX's audit of the Leonardo/Agenor TAO which was conducted in 1998.

5.3.2. The main allegations in this first audit report by DG XXII were the following:

- * Alteration of the initial tender specifications in order to give an advantage to the printing company 'Forma in Quarto'.
Under normal circumstances, price estimates are requested from various printers in order to secure the least expensive price. In this case, however, the initial tender specifications were altered at the last moment and revised price quotes were requested by fax. It emerges that 'Forma in Quarto' always replied last, its prices being in each case slightly lower than the best prices previously received.
- * Deliberate non-compliance with the rule that the cheapest provider must be chosen for paper and printed products, again to the advantage of 'Forma in Quarto'.

Although the proposals for calls for tenders regarding paper and printed products in April/May 1998 clearly showed that 'Editions Européennes' had submitted the most favourable bid, and although DG XXII had asked the Leonardo TAO in a note dated 7 May 1998 not to accept the bid from 'Forma in Quarto', the Leonardo TAO still recommended this company. As DG XX's audit report later showed, 'Forma in Quarto' was in any case was not able to fulfil the required printing work.

- * Irregular expenses in favour of a contract employee in the Leonardo TAO, charged by DML Consult, a company owned by the employee's wife. The employee worked for the TAO on the basis of a full-time secondment from the Belgian company VDAB, but at the same time charged for consultancy work through his wife's company DML Consult.

In the period from 1 June 1995 to 1 July 1997, the employee thus received, in agreement with the director of the Leonardo TAO, 'emoluments' for a total of BEF 4 million per year (BEF 2.85 million for his full-time secondment from VDAB and BEF 1.2 million via fictitious invoices from DML Consult).

As from 1 June 1997, he received an additional amount of approximately BEF 100 000 per month through a consultancy contract concluded between the TAO and DML Consult.

- * An allegedly fraudulent invoice of ECU 8000. The invoice concerned study work supposedly performed by an organisation called Cendis-Ris. A detailed review of this study revealed that the document had been prepared by three other persons who had consultancy agreements with the Leonardo TAO through 'Etudes et Formation'. Moreover, no agreement from the Commission to carry out this study had been secured.

- * Unacceptably high daily fee rates of ECU 2677 for a professor from Exeter University. On 15 August 1995, the Leonardo TAO confirmed an agreement with Exeter University under which the latter would contribute expertise and networking know-how to the Leonardo da Vinci programme. The budgeted fees for this task amounted to GBP 40 000 per year based on a daily fee to the professor of ECU 2699. The contract was renewed for 1996/97 and 1997/1998.

No formal authorisation was ever given by the Commission for the services of Exeter University or the professor, who apparently did not produce any scientific services which could justify the considerable fee of over GBP 40 000 a year paid to the University by the TAO.

- * An allegedly fraudulent invoice of ECU 24 000 for consultancy work by the company 'Etudes et Formation'. Invoice No 30 dated 1 May 1997 for ECU 24 000, paid on 16 September 1997, referred to consultancy services carried out by employees of 'Etudes et Formation' for work on a 1996 compendium during the months March, April and May 1997. For this follow-up work to an already existing compendium, neither a contract, nor supporting documents nor a formal agreement from the Commission could be presented.

5.3.3. It should be noted that **no action was taken** by DG XXII to examine the alleged irregularities further and/or to review the patterns of control and of cooperation with the Leonardo/Agenor TAO

5.3.4. **The internal audit unit of DG XXII undertook another brief audit visit to the Leonardo/Agenor TAO from 24 to 30 July 1997 covering the first two years of operation on a random basis. The audit report of this visit was submitted to and discussed with the Director-General of DG XXII in December 1997.**

5.3.5. The report in many respects confirmed the earlier findings and revealed the following examples of alleged mismanagement and fraudulent practices:

- * mission orders did not indicate the purpose of the missions;
- * mission reports could not be presented;
- * conflicts of interest: the 'group of experts' established by the Leonardo/Agenor TAO concluded contracts in 1995 and 1996 and participated in contracts during the same years;
- * pre-invoicing from 'Forma in Quarto' for printing tasks to the order of ECU 93 676;
- * an invoice for BEF 300 000, without a VAT number or an invoice number, for a study on a general evaluation of the Leonardo/Agenor TAO database by the systems manager of the TAO himself;
- * double invoicing of a study produced by Cenid-Ris;
- * pre-invoicing or fraudulent invoice of BEF 200 000;
- * overstated fees and daily payments for consultancy services from Exeter University;
- * pre-invoicing or fraudulent invoices of ECU 24 000 by 'Etudes et Formation'.

5.3.6. In total, the audit recommended a reduction of the reported amount of ECU 456 486 and noted in its final remarks *Taking into consideration the importance of the remarks, ..., the internal audit considers it as a standard procedure that this report is communicated to DG XX and UCLAF.'*

5.3.7. Given the above findings and the recommendations, it is inconceivable that the Director-General of DG XXII did not inform the Commissioner responsible, Mrs Cresson. Since UCLAF could not be involved without giving notice to the Commissioner concerned, Mrs Gradin must also have been aware of the situation.

5.4. Audit findings by DG XX, Directorate-General for Financial Control

5.4.1. Only after lengthy debates between DG XXII, DG XX and UCLAF **was a decision taken in February 1998 by DG XX and UCLAF to undertake an official audit of the Leonardo/Agenor TAO.** The involvement of these two services, responsible respectively for financial control and the fight against fraud, not only indicates that the allegations were finally taken seriously by the services concerned but also, as indicated above, that the Commissioners responsible for the services must have been informed through their Directors-General. On the other hand, in spite of these findings, no initiative whatsoever was taken for immediate precautionary or preventive action, as should have been the case.

5.4.2. **The internal draft audit report of DG XX was issued as early as 20 July 1998. It revealed *inter alia* the following allegations of possible fraud, management irregularities and/or breaches of disciplinary rules (the presentation of cases is not complete in order to avoid lengthy repetitions, but the selection presented sheds a significant light on the nature of the findings) :**

* The minutes of Agenor's Administrative Board suggest that it had extensive foreknowledge in respect of the TAO call for tender, as a result of which Agenor was selected as the TAO.

* Agenor's Administrative Board never established procedures and rules delineating the decision-making powers of the Director. In important areas, such as recruitment, remuneration and promotion, the Director could take unilateral decisions.

* Certain projects were subject to a third evaluation carried out by representatives of the social partners, which is contrary to the relevant Council Regulation, and, furthermore, members of Agenor's Administrative Board were involved in projects. The draft report states in this respect:

"In our review of the selection process we came across a document in the TAO which was a list of projects having the direct support of the Cresson cabinet. We also saw documents advocating the use of Professor Reiffers, an advisor to the Cresson Cabinet, as an extra evaluator of projects related to a certain priority under the White paper. Organisations with links to Professor Reiffers are involved in Leonardo projects as either contractors or partners".

* Mission reports were missing or in certain cases not written. Several employees were apparently allowed trips home in lieu of salary, the legality of which is questionable as salary increases for Belgian companies at the time were restricted by law. An invoice, to the order of ECU 30 000, under the 1996-97 contract included several missions of the Director of the TAO that were not carried out.

* Invoices were submitted for payment without supporting documents, the only requirement being the approval of the Director. There was no centralised purchase order system.

* Nearly all printing assignments and the whole publication budget were awarded to one company, Forma in Quarto. The turnover of the 'Forma in Quarto' company equalled about 100% of the amount paid by Agenor to 'Format in Quarto' for the years 1996 and 1997, which suggests that Leonardo/Agenor TAO was the only client of the printing company. The fact that the total staff of 'Forma in Quarto' was only three and the investment in machinery was only ECU 50 000 is difficult to reconcile with the amount of work billed to the Leonardo/Agenor TAO, on average ECU 300 000 per year, and leads to the conclusion that the printing work was subcontracted out by 'Forma in Quarto'.

The obligation that at least three price estimates be obtained for expenditure above ECU 10 000 was circumvented by splitting the amount charged into invoices under ECU 10 000.

- * For some contracts the Leonardo/Agenor TAO could give no proof that reports had actually been written; in one case, the same report was invoiced a second time under a different contractor's name.
- * A possibly fraudulent payment of BEF 885 000 to the Deputy Director of the Leonardo/Agenor TAO. This Deputy Director was included in the proposal for the Leonardo/Agenor TAO as Head of Finance and Administration and was made redundant by the TAO Director within two weeks of his appointment. It was stated that he and the Director of Leonardo/Agenor TAO did not know each other at all. DG XX was not presented with any evidence of prior approval by DG XXII for this dismissal. A further amount of BEF 250 000 was ultimately also paid to a lawyer of the former Deputy Director for legal advice.
- * Alleged 'ghost experts' charged to the Commission in respect of whom the Leonardo/Agenor TAO did not register attendance or the time of employment.
- * Payment of allegedly illegal salary increases of BEF 50 000 per month to the Deputy Director of the Leonardo/Agenor TAO and an additional fee of BEF 25 000 for missions allegedly never carried out.
- * Irregular advances and loans given to the Leonardo/Agenor TAO staff; to some staff, 'loans' of over BEF 1 million were given, which appeared extremely high in relation to the salaries and the low equity of Agenor.
- * Alleged fraud by the Head of Administration. From October 1996, when she received the authority to sign payments of up to BEF 100 000, she started to write cheques to herself for amounts between BEF 50 000 and 100 000, totalling BEF 1 500 000 by March 1998. She was dismissed when this fraud was detected and after she had 'regularised' the situation. She is quoted as saying that she had received oral approval from the Director and that the transfers were to be considered as an advance payment to her.
- * The Director's wife had been included in the initial proposal for the Leonardo/Agenor TAO as an assistant working in the Director's secretariat with a salary of BEF 89 000. After the dismissal of the Head of Administration in March 1998, she was appointed as the Head of Administration/Personnel with a salary of BEF 220 000. This salary has to be considered as grossly overstated for someone who not only has no appropriate degree but also no qualification relevant to the post occupied and who does not speak a second language.
- * The future daughter-in-law of the Director replaced the Director's wife in her previous post in March 1998 as Head of the selection process. For this promotion, her gross monthly salary increased from BEF 107 000 to BEF 150 000.

- * Another administrator, responsible for the development of administrative applications, started with a salary of BEF 125 000 (June 1995) which was later increased to BEF 200 000 (June 1996). She created her own company as of April 1997 and received several assignments from the Leonardo/Agenor TAO.
- * Alleged false invoices issued by a company for analysis of the Leonardo/Agenor TAO database structure. The analysis report in question was in fact a simple description of the database structure of the Leonardo/Agenor TAO which should have been available after the acquisition of the database. It appears that the payment was more a present than payment for a service rendered with added value.
- * An alleged false invoice of ECU 8800 from a subcontractor for 22 days of service in December 1977. The person in charge of staff in the Leonardo/Agenor TAO claimed never to have seen anybody doing the work. There were not 22 working days in December 1997 in the TAO.

5.4.3. The findings of DG XX's draft audit report, as well as other supporting documents, justify the conclusion that the implementation of the Leonardo I programme through the Leonardo/Agenor TAO can be characterised by

- a lack of internal control on financial transactions;
- a poor control environment concerning staff and activities which allowed staff to commit serious irregularities;
- a perception of irregularities which in itself must be considered as an incitement to corruption, as it meant offering indemnities to those who were suspected of fraud rather than threatening prosecution.

5.4.4. The draft report thus shows important deficiencies in the Commission's monitoring of the Leonardo/Agenor TAO by the Commission. It states in this context:

The Commission control could best be described as form over substance. It appears that the TAO has, under these circumstances, taken the opportunity to enforce its position to the extent that it is not always clear who is controlling whom, DG XXII the TAO or vice versa.'

5.4.5. On 6 November 1998, DG XX's internal draft audit report of 20 July 1998 became the **provisional final audit report** of DG XX and was submitted for observations to DG XXII.

5.4.6. It has to be noted that the time lapse of four months (July to November 1998) is to be regarded as excessively long, given the number and nature of the findings set out in the draft audit report of July 1998, which would have required immediate and decisive action by the services responsible.

5.4.7. Even though the provisional final audit report was shortened as regards to details and considerations on a number of aspects compared with the draft audit report of 20 July 1998, it still contained the major allegations, such as:

- detailed information about the requirements for the future Leonardo TAO was available to Agenor prior to publication of the tender;
- a considerable number of breaches of contract conditions, of varying degrees of seriousness,
- non-compliance with the contract clause relating to taxation;
- non-compliance with national tax laws and other local legislation, including social security payments;
- breaches in tendering procedures and staff policy;
- several areas of possible irregularities which UCLAF was advised to examine;
- in general, a poor system of internal control combined with a highly centralised management style operated by the TAO Director;
- serious weaknesses in the organisational and control structures as evidenced by irregularities that had already been identified;
- misappropriation of funds;
- senior management operating with a lack of integrity;
- absence of objective recruitment policies and procedures;
- favouritism with regard to the appointment of the Director's wife to a key management position;
- circumvention of DG XXII's approval in areas of project development;
- inadequate checks by DG XXII in areas such as personnel and management, informatics and operations (i.e. in none);
- lack of cooperation and, on occasions, reluctance of the Leonardo/Agenor TAO to provide timely and relevant information;
- general dissatisfaction of Member States (NCUs) and promoters with the time taken by the Leonardo/Agenor TAO and DG XXII to process applications and with the bureaucratic nature of the process.
- eligibility criteria appeared to have been applied in an arbitrary fashion;
- lack of transparency in the pre-selection process and interference by the Commissioner's private office.

5.4.8. DG XX concludes its above-mentioned audit report with the following remark:

'Given the overall results of this audit, the audit team proposes that DG XXII seriously reconsider the continuation of the TAO contract with Agenor. The fundamental problem is the management of the TAO where there are proper procedures these are often overridden by the Director.'

5.4.9. Looking from a more detached point of view at the above results, which had all previously appeared in their essentials in the internal draft audit report of 20 July 1998, the conclusion drawn by DG XX can only be regarded as an understatement. The question arises whether internal management, control and organisation functioned in an acceptable way in any area of the TAO's activities.

Above and beyond the established procedures of regular controls, standard audit procedures and spot checks, the question must further be asked whether it can be considered credible or probable that the overwhelming number of deficiencies that have become apparent, and which had been predicted (given the early 1994 internal audit report by DG XXII on 'Force' referred to above), could occur and continue over several years without - at least - having become known, through

informal channels at the Commission and/or between the Leonardo/Agenor TAO and the Commission, at the highest levels of DG XXII.

5.4.10. On 10 November 1998 the then Director-General of DG XXII forwarded the provisional final audit report, together with his first observations, to the Commissioner responsible, Mrs Cresson. From various remarks made by the Director- General it must be concluded that DG XXII was not in a position to contest the factual findings. The remarks, moreover, contained references to further investigations that might be needed, to unspecified burdens of the past, to statements that some of the evaluations were 'questionable', to formal checks undertaken by DG XXII, which was officially not entitled to interfere, to the fact that the contract with the Leonardo/Agenor TAO did not allow further corrective measures, that - in his opinion - the overall functioning of the Leonardo programme was not to be questioned, that minor improvements had been introduced, that certain payments were not accepted by the Commission and that possibly illegal payments of the Leonardo/Agenor TAO did not concern 'Community funds'. It was further claimed that DG XXII relied on information provided by the Leonardo/Agenor TAO, that other internal DG XXII audits had not yet been finalised, that the Commission was not aware of the local social legislation, that further investigations would be needed and, finally, that a number of suggestions had to be taken on board, such as the information of UCLAF.

5.4.11. Even if it has to be conceded that the TAO contract itself provided a high level of freedom of action for the Leonardo/Agenor TAO, DG XXII certainly allowed an extension of the scale of independence through tacit acceptance and/or indifference. In this Committee's opinion, the remarks of the Director-General of DG XXII, although concealing the real problems, did nevertheless disclose findings that should have alerted the Commissioner who, in turn, should have informed the Commission.

5.4.12. Responsibility for the facts assessed above, lies certainly with the Commissioner concerned, either because of non-intervention in a situation known to be highly unsatisfactory, or because of a failure to make inquiries about the true situation in a file which, from the outset, (see above para. 3) should have been followed up with special care. But, of course, such responsibility also has to be borne by the heads of DG XXII and the officials responsible for contacts with the Leonardo/Agenor TAO and the supervision and implementation of the programme. All of them hid behind formal arrangements, understating established findings and/or showing an extraordinary degree of indifference.

5.5. Further Proceedings in the Commission

5.5.1. In an internal note from UCLAF dated 18 September 1998, a summary is given of sixteen cases of possible breaches of criminal law, of four cases of possible contractual and administrative breaches and two cases of possible internal disciplinary violations. Against the background of this record, which is based on DG XX's internal draft audit report on the Leonardo/Agenor TAO dated 20 July 1998, it was suggested that:

'a letter should be prepared to the Public Prosecutor in Brussels requesting a criminal investigation with reference to Article 209A of the EU Treaty. This letter should contain a copy of DG XX's final audit report as well as a non-

exhaustive listing of points, which according to the Commission would be actions of fraud and violations of the Belgian criminal legislation. However, the non-exhaustive list should only contain examples of fraud, which can immediately be proved by evidential documentation. The purpose of the list is to convince the Belgian judicial authorities of the necessity to start the police investigation. It should therefore only contain the most obvious cases of fraud. Administrative actions should also be conducted vis à vis the company Agenor as indicated in the draft audit report. Finally, with regard to the internal personal aspect in the Commission it should be considered to involve the DG IX to complete an administrative investigation which will determine any possible disciplinary sanctions and/or penal actions against responsible employees in the DG XXII.

5.5.2. In a note dated 23 September 1998 from the Head of unit DG XX.2's Internal Audit Unit to the Director-General of DG XX, reference is made to **meeting arranged with representatives of DG XXII** to discuss the comments of DG XXII on the internal draft audit report on the Leonardo/Agenor TAO which had been forwarded to them on 18 September 1998. The Head of DG XX.2's unit concluded his note with the following remarks:

'I must emphasise, at this stage, that DG XXII did not contest the findings on the TAO Leonardo da Vinci, which means that DG XXII should consider without further delay their approach to the TAO Leonardo and the actions to be taken in respect of the contract with the TAO that expires on September 30. It appears that DG XXII have not developed any contingency plans in respect of the future management of the Leonardo programme in the light of our audit findings (received 24 July 1998).'

5.5.3. It should be emphasised that this note was drafted well in advance of 10 November 1998 when the provisional final audit report was forwarded to DG XXII (as referred to above in para 5.4.9.).

5.5.4. According to a **note for DG XX's** files, a meeting took place on 30 September 1998 between the Director-General of DG XX and the then Director-General of DG XXII concerning the renewal of the contract of the Leonardo/Agenor TAO. In the light of the findings of the audit report, the option of terminating the contract with Agenor with six months' notice and the engagement of a new TAO was discussed. DG XXII considered that such a termination would create problems for the continuity of the programme. It was finally agreed that the contract would be extended for an initial period of four months - from September 1998 to January 1999 - with special conditions for improvement being closely monitored by DG XXII. With regard to the performance of the Director of the TAO, DG XX requested that DG XXII approach Agenor with a view to negotiating the replacement of the current Director.

5.5.5. No reference was made at that stage either to an intention of informing the Commissioners responsible and, through them, the Commission, or to possible reactions or measures to be taken in the light of the findings of the audit report, such as possible disciplinary action or judicial proceedings.

5.5.6. In two confidential **UCLAF working documents** dated 16 October 1998 (n° 6903) and 3 November 1998 (n° 7358) on meetings held between representatives of UCLAF and DG XX on 1 October 1998 and 13 October 1998, the issue of possible breaches of criminal law and further investigations in the framework of the Leonardo/Agenor TAO was discussed. There is, however, no evidence that the meetings resulted in any kind of immediate action by the Directors-general or the Commissioners concerned.

5.5.7. On **4 November 1998**, a meeting took place between the Director of UCLAF, the Director-General of DG XXII and the Deputy Director-General of DG XX. At that meeting, the final audit report to be issued on 10 November 1998 (see above para. 5.5.2) was available in manuscript version, and it was agreed that it would be submitted to the Secretary-General, Mr Trojan, and to Commissioner Gradin with names and to the European Parliament without names. It was further decided to establish a file with documentation to back up the most obvious cases of fraud and to give priority to five matters which appeared to contain *the most obvious and easily proved cases of irregularities*.

5.5.8. It should therefore be noted that the Heads of both DG XX and UCLAF were well aware not only of the numerous incidences of mismanagement but also of fraudulent practices which justified the involvement of judicial authorities.

5.5.9. At this stage, DG XXII was still involved in what is known internally as a contradictory procedure. But it is also evident that the audit report as produced by DG XX was available to the services concerned, including the Director-General of DG XXII, and therefore also to the Commissioner responsible.

5.5.10. By letter of **10 November 1998**, the then **Director-General** of DG XXII submitted to Mrs Cresson's Chef de cabinet a revised version of DG XX's supposedly final audit report together with the remarks of DG XXII (referred to above in para. 5.4.4.). It followed from the text of the audit report, and even more from the 'remarks' added by DG XXII, that the findings of the report had to be deemed to be serious, especially since these remarks did not contest the factual basis of the serious allegations made in the report. At one stage, DG XXII conceded for the first time that the matter in question should be investigated by UCLAF.

5.5.11. On **23 November 1998**, the **Deputy Financial Controller** submitted to the Director-General of DG XX copies of the final audit report, subsequent to the contradictory procedure with DG XXII, which were to be forwarded to Commissioners Gradin, Cresson, Liikanen as well as to Mr Trojan and President Santer's Chef de cabinet. It may be assumed that, from then on the whole Commission was in a position to know what had been revealed in the reports and what was going on in the Leonardo/Agenor TAO.

5.5.12. In a letter, with annex, from the then Director-General of DG XXII to the Director-General of DG XX dated 26 November 1998, further observations were set out regarding DG XX's audit report. It is stated that this reply from DG XXII had been 'examined' together with Commissioner Cresson's Chef de cabinet, and that it had also been forwarded to the Secretary-General, Mr Trojan.

5.5.13. On 10 December 1998, the contradictory procedure concerning DG XX's audit report concerning the Leonardo/Agenor TAO was 'officially' finalised, and the Director-General of DG XX sent a copy of the report to the Chair of Parliament's Committee on Budgetary Control. DG XX's final remarks were forwarded later on 7 January 1999.

5.5.14. By mid-December 1998, an official of the Commission, Mr Van Buitenen, had sent a comprehensive letter to the Chair of the Green group in the European Parliament revealing, among other things, most of the findings of the Leonardo/Agenor TAO audit report. From then on, both information and action on the part of the Commission developed rapidly:

- on 19 January 1999, the Financial Controller of the Commission and the Director-General of DG XX sent a note to Mrs Cresson with the conclusions of the audit report;
- on 8 February 1999, UCLAF sent a note to Mrs Cresson's Chef de cabinet informing him that four cases involving the Leonardo/Agenor TAO would be brought before the Public Prosecutor in Brussels, as subsequently occurred on 11 February 1999.

5.5.15. On 29 January 1999, the Commission decided to give Agenor an extension of the Leonardo TAO contract for another two weeks from 31 January 1999 until 15 February 1999 in order to gain time for further negotiations on the improvement of the internal management of the TAO and for the removal of the Director who was held responsible for a large number of alleged breaches of the rules. Since Agenor did not respond to this extension, the Commission terminated the contract with Agenor with effect as from 31 January 1999 by letter of 11 February 1999.

5.6. Parliament in ignorance

5.6.1. Throughout the summer of 1998, the European Parliament worked on its report on the proposal from the Commission concerning the Leonardo II programme, the successor to Leonardo I currently under consideration. According to Parliament's schedule, the report of the Committee on Social Affairs and Employment on Leonardo II drawn up by its rapporteur, Mrs Sue Waddington, was to be discussed and adopted at Parliament's part-session of 4-5 November 1998. The European Parliament's Committee on Social Affairs adopted its draft report for the plenary on 27 October 1998.

5.6.2. There can be no doubt that all matters regarding the financial, managerial and substantive implementation of Leonardo I would have been of imminent importance for Parliament's attitude and for the decision-making process relating to Leonardo II. It is elementary 'common sense' that the Commission should have supported the Parliament's decision-making process in providing it with all kinds of information on substantial and even seemingly less important matters concerning Leonardo I. Any information on past experience could have served as a background on how to structure the successor programme.

5.6.3. On 26 October 1998, a few days before the debate and adoption at first reading of Parliament's resolution on the Leonardo II programme on 5 November 1998, MEPs received an anonymous 'Open letter to Members of the European Parliament' dated 26 October 1998 which closed with the demand: 'Do not vote for the proposed Leonardo Da Vinci II programme at your November part-session'. Subsequently, a number of allegations were made regarding the

democratic control of the programme, distorted procedures for project selection, poor information and dissemination practices, as well as very bad management. Even though it had to be classified as one of the many papers trying to influence political decision-making, a fact of life in the European Parliament, the paper was such as to suggest at least some familiarity with the programme's implementation.

5.6.4. Until 26 October 1998, the day when the anonymous letter arrived, the rapporteur for Parliament's Committee on Social Affairs and Employment, Mrs Sue Waddington, had no information whatsoever about the numerous irregularities that had occurred in the implementation of the Leonardo I programme. In order to secure complete assurance that the insinuations of the anonymous letter were false, she wrote to the President of the Commission on 5 November 1998:

'Of course, I am not inclined to give any credibility to anonymously sent material, and I intend to take my report through the Parliament as planned. I would however like your assurance that the allegations are unfounded and that the audit of Leonardo I has been satisfactory and that the Commission have taken account of the Parliament's decisions on the White Paper.'

5.6.5. Four days later, on 9 November 1998, President Santer answered Mrs Waddington *in alia* with the following words:

'I share your view as to the attitude to be taken towards anonymous material.'

I can confirm that the Commission's Financial Controller is currently finalising an internal audit report which raises questions about certain aspects of the management of the current Leonardo programme by the technical assistance office concerned. During the period of the audit the contract with the technical assistance office has been renewed on a temporary basis to ensure that, if necessary, corrective action is taken.

The Commission will monitor closely the performance of the technical assistance office and the position will be critically reviewed before the end of the year.

5.6.6. The above-mentioned response from President Santer may be interpreted on two levels; a formal one, and one which takes into account the substance of the question raised by Mrs Waddington as to the nature of the accusations made in the anonymous letter.

5.6.7. On the formal level President Santer answered correctly in stating that the Financial Controller was currently finalising an internal audit report and that certain aspects of the management of the Leonardo programme by the Technical Assistance Office were being questioned. He was also right in noting that the position of the Technical Assistance Office would be critically reviewed before the end of the year.

5.6.8. As for the substance of Mrs Waddington's letter, however, the answer was evasive to an extent which can only be qualified as misleading, in that it failed to mention all those allegations

and factual management irregularities that were known to the Directors- General of DG XXII, DG XX and UCLAF by that date.

No mention was made of the initial internal audit from June 1996 to May 1997 (see para. 5.3.4. above) and of its very critical findings, no mention was made of the report on the audit visit to the Leonardo/Agenor TAO (see para. 5.4.1.), which had already disclosed internally many serious allegations of mismanagement and fraudulent practices and, finally, no mention was made of the internal draft audit report by DG XX, nor of the subsequent consultation between DG XX, DG XXII and UCLAF (see paras. 5.5.1.-13. above) which gave a global picture of disastrous management of the Leonardo/Agenor TAO, and which was available on 20 July 1998.

5.6.9. Even if the President of the Commission, had no idea of what was going on in the Leonardo/Agenor TAO when he signed the letter on 9 November 1998, it should have been imperative to write a rectifying letter to Mrs Waddington on 23 November 1998 when the seriousness of the situation was 'formally' disclosed to Mr Trojan and President Santer's Chef de cabinet, Mr Cloos (see para. 5.5.11. above).

5.6.10. With a view to securing more complete information about the 'internal audit report which raises questions about certain aspects of the management of the current Leonardo programme' referred to in President Santer's first reply to Mrs Waddington, she wrote another letter to the President pm 30 November 1998 'concerning allegations of fraud and failures in the administration of the Leonardo programme.' She closed her letter by saying:

'I would therefore be grateful if you could provide me, as the Parliament's rapporteur on the programme, with a copy of the internal audit report and also keep me fully informed of any action which may be taken vis à vis the technical assistance office.'

I look forward to receiving your reply.'

No formal reply to this letter was ever given, although the fact that Mrs Cresson appeared before the European Parliament's Committee on Social Affairs on 5 January 1999 to some extent obviated the need for such a reply.

5.7. Professor Reiffers' mission

5.7.1. Professor Reiffers' mission

- The White Paper on Education and Training, approved by the Commission in November 1995 on a proposal from DG XXII and Commissioner Cresson, sought to promote new approaches in the field of education (Towards the Learning Society) by boosting the LEONARDO and SOCRATES programmes. Professor Reiffers, from the University of Aix-Marseilles, made significant contributions to the drawing up of this document (cf. note from Mrs Cresson to the Committee of Independent Experts dated 17 February 1999).
- The White Paper proposed five objectives, the first of which concerned the promotion of 'the acquisition of new knowledge'. In July 1995, with a view to the attainment of these

objectives, on a proposal from Commissioner Cresson and in agreement with Commissioners Bangemann and Flynn, the Commission appointed a reflection group consisting of 25 members, chaired by Mr Reiffers (amount paid to Mr Reiffers: ECU 10 000, the other members of the Bureau also being remunerated).

Mr Reiffers' curriculum vitae, which the Committee has noted, shows that he is an eminent person with a well established reputation. After holding several university posts, in 1991/1992 he was appointed education and training adviser to the Prime Minister, Mrs Cresson.

- On 29 December 1995, Mr Reiffers secured a contract to provide assistance (ECU 30 000) for an individual mission connected with the implementation of the White Paper. That contract was awarded without any pre-selection procedure. The possibility cannot be excluded that it was awarded in implementation of Article 59(d) of the Financial Regulation which authorises private-treaty contracts under certain circumstances.
- By letter of 27 March 1996, in agreement with the Director-General of DG XXII, Mrs Cresson appointed the heads of project responsible for the attainment of the five objectives set out in the White Paper. Mr Reiffers was appointed head of project for Objective No 1, the other heads of project being heads of unit at the Commission. In her letter, Mrs Cresson said that these heads of project were working under the responsibility of the Director-General responsible for ensuring a balance between the estimated costs and resources. Finally, it was indicated that such cooperation should result in compliance with decision-making procedures and institutional rules vis-à-vis the public authorities of the Member States. Those appointments were also made without any pre-selection procedure.

The post of head of project was not remunerated.

- A call for tenders was issued on 31 May 1996 for the provision of consultancy services to assist in the implementation and monitoring of the experimental European project for the accreditation of knowledge. Consultancy contracts were also concluded for the attainment of Objectives No 3 and 4 in the White Paper.

In response to this call for tenders concerning Objective No 1, 66 requests for documentation were registered, and four bids were deemed to comply with the tender specifications. The bid submitted by Reiffers Conseil was selected because it was the economically most advantageous bid. When this proposal was submitted to the ACPC, that committee asked for further information so that the authorising officer might consider the possibility of the appointment of Mr Reiffers as an expert under other current procedures and might explain and attest to the fact that the person to whom it was proposed that the contract be awarded had had no influence on the drawing up of the notice of tender and the tender specifications (cf. the aforementioned meeting of the ACPC).

In his additional report, the Director-General of Directorate-General XX II noted that it was neither for the Commission as a body nor for the Commissioner responsible to make

such an appointment. He wrote that the nature of the consultancy services to be provided by the contractor did not seem to require appointment by the Commission as a body. It was a matter of meeting the requirements of the services which currently did not have available the expertise required to bring the project to a successful conclusion. Appointment by senior politicians in the Commission would divert the mission from its purpose, which was to assist the services and not to play a role involving advice or political direction.

Having said that, the Director-General approved Mr Reiffers' contract, taking the view that there was no conflict of interests in Mr Reiffers' being appointed coordinator for Objective No 1 since he had not been involved in the drawing up of the call for tenders or the tender specifications.

The Commissioner responsible gave no information to the ACPC in his letter dated 27 March 1996 that he had appointed Mr Reiffers head of project.

The amount of the contract was estimated at EUR 80 000 per year (one-year contract renewable twice) (meeting No 370 of the ACPC of 16 October 1996).

- Having been consulted by DG XXII, the Commission's Legal Service indicated on 3 December 1997 that there was a conflict of interest between the two posts held by Mr Reiffers. He subsequently resigned from his post of consultant.
- A letter sent to the Commissioner's Chef de cabinet by the Director-General of DG XXII on 24 September 1996 reflects a desire not to reveal certain facts to the bodies asked for their opinion on certain aspects of the programme. In that letter it is stated that some of the objectives set out in the White Paper continued to result in reservations if not outright opposition from certain Member States and that they must not be given any opportunity to increase the pressure on and cause difficulties for Mrs Cresson, particularly when the Council of Education Ministers met on 21 November.

This matter gives rise to the following assessment:

5.7.2. From the time when Mr Reiffers was appointed as initial project deviser and as architect, it was not irregular for him also to become the person responsible for implementing one of the objectives. Nothing prohibits in principle the person selected as project deviser from acting as project manager and, possibly, from assisting in its implementation. It is on a case-by-case basis, depending on the circumstances of each contract, that the authorising officer may select the appropriate solution.

5.7.3. In the light of the documents available to it, the Committee of Experts has not been able to establish whether Mr Reiffers had been awarded a consultancy contract for the attainment of Objective No 1 in respect of which he was also head of project or whether that call for tenders concerned his appointment as head of project.

It may well be that this involved a procedure used inappropriately with a view to actually remunerating a head of project which would explain why no reference was made before the

ACPC to the earlier appointment of Mr Reiffers on 27 March 1996 or of an aggregation of appointments and/or contracts resulting in a conflict of interests by making one and the same person of head of project and consultant.

5.7.4. The Committee would like to recall in this connection an opinion which it expressed on another occasion, namely that the fact of complying with legal and statutory provisions does not mean that such conduct was justified. Furthermore, with the tacit approval or not of the Commissioner responsible, Mr Reiffers put her in an embarrassing situation.

5.8. Conclusions

5.8.1. The Leonardo Da Vinci file raises significant questions with respect to the functioning of the services of the Commission, up to the highest levels of command, the Directors-general, as well as of the individual Commissioners and the Commission as a whole. The allegations raised against the Leonardo/Agenor TAO at an early stage of operation, and even before (see para. 5.2.8. above), were so serious and illustrative of a dysfunctional organisational climate and structure that they should have been seen by those who were in charge. They are a demonstration of the weaknesses of the information channels and control mechanisms within the Commission, up to the highest level. Individual Directors-general and Commissioners were indeed aware at the latest by July 1998 of the serious problems facing Leonardo/Agenor TAO, and critical reports were known to the Directors-general concerned long before that date but, pending lengthy discussions between the Commission services involved, no action was taken. The main failings are identified in the following paragraphs.

5.8.2. As may be seen from several of the files discussed in this report, the concept of having European public programmes implemented by private contractors needs to be carefully considered and managed. The European Parliament and the Council have imposed on the Commission more and more tasks, while at the same time applying rigorous budgetary restrictions. However, the multiplication of the operational funds in many of the Commission's areas of activity or the introduction of new multimillion ecu programmes, without providing the necessary staff and/or adapting the relevant regulations, will obviously cause problems.

5.8.3. The implementation of Community programmes by private contractors can only be accepted on the basis of a guarantee that the essence of the public function is not ~~not~~ and transferred into the hands of private contractors. Moreover, those private contractors must be subject to contractual provisions imposing strict obligations in the general interest, and the public authorities must effectively supervise this action. It is clear that such supervision has not been exercised with sufficient care in the present case vis-à-vis the Leonardo/Agenor TAO. It would seem that excessive confidence has been placed in the TAO, and thus excess reliance on outside consultants (see above para. 5.4.2.).

5.8.4. DG XXII, which is responsible for the programme, had already found indications of irregularities as early as 1994 when it conducted an internal audit of the implementation by Agenor of a predecessor programme (see above, para. 5.2.9.). It should have acted accordingly, if not in the selection of Agenor as TAO for Leonardo, then at least in the supervision of its activities, once selected.

5.8.5. As DG XXII's own audit reports show, many irregularities and fraudulent practices were detected in 1997. Given the findings and recommendations, it is not conceivable that the Director-General of DG XXII did not inform the Commissioner responsible, Mrs Cresson, or that the latter was not informed through other sources.

5.8.6. After unnecessarily lengthy discussion between DG XXII, DG XX and UCLAF, it was finally decided in February 1998 that DG XX and UCLAF would undertake further investigations, a fact which must have been communicated to the Commissioner responsible for those services, Mrs Gradin. In DG XX's internal draft audit report of 20 July 1998, allegations of numerous frauds and irregularities were confirmed. It revealed important deficiencies in the control of the Leonardo/Agenor TAO by DG XXII and came to the conclusion that it was not always clear who controlled whom, DG XXII or the TAO (para. 5.4.3.). It was not until the beginning of November 1998 that action was taken on the final audit report, that it was officially submitted to DG XXII and thereafter to the other Commissioners (paras 5.5.7. et seq.). On 10 December 1998, the final audit report was sent to Parliament (para 5.5.13.). It would seem to the Committee that, during these lengthy proceedings which took place from February until December 1998, DG XX, its Director-General and the Commissioner responsible should have acted more swiftly and taken control of the situation, given the seriousness of the allegations involved.

5.8.7. When Parliament was finally informed about this matter in December 1998, when the audit report was submitted to its Committee on Budgetary Control, it had already adopted its position on the successor programme, Leonardo II. Taking into account the importance of the decision to be taken and the role of Parliament in the decision-making process, it is unacceptable that the Commissioner responsible failed to inform the President and through him Parliament, of the allegations which surrounded the Leonardo/Agenor TAO.

6. THE SECURITY OFFICE

6. THE SECURITY OFFICE

6.1. Introduction

The Security Office

6.1.1. The Commission Security Service provides for the internal and external security of the Commission's premises as well as of the persons working within it and/or having official access to it. The Service also provides accompanying security services to Commissioners and, in special cases, other staff of the Commission when they are on official missions and/or on their way to and from Commission premises.

6.1.2. The Service acts under the direct responsibility of the President of the Commission and is headed by a Director who reports directly to the President's Chef de cabinet.

6.1.3. The Security Service, since it also deals with matters of public order at the Commission's places of work in Brussels, has been outsourced by the Commission to security companies in possession of a licence to operate in Belgium. In the case under examination, the contract for Security Services in the years 1992 to 1997 had a value of ECU 79 554 861 in commitment appropriations.

6.2. The sequence of events

The press discovers the Group 4 story

6.2.1. On 18 August 1997, the Belgian newspaper *De Morgen* published an article which contained severe criticism of the security contract (surveillance of Commission buildings, etc.) with the company IMS Group 4/Securitas in Belgium for the period 1 November 1992 to 1 November 1997. The newspaper made the following allegations:

- * that Group 4's tender application for the 1992 security contract had been manipulated after the deadline for the submission of tenders and prior to the formal tender-opening procedure in order to give the company an unfair advantage in the selection process;
- * that an annex with an incorrect price index and other provisions had subsequently been inserted, but not submitted to the ACPC, in order to compensate the company for the reduction in the bid price;
- * that Security Office personnel had arranged the recruitment of a number of 'ghost' employees, paid for under the contract and bypassing normal procedures.

6.2.2. The above-mentioned article in the press was the catalyst for the Commission to initiate inquiries in the matter.

The Commission's reaction to the press allegations

6.2.3. Two days after the press allegations appeared, on 20 August 1997, the Commission departments responsible for financial control (DG XX) and staff (DG IX), the Security Office and UCLAF concluded that UCLAF should undertake an investigation into the allegations. As a starting point, UCLAF took receipt of a copy of an audit report on the Security Office security contract by DG XX which had been finalised on 23 April 1993 and issued on 7 July 1993. The Security Office endorsed the audit report on 14 July 1993.

The DG XX audit of 1993

6.2.4. The above-mentioned audit report by DG XX on the Security Office of the Commission dated from 7 July 1993, i.e. nine months after the Security Services contract with IMS Group 4/Securitas was concluded. The findings in this audit report contained, *inter alia*, the following observations with regard to the allegations that would be made public four years later:

- * no formal internal system of budgetary control, and therefore no satisfactory level of internal control, existed in the Security Office;
- * the control systems were considered inadequate;
- * the combination of duties performed by the Assistant¹³ was likely to reduce further the level of internal control;
- * the Assistant, responsible for financial administration, was also responsible for the operational unit 'Brussels Protection', and the technical work of this section, such as evaluating and proposing actions.

Referring directly to the security contract, the audit report further stated:

1. *With regard to the implementation of the Commission Protection contract and subsequent modifications (as detailed in Section III.B.2), the financial conditions of the contract have undergone substantial changes, which were not approved by the ACPC.*
2. *If the offer terms of the contract are to be respected, the price charged by IMS should be the offer price in ecus and only adjusted for any official increases in the index taking place after October 1992.*
3. *In the circumstances where the amendments to the contract are considered to be accepted, then;*
 - *the offer terms and conditions have not been respected.*
 - *the prices quoted in the offer by IMS are misleading and the comparison with the prices of the other competitors used in the selection procedure of the tender offers were meaningless."*

¹³

In this chapter, the term 'Assistant', refers to the assistant to the Director of the Security Office, a post occupied by an official graded at 'head of unit' level.

6.2.5. The audit thus revealed a number of weaknesses in the area of financial management and control and also noted that the contract had undergone substantial changes which were not approved by the ACPC, this being a serious infringement of the Financial Regulation. In spite of the very precise indications of infringements of the rules, the report made only very general recommendations and did not draw any specific conclusions as to the handling of the security contract. The problems identified were not regarded at the time as evidence of fraud or criminal offences.

6.2.6. The follow-up to the audit - by DG XX, the Security Office or other services - remains an open question, and no documents were submitted to the Committee in this connection. According to the UCLAF report, the invoicing arrangements were changed in order to improve control within the Security Office.

Further Commission reaction

6.2.7. During the weeks following the allegations in the press in August 1997 a number of meetings took place between UCLAF, DG XX, the Security Office and the Legal Service at which the investigation strategy, the collection of documents and the legal framework of the investigation were discussed as well as the invoicing procedures of Group 4 and the Security Office. During these meetings, the Director of the Security Office denied all the allegations made in the press article and the existence of any irregularities in the Security Office.

UCLAF inquiries

6.2.8. In its note No 4961 dated 28 August 1997, UCLAF informed the Secretary-General about the initial inquiries into Group 4/Securitas and suggested that a thorough investigation should be conducted by UCLAF in collaboration with DG XX. This suggestion was confirmed the following day by the Secretary-General, and he asked that such investigation should be conducted 'without further delay'.

6.2.9. On 19 December 1997, UCLAF submitted the provisional investigation report to the office of Mrs Gradin, to the Secretary-General and to DG XX.

6.2.10. The report states that the investigations indicated the existence of irregularities in respect of the rules governing recruitment and the Financial Regulation relating to the hiring of a considerable number of staff through the Security Office, or through 'intermediaries'. This implied an unspecified number of 'ghost personnel'. Since there was no establishment plan for the Security Office, and since it was difficult to assess the number of staff actually working at any given time, the Security Office used the security contract to cover its staff shortages; about 65 persons were at the disposal of the Security Office for periods ranging from one month to one year, about 20 persons were employed on the basis of 'various recommendations', and a limited number worked at the 'disposal' of the Assistant in the Security Office. In general, Group 4 recruited personnel and determined remuneration on the basis of telephone calls with the Assistant.

6.2.11. As to the allegations concerning the manipulation of the contract, the fact that the company in question had hitherto refused access to documentation and information had prevented UCLAF from drawing any conclusions on these points as yet.

6.2.12. Following a number of meetings and exchanges of information between Group 4/Securitas, UCLAF and DG XX, the final report No 1859, dated 12 March 1998, on UCLAF's investigation was submitted, and it concluded, inter alia, the following :

- that there was strong circumstantial evidence that manipulation effectively occurred in favour of Group 4 and that such manipulation had taken place before the opening of the bids;
- that the annex to the contract adding major changes to the financial terms and conditions in favour of Group 4 had not been submitted to the ACPC and to the Financial Controller before being signed, a serious violation of internal rules;

6.2.13. Concerning 'ghost personnel', it was concluded that

- the Security Office had used the security contract to solve internal staffing problems, under circumstances which would have to be investigated further;
- other services in the Commission (DG XII, ECHO) employed staff through the Security Office for purposes other than security; two persons with administrative tasks were working in the European Parliament under the Commission's security contract;
- 31 persons were placed at the disposal of the Security Office or its 'intermediaries' (DG XII, ECHO, EP) for periods of up to one year for tasks other than security but were still paid by Group 4 under the contract;
- a large number of persons were recruited on the recommendation of various persons in authority, and some of them had close relations with the Assistant to the Director of the Security Office.

Consequences of the UCLAF report and DG XX action

6.2.14. On 13 March 1998, Commissioner Gradin sent a note to Commissioner Liikanen informing him that the UCLAF report on Group 4/Securitas had been finalised and that its conclusion pointed to both disciplinary and judicial proceedings. She added that in her opinion the behaviour of the Director of the Security Office appeared to be highly questionable, in particular since the post carried particular responsibilities and required absolute integrity. She therefore asked that, in the light of UCLAF's conclusions, disciplinary proceedings should be initiated against the Director of the Security Office and that the Commission should suspend him from his duties pending the final outcome of the inquiry. She finally noted that, because a number of other staff had been operationally involved in the alleged fraud, firm and rapid action would be required.

6.2.15. In a note dated 17 March 1998 from Commissioner Anita Gradin's Chef de cabinet, reference was made to the established procedures regarding UCLAF's investigation, and it was indicated that the preliminary investigation of the Commission's contracts had been completed. He further noted that the conclusions of the report should be brought to the immediate attention of Mr Liikanen, the Commissioner responsible for staff matters, Mr Trojan Secretary-General, and President Santer's Chef de cabinet.

Judicial and disciplinary proceedings are initiated

6.2.16. Following the submission of the UCLAF report, on 21 April 1998 the Secretary-General of the Commission instructed the Director-General of DG XIV to conduct an administrative inquiry, the report on which was submitted on 14 July 1998.

6.2.17. By letter of 23 April 1998, the Secretary-General submitted the UCLAF report to the Public Prosecutor in Brussels and requested a police investigation pursuant to Article 209a of the Treaty on European Union.

Provision of information to the European Parliament

6.2.18. In a letter dated 12 May 1998, from the Chair of Parliament's Committee on Budgetary Control, Mrs Diemut R. Theato, to the Director of UCLAF, the Commission was asked, amongst other matters, whether it intended to initiate judicial proceedings against officials involved in the Group 4 case and what measures it intended to take if the Belgian judicial authorities did not pursue the matter. She further asked that the reports on the Group 4 contract drawn up by UCLAF and DG XX (Financial Control), finalised on 12 March 1998, be made available.

6.2.19. In his reply to Mrs Theato, the Director of UCLAF confirmed that the whole file on Group 4/Securitas had been forwarded to the Public Prosecutor in Brussels by the Secretary-General of the Commission on 23 April 1998. She was further informed that the Secretary-General of the Commission had appointed a Director-General to open an administrative inquiry regarding the role of Commission officials in relation to the contract in question. He regretted, however, that he was unable to forward the above-mentioned file to Parliament, since it contained documents handed over to the judicial authorities in Brussels and concerned ongoing disciplinary procedures which were confidential.

IMS/Group 4's own inquiry

6.2.20. On 18 September 1998 IMS/Group 4 Securitas submitted its own inquiry report prepared by a consultancy called Farleigh Projects International Ltd. This company is part-owned by Group 4 Securitas, and the investigation was carried out by two former Scotland Yard police officers. The investigation focused on the allegations made in the press on 18 August 1997.

6.2.21. Even though the report concedes that the contractual details were 'finalised' between Group 4 and the Security Office on 5 October 1992, this was one month after the ACPC had recommended that the contract be awarded to Group 4. Even though it notes *that the tender by Group 4 IMS (as revised) was not the lowest bid. Evidently the Security Office had decided that Group 4 IMS should be awarded the contract on the basis of considerations other than price*, general conclusion of FPIS Ltd. was *that the allegations made in 'De Morgen' in August 1997, together with their imputation of corrupt business practices on the part of a former managing director of Group 4 IMS, are unfounded.*

6.2.22. This conclusion was partially contradicted during a meeting between the Director of Group 4 and representatives of UCLAF prior to the publication of the report on 2 September

1998. In the course of this discussion, the Director of Group 4 said that the inquiry by Farleigh International would reveal that manipulation of the Group 4 proposal had probably taken place between 1 and 2 September 1992 (i.e. just before the tender-opening procedure).

Further action

6.2.23. On 11 September 1998 representatives of UCLAF officially informed the heads of Group 4/Securitas of the conclusions of the UCLAF inquiry and of the fact that they had obtained clear evidence that the proposal submitted by Group 4/Securitas had been manipulated. The Secretary-General, Mr Trojan, and Commissioner Gradin were informed by way of a note from UCLAF.

6.2.24. On 6 November 1998, seven months after the UCLAF report on Group 4/Securitas had been submitted to the Public Prosecutor in Brussels, the latter asked the Commission to waive the immunity of eight officials, including the Director of the Security Office.

Disciplinary action

6.2.25. By decision of 29 July 1998, the Commission initiated disciplinary proceedings against the Director of the Security Office in connection with the security contract concluded in October 1992 with Group 4. In the context of the disciplinary proceedings, the Director-General of the Commission's Translation Service was appointed to hear the Director, as stipulated in Article 87 of the Staff Regulations of Officials.

6.2.26. On 6 January 1999, the Director-General presented her report on the hearings conducted with the Director of the Security Office, together with those of three other officials from the same service against whom disciplinary proceedings had been initiated. The above-mentioned report of 6 January 1999 concluded that the professional behaviour of the Director revealed failings which should be sanctioned by disciplinary action. No further decision has yet been announced.

6.3. Observations on the environment within the Security Office

(The information below is essentially based on internal Commission documents)

6.3.1. The Director of the Commission's Security Office took up his post in 1986, replacing his predecessor who had retired. He was nominated at the behest of President Delors's Chef de cabinet.

Doubts over the suitability and competence of staff

6.3.2. On a recommendation from the Director of Security in Belgium, the Director of the Security Office recruited into the Commission Security Office an ex-colonel from the Belgian police. This recruitment was undertaken, according to an internal note from UCLAF dated 5 December 1997, in an effort to strengthen and to improve relations between the Commission's and the Belgian Security Services.

6.3.3. These circumstances were made public when, in the course of a parliamentary inquiry, a Member of the European Parliament, Mrs Dury, expressed her surprise that a member of an

extreme right-wing political organisation should find employment within the Commission's Security Services.

6.3.4. Furthermore, the effectiveness of the above-mentioned ex-colonel was called into question when, in 1991 (the year of the Gulf War), five days after the implementation of what is known as 'phase II' (enhanced protection of the Commission's buildings and staff), no particular measures had been taken to that effect. The person concerned was subsequently transferred to another post in the Commission.

6.3.5. In 1991, the ex-colonel was replaced by Mr Y. This measure was seemingly generally welcomed, to the extent that the Director of the Security Office appointed him as his assistant with the agreement of the President's Private Office (internal UCLAF note dated 5 December 1997). In this capacity, Mr Y was head of the 'Brussels protection' unit and of the financial unit of the Security Office, which entailed the following responsibilities:

- * preparation of the budget, ACPC files and financial operations;
- * internal control of the financial systems of the Security Office;
- * liaison with DGs XIX and XX in connection with the approval of expenditure commitment proposals and payment orders and the relevant accounting procedures;
- * preparation and administration of the contracts.

6.3.6. When he visited the Seville World Exhibition in 1992, the President of the Commission himself noted the presence of 10 Commission security officials, even though security on the spot was provided by Spanish Security Services. Moreover, their behaviour (feet on the table, heavy drinking, etc.) was considered intolerable.

6.3.7. When the Director of the Security Office was informed about these incidents he 'covered' for his staff.

6.3.8. On 8 October 1992 Mr N, then a member of the President's Private Office, was visited by a member of the Staff Committee who reported dubious incidents at the Security Office, such as the disappearance of office equipment and furniture.

6.3.9. When these events were reported, Mr DM of DG XX was asked to undertake an internal audit of the Security Office.

Attitude of the President's Private Office

6.3.10. Mr N in the President's Private Office was completely unaware of the contract for Security Services concluded between Group 4/Securitas and the Commission. He had no knowledge of either the call for tenders or the signing of the contract.

6.3.11. The only information he received was a note from Mr Y dated September 1992 stating that IMS Group 4/Securitas had been chosen.

6.3.12. On 15 October 1992 Mr N was succeeded by Mr M in the President's Private Office.

6.3.13. Mr M apparently had a very poor opinion of both the Security Office (amateur police) and its Director. He never had confidence in Mr Y, even though he had no indications of any violation of the rules on recruitment. As to the internal audit by DG XX, he said that no special attention had been paid to it by the President's Private Office and that it only confirmed that the Security Office was organised in a 'shambolic' way. As a general rule, he himself, as a member of the President's Private Office, did not pay special attention to what was going on in the Security Office.

6.3.14. There was a peculiar complicity within the security system and between the Security Office and other circles in the Commission that created a kind of 'regulation-free-zone', where existing laws and regulations were regarded as cumbersome barriers to various forms of arbitrary action rather than as limitations to be respected. The security system appears to have been undermined by a sub-culture which was characterised by personal relationships, a system of 'give-and-take' and a withdrawal from the overall system of control and surveillance. The question must be asked as to how such a sub-culture could develop, exist and prevail in a section of the European civil service without being detected from within, brought to light only when a newspaper published the allegations.

6.3.15. Confidential Commission notes disclosed particular features of this sub-culture such as:

- * the power to offer 'small favours' to colleagues in the Commission, such as cancelling police fines for parking offences or drink-driving. He allegedly performed these favours for directors-general and members of Commissioners' private offices.
- * the services of drivers and gardeners;
- * the Security Office was a private club for former police officers from Brussels or the vicinity, for whom special recruitment 'competitions' were arranged.
- * surveillance of UCLAF staff by guards who informed him who was visiting UCLAF's offices during its inquiry into the Security Office.

6.4. Allegations regarding the tender procedure for the new Security Services contract (1997)

6.4.1. Overlapping with the above-mentioned proceedings connected with the revelations in the press concerning the contract awarded to IMS Group 4/ Securitas, another tender procedure for the provision of Security Services as from 1 November 1997 was opened on 6 June 1997. Two companies submitted bids, the Belgian company 'Securis', which already in 1992 had taken part in the procedure, and the German company, 'SIBA', which planned to open a subsidiary in Belgium.

The bidding process and the evaluation of tenders

6.4.2. At a meeting with the German bidder on 19 June 1997, Commission officials gave assurances that the fact that SIBA had not yet established a formal presence in Belgium (requiring licensing by the Belgian authorities) would not be taken into account as a selection criterion, but that such a presence (and licence) would be required for the contract to become effective.

6.4.3. On 18 July 1997, the Commission's ACPC considered only one of the bids submitted for the Security Services contract, that from 'Securis'. The SIBA bid, even though supposedly ECU 1.5 million less expensive per year than the 'Securis' offer, was not submitted to the ACPC, since it was said to be a 'conditional' offer (i.e. the company would only apply for a licence in Belgium 'on condition' that it was awarded the contract).

6.4.4. SIBA contested the notion of a 'conditional' offer and pointed out that the criterion that a licence had to be submitted together with the bid had not been included in the original call for tenders. However, the call for tenders did stipulate that a specific licence should be obtained from the Belgian authorities. 'Conditional' offers, i.e. bids which include a declaration that certain requirements of a tender will be fulfilled 'on condition' that the contract is awarded, are normally not accepted by the Commission, to protect it against non-compliance with such declarations once the contract has been signed.

6.4.5. On the same day, SIBA sent a message to the Commission that it would seek to acquire a licence for Belgium well before the start of the EC contract on 1 November 1997 and irrespective of the outcome of the call for tenders. On 22 July 1997, SIBA sent a letter to the Director-General of DG XV¹⁴ asking him to inquire urgently into this procurement procedure. One of the arguments put forward was that the facts had been wrongly presented.

6.4.6. The contract was finally signed with 'Securis' by the Director of the Security Office by the end of July 1997. Neither the Secretary-General nor the President's Chef de cabinet were informed. By letter of 2 October 1997, the Commission Security Office informed SIBA that its bid had been rejected.

Reactions from outside the Commission

6.4.7. The proceedings surrounding this call for tenders give rise to another set of questions, with particular regard to the comparison of prices and compliance with conditions laid down in the call for tenders. It must be noted that the German company claimed that its bid was ECU 1.5 million less than the one from the Belgian company 'Securis' and that no answer was given as to why, at the beginning of the procedure, the condition of having a licence for Belgium had not constituted a problem, whereas it later emerged as the decisive factor in SIBA's exclusion.

6.4.8. In a letter dated 28 October 1998, the then President of the European Court of Auditors, Mr Friedmann, informed SIBA that he had asked UCLAF to investigate the matter. The same question was raised in a letter from the Chair of the European Parliament's Committee on Budgetary Control, Mrs Theato, dated 12 May 1998, to the Director of UCLAF.

6.4.9. In his letter of reply to Mrs Theato dated 17 July 1998, the Director of UCLAF noted that neither the relevant Commission departments nor UCLAF had received any indications as to possible irregularities regarding the award of a Security Services contract to the Belgian company 'Securis'.

¹⁴

DG XV - Internal Market and Financial Services

6.4.10. In a letter dated 5 March 1999, i.e. almost two years after the events in question, from DG XV to the President's Chef de cabinet, the reasons why DG XV did not react to the complaints from SIBA are explained: 'It would appear that we did not reply to the complainant as the contract had already been approved by the ACPC on 16 July 1997 and we were informed that the complainant had already been in contact with the service responsible, in this case the Security Office. This omission may also result from the fact that this case is not subject to the Directives on Procurement.'

6.5. Conclusions

Rapidity of reaction

6.5.1. Following the first allegations of violations of rules and of criminal laws in the Commission's Security Office in the Belgian press in August 1997, the Commission acted both comparatively rapidly and according to established rules with regard to the verification of the allegations, the opening of an internal administrative inquiry, the opening of procedures leading to possible disciplinary measures and the forwarding of relevant material to the Public Prosecutor in Brussels.

6.5.2. The first action was taken within 48 hours, the administrative inquiry was launched five weeks after the UCLAF report became available, and judicial proceedings were initiated two days later. After another three months, in July 1998, disciplinary proceedings were initiated.

6.5.3. Given the existing rules, the procedures to be followed and the investigations to be conducted, the time-frame described above can be considered acceptable for a public institution like the Commission.

Follow-up of audit results

6.5.4. The internal audit of the Security Office carried out in 1993 revealed a number of weaknesses in the area of financial management and control, and it stated that substantial changes not approved by the ACPC had been made to the contract. However, the audit was confined to the formal procedure and did not go to the heart of the matter. It did not reveal anything about the 'ghost' personnel system. To the Committee's knowledge there was no procedure to follow up the findings of the audit. According to the UCLAF report, however, measures were taken to improve control arrangements. Although it was precise and correct in its findings, the audit procedure as a whole seemed to be very lax in character, which illustrates the weak institutional position of internal audits in the Commission.

6.5.5. It is the Committee's view that disciplinary proceedings should have been launched as early as 1993 on the basis of the internal audit report.

The second contract

6.5.6. Regarding the second Security Services contract awarded to the Belgian company 'Securis', no allegations have been confirmed. The German firm SIBA has lodged complaints against the

Commission, but the Committee was not in a position to consider this case ~~in~~the available. At this stage, it should merely be noted that the Commission, after its experience with the previous contract for IMS/Group 4, should conduct any tender procedure for Security Service contracts with the utmost caution.

Responsibilities

6.5.7. In the Security Office case, the Commissioner responsible, Mr Santer, acted swiftly after the allegations of fraud appeared in the press. This said, audit results as early as 1993, if followed up, could have made it possible to identify the nature of the problems in the Security Office much sooner. The prime responsibility of Mr Santer in this case is that neither he, as the official nominally responsible for the Security Office, nor his private office took any meaningful interest in its functioning. As a result no supervision was exercised and a 'state within a state' was allowed to develop, with the consequences described in this report.

7. NUCLEAR SAFETY

7. NUCLEAR SAFETY

INTRODUCTION

7.1. Regulatory and budgetary framework

7.1.1. The Commission, since the Council resolution of 22 July 1975 defining the role it ought to play in nuclear safety issues, has had the task of acting as a catalyst for Member State initiatives, seeking a common position within international organisations and promoting harmonisation of safety requirements and criteria in order to submit optimum draft Community provisions in this area to the Council.

7.1.2. Following the accident in Unit 4 at Chernobyl in 1986, the international community began to size up the risks to the planet posed by the stock of Soviet-designed nuclear reactors, which focused on meeting nuclear production requirements, while neglecting safety and environment questions. From 1990 to 1997, accordingly, the European Community allocated ECU 848.5 m for nuclear safety programmes, including ECU 786.1 m under the PHARE and TACIS programmes. Those appropriations are intended to support and speed up domestic safety upgrading programmes, but not to shoulder recipient countries' own responsibilities. Community aid represents roughly 1% of the spending which would have to be effected to upgrade 65 stations concerned.

7.1.3. Most Community aid for nuclear safety has been provided under the PHARE and TACIS programmes and represents, respectively, 2% and 20% of the commitments for those programmes. The commitments break down as follows:

- operational safety and on-site assistance: 38%
- generic studies, design safety: 21%
- fuel, waste and decommissioning: 14%
- assistance for safety authorities: 10%
- subsidy to the Russian and Ukrainian institutes (ISTC and USTC): 10%
- planning, management and evaluation: 5%
- miscellaneous: 2%.

7.1.4. The TACIS and PHARE rules constitute the legal framework for these measures. TACIS is covered by the Council Decisions of 15 July 1991, 19 July 1993 and 4 July 1996 on Community support to assist economic transition, firstly in the Soviet Union, subsequently (to take account of political developments) in Russia and the other New Independent States (NIS), as well as in Mongolia.

7.1.5. With regard to PHARE, the Council Decision of 18 December 1989 on economic aid to Hungary and Poland, successively amended to extend aid to the countries of Central and Eastern Europe, constitutes the applicable rules.

7.1.6. Each year, lastly, the Commission adopts a nuclear safety programme relating to TACIS and PHARE.

7.1.7. The Financial Regulation and the detailed rules for the implementation thereof plus the Commission's internal budget implementation rules constitute the other provisions. It should be pointed out that the conclusion and award of Community-financed contracts benefiting recipients of external aid are governed by Articles 113 to 119 of the Financial Regulation, notwithstanding Title IV of the Financial Regulation, with only service contracts awarded in the interests of the Commission being governed by Articles 56 to 64a of Title IV, Section I, i.e. by the ordinary provisions.

Article 118 stipulates inter alia that:

- (1) contracts for services and cooperation shall be awarded after restricted invitations to tender;
- (2) some contracts may be awarded by private treaty, particularly in the following cases:
 - short or small projects
 - projects being carried out by non-profit-making institutions or associations
 - extension to projects already under way
 - where the invitation to tender has been unsuccessful.

7.1.8. Under the PHARE and TACIS programmes, contracts may be concluded by private treaty up to a value of ECU 200 000 (originally ECU 300 000).

7.2. Organisational structure

7.2.1. The Commission is the authorising authority for nuclear safety expenditure for the Central and Eastern European countries (CEEC) and the NIS. It was decided to authorise the Commissioner responsible for external relations. From 1990 to 1997, the Commissioners responsible were:

- from 1989 to January 1993: Mr Andriessen
- from January 1993 to January 1995: Sir Leon Brittan
- from January 1995 to January 2000: Mr van den Broek.

7.2.2. The managing authority is DG I A, which has a total complement in Brussels of 560 officials and other staff (204 category A officials and 29 detached national experts), specifically Unit 1AC5, which is responsible for nuclear safety and the coordination of energy measures. Several other directorates-general deal with nuclear-related questions, such as the RELEX joint service created in 1998 and made up, in part, of officials from DG I A.

7.2.3. A PHARE/TACIS committee, comprising representatives of the Member States and chaired by the Commission representative, is consulted on proposals submitted to it by the Commission. Should the committee be unable to take a decision or should it deliver a negative opinion, the Commission may submit its proposal to the Council.

THE FACTS

7.3. The report of the Court of Auditors

7.3.1. In its Special Report No 25/98 (OJ EC C35/1 of 9 February 1999) concerning operations undertaken by the European Union in the field of nuclear safety in central and eastern Europe (CEEC) and in the new independent States (1990 to 1997 period), the Court of Auditors criticises the approach taken by the Commission, its management of the operations, and the mobilisation of appropriations and points to the poor results.

7.3.2. The following, in particular, are called into question:

- (1) the excessive transfer of Commission responsibilities to third parties (cf. 6.3.)
- (2) the fact that there were no tendering procedures for contracts with on-site assistants and few contracts with supply agencies (cf. 6.9.), plus uncertainty in the share-out of work between contractors and subcontractors (cf. 6.8.)
- (3) inadequate implementation monitoring and project follow-up (cf. 4.12. to 4.18).

The Commission has responded to these criticisms (document attached to the Court of Auditors' report) and has forwarded additional information to the Committee of Independent Experts.

7.4. Delegations of responsibilities

7.4.1. The DG I A unit in charge of the programmes did not have the necessary manpower at its disposal, in terms of numbers and expertise, to draw up the nuclear safety programmes, follow them up and monitor implementation. For this reason, the Commission delegated some of its responsibilities to the Twinning Programme Engineering Group (TPEG) and to supply agencies to such an extent that the Court of Auditors termed these delegations excessive and likely to clearly jeopardise the institution's independence.

TPEG

7.4.2. TPEG was established on 24 July 1992 in response to the Commission's desire to rely on a single structure constituted by European Community electricity generators responsible for pressurised-water nuclear reactors. TPEG is a consortium made up of EDF (France), TRACTEBEL (Belgium), MAGNOX (United Kingdom), DTN (Spain), VGB (representing the German electricity generators RWE, KKE and GKN GmbH), ENEL (Italy), GKN (Netherlands) and IVO/TVO (Finland).

7.4.3. TPEG played an important role in drawing up the programmes. In its Special Report, the Court of Auditors considered that the Commission had delegated too many of its planning responsibilities, thus undermining its authority and independence (cf. point 2.7.).

7.4.4. In its reply to the Court of Auditors and to the Committee of Experts, DG I A pointed out that TPEG had not handled the planning on its own and that it itself had set the strategy. Furthermore, its services and Member States' experts had reviewed the TPEG proposals before the programmes had been adopted by the Commission, following consultation of the

PHARE/TACIS management committee. For DG I A, in fact, making use of TPEG genuinely enhanced the independence of the expert assistance provided, since all the Member States' nuclear power stations operators, and not just one or some of them, were represented within it. Some areas were excluded from its field of activity, however, such as nuclear safeguards, nuclear waste reprocessing, security authorities and, to some extent, on-site assistance.

7.4.5. TPEG was involved in drafting virtually all the terms of reference for the design safety projects in the 1991 and subsequent TACIS programmes and the PHARE programmes as of 1992-1993. Because of its involvement, project uniformity was ensured.

7.4.6. As of 1996, TACIS rules prohibited firms which had taken part in the process of defining projects from implementing them. For that reason, starting with the 1996 programmes for TACIS and the 1998 programmes for PHARE, the terms of reference for the design safety projects, were established by the Joint Research Centre. The involvement of the JRC is longer-established, since it also carried out all the projects concerning nuclear safeguards since 1994 and took part in the 1991 TACIS evaluations, but the rules by which it used to be governed did not authorise it to take a more active role with regard to nuclear safety.

7.4.7. On account of its independence, the JRC affords considerable advantages; but it is not in a position to cover all expertise requirements needed for implementation of the programmes. For that reason, the Commission must continue to rely, in part, on the nuclear power industry of the European Union's Member States.

7.4.8. TPEG was dissolved in January 1999.

The supply agencies

7.4.9. The Commission often resorts to supply agencies for the implementation of complex and large-scale projects. In the opinion of the Court of Auditors, interposing these agencies between the Commission and the European nuclear power station operators responsible for on-site assistance complicated programme implementation, contributed to delays and allowed excessive advances to be paid, thus artificially improving the rate of mobilisation of appropriations. In fact, the use of supply agencies was inevitable. Commission services were not in a position to take charge of project management (issuing of invitations to tender, follow-up to evaluations, contract negotiations, payments, etc.), since they did not have the necessary expertise. The alternative to making use of agencies would have been to entrust these tasks to the electricity generators responsible for on-site assistance; in 1993-1994, however, DG XX (Financial Control) judged this solution to be unacceptable, since it would have given too many powers to firms intimately involved in the programme (TPEG). DG I A therefore decided to bring in agencies as a counterweight to assist it in administering supply contracts, while requiring them to comply with precise supply rules.

7.4.10. For service contracts, the Financial Regulation stipulates the procedure involving restricted invitations to tender. However, contracts with supply agencies have often been concluded by private treaty in order to maintain service continuity. In general, such contracts represented amounts below the threshold authorised for the award of private-treaty contracts under the PHARE and TACIS programmes.

7.4.11. For their first contract, agencies had their services remunerated on the basis of flat-rate fees. Subsequently, services were financial on the basis of a fixed percentage of the value of the equipment concerned. Payments were made in instalments, as supply projects proceeded. Agencies' fees are also dependent on the degree of complexity of the specific services requested.

7.4.12. The responsibilities of the agencies were set out in their respective contracts, in particular with regard to the preparation of invitation to tender documentation. The agencies are responsible for ensuring that specifications are neutral and have the task, under Commission oversight, of opening tenders and submit to it the final evaluation report and the contractual documents for the purchase of equipment. They also work with the operators on-site, who define the technical specifications and make arrangements for evaluating tenders.

7.4.13. In 1996, the procedures applied to purchases made via agencies set out in more detail and standardised the description of the role of the players concerned (Commission, on-site consultant, agency and recipients).

7.4.14. The agencies discharge the following responsibilities:

- verifying the neutrality of technical specifications
- organising invitations to tender and registering tenders received
- verifying technical and then financial evaluation reports
- drawing up contracts with the supplier appointed by the Commission
- payment of invoices in line with the contract.

7.4.15. A major criticism levelled by the Court of Auditors concerned the fact that the amounts paid to agencies inflated budget implementation with regard to the volume of contracts and did not reflect actual contracts. Of the ECU 167 m paid out, the contracts concluded by agencies in 1997 represented ECU 44.06 m. Furthermore, most of the contracts concerned were apparently concluded at the end of the year, which would have continued to improve the rate of utilisation of appropriations at year end. Lastly, large amounts of bank interest accrued which had been neither entered in the accounts nor audited by Commission services.

7.4.16. The Commissioner responsible replied to the Committee of Experts that, within the Commission, the full details of delegated operations are not recorded in real time. They are examined by DG I A services and, subsequently, by JRC services in regular reports. Interest is recorded in those reports; it is then paid back to the Commission upon expiry of contracts with supply agencies.

7.5. The contracts

Contracts by private treaty

7.5.1. From the outset of the programmes, the Commission has concluded service contracts involving large sums without competitive tendering, with ECU 192 m out of a total of ECU 610 m, or 31% of the value of the contracts, pursuant to Article 118(2) of the Financial Regulation, having been committed by private treaty.

7.5.2. DG 1 A has justified the use made of this procedure by citing the exceptional nature of the area of action. Private treaty was used for on-site assistance in particular, since Commission services wished to call in the Union's power station operators for contracts concerning a large number of nuclear sites.

7.5.3. During his hearing before the Committee of Experts, the Commissioner pointed out that, as a rule, private-treaty contracts related only to services (safety authority assistance projects and contracts with the Union's electricity generators for on-site assistance) and that, in agreement with the Financial Controller, cost controls had been carried out by applying the hourly rates laid down on the basis of the outcome of the twenty or so invitations to tender issued for the design safety projects under the 1991 programme, which were evaluated in February/March 1993.

7.5.4. In spite of requests from nuclear power station operators, the rates have remained unchanged from the outset. Since it has not been demonstrated that the costs were too high, the Commission services consider that they have protected the Community purse.

7.5.5. As the volume of activities was the variable factor, it was described in detail in the terms of reference, which were discussed on a case-by-case basis. Estimates were analysed and discussed before contracts were concluded, but the resources available for legal checking of contracts are not specific to the nuclear programmes, since they are identical for all TACIS and PHARE contracts.

The derogatory framework accepted by DG XX - Financial Control

7.5.6. On 12 July 1994 the Financial Controller accepted a derogatory framework proposed by DG I A which was based on a list of the types of nuclear safety contracts as grounds for authorising derogations without the prior agreement of Financial Control. The contracts concerned were:

- Engineering contracts

7.5.7. These contracts make it possible to improve the nuclear facility stock in the East by introducing European know-how. Although most such contracts can be concluded following a restricted invitation to tender, private treaty proved necessary in about 20% of cases for following up operations under previous projects or for technical reasons leading the institution to approach a particular contractor because of his expertise in a specific technology.

- Equipment contracts

7.5.8. Derogations are required for this category of contract, which is the second largest, either because of the limited number of suppliers, which makes it necessary to make use of restricted rather than open invitations to tender, or for reasons concerning technical characteristics or on grounds of urgency, necessitating private treaty. Equipment contracts were concluded by private treaty mainly for spare parts in respect of which it was not possible to change supplier.

- Contracts with safety authorities

7.5.9. For such service contracts, competitive tendering would have been inappropriate: the Union's safety and regulatory authorities are non-profit-making or public-law organisations, each representing a particular technical system. If an invitation to tender were to lead to the selection of a single European partner, the system transferred to the East would constitute the first instalment of a contract which would subsequently be captive. To avoid such problems, the five annual contracts representing some ECU 8 to 10 m were concluded by private treaty with a consortium of national authorities which had decided to pool their knowledge, allowing them to provide coherent and balanced assistance.

- On-site assistance contracts

7.5.10. In view of the limited number of nuclear operators in the European Union and the little interest shown by Western operators for this type of activity, the contracts initially concluded were by private treaty and were extended on the same basis. In 1994 there were nine contracts, with an annual volume of ECU 15 to 18 m.

- Consultancy or research contracts

7.5.11. This type of activity involves about ECU 6 m, with 100 contracts per year to provide the Commission with technical assistance services so as to help it to prepare the nuclear safety programme, make the best operational choices and follow up and evaluate projects. These contracts were concluded by private treaty with TPEG - a multinational consortium of nuclear operators established at the Commission's initiative.

- Joint ventures

7.5.12. By their nature these contracts, based on the notion of partnership, can only be concluded by private treaty.

7.5.13. Derogations from customary competitive tendering procedures are justified:

- where there is an oligopolistic situation: in this instance, a restricted invitation to tender may be preferred to a general invitation to tender, provided that all the companies which might be able to perform the contract are included on the list of companies consulted,
- on grounds of urgency,
- for technical reasons, where a firm can perform the contract.

Contracts based on invitations to tender

7.5.14. As regards two thirds of the remainder of the contracts, the Court of Auditors considered that some invitations to tender tended to create the impression that there was satisfactory competition whereas, in fact, the Commission was in a quasi-monopolistic or oligopolistic position which encouraged private treaty. In those cases, alternative procedures should have been

used to verify the prices emerging from invitations to tender (itemising and analysis of prices or framework contracts) (cf. 5.12.).

7.5.15. In his replies to the Committee of Independent Experts, the Commissioner responsible acknowledged that that had been the situation, but that it had been a special case where the beneficiary wished to make improvements to a radioactive-waste incineration plant. Contracts - concluded outside the TACIS framework - had existed between the power station and a company since the start of the 1990s. The Commission's choice was between requesting a derogation to award a contract by private treaty with the firm or seeking to widen the potential choice through competitive tendering. So as not to seek derogations at a time when it was possible to organise an invitation to tender, it opted for the second solution. A single tender was received, and the contract was concluded with the original bidder. The Commissioner stresses that this was a works contract, whereas the TACIS programme makes provision only for service or supply contracts. The alternative for DG I A would have been to abandon the project.

Subcontracting involving Eastern organisations

7.5.16. In its report, the Court of Auditors pointed out that, in many instances, design safety research contracts go to Russian design institutes via subcontractors and that the specifications in the subcontracts are often identical to those in the main contract, thus making it extremely difficult to evaluate the respective workloads of European Union contractors and their Russian subcontractors (cf. 5.19.). The way in which work is divided between contractors and subcontractors is vital, however, since Western experts' fees are far higher than fees for Eastern European experts with equivalent expertise. The Court of Auditors concluded that the subcontracting arrangements were likely to enable European Union contractors to make sizeable profits which cannot be verified (cf. 2.12.)

7.5.17. Appearing before the Committee of Experts, the Commissioner responsible replied that the approach chosen, in particular for study contracts under the 1991 TACIS programme, consisted in requiring bidders, for subcontracts, to accept a flat rate laid down by the Commission on the basis of a technical opinion by European Union experts. In all instances bar one, that rate had been accepted by the Russian subcontractors.

7.5.18. Subcontracts were negotiated by the main contractors selected under invitations to tender on the basis of a budget imposed by the Commission. During negotiations, almost all the firms adopted the same approach, i.e. they included general terms in the subcontract which were similar to those in the main contract plus payment arrangements based on the staged submission of reports or information by the Russian side. The Commission subsequently instructed TPEG to define in greater detail, when the terms of reference were being drawn up, the respective tasks of the main contractor and the subcontractor. In 1993, the terms and conditions documents systematically laid down a precise breakdown: the maximum amount allocated for the Russian subcontractors' tasks was consistently defined in terms of workload or subcontracted budgets when the terms and conditions were accepted by the beneficiary.

7.6. Project implementation and follow-up

Project implementation

7.6.1. With regard to project implementation, according to the Court of Auditors, 14 of the 52 projects relating to on-site assistance for the 1992 to 1994 programmes had been carried out, and 11 cancelled, at the end of the financial year 1997.

7.6.2. The Commissioner responsible explained to the Committee of Experts that the need to commit global amounts each year, after consulting the Management Committee, had often led to the adoption of budgets by site before project content had been fleshed out. Consequently, the feasibility of equipment projects was all the more uncertain because, in general, equipment was requested which was unsuitable and difficult to introduce in the local context. For recipients, the heavy plant aspect often takes precedence over organisational considerations and consideration of raising awareness of safety questions, which, in their view, the European side took exaggerated account of.

7.6.3. The major disparity between budgets for on-site assistance and budgets for actual projects relating to such assistance (cf. 5.11.) is accounted for by the fact that, with regard to general assistance for operations, spending is always immediate (pooling of operational experience through training seminars, training periods in Europe and virtually permanent presence of Western experts on sites). Equipment is supplied after protracted discussions between electricity generators at the sites and the Russian and Ukrainian partners. Payments are made even later, following submission of invoices, and come up against difficulties relating to differences in technical specifications and administrative formalities such as customs.

7.6.4. The Court of Auditors also pointed to the delay in turning budgetary decisions into contracts (63% of allocations) and payments (37%). The figures are even lower in the case of Chernobyl (20% and 8% respectively) (cf. 5.2.2.).

7.6.5. The Commissioner responsible replied to the Committee of Experts that, in order to improve the situation, DG I A had introduced the following changes:

- better preparation of terms of reference before action programmes were adopted;
- cancellation of projects whose launch is unduly delayed;
- increase in the average volume of projects and a reduction in the number of projects.

7.6.6. At the start of the 1990s, under pressure from the European Parliament and the Council, priority had been given to the immediate organisation of operations on the basis of applications from recipient countries. Those applications were piecemeal and involved small-scale action. Only on the basis of this experience was the Commission able, some years later, to respond to needs by cancelling certain projects.

7.6.7. With regard to Chernobyl, the project could not commence until there had been sufficient progress in the negotiations with Ukraine on shutting down the power station.

Project follow-up

7.6.8. Project follow-up was carried out by means of missions by Commission officials and contracted experts. For each project, furthermore, checks were arranged throughout the process by Commission services acting to:

- prepare the project statement submitted to the experts group and subsequently to the Management Committee;
- verify the terms of conditions;
- prepare the list of companies to be consulted and the technical documentation for the invitation to tender;
- check the evaluation of tenders and negotiations for the contract;
- verify the contractor's progress reports, involving JRC expertise or other Commission services on request;
- negotiate and prepare possible addenda to the contract;
- authorise payments or approve invoices.

7.6.9. Supply agency projects are also monitored by the task manager on the spot in the beneficiary countries.

7.6.10. At central level, the programme follow-up tools are as follows:

- the Désirée database - a financial management and analytical accounting tool permitting follow-up by programme (country and theme), operation, project and contract;
- a master control schedule permitting forward financial management with the same degree of detail as the Désirée database;
- a central database for project follow-up, providing summary qualitative information by country and programme.

7.6.11. The Désirée records faithfully reflect all actual TACIS contracts signed with contractors. Only supply contracts awarded by supply agencies are not recorded in Désirée, but each invitation to tender and each contract prepared and awarded by supply agencies is verified by the Commission as part of the payment procedure.

7.6.12. The 1992 TACIS programme earmarked a budget of ECU 1 million for project management and coordination by a Joint Management Unit (JMU) based in Moscow. The purpose of that unit, made up of staff from the Ministry for Atomic Energy (MINATOM), the safety authority (GAN), nuclear power station operators (REA), other Russian organisations involved and Western experts, was to make sure that TACIS operations were properly implemented and facilitate relations with Western institutions. The need for such a structure was restated in the 1993 TACIS programme. In October 1997, the representatives of the Russian Ministry for Atomic Energy expressed their disappointment at the lack of progress made in setting up the JMU. Contracts were concluded in November 1997 in order to finance it until 30 September 1999; those contracts were charged to the 1994 and 1996 programmes. The Court of

Auditors considered that the lack of a JMU in Moscow had prevented any continuous monitoring of programmes in Russia until the end of 1997.

7.6.13. In its reply to the Court, the Commission pointed out that the JMU had been established to help the Russian authorities to coordinate their participation in the nuclear safety programme, particularly at the programme definition stage, and to act as a clearing house for information. Appearing before the Committee of Experts, the Commissioner responsible explained that the setting up of the JMU had come up against difficulties because MINATOM was unwilling to make premises and staff available, except in return for financial compensation under TACIS, despite the fact that the JMU is described as a joint unit, and because the Russian coordinator - the official partner for the entire TACIS programme - was hostile to the creation of a specific nuclear structure on the fringes of the coordination unit.

CONCLUSIONS

7.7. Conclusions

Preliminary remark

7.7.1. Two main questions are raised:

- the question of human resources in terms of both allocation and management,
- the question of competitive tendering and the award of contracts by private treaty in an oligopolistic or virtually monopolistic sector.

Staff problems

7.7.2. The Commission does not have sufficient human resources at its disposal, in terms of numbers and expertise, to manage programmes of such complexity. Staff assigned to the nuclear safety programmes are on fixed-term contracts, with a maximum of three years for detached national experts and one to three years for auxiliaries. Because of this permanent turnover, staff must be trained when they take up their duties; and when they leave the institution, their knowledge disappears with them. This loss of knowledge is not offset - again because of a lack of staff - by sufficient arrangements to keep and archive files.

7.7.3. Furthermore, the services responsible for nuclear safety programme implementation are not grouped together, which necessitates major coordination efforts with no guarantee of success. For that reason, an inter-departmental group was set up in 1998, bringing together officials from DG I A, DG II (Economic and Financial Affairs), DG XI (Environment, Nuclear Safety and Civil Protection), DG XII (Science, Research and Development), DG XVII (Energy) and the Joint Research Centre.

7.7.4. The Commission considers that programme implementation ought to be improved because of the setting up of the inter-departmental group and the RELEX joint service, the use of the resources available at the JRC and the setting up of the JMU in Moscow. However, the

complexity of the structures and the fact that they are fragmented lead the Committee of Experts to put a question mark against the effectiveness of the solutions adopted by the Commission.

Award of contracts

7.7.5. In spite of the replies given by the Commission, the problem of the award of contracts to European Union industrial firms remains, given an oligopolistic and indeed even monopolistic market because of the need to apportion contracts among the Member States, with extremely high risks of concerted practices. Regardless of whether contracts are concluded by invitation to tender or private treaty, there are question marks against the Commission's ability to carry out appropriate cost analyses by specialised technical services and to make provision, in contracts, for the legal means for cost control on an a posteriori basis.

7.7.6. The Commission's reply concerning the setting of hourly rates on the basis of the twenty or so invitations to tender issued in 1991 did not answer this question sufficiently pertinently.

7.8. Commissioners' responsibilities

7.8.1. From the examination undertaken by the Committee of Independent Experts, exclusively on the basis of the Court of Auditors' recent report, of the Commission's replies and from the discussion with the Commissioner responsible, it emerges that there are no grounds for contending, as matters stand at present, that the implementation of nuclear safety programmes in Eastern countries gave rise to fraud or serious irregularities.

8.ALLEGATIONS OF FAVOURITISM

8. ALLEGATIONS OF FAVOURITISM

The Committee of Experts has considered the situation of all the Commissioners against whom allegations have been made, particularly in the press, in order to ascertain, in accordance with its terms of reference, whether these allegations were well-founded and whether favouritism had occurred or whether the Commissioners had been libelled.

8.1. Mrs Cresson

Numerous allegations have been made against Mrs Cresson, both by the press and by Members of Parliament. The Committee has concentrated on the issue involving Mr Berthelot.

FACTS

Links between Mrs Cresson and Mr Berthelot

8.1.1. Mrs Cresson wished to make use of Mr Berthelot's skills at the Commission. She has admitted several times that, at the time of the facts considered here, Mr Berthelot was a long-standing friend of hers.

8.1.2. For example, when she appeared before the European Parliament's Committee on Budgetary Control on 28 October 1998, Mrs Cresson confirmed that she had known Mr Berthelot for many years. She had wished to draw on his advice in her capacity as a Member of the European Commission in connection with the preparation of the 5th Framework Programme of Research and Development. When she had explained to her staff that she wished to have an independent adviser to help her prepare the programme, that such an adviser should have a scientific background combined with practical experience and, above all, should enjoy her confidence, and that his role would be to state his views on the reforms undertaken, they had informed her that the appropriate status would be that of 'visiting scientist'. Accordingly, it had seemed to her perfectly legitimate, as a political decision-maker, to use external advisers, including some whom she knew well.

The contract with DG XII: 1 September 1995 - 28 February 1997

8.1.3. Before being appointed by the Commission, Mr Berthelot signed two contracts in 1995 alone: one with ANVAR (see below), the other with Parkington Enterprises Limited, which has registered offices in Ireland and would appear to be linked to the Perry Lux group.

8.1.4. The legal provisions applicable to the contract with DG XII - administrative directives applicable to visiting scientists in the context of research programmes run by DG XII/the Joint Research Centre - stipulate that the following may be accepted as visiting scientists:

- (a) university professors or teaching staff from scientific higher education establishments
- (b) scientific staff of high standing from other research organisations.

8.1.5. It is not apparent from Mr Berthelot's curriculum vitae, which was forwarded to DG XII, that he falls into either of the above categories. In the CV which Mr Berthelot submitted at the time of his appointment, he stated under the heading 'current posts' that he was a special adviser to ANVAR (National Research Exploitation Agency), which is based in Paris. In fact, it transpires that he had simply had a contract with that agency from 6 March to 30 June 1995 as an expert, the purpose of which was to define more clearly the Commission's approach to ANVAR, its image and user requirements.

More specifically, Articles 1 and 2 of this contract define its purpose as being a study to ascertain how ANVAR can become a natural partner of the Commission of the European Union and, with due regard for the subsidiarity principle, how it can participate effectively in the implementation of Community programmes.

8.1.6. The letter of appointment which DG XII sent to Mr Berthelot on 26 July 1995 quotes as its subject 'your unsolicited application'. The appointment was initially for 6 months, and the letter was signed by the Deputy Director-General of DG XII. No specific duties are set out in the letter, contrary to the requirements of the directives; Article 1(3) of the above-mentioned legal instrument stipulates that the subject on which the visitor is to work shall be determined in advance by the appropriate Director.

8.1.7. The Commission's Financial Control (DG XX) approved the appointment offer on 20 July 1995.

8.1.8. The contract was extended for the first time until 31 August 1996, retaining the same financial and administrative provisions. A second extension, subject to the same conditions, continued the contract until 28 February 1997. These two letters were likewise signed by the above-mentioned Deputy Director-General.

8.1.9. Article 7(7) of the above-mentioned legal instrument stipulates that the visitor shall submit to the Director-General, within one month of the end of the visit, a report on the work for the purpose of which the visit was made. The documentation submitted to the Committee of Experts on this subject contains numerous notes, which are very diverse and in some cases technical and in others very vague and political, all addressed to Mrs Cresson, some written during the contract period and some after it had expired. But this documentation does not include any formal report in the sense of the above article concerning the work for the purpose of which the visit was made. Moreover, these notes, of which there are ten, do not bear any entry stamp or registration number. These notes are as follows, starting with the most recent:

1. Scientific programme of IAVI (Rockefeller AIDS Initiative) (18.3.97);
2. Participation by Member States in life sciences programmes under the 3rd and 4th Framework Programmes of Research and Technological Development (17.12.96);
3. Comparison of the scientific performances of the EU, USA and Japan in life sciences and technologies (15.10.96);
4. Why should life sciences and technologies be assigned an important position in the 5th Framework Programme of R&TD? (16.7.96);
5. Research, innovation and economic development - Poitou-Charentes, a case study (8.7.96);
6. Signs of worrying trends in European investment in pharmaceutical R&D (11.6.96);

7. Beyond the myth of venture capital (19.3.96);
8. Structural differences in the development of biotechnology in the USA and Europe (30.1.96);
9. AIDS in Thailand (18.12.95);
10. Attenuated live vaccines (30.10.95).

All these notes, taken together and representing a year and a half's work, total barely 24 pages. Annex 1 to the note of 8 July 1996 contains a list of 13 'journeys to Châtellerault' (a town in Poitou-Charentes), stating the dates and places of the visits (between January and the end of May 1996). Annex 2 to the same note lists Community financing of research in Poitou-Charentes in 1996.

8.1.10. Altogether, during the period of this contract, Mr Berthelot apparently undertook 17 missions, including 13 to Châtellerault, one to Issoudun (in Poitou-Charentes) and the last one in Marseilles, it seems that two of them ultimately did not take place. In the box marked 'purpose' on the application forms for the mission orders, Mr Berthelot always entered exactly the same phrase: 'Performance of specific duties at the direct request of the Commissioner'. Altogether, Mr Berthelot spent at least 41 days on mission to Châtellerault, paid for out of the Community budget.

8.1.11. It was not until 2 October 1997 that, following an internal audit in DG XII, the Deputy Financial Controller took an interest in the candidacy, work performed and final report of the visitor in question and sent a letter to DG XII.

The latter did not reply, despite several reminders, until 27 April 1998: it then merely stated that the final report requested was not in the file and claimed that the person concerned had serious health problems; the Deputy Financial Controller recalled in a note dated 30 June 1998 that he would also like to receive the other information which he had requested concerning this case, particularly details of the places and nature of the missions undertaken by the person concerned, including those in respect of which payments were made on the following dates; DG XII replied on 30 July 1998.

The contract with the Joint Research Centre: 1 March 1997 - 31 December 1997

8.1.12. This contract was concluded for one year but terminated prematurely on grounds of illness. Unlike in the case of the previous contract, the provisions applicable to this second contract - Administrative Directives applicable to visiting scientists to the Joint Research Centre - include a third paragraph which reads:

(c) any other person of high scientific standing whose knowledge can be used to good advantage by the JRC in the scientific work the performance of which has been entrusted to it.

8.1.13. The Commission Administration confirmed in its letter of 24 March 1998, in reply to comments by the Financial Controller, that 'Mr Berthelot has been awarded visiting scientist status in accordance with Article 1(1)(c)...'.

8.1.14. Another difference from the previous contract was that, in the draft contract proposed by the Director-General to the Head of the Human Resources Unit of the JRC, it was proposed that in view of the level of competence and experience of Mr Berthelot, his remuneration should be

increased by 25%. This corresponds to Article 2(3) of the above Administrative Directives, which lays down that on a proposal from the Director of the receiving institute, the Director-General of the JRC may, exceptionally, permit the remuneration to be increased by 25% for reasons based on the competence and experience of the visitor.

8.1.15. Again unlike in the case of the previous contract, ~~thi~~ the Administration specified a short description of the planned work: participating, in close contact with Mrs E. Cresson's private office and the Commissioner, in the preparation of the 5th Framework Programme and of specific programmes in the field of the life sciences. Liaising with certain national research circles, particularly in France... Work within the programme: exchanges of views with the Commissioner. Attending meetings at the Commission and elsewhere...; this Administration document also specifies that 'Mr Berthelot has been selected, in accordance with the approval procedure presently in force, for a visiting period...'; these terms, and the above-mentioned increase in remuneration, were confirmed in the letter of appointment sent to the person concerned on 29 January 1997 and approved by Financial Control (DG XX).

8.1.16. On 11 December 1997, Mr Berthelot forwarded to the acting Director-General 'a brief summary of my fields of work' and informed him of the state of his health (heart attack in April 1997) with a view to terminating the contract. The summary consists of three very vague and miscellaneous paragraphs which mention AIDS, the Second-Chance School and electric vehicles. On the same date, the recipient of this letter thanked Mr Berthelot for all the information provided and for all his efforts to promote European research.

The intervention of the Deputy Financial Controller

8.1.17. On 14 September 1998, the Deputy Financial Controller informed the Financial Controller of the steps he had taken vis-à-vis DG XII and the JRC, taking the view that it was difficult not to conclude that Mr Berthelot's visiting scientist duties in 1996 and 1997 had been - primarily at least - a way of remunerating Mrs Cresson's adviser in connection with Mrs Cresson's work as mayor of Châtellerault. Subject to proof to the contrary, this was an abuse of public funds, as appropriations from the Community budget may not be used to finance the remuneration or other expenses of an adviser to a mayor in a Member State of the Community.

8.1.18. By letter of 9 November 1998, the above-mentioned Deputy Financial Controller submitted to the Financial Controller the draft of a letter to the Directors-General of DG XII and the JRC seeking their comments on a number of points and asking them 'to consider whether a recovery order should be prepared for all or part of the payments shown in Annex III and Annex IV (amounts paid on the DG XII contracts and amounts paid on the JRC contracts)'. The Director-General for Financial Control does not seem to have sent this draft letter to the appropriate Directors-General.

8.1.19. It was only on 7 December 1998 that the Director-General of the JRC asked Mr Berthelot to send as soon as possible a copy of any information, opinion, report or background paper he had submitted either to Mrs Cresson or to her private office. A virtually identical letter containing the same request was sent to Mrs Cresson's Chef de cabinet.

8.1.20. This belated request for information was the outcome only of an exchange of correspondence which began with a letter of 1 December 1997 from the Deputy Financial Controller asking the above-mentioned Director-General for information about the case. This first letter was supplemented by another, dated 20 February 1998, in which the Deputy Financial Controller in particular asked for a statement of 'the particular qualifications and experience of the person concerned which fulfil the conditions of a scientific visitor... and whether his letter of 11.12.97 should be considered as the report...'. He added, 'Could I also ask you to explain why a 12 months contract was proposed by the JRC after the person concerned had already spent 18 months as a scientific visitor at DG XII since ... the Directive limits the duration of the visit to a maximum of 24 months'.

8.1.21. On 10 January 1999, Mr Berthelot's wife replied to the Director-General of the JRC, informing him that because of the lengthy period which her husband would have to spend in hospital, she could not comply with his requests. Her husband would be able to reply himself once his health improved.

EVALUATION

Summary and discussion of grounds for complaint

8.1.22. The objective grounds for complaint about Mr Berthelot's recruitment by the Commission are as follows:

Appointment

8.1.23. In the case of his first contract with DG XII, his appointment was manifestly irregular, being contrary to the rules in force, in spite of the Commissioner's needs (apparently at the interface between science and administration). Moreover, it may be deduced *contrario* that there was no basis for the contract with DG XII, since the contract at the JRC was based on subparagraph (c) of the internal directives and this subparagraph did not exist in the case of the first contract. In addition, his four-month contract with ANVAR could not under any circumstances justify his appointment by DG XII, as the statement of facts makes clear. Furthermore, the nature of his duties is not stated in the first contract.

8.1.24. Nor can the contract with ANVAR alter the unjustified nature of his employment by the JRC, as it does not qualify him as 'any other person of high scientific standing'. An examination of Mr Berthelot's professional career (between 1958 and 1992) does not reveal any trace of scientific work. Moreover, a comparison with the CVs of other 'visiting scientists' leads to the conclusion that their cases are hardly comparable to that of Mr Berthelot. In sum, the two contracts are irregular because they lack a legal basis, so that Mr Berthelot's applications ought to have been declared inadmissible.

The duration of the appointments

8.1.25. The duration of the appointments at the Commission was excessive, since his contract with the JRC took the total length of his contracts with the Commission to 30 months (18 months at DG XII and 12 at the JRC), whereas Article 1(4) or (5) of the provisions applicable (Directives for DG XII and the JRC) restrict total contract periods to a maximum of 24 months.

Missions

8.1.26. Virtually all his missions were to Châtelleraut. On this essential point in the case, we consider it highly unlikely that these missions could be justified in the interests of the Commission. That strongly suggests (despite the above-mentioned note of 8 July 1996) that the missions must have been mainly undertaken in the personal interest of Mrs Cresson when mayor of that town. Such a situation gives rise to a confusion of interests between Mrs Cresson's dual status as a Commissioner and as Mayor.

Failure to produce work

8.1.27. Finally, there is the failure to produce even a minimum quantity of work of interest to the Commission and, particularly, a final report. A comparison with the reports normally submitted by visiting scientists makes this very clear.

8.1.28. This failure to produce a minimum quantity of work raises the question of a possible recovery of the payments made on grounds of non-performance by Mr Berthelot at the required level. At all events, the payments made to him during his illness and in respect of absences seem to have been completely unjustified, as he was supposed to be covered by his social security scheme and his pension. The penultimate paragraph of the JRC's aforementioned letter of appointment of 29 January 1997 stated, 'concerning social cover, a document certifying your membership to a sickness insurance scheme is required throughout your visit. Insurance against the risk of accidents which may occur is also required during the same period', which corresponds to Article 6 of the administrative directives applicable.

Altogether, some BEF 5.5 million was paid directly to Mr Berthelot by the Commission (contracts with DG XII and the JRC), the recovery of which should be considered.

Inadequate compliance with administrative procedure

8.1.29. When appearing before the Committee on Budgetary Control on 28 October 1998, Mrs Cresson said that Mr Berthelot's appointment as a visiting scientist was approved by the Financial Controller. If they were qualified and the procedures were complied with, there is no reason why these recommendations should not be acted upon, on condition that the generally applicable rules were strictly respected, as regards both administrative procedure and qualifications.

8.1.30. It emerges from the file that the administrative procedure (letter of recruitment, offer of appointment, approval by the Financial Controller, etc.) proceeded unhindered within the Commission and that the decisions - for example concerning his appointment - giving rise to the case were taken, at least formally, directly by those responsible in DG XII and the JRC without any intervention by the Commissioner, which is apparent from the documents in the file. The violation of certain essential aspects of the internal administrative directives was raised only at the end of 1997 by Financial Control when performing its retrospective audits.

8.1.31. Under the circumstances, when the various administrative authorities fell into line, it is necessary to ascertain the share of responsibility attributable to the Commission Administration (DG XII, JRC and DG XX - Financial Control) and the share attributable to Mrs Cresson. Is it reasonable to suppose that the administrative procedure could have been completed if the person concerned had not been a member of Mrs Cresson's personal entourage?

8.1.32. In view of the numerous shortcomings of the administrative file which has been examined, it seems unlikely that the answer could be yes.

An aspect difficult to justify: the missions to Châtelleraut

8.1.33. The missions to Châtelleraut (virtually all the missions undertaken) are hard to justify purely from the Community's point of view, without considering the significance of that town and of its links with the Commissioner, who was its mayor until the end of 1997.

8.1.34. This is all the more pertinent in view of the fact that, as described in the section headed 'Facts', the purpose of the mission orders was simply 'Performance of specific duties at the request of the Commissioner'. It is hard to understand why Châtelleraut and the surrounding region should be almost the sole centre of interest of a visiting scientist whose remit in theory covered very wide fields, as the above-mentioned notes sent to the Commissioner, at least, attest.

The above-mentioned note of 8 July 1996 (without entry stamp or any registration number) , which in theory constitutes the culmination of the work which he did during his missions to Châtelleraut, comprises only seven pages (not counting the annexes), and they are extremely vague and schematic and contain no hard information. Its added value is not particularly obvious, therefore. In sum, it can hardly be regarded as the outcome of more than 40 days spent on mission in the region.

These missions may, therefore, be regarded as evidence of the fictitious nature of the 'scientific advice' which Mr Berthelot was in principle deemed to be giving, and demonstrate his failure to submit any work of interest to the Community in this capacity.

A case of favouritism

8.1.35. In conclusion, what we have here is a clear-cut case of favouritism. A person whose qualifications did not correspond to the various posts to which he was recruited was nonetheless employed. The work performed was manifestly deficient in terms of quantity, quality and relevance. The Community did not get value for money.

8.1.36. Moreover, the person recruited worked mainly as a personal staff member of the Commissioner, and there are very strong grounds for believing that he was often used in a manner which had little to do with the Commissioner's work on behalf of Europe.

8.1.37. The competent administrative authorities signed the contracts, and Financial Control approved them beforehand. Despite the lack of a legal basis, it seems that there were no hesitations on their part.

8.1.38. Compliance with formal requirements does not exonerate the beneficiaries of their responsibility, whether it be the employer (Mrs Cresson) or the employee (Mr Berthelot). Quite the opposite: as he was a friend of hers, Mrs Cresson, as a Commissioner, ought to have exercised heightened vigilance throughout this affair.

8.2. Mr Liikanen

Two contracts signed by Mrs Liikanen

8.2.1. Two contracts concluded between Mrs Liikanen and the Commission (DG V) have been criticised in the press and have led Members of the European Parliament to table a number of written questions.

8.2.2. Mrs Liikanen, whose career began in 1973, has been an official of STAKES, the Finnish National Research and Development Centre for health and social affairs, since 1994. She has worked as a head of project, first in Finland and then, as from 1 September 1996, at STAKES' European Union liaison office in Brussels.

8.2.3. Mrs Liikanen signed or jointly signed two contracts with the Commission:

1st contract:

8.2.4. In 1994, the Commission granted a subsidy of ECU 6000 under the equal opportunities programme, on the basis of the estimated cost of the project, to the Finnish association Women 96 Network, chaired by Mrs Liikanen. This subsidy was for a programme to promote the equal opportunities dimension in the public debate about Europe in Finland. The project lasted 13 months, from September 1995 to October 1996; in view of the actual cost of the project, the Commission, despite having agreed to contribute ECU 6000, in the event paid ECU 4970 towards it.

8.2.5. Mrs Liikanen did not receive any remuneration in connection with this project.

2nd contract:

8.2.6. The second contract was concluded on the basis of a call for tenders issued in 1994, at a time when the current Commission had not yet taken office. The project was selected by DG V in 1995, but for reasons relating to the availability of budget funds, the contract was not signed until 1996, covering the period 1 February 1996 to 1 November 1997. Mrs Liikanen, in her capacity as head of project, signed it jointly with the Director-General of STAKES. The subject of the contract was the situation of elderly women (SEW), and a subsidy of ECU 243 100 was awarded for it. The project was developed in partnership with Greece, Ireland and Portugal and coordinated by Mrs Liikanen as a representative of the Brussels Liaison Office.

8.2.7. In view of the total cost of the project, the Commission actually paid ECU 207 779 towards it. The project was terminated and its results published.

8.2.8. Commissioner Liikanen also notified the payments connected with his wife's attendance at a meeting of experts, namely one payment of BEF 2600, representing a train journey to attend a two-day meeting organised by DG XII, and a payment of BEF 6000 made by DG IX in 1998 for her attendance at a conference organised by DG X in January 1998.

8.2.9. STAKES concluded several contracts with the Commission which did not involve Mrs Liikanen.

8.2.10. The Committee of Experts concluded that Mrs Liikanen's professional life was genuinely independent of that of her husband and that the allegations concerning both Mr and Mrs Liikanen were unfounded.

8.3. Mr Marín

The appointment of Mr Marín's wife at the Commission

8.3.1. The criticisms levelled at Mr Marín concern his wife's appointment at a high grade in category B.

8.3.2. Mrs Ortiz Bru, Mr Marín's wife, is a Commission official in grade B2.

8.3.3. When the Community was enlarged to include Spain and Portugal, the Council adopted, on 12 December 1985, Regulation No 3517/85 laying down special and temporary measures applicable to the recruitment of Spanish and Portuguese officials. Article 1(2) provided for appointments to intermediate and higher grade posts in each category to be decided after a competition on the basis of qualifications. The Commission made use of this procedure to fill intermediate-grade posts in a number of categories and held competition COM/B/612 to establish a reserve list for recruitment of assistants of Spanish nationality leading to career bracket B3/B2.

8.3.4. The Committee of Experts has studied the notice of competition, the selection board's report and the reserve list. Its findings were as follows:

- 377 applications were registered, 99 people were called for interview, and the Selection Board placed 48 successful candidates on the reserve list. 29 were placed on list 1 (general administration), divided into two groups according to merit, the first comprising seven candidates, the second 22. Mrs Ortiz Bru was in the second merit group. All the candidates in the first group were recruited. Mrs Ortiz Bru was appointed on 1 October 1988.

8.3.5. Having examined the qualifications of Mrs Ortiz Bru, the Committee of Experts found that they complied with the conditions required by the notice of competition. Consequently, it took the view that the recruitment of this official to grade B3 did not involve any irregularity.

8.4. Mr Pinheiro

Mrs Pinheiro

8.4.1. On 13 February 1993, the Permanent Representation of Portugal submitted to DG IX - Personnel and Administration - an application from Mrs Pinheiro, a professor at the University of Minho. In view of her qualifications and her scientific and technical research work, published in numerous scientific journals, Mrs Pinheiro was seconded to the Commission as a national expert from 5 May 1993 to 4 May 1994. Her secondment was twice extended for a year and terminated on 4 May 1996 in accordance with the internal rules applicable.

8.4.2. Her secondment did not entail any expense for the Commission. Mrs Pinheiro was paid by her Portuguese employer. The Community did not pay her any daily allowance, nor did it reimburse her travelling expenses although national experts on secondment are entitled to reimbursement provided that they demonstrate that they have incurred expenses which justify such reimbursement.

8.4.3. The Committee of Experts concluded that the allegations about Mrs Pinheiro's ~~stipos~~ at the Commission were unfounded.

Mr Pinheiro's brother-in-law

8.4.4. Mr Pinheiro spoke about the case of his brother-in-law, Mr Vieira Paisana, before the Committee of Experts.

8.4.5. Most of Mr Vieira Paisana's professional experience was as a member or head of the private office of various Portuguese Junior Ministers, then, between 1986 and 1996, as an adviser to the Permanent Representation of Portugal to the European Union. Since April 1996, Mr Vieira Paisana has been a member of the private office of Commissioner Pinheiro responsible for external relations with the African, Caribbean and Pacific States and with South Africa.

8.4.6. Before the Committee of Experts, the Commissioner said that Mr Vieira Paisana's remuneration at the Portuguese Representation was slightly higher than the one which he received at the Commission.

8.4.7. The Committee of Experts decided that, given Mr Vieira Paisana's professional experience as Chef de cabinet and then over a period of ten years at the Portuguese Representation, he possessed the requisite qualifications to hold one of the six posts allocated to the Commissioner's private office.

8.4.8. The Committee concluded that the recruitment of Mr Vieira Paisana did not involve any irregularity. However, it felt that it would have been more prudent on the part of Mr Pinheiro if he had not appointed his own brother-in-law.

8.5. Mr Santer

La Générale des Métaux Précieux and Off-Shore Ecologies Ltd

8.5.1. Allegations have been made about Mr Santer in the press, particularly in an article asserting that a preliminary inquiry had been instituted by the Luxembourg Public Prosecutor's Office concerning him. This inquiry concerned the regularity under Luxembourg law of the commercial operations of a company (la Générale des Métaux Précieux (GMP)) whose founders and shareholders were also said to have set up an off-shore company in Ireland, Off-Shore Ecologies Ltd. The latter allegedly wished to secure a favourable position with a view to the major projects to dismantle North Sea oil platforms, which would receive Community funding. The names of President Santer and his son are said to have appeared in a preparatory document relating to Off-Shore Ecologies Ltd identifying them as potential Honorary Chairman and legal adviser respectively.

8.5.2. Upon inquiry, the Public Prosecutor's Office at the Luxembourg District Court categorically denied these claims, which it described as pure fantasy. It also stated that no inquiry concerning Mr Santer or any member of his family was in progress and that there were no grounds for such a measure.

8.5.3. Mr Santer forwarded to the Committee a letter from the Public Prosecutor's Office at the Luxembourg District Court and the official records of the inquiry into GMP and Off-Shore Ecologies. A study of these documents shows that the claims reported in the press are without foundation.

8.5.4. Lastly, according to a journalist, the Luxembourg judicial authorities have been investigating the real estate interests of Mr Santer's wife, who, 'in one way or another', was said to have a holding in companies managing buildings used by the European Community. The Luxembourg Minister of Justice denied these claims in a communication dated 8 January 1999.

8.5.5. The Committee considers the allegations about Mr Santer to be unfounded.

8.6. Mrs Wulf-Mathies

The appointment of Mr Vogel

8.6.1. Mr Vogel was appointed by DG XVI as a legal expert to work in the private office of Mrs Wulf-Mathies, who readily acknowledged that she had long been acquainted with Mrs Vogel. He signed a one-year contract as an auxiliary staff member assigned to DG XVI; the contract was signed by the Director-General of DG IX - Personnel and Administration.

8.6.2. Mr Vogel is a jurist. He first served as a judge on a labour tribunal; since 1994, he has taught labour law, environmental law and food law with a view to its integration with environmental policy.

8.6.3. At the Commission, Mr Vogel dealt with legal issues relating to the Structural Funds, with particular regard to environmental policy and the imposition of penalties for offences.

8.6.4. Before the Committee of Independent Experts, Mrs Wulf-Mathies explained that Mr Vogel had been appointed by DG XVI as her legal adviser because she needed an independent member of staff in order to explore new avenues in relations with the Member States, with a view to strengthening the Commission's role by making greater use of penalties. The Committee accepted this explanation but considered that, if Mrs Wulf-Mathies wished to recruit Mr Vogel, she should have appointed him to one of the posts in her private office. Mr Vogel's recruitment by DG XVI for Mrs Wulf-Mathies' private office, though admissible on its merits, could be regarded as bordering on an inappropriate procedure.

9. CONCLUSIONS

9. CONCLUDING REMARKS

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

9.1.1. The primary task of the Committee of Independent Experts, as defined in its terms of reference, is to *seek to establish to what extent the Commission, as a body, or Commissioners individually, bear specific responsibility for the recent examples of fraud, mismanagement or nepotism raised in Parliamentary discussions* (see para. 1.1.4.).

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

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

9.2. Responsibility of the Commission and of individual Commissioners

General observations

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

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

9.2.3. The Committee did not encounter cases where a Commissioner was directly and personally involved in fraudulent activities. It found, however, instances where Commissioners or the Commission as a whole bear responsibility for instances of fraud, irregularities or mismanagement in their services or areas of special responsibility. Furthermore, the Committee

found no proof that a Commissioner had gained financially from any such fraud, irregularity or mismanagement.

The individual cases examined by the Committee

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

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

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

9.2.7. In the *LEONARDO case*, Commissioner CRESSON failed to act in response to known serious and continuing irregularities over several years, starting with the audit of the predecessor programme by DG XXII in 1994 and followed by further reports by DG XXII and DG XX. In the case of the DG XX audit of 1998, she shares responsibility with the Financial Controller for

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

9.2.8. In the *SECURITY OFFICE case*, the Commissioner responsible, Mr SANTER, acted swiftly after the allegations of fraud appeared in the press. This said, audit results as early as 1993, if followed up by the then President, might have enabled the nature of the problems in the Security Office to be identified much earlier. The prime responsibility of Mr SANTER in this case is that neither he, who is nominally responsible for the Security Office, nor his private office, took any meaningful interest in the way it operated. As a result, no supervision was exercised, and a 'state within a state' was allowed to develop, with the consequences set out in this report.

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

Allegations of favouritism examined by the Committee

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

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

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

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

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

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

9.3. Assessment in the light of standards of proper behaviour

9.3.1. The Commission, and Commissioners, must act in complete independence, in the general interest of the Community, and with integrity and discretion on the basis of certain rules of conduct. These, as the Committee pointed out at the outset of its report (para 1.5.4.), are part of a core of 'minimum standards in public life' accepted in the legal orders of the Community and the Member States. The Committee found instances where no irregularity, let alone fraud, could be discovered, in the sense that no law and/or regulation had been infringed, but where Commissioners allowed, or even encouraged, conduct which, although not illegal *se*, was not acceptable.

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

9.3.3. The principles of openness, transparency and accountability (see above, para. 1.5.4.), are at the heart of democracy and are the very instruments allowing it to function properly. Openness and transparency imply that the decision-making process, at all levels, is as accessible and accountable as possible to the general public. It means that the reasons for decisions taken, or not taken, are known and that those taking decisions assume responsibility for them and are ready to accept the personal consequences when such decisions are subsequently shown to have been wrong. For instance, calls for tender should be much more open and transparent: any bidder should be in a position to know why his bid was not chosen and why another one found favour.

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

9.3.5. In the same spirit, the Committee would stress that it is imperative for all those working in the Community Institutions to understand that no strategy of cover-up may ever be considered acceptable. No information may be withheld from other institutions, such as Parliament, or other officials - Commissioners especially - when they are called upon to play a role in the decision-

making process. This applies equally to information which has not yet been entirely subjected to what are often lengthy contradictory procedures (as in the case of audit reports). Such information must be shared at an early stage, of course under cover of confidentiality, with the officials, services, directorates or Commissioners who need to have full knowledge of the facts in the light of the decisions to be made or to be prepared.

9.4. Reforms to be considered

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

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

9.4.3. No one disputes that, in recent years, the Commission has had to deal with many new challenges, such as the preparations for successive enlargements, humanitarian crises and the problem of refugees, the crisis involving mad-cow disease, etc. In the light of its new management tasks, the Commission had a duty to set priorities, something which it failed to do, preferring to use Community funds (sometimes illegally) to ensure a match between the objectives to be achieved and the resources to be employed. The use of outside assistance (TAOs and others) demonstrates the fact that the Commission has failed to tailor its human resources to its needs (redeployment, filling of vacant posts).

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

A mismatch with serious consequences

9.4.5. The problems encountered in connection with each of these cases can be traced back to the mismatch between the objectives assigned to the Commission, in the context of the new policy

laid down by the Council and Parliament, on a proposal from the Commission, and the resources which the Commission has been able, or has chosen, to employ in the service of that new policy.

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

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

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

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

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

Control mechanisms

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

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

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

9.4.14. A priori control is embodied in the approval procedure, for which DG XX is responsible; this procedure, as currently employed within the Commission, is very ineffective. Most of the

irregularities highlighted by the Committee stemmed from decisions to which Financial Control gave its approval.

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

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

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

UCLAF

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

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

Administrative and disciplinary inquiries

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

they have often been started too late and taken too long, sometimes producing little in the way of results. They may sometimes even act as a deterrent to the opening of disciplinary proceedings.

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

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

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

Responsibility

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

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

Specific cases examined: Commissioners and Services Responsible		
CASE	COMMISSIONER	SERVICE
Tourism	Mr CARDOSO E CUNHA (until 1992) Mr VANNI D'ARCHIRAFI (until 1994) Mr PAPOUTSIS (from 1995)	DG XXIII Enterprise Policy, Distributive Trades, Tourism and Cooperatives
MED	Mr MATUTES (until 1992) Mr MARIN (from 1993)	DG IB External Relations: Southern Mediterranean, Middle East, Latin America, South and South-East Asia and North-South Cooperation
ECHO	Mr MARIN (until 1994) Mrs BONINO (from 1995)	ECHO European Community Humanitarian Office (Directorate)
LEONARDO	Mrs CRESSON	DG XXII Education, Training and Youth
Security Office	Mr SANTER (reports direct to President)	Security Office - Directorate
Nuclear Safety	Mr Van Den BROEK	DG IA External Relations: Europe and the New Independent States, Common Foreign and Security Policy and External Missions
Other relevant Commissioners and Services in the context of the cases examined		
All cases (except nuclear safety)	Mr Van MIERT (until 1994) Mr LIIKANEN (from 1995)	DG IX Personnel and Administration
All cases (except nuclear safety)	Mrs GRADIN	DG XX Financial Control UCLAF Task force set up to coordinate the fight against fraud (Directorate of the Secretariat- General)