

Tackling fraud and mismanagement in the European Union

Stephen Grey

Stephen Grey is Brussels Correspondent of the *Sunday Times*

The European Union's political leaders have great ambitions for the years ahead: a successful economic and monetary union, a coherent and effective foreign policy, and the accession of up to 12 new member-states. Yet public confidence in the EU, and particularly in its ability to manage a €90 billion annual budget, is at an extreme low. The EU's plans could easily founder if the people of Europe are left behind, grumbling about the waste and corruption of the Brussels bureaucracy.

On 15th March 1999 all twenty commissioners, led by Jacques Santer, were compelled to resign after the publication of a damning report revealing nepotism and mismanagement at the heart of the Commission. Its authors—a committee of independent experts comprising three auditors and two lawyers—declared that “it is difficult to find anyone with the slightest sense of responsibility”.¹

The dramatic events of that day followed months of turmoil and allegations in the press. There were reports that Edith Cresson, a commissioner and former French Prime Minister, had hired a dentist friend as an adviser. It was revealed that more than €1 billion of humanitarian aid had been spent by ECHO, the Commission's humanitarian aid office, without adequate accounting controls (the Commission's internal auditors subsequently referred to ECHO's “mythological accounting”). And a police investigation was launched into an alleged fraud within the Commission's own security department.

The Commission has long sought to mitigate its own responsibility for these problems by pointing out that only a small proportion of EU fraud is committed by staff within the Commission bureaucracy or by its contractors. Around 80 per cent of the EU budget is administered directly by the member-states. National, regional and local authorities must assume much of the blame for the fraud and waste on their patch. But this should not absolve the Commission of all responsibility. Together with national administrations it decides the shape of funding programmes and defines the rules that underpin them. Just as the Commission exists to uphold the rule of Community law across the EU, one of its central tasks must be to make sure that the budget is well spent. It should become a champion for financial probity, denouncing dishonesty and waste wherever it finds it. Moreover, this paper will demonstrate some of the worst examples of fraud have been committed by Commission officials, or by people working on Commission contracts.

¹ Committee of Independent Experts, *Allegations regarding Fraud, Mismanagement and Nepotism in the European Commission*, 15th March 1999, Paragraph 9.4.25.

The Prodi Commission has made a start. In March 2000, Neil Kinnock, vice-president of the Commission in charge of reform, presented a series of important proposals to modernise the Commission.² They include the creation of clear lines of responsibility between officials, the establishment of a new internal audit system and the reform of management structures to ensure that money is directed at policy priorities. These are important reforms and deserve full support. They will help change the bureaucratic culture that has allowed mismanagement to flourish. But this paper argues that the Commission should undertake further radical steps if it really wants to stamp out fraud and mismanagement altogether and thus help stem the decline of confidence in European institutions.

PART ONE: THE CASE FOR RADICAL REFORM

For all the furore over alleged financial impropriety and the subsequent resignation of the Commission in 1999, little attention has been paid to the institutional and legal obstacles to combating fraud. It is glib to attribute the problems of fraud to the long-lunch culture of the privileged bureaucrats of Brussels or more generally, to 'continental attitudes'. By this theory, Mr Kinnock need only launch a crackdown on lazy and incompetent officials for everything to be put right.

Past cases of fraud, however, suggest that more fundamental changes are required. Consider, for example, the methods of EU investigators in dealing with a specific allegation of fraud in the Commission's humanitarian aid office (ECHO), involving fictitious aid contracts worth €2.4 million. Very senior Commission officials, in co-operation with an outside company, were involved in setting up a system of fake accounting in order to cope with a staff shortage in Brussels. Cash originally earmarked for aid was instead used to pay for extra workers. One senior ECHO official was also then accused of diverting €200,000 of aid money into his wife's bank account. It was this case which precipitated the crisis that eventually brought down the Santer Commission.

As part of its investigations into the ECHO case, the EU's anti-fraud office (then known as UCLAF, re-named OLAF last year) raided the offices of a Luxembourg company in 1998.³ Unfortunately, the company had been informed in advance of the raid. Company owners were able to hide key documents in plastic sacks outside the doors. Later, an EU official returned to collect the sacks and drove them back to Belgium. The documents have not been seen since.

Clearly, this operation was badly managed. But the problem was not incompetence. OLAF's small staff has played an exemplary and effective role in dealing with fraud cases. The problem was legal: since OLAF is not a police agency, it could not independently raid the company without informing it in advance.

² *Reforming the European Commission a white paper*, 1st March 2000.

³ For ease of reference this paper will use OLAF in all future mentions of the EU's anti-fraud body.

In July 1998, the case was handed over to the Luxembourg police for investigation. But, by the beginning of this year, they had, according to the Commission, taken almost no action. Over €1 million of EU money, which had been paid into offshore bank accounts, has still not been traced. The Commission is considering whether to sue Luxembourg for its inaction. This illustrates a second fundamental problem: it appears that national police forces, when passed a case of alleged EU fraud, cannot be relied on to investigate it as a priority.

The Commission itself has also been guilty in the past of not pursuing suspected fraud cases with the utmost vigour. In 1992, the Group 4 security company was awarded a E75 million contract to handle the Commission's security services for five years. There were immediate suspicions about the fairness of the tendering process as well as reports that Commission staff were using Group 4 employees, hired as security guards, to perform other tasks, such as chauffeuring for senior officials or working as office assistants. An internal investigation dated 7th July 1993 identified serious problems with the bid but it was never made public. It took another four years for an inquiry to begin and only in March 1998 was the case finally handed over to the Belgian police.

A similar delay has occurred in bringing charges against officials implicated in the fraudulent misuse of €1.6 million of cash that was linked to the 1990 European Year of Tourism. The problems first came to light in 1993 but legal proceedings have not yet begun. These cases illustrate not only the slow progress of justice, but also the Commission's reluctance to inform the public of known problems. Where Commission officials are involved, it often seems that cases are allowed to drag on for years before coming to court—if they even make it that far.

As this paper will elaborate, there has not been a single successful prosecution of an EU official for fraud and there may not be many in the future unless the EU's anti-fraud safeguards undergo a truly radical overhaul. Neither have there been many internal prosecutions. Only a handful of officials are disciplined annually for any offence. Incompetence is only punishable if it is proved deliberate. The lack of internal or external control encourages sloppy management and, on rare occasion, serious fraud.

The Court of Auditors, charged with overseeing the EU's expenditure, has repeatedly ruled that the Commission's accounts are unreliable and consequently cannot be legally assured. The Court argues each year that imprecise information and inadequate control procedures mean that it cannot properly account for billions of euro. It is hardly surprising in this context that major frauds go unnoticed. The Commission is trying to tackle the accounting problems but the pace of reform is slow. Michael Schreyer, the budget commissioner, has warned that it could be 2003 before the budget is fully in order. With such a record, it is hardly surprising that public confidence in the EU's probity remains so low.

The extent of the Commission's responsibility

The Commission has often pointed out that most of the responsibility for fraud lies with the member-states that manage over 80 per cent of the spending.⁴ This is because the Commission directly handles only external aid and what are known as internal policies—programmes in education, research and transport. Together with the EU's administrative costs, the parts of the budget directly managed by the Commission in 1998 amounted to €16 billion, or some 17 per cent of the total (see table overleaf).

The Commission can also claim with some justification that the member states frequently try to bind its hands on spending issues. The latest reform of the Structural Funds, for instance, weakened the Commission's ability to oversee the spending carried out by national governments.

EUROPEAN UNION SPENDING 19985		
	million euro	percentage of total budget
1. Agriculture	38750	44%
2. Regional Aid of which:		
Structural funds	30390	34%
Cohesion Funds	2870	3%
European Economic Area	110	<1%
3. Internal Policies	5920	6%
4. External Action	5670	6%
5. Administration	4270	5%
6. Reserves	370	1%
Total	88340	100%
Actual Payments	80710	
Surplus	7630	

Yet the Commission still retains overall responsibility for producing guidelines and monitoring and reporting on those parts of the budget which are directly implemented by the member-states. Loopholes in Commission inspired rules often result in subsidies being wasted or exploited by criminal gangs. For example, a scandal erupted in Spain in May 1999 over the payment of €60 million in EU subsidies to farmers producing a variety of flax with almost no commercial value and which many farmers did not even bother to sell. The scheme was open to abuse because payments often exceeded production costs and no proof was required of yield or even evidence that the flax was processed.

⁴ Court of Auditors, *Financial Information on the general budget of the European Union*, 1998, page 376.

⁵ Court of Auditors, *Financial Information*, 1998, diagram III.

It is also the Commission's task, acting on behalf of the member states, to ensure that proper action is taken to stop fraud across the whole EU budget. If one member-state is found pouring EU money down the drain then the Commission is duty-bound to act on behalf of the 14 other countries which fund that budget. It should inform the European Parliament and the people of Europe that abuses are taking place, otherwise its silence could be construed as complicity. It should propose cutting off grants to countries that take inadequate action. Just as the Commission is responsible for making sure EU law is correctly and evenly applied across the Union, it must also ensure that the entire EU budget is spent properly. And as the ultimate arbiter of EU spending, it should share at least part of the blame when fraud occurs.

The missing millions

The very nature of fraud makes it notoriously difficult to establish precise figures on how much the EU loses each year. This problem is compounded by the Commission's failure to provide adequate information about how EU money is spent, particularly in the member-states. Nevertheless, establishing some kind of measure is important. Otherwise, all concerns over the fraudulent misuse of the EU budget—whether legitimate or not—can simply be dismissed as euro-sceptic exaggeration.

In successive years, the Court of Auditors' annual report has identified around 5 per cent of EU payments—about €4.5 billion—as “irregularities”. This is typically seized on as a golden measure of fraud. But the figure is misleading. It includes accounting mistakes and wasteful policies, often agreed by all the member-states, such as the €3 billion in agricultural subsidies squandered on durum wheat producers in 1997.

Separately, in 1998 member-states notified the Commission of 5091 cases of “irregular spending” involving €575 million. OLAF estimates that around €120 million of that sum involved a potentially criminal fraud.⁶ Meanwhile OLAF, with a staff then of just over 100, itself opened 227 new cases in 1998, “generally on suspicion of fraud or another illegal activity”. These cases of potential fraud, together with new sums discovered that year in on-going investigations, amounted to €466 million. Thus in 1998 the authorities identified alleged fraud and irregularity worth, in total, over €1 billion, of which some €680 million was being investigated as suspected criminal fraud (about 1% of the total EU budget).

⁶ OLAF, *Protecting the Communities Financial Interests and the Fight against Fraud, Annual Report for 1998*.

THE COST OF FRAUD AND IRREGULARITY ⁷ (million euro)						
	Discovered by Member-states		OLAF investigations		TOTAL	
	1998	1997	1998	1997	1998	1997
VAT and customs and agriculture duties	249	294	288	643	537	937
Direct Commission spending (research, education, overseas aid)			11	18	11	18
Regional aid	42	57	32	63	74	117
Agriculture	284	164	135	153	419	317
TOTAL	575	515	466	877	1041	1392

Overspend, underspend

Fraud can easily flourish in a big-spending organisation where budgetary information is scarce. As this paper has already noted, some of the most disturbing allegations of fraud have occurred within the €16 billion of direct spending by the Commission. These frauds commonly take place when financial discipline is lax and where accounting errors are widespread. Among the programmes managed by the Commission in the 1998 EU budget, the Court of Auditors found mistakes in nearly half of the payments examined in the €6 billion 'internal policies' budget. In the external aid budget around one-quarter of payments examined could not be justified to the auditors.

The fact that few within the Commission can say accurately where and how its money is being spent, is an indication that far more waste and fraud could lie undiscovered. As the second report of the Committee of Independent Experts made clear, the Commission does not even have a clear idea of how many contracts it signs each year. Even within the programmes which it managed directly, the Commission could only estimate—based on an internal survey—that there were around 1,200 contracts signed (worth €2 billion) for services to the EU institutions plus another 10,000 contracts (worth a further €2 billion) to provide external aid.

In the past, when the Commission awarded contracts or subsidies, there were few proper controls or assessments of whether EU money was well spent. The lack of performance evaluation measures, and thus of feedback on projects, was understandable when many of the projects had no clearly defined objectives or success criteria. In a 1998 report, the Commission's financial controller estimated that the Commission departments with "mature" evaluation systems and controls were responsible for only around half of the EU budget.

⁷ Calculated from OLAF *Annual Report*, 1998.

Most national governments now provide some detailed measures against which the results of public spending can be judged: the number of crimes, the number of prison escapes, the numbers of nurses employed, the size of hospital waiting lists, or the number of students who succeed in their university exams. But the EU budget offers few benchmarks against which performance can be measured. The EU's lack of clarity in expenditure is illustrated by its failure to produce clear annual reports that demonstrate where money has been spent and what have been the results. For instance, a Court of Auditors inquiry into the programme of technical assistance for nuclear energy in eastern Europe and the former Soviet Union found that almost €800 million had been spent without any assessment of the impact of the projects. Instead, the programme's annual report chose to highlight as its main achievement the fact that it had managed to spend a higher proportion of its budget than before.

Some departments already make great efforts to state clearly what they do with public money. But, as the Prodi Commission appears to recognise, an organisation with a €90 billion budget must account for all parts of its spending programme.

Since the 1980s the Commission has made legal commitments to spend billions of euros on projects, yet not drawn down the money. When these projects are spread over a number of years, a backlog of unspent money is probably inevitable. But the backlog has become enormous, increasing from €14 billion in 1987 to more than €73 billion in 2000, according to a Commission estimate.⁸ In overseas aid alone, there is an overhang of unspent funds of €18 billion, covering 14,500 projects, of which one-third are more than five years old.⁹ The backlog comprises not only genuinely on-going projects, but also abandoned schemes that the Commission is afraid to declare as failures, and thus have to write off the initial costs or payments as waste. In regional projects, the financial commitments are eventually withdrawn if the money is left unspent, which encourages officials to "use it or lose it".

⁸ *Credits d'engagement restant à liquider* (RAL), European Commission working paper, July 1999 for the budget 2000 exercise.

⁹ Chris Patten confirmation hearing before the European Parliament 2nd September 1999.

An adequate response?

The European Parliament tried to play a heroic role in the fraud saga that eventually led to the Santer Commission's downfall. But continuing concern over mismanagement and fraud in Parliament's own affairs, such as its lavish building programme and alleged travel expense fiddles, has given it little moral authority to criticise the Commission. The Parliament's attempt to pass a motion of censure on the Commission in January 1999 degenerated into a party-political squabble, with no clear charges being made against individual commissioners. The only achievement of that debacle was the appointment of the Committee of Independent Experts whose report led, ultimately, to the Commission's resignation. Yet the decision to establish an external inquiry highlighted the Parliament's inability to organise any kind of proper investigation itself. For too many years, MEPs' criticism of blatant mismanagement by the Commission has been half-hearted. In fact, Parliament could even be accused of adding to the problem, by forcing the Commission to take on extra spending programmes without clearly defined objectives.

Member-states, too, played an ignoble role in the fraud crisis. Almost all items of EU expenditure are supervised in detail by around 300 committees of member-states' representatives.¹⁰ Yet these delegates, who remain shielded from public view, have played no 'whistle-blower' role and, with their governments, have been complicit in allowing the waste of millions. Since most fraud is carried out in programmes nominally under member-state control, they also carry a shared responsibility for fraud prevention. The failure of most member-states to ratify the 1995 Convention on the Protection of the European Communities' Financial Interests makes a mockery of their leaders' promises of action. This Convention is supposed to ensure that each member-state's legal system recognises fraud against the EU budget as a crime.

The Prodi Commission has begun to address the deep-seated problems inside the bureaucracy. On 18 January 2000, Neil Kinnock, vice-president of the Commission in charge of reform, published his strategy for change. The core ideas have now been adopted as a substantial 101-point action plan complete with target dates for implementation. Mr Kinnock will also create a new deputy secretary-general position, charged with ensuring that best practices are spread throughout the Commission apparatus.

The reform plan seeks to overhaul the EU's management structures in three broad ways. First, there is an attempt to overhaul the working culture of the Commission. Mr Kinnock intends to establish a European Committee on Standards in Public Life, which will provide advice on ethical issues for all the EU institutions. The Committee's work will be supplemented by a new Code of Good Administrative Behaviour for all Commission managers while a top-level official is to be given the key task of streamlining procedures and reducing red-tape.

¹⁰ Source: Secretary General's department, European Commission.

Mr Kinnock is also aiming to re-write the 40-year-old staff rulebook covering all aspects of personnel policy from recruitment to retirement. There will be substantial and increased training provision and reformed promotion procedures. The Action Plan envisages an overhaul of the guidelines on “whistle-blowing” to prevent a recurrence of the van Buitenen affair. Paul van Buitenen is the Commission official who became so disillusioned with the failure of senior officials to heed his warnings of serious mismanagement that he felt the need to take his complaints public. His stand helped provide a focus for criticism of Commission mismanagement and became a catalyst for reform. Although much of what he said has since proven correct, he has still been disciplined by the Prodi Commission and banished from the financial department where he had been employed.

Second, Mr Kinnock is aiming for a fundamental modernisation of the Commission’s system of financial management. The existing ex-ante “rubber stamp” system of financial control will be abolished with responsibility for monitoring day-to-day spending devolved from a central financial control department to managers. A new independent internal audit system, led by qualified specialists, will conduct “ex-post” checks designed to guarantee the overall quality of the financial system. The Commission also intends to launch a crackdown on wasteful management by external agencies, with explicit rules and guidelines on the use of agencies provided to all departments.

Finally, the Commission will introduce a new system of strategic planning, employing activity-based management and budgeting techniques. This should lead to the more efficient matching of priorities with resources. The Commission will become better able to decide what should remain as core activities, and which peripheral activities are merely drains on time and money.

These proposals should be enthusiastically endorsed. But the Commission still does not seem to have the full measure of the challenge it faces, nor of the depth of reform that is required to tackle financial mismanagement and fraud. There remain serious doubts about the willingness of the Commission to take action against its own employees and its commitment to the transparency levels needed to curb fraud and mismanagement. Radical reform, as promised by Mr Kinnock, will not occur unless a real culture of openness begins to permeate throughout Brussels.

PART TWO: A PROGRAMME FOR REFORM

1. Make commissioners more accountable to the European Parliament

The Kinnock reforms will do much to reform the culture of the Commission, bringing its working practices into line with modern views of efficiency and accountability. But it is still not certain that Commissioners will be held politically accountable for failure. They should not need to be found personally guilty of fraud or corruption to be removed. They should be dismissed if they are not up to the job, or simply because the fault lies within their chain of command and they have failed to tackle it.

This was precisely the thrust of the first report of the Committee of Independent Experts when it concluded:

*"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."*¹¹

Romano Prodi has drawn on the principles outlined in the Independent Experts' second report in an attempt to establish a mechanism to sack discredited commissioners. Each individual commissioner has verbally agreed to resign if asked to by the President. It is a step forward but unless it is confirmed as a formal power under the treaty, the President will remain vulnerable to the political interference of the member states. Although under the treaty Mr Prodi has an equal say with the member-states over the appointment of commissioners, he can only choose from those candidates presented to him. His ability to reshuffle the commissioners is also only an informal power. There remains a risk that if a disgruntled commissioner won the support of their home government, they could quite legally renege on their commitment to resign or accept another portfolio.

¹¹ Committee of Independent Experts, *Allegations etc*, Paragraph 9.4.25.

The European Parliament has also made an attempt to win the power to dismiss individual commissioners. As the crisis in the Santer Commission demonstrated, Parliament's existing power to dismiss the entire Commission is a blunt instrument. Parliament cannot intervene without causing a political crisis within Europe and a power vacuum in Brussels. While the mass resignation of the Commission in March 1999 was presented as a success for Parliament at the time, the affair ultimately failed to establish the principle of responsibility; it was unclear who was resigning for what reason.

Parliament should test the limit of its existing powers in trying to ensure that commissioners are made individually accountable for their actions. Parliamentary committees should provide regular assessments of the performance of commissioners. Failing commissioners should be made subject to a parliamentary motion of censure in order to send a very clear message to Mr Prodi about their behaviour. If this failed, tactics such as the blocking of the budget could also be employed. If future presidents of the Commission show themselves unable to take on member-states and remove errant commissioners, MEPs will need to campaign for a formal power to dismiss individual members of the Commission.

2. Take on the directors-general

The directors-general, the heads of the various Commission departments, are responsible for most operational decisions and must bear the brunt of the blame for mismanagement within their departments. Under present staff regulations, a relic from 1957, individual commissioners cannot sack, transfer or appoint the directors-general. In the past, the directors-general have seemed to have acquired the status of life peers, appointed through political patronage or by national flag. They have only been removable in extremis.

This autonomous status has also blurred the lines of responsibility back to the commissioners. Asked in writing by the European Parliament if he would accept responsibility for the running of his departments, Franz Fischler, European agriculture commissioner, replied: "Since I cannot myself select or dismiss management or directors-general under my charge, I cannot accept sole personal responsibility for their actions. The same applies to Commission's joint decisions."

In September 1999, Mr Prodi set an important precedent by re-shuffling some of the senior posts. He also broke the practice under which some posts were reserved for certain national flags, most notably the director-general for agriculture which had always been the preserve of the French. However, all three director-generals who left their posts were retired "in the interests of the service" an obscure rule that provides a lucrative pay-off for the director-general concerned. Whatever the records of the individuals concerned, the Commission still cannot simply replace a director-general because it wants to appoint a more capable candidate.

Mr Kinnock's white paper proposes that directors-general produce an annual report and formally certify that their departments' expenditure complies with the rules. This system will allow a full evaluation of the performance of directors-general. The Commission has also stressed its determination to ensure the experimental re-shuffle of last autumn eventually becomes a more formal rotation procedure—common in European civil services—to prevent directors-general establishing private fiefdoms.

It is vital that the process of reform continues further. The European Parliament should be allowed to scrutinise directors-general regularly, and to call them to account for the work in their departments.¹² The Commission should consider placing senior officials on fixed term contracts and granting the commissioner for administrative reform an explicit power to “hire and fire” the directors-general.

3. Transfer staff where required

In the past, the Commission has proved incapable of transferring its staff around the organisation to meet new demands. The result is that staff in some areas, particularly departments managing new areas of expenditure (e.g. humanitarian aid) are over-stretched, while other well-established departments have a surplus of staff (e.g. internal market).

In his action plan, Neil Kinnock has promised a thorough reform of staff regulations to ensure that people are promoted on merit and to make it easier to shift staff from one part of the administration to another. Already, around 5 per cent of Commission staff have been moved since the Prodi Commission took charge last year. Detailed proposals for modifying the staff regulations will, however, not be published until September 2000. Previous attempts at reform have failed, partly due to opposition from trade unions who have gone on strike or have threatened to do so. The Commission must be prepared for, and have the stomach to win, such an industrial dispute. Many trade unionists claim to be firm supporters of modernisation. It remains to be seen whether they will be true to their words.

4. Clarify internal rules and responsibilities

Dr Maryon McDonald, of Robinson College, Cambridge, in her *Anthropological Study of the European Commission*, finds it divided by different cultural attitudes to public administration. She describes a north-south split, where officials from northern nations favour the managerial approach of establishing clear goals of public service within a hierarchical chain of command. Southerners, in contrast, prefer a system of internal and horizontal checks and balances, based on the idea that neutral and objective officials will resist 'political influence' from higher up. However, both northerners and southerners agree that, between these approaches, there exists a flou, a murkiness or uncertainty where rules are at times observed but often ignored. An internal inquiry into the ECHO aid scandal concluded that this is a Commission-wide problem:

¹² The Parliament has no legal power or sanction to compel a director-general or indeed any witness to appear before it, but most directors-general would regard it as damaging to their careers not to co-operate with MEPs.

“The overriding impression gained from this inquiry is of a general culture of ambiguity within the institution towards a wide range of administrative rules...The importance of this culture of ambiguity varies largely according to the legitimacy which the rule enjoys among Commission officials themselves. The more officials believe a rule to be bad or unhelpful, the more likelihood there is that they will exploit every possible angle of ambiguity for it not to be implemented effectively. All too frequently...Commission officials have exceeded their powers in assuming, given this ambiguity of rules, that they themselves are the ultimate arbiter in the use of public moneys...”

The answer to this ambiguity is to define clearly the rules as they apply to each individual, to eliminate the inter-departmental controls that blur responsibilities, and to start enforcing the rules rigidly. The Kinnock proposals for lines of accountability, for job descriptions for staff, annual performance assessments and merit based promotion system, represent a bold move towards establishing clear internal responsibilities.

An even larger step forward is the proposed overhaul of the financial control system. The old system of financial control relied on every financial decision or grant being approved by a centralised financial control unit, effectively leading the hugely overworked department to simply “rubber stamp” most project funding. In future, however, each departmental manager will take personal responsibility for spending. This will force better managerial practice. It will also free up the resources of financial investigators to carry out ‘ex-post’ audits with an element of surprise to discover waste and fraud.

However, the danger remains that the Kinnock reforms will be watered down by the Council of Ministers or the Parliament. Already, some member-states and MEPs are expressing doubts about the introduction of the “ex-post” controls, claiming it may increase the threat of fraud by providing officials with too much freedom to determine spending. However, the Commission must stick to its guns on this vital area of reform.

5. Reduce reliance on outside agencies

The Commission often complains of having only 23,000 officials (18,000 in Brussels).¹³ About half of these are devoted to managing expenditure programmes, according to internal estimates within the budget department. In fact, these figures are misleading because much administrative work is delegated to outside agencies, whether private companies, state agencies or non-governmental organisations. In particular, private sector groups known as a technical assistance offices (TAOs) play a major role. They have been the source of many of the instances of fraud and mismanagement. Although they are technically subject to control by Commission officials, these private companies have effectively had the power to issue grants of large money.

¹³ Court of Auditors, *annual report*, 1997.

There is no right of public access to the TAOs' records, thus leaving them open to widespread abuse. The TAO that ran the Leonardo youth training programmes, under the responsibility of Edith Cresson, was accused of improperly hiring close friends and relatives of its directors. The TAOs that ran nuclear technical assistance to eastern Europe and the former Soviet Union have been heavily criticised for awarding multi-million euro contracts to close associates in the electricity sector.

Incredibly, until 1999, there had never been a register of the TAOs. But after unwelcome press and parliamentary attention, the then budget commissioner, Finland's Erkki Liikanen, forced every department to declare what outside agencies were being used. The Commission told the Committee of Independent Experts there were some 100 of these agencies, employing about 800 staff. But, a few weeks later, Mr Liikanen revealed the running total was actually some 250 agencies, which were paid a total of some €330 million in administrative costs.¹⁴ Neither he nor his successor, Michaele Schreyer, have been able to provide any details of the total amount of money these agencies handle.

The bureaucratic functions of the TAOs should be brought back, as far as possible, under the control of the Commission. If extra staff are required or if existing resources need to be re-deployed, then the EU member-states should agree to pass the necessary rule changes and budget lines.

But the use of arms-length agencies to ensure good management should not be dismissed out of hand. Agencies that operate outside the Commission often use more flexible employment patterns or other private sector practices to meet precise performance objectives. The use of such bodies for the delivery of public services in the UK—known as next-step agencies—has led to big improvements in value-for-money.

The Commission should thus examine the idea of creating a small number of statutory executive agencies. These should be operationally independent, but publicly accountable to the European institutions. Their chief executives would be rewarded according to their performance. Mr Kinnock is promising to examine this whole area and is due to publish its proposals in September 2000. There are encouraging signs that the Commission will adopt a radical approach.

The use of a small number of well-designed public agencies could bring not only administrative efficiency to the management of EU programmes, but also political accountability and greater transparency. In contrast, the use of hundreds of small, privately run TAOs to run programmes creates a huge management problem for the Commission and blurs lines of responsibility.

¹⁴ Information provided by Mr Liikanen to the author.

6. Improve information provision

The way the community budget is published needs to be redrawn so that administrative costs, totalling €4.5 billion, are allocated to each area of programme expenditure, rather than lumped together under a single heading.¹⁵ This would help make clear how much money is spent on the administration of each programme. Over-staffed or under-staffed areas would then be easier to identify and the Commission could begin the task of evaluating its spending priorities.

The Commission has frequently complained, with some justification, that it has too few staff to manage its programmes, and that problem will not be solved by better use of current resources alone. It has begun a resources assessment programme destined to “identify activities which can be stopped because they are not priorities with sufficient value added at European level.” The EU must be prepared to cut unnecessary programmes and projects and re-direct resources to its most important activities.¹⁶

In future, each project funded by the Commission must have clearly defined objectives. The proper reporting of results must be a condition for granting aid. Generally, the agency receiving the EU grant should be responsible for providing this information. In other cases, such as aid to local organisations in some of the poorest communities of the developing world, this may not be practicable since the additional bureaucracy might stifle their work. Then the Commission should use its own staff or hire an expert to check the results. All such information and results should be published rapidly.

The Commission is already committed to extending its feedback and evaluation procedures to all items of expenditure. Mr Kinnock proposes a new management information system (“activity based management”), that will make better use of existing resources, improve the evaluation of Commission activities and provide clearer information on how the Commission spends its money. This initiative needs to be expanded urgently so that each department of the Commission can provide an annual report detailing how it spent its money and what were the results. It is unacceptable that the success of some programmes is measured simply by how much of the allocated money has been spent.

Mr Kinnock must also give a clear commitment to make much of this new information public. Each department of the Commission should create a register of all contracts signed with voluntary groups and companies. Copies of the contracts, the names of beneficial owners, of private groups, and the names of the responsible project managers should be public information.

¹⁵ See table on European Union Spending 1998 on page 3.

¹⁶ A separate Centre for European Reform paper, written by Nick Clegg MEP, will focus on the question of the EU's negative priorities, those activities that have proved unworkable at the EU level, or which no longer need to be managed by the EU. It will suggest the manner in which the EU should identify and prune redundant legislation, programmes and budget lines.

The results of internal audits of programmes should also be made available on request, subject to the deletion of names of staff. Annual assessments of programmes should be carried out and the findings should be published by the commissioner in charge. He or she would thus become directly responsible for those programmes and for collecting adequate information about their progress. In the member-states, the public subsidies handed to farmers and other private individuals should be listed in a register for public inspection. Nobody who receives public subsidies should be able to shelter behind confidentiality. Such public information should help expose potential conflicts of interest. If anyone objected, he or she would be welcome to decline the subsidy.

Frequently, key information about the progress of inquiries into fraud and mismanagement is held back because disciplinary proceedings or legal actions are ongoing. Many of these cases, of course, get nowhere. But the possibility of legal action should not preclude disclosure of the basic facts about a fraud, even if some details have to be withheld for legal reasons.

The Commission has made strong commitments to increase openness. In January 2000 Mr Prodi proposed a regulation for public access to documents in all the EU institutions, saying that transparency was “vital for the democratic health and accountability of the European Union”.¹⁷ Yet according to the EU ombudsman, Jacob Soderman, the proposals appear “to consist mainly of a long list of possible reasons to deny access to documents”. Exemptions cover documents intended for discussion, internal administrative notices and informal messages. There are also safeguards for “the public interest, respect for personal privacy, commercial, economic or industrial confidentiality, and confidentiality where it is requested by a third party providing information or documents.” It is not clear that any of the categories of information discussed in this paper—full details of grants, subsidies, audit reports, and fraud cases—would be available for public inspection under these proposals.

7. A more vocal role for the Court of Auditors

The Court of Auditors is often hailed for its work in exposing fraud, largely because it is the only official institution that regularly studies EU spending programmes and then makes a public report. But the Court itself is a poorly managed, highly politicised institution that finds it difficult to present any clear conclusions or to make constructive suggestions. Its members appear divided, with some seeking a quiet bookkeeping role while others want to take a high-profile fraud-busting approach. The Court does not need greater powers under the treaties, but it must become a stronger and clearer voice.

¹⁷ *Proposed regulation on public access to European Parliament, Council and Commission documents*, adopted by Commission 26th January 2000, IP/00/75.

If the Court wants to be taken more seriously it should start by learning to write intelligible reports. Its annual 'statements of assurance' on the reliability and legality of the EU's accounts are largely incomprehensible. The Court is also obsessed by confidentiality, refusing to name the perpetrators or the nature of the 'irregularities' it identifies. The Court revealed that in 1997 one particular EU member-state owed the European Commission €5.9 billion. Yet it believed it improper to publish the name of that country.¹⁸ The Court is supposed to be the friend of the European taxpayer. But the Court cannot act as the EU's financial watchdog if parliamentarians or the media are unable to use its findings to hold the executive to account.

8. Reform disciplinary procedures

The Commission must also overhaul its disciplinary measures to ensure that it can establish proper internal accountability. At present, the procedures lack credibility, and thus fail to act as a deterrent. In the last five years, despite the many auditors' reports of wasted money, the Commission has disciplined a total of 43 staff and dismissed only 13. The disciplinary inquiries can be long and cumbersome. Proceedings last, on average, about 12 months when a disciplinary board is set up, or four months when no board is involved. One ongoing case dates back to 1995.

One senior Commission official has noted: "In the 'culture of the house' disciplinary measures are widely considered as reserved for situations of gross dishonesty and/or criminal behaviour or flagrantly unprofessional conduct (e.g. insulting a diplomat or making public statements which are disloyal to the institution). This is in large part due to the fact that the Commission has rarely taken disciplinary measures of any significance in situations of serious but non-criminal financial irregularity."

European Commission Discipline Cases 1994-99 ¹⁹				
Year	Total Cases	No Action Taken	Dismissed	Other Cases
1994-95	37	26	3	8
1996	14	8	2	4
1997	7	1	0	6
1998	16	1	6	9
1999 (to Aug)	6	1	2	3
Total	80	37	13	30

¹⁸ Court of Auditors, *Annual Report*, 1997, page 13.
¹⁹ Figures provided by then acting commissioner Erkki Liikanen, September 1999.

Disciplinary action for incompetence has almost never been used. The Independent Experts pointed out that “the hierarchy only very rarely takes appropriate action on the cases of professional incompetence or misconduct which actually come to light, as is demonstrated by the almost total lack of any precedents and the extreme scarcity of case law in this area.”²⁰

Nor are disciplinary inquiries as impartial as they should be. On occasion they are seen to 'let off' erring officials far too easily. For example, one senior Commission official was found by an administrative inquiry, in 1999, to have broken financial rules and lied about his knowledge of fictitious contracts. Yet a disciplinary board composed of colleagues subsequently cleared him.

The commissioners, who were highly embarrassed when they found themselves endorsing the 'not-guilty' verdict and clearing the official entirely, rightly complained that the whole disciplinary board system needed to be reformed. Instead of a simple 'trial by peers', there needs to be a system of 'prosecution' to put the case against an official. The case should be heard by a board of independent members. Mr Kinnock has proposed such changes, and will provide more precise details in September 2000. Under the staff regulations, commission officials found guilty of serious misconduct can be made financially responsible for their actions.²¹ The Independent Experts found that the Commission had never used this power. It must now be prepared to do so.

The Commission must also be prepared to tackle the sensitive issue of the level of staff immunity which remains one of the biggest barriers to proper investigation of fraud cases within the European institutions. The purpose of legal immunity was to guarantee the Commission's independence and prevent unjustified legal interference by member-states, not to protect individual officials from criminal investigations.

However, immunity has effectively become a major stumbling block to the investigation of financial and other irregularities. It requires the unanimous approval of all 20 commissioners to lift immunity, a process that can be cumbersome and long-winded. The Parliament has to vote before a MEP can be questioned, or indeed an investigation opened into his/her activities. Immunity also applies to EU buildings. During an investigation in 1998 into allegations of child abuse at an EU staff crèche run by a private subcontractor, the Belgian police were not able to carry out any surprise search of the Commission building.

In practice investigating authorities, whether dealing with EU institutions, officials or parliamentarians, require a very strong case before they can get immunity lifted. But with immunity in place, it is very difficult to find the necessary proof. As one Belgian investigating judge explained:

²⁰ Independent Experts II, Vol One, Para 6.5.62.

²¹ Article 22 of the Staff Regulations.

*"These European investigations are very, very difficult and there are many people who slip through our fingers. Many allegations are never investigated properly. For immunity to be lifted then at the very least we must have the beginnings of clear evidence of a crime. And when we make such an application then we lose all element of surprise and those we accuse can legally have full access to our files. The whole process also takes far too long."*²²

Commission immunity should not be self-regulating. Immunity against prosecution should be lifted under the authority of the European Court of Justice, rather than remain subject to Commission approval. This would free the Commission of the suspicion that it uses immunity to protect its own, as well as enabling the police or other authorities to carry out confidential investigations, seizing documents and making swift arrests where necessary.

9. A stronger mandate for OLAF and for the police

There are far too many agencies involved in investigating fraud and mismanagement inside the Commission. These include: OLAF (the independent fraud office); the Court of Auditors; the Commission's internal financial control department (which has written some of the most damning reports); the Parliament's budget control committee; the disciplinary inquiry teams within the Commission; the EU's ombudsman (who officially investigates maladministration); and police forces called in to investigate specific cases. In cases of fraud against the EU budget where Commission officials are not involved—for example, excise duty and tax evasion by cigarette smugglers—there are further agencies involved, including investigating magistrates, customs agents and national intelligence agencies.

When dealing with allegations specifically against Commission officials, and within programmes administered by the Commission, the fight against fraud and waste would be far more effective if there were fewer agencies involved. The myriad of investigators and investigations spreads panic, causes confusion and allows evidence to vanish. It also permits evasion of responsibility: it is too easy for one organisation not to take action on a case simply because a different investigation by another body is in progress.

The role of OLAF is crucial. It is the lead anti-fraud investigation agency inside European institutions, and should therefore have precedence over the Court of Auditors, financial controllers inside the Commission or internal disciplinary inquiry teams. OLAF was created in 1999 as a hybrid body, partly an external investigative agency and partly an internal Commission department. Its quasi-internal status gives it the advantage of being able to enter Commission premises without warning in order to question whoever it wants. But this means that it is not fully independent of the Commission. OLAF's status as a semi-external agency has the advantage of making it operationally independent. But as result the director of OLAF is not answerable for his or her actions to any EU institution or indeed anyone at all.

²² Interview with author.

To ensure proper accountability and control, and to avoid duplication of investigations, OLAF should instead be placed directly under the budget control committee of the European Parliament, the key institution charged with ensuring that the EU budget is well spent. This model would mirror that of the UK's National Audit Office, which comes under the UK Parliament's Public Accounts Committee—although OLAF's work is focused on the fight against fraud whereas the NAO's job is audit and value-for-money investigations.

Parliamentary control would emphasise OLAF's key role in safeguarding the finances of the European Union and the interests of the taxpayer. It would ensure that the public was kept adequately informed when fraud is uncovered. The present situation, where information on cases of fraud and mismanagement is frequently withheld on the grounds that they are 'on-going inquiries', is unacceptable. Non-confidential information and regular reports on OLAF's activities could be regularly published by Parliament. OLAF could also advise both Parliament and the Commission on the effectiveness of EU legislation and regulations in preventing fraud.

Parliament should not be able to interfere in the operational conduct of inquiries. Instead, these should be placed under judicial control. Although OLAF makes clear that it investigates all allegations as potential crimes, it is not fair that staff can be questioned on what appears to be a disciplinary matter without a clear understanding that what they say could be used against them in a criminal trial. As pointed out in the second report of the Independent Experts, it is also questionable that OLAF should be allowed to search freely around the EU institutions without some form of judicial control. A member of the European Court of Justice should decide if such actions are justified.

Whether or not OLAF is attached to the Parliament, its investigative role will remain limited since it does not have the legal power, the resources or the experience to act as policeman. Indeed, no European institution is competent to investigate fraud without involving the police. To take action against an official, OLAF has to pass on its information, either to an internal investigation by the Commission's disciplinary inquiry teams or to the police.

Given the tiny resources and restricted mandate, OLAF has done well to expose many of the scandals that have hit the headlines. But OLAF, and its predecessor, UCLAF, have had limited success in working with the police to bring criminal court cases to conclusion. Since 1996, out of 298 criminal prosecutions involving investigations by the EU's anti-fraud unit, only 13 have so far produced any judgement. Of 30 fraud inquiries carried out involving accusations against the Commission's own staff, 12 have led to criminal prosecutions but none to a conviction.²³ The wheels of European justice are slow and some future prosecutions will succeed. But it is clear that OLAF has so far been largely unsuccessful in providing state prosecutors with the research required for successful convictions.

²³ Independent Experts II, Vol One, 5.9.27.

One possible solution to this problem, suggested in the second report of the Independent Experts, is to create a European Public Prosecutor under the control of the European Court. A European Prosecutor would be able to directly order investigations in several jurisdictions and could over-ride the immunities of EU officials. However, this proposal is likely to take years to implement, requiring considerable harmonisation of criminal law. It would raise profound questions about the future of judicial sovereignty within the EU and is therefore likely to be met with fierce opposition by some member-states.

There is a far more practical solution that could be relatively quickly enacted. What the EU needs is a dedicated police unit with the responsibility of mounting criminal investigations within European institutions, and the ability to search the institutions and question officials under a European Court judicial warrant. Since the majority of EU staff are based in Belgium, it would seem sensible that the EU funds a unit technically within the Belgian police to fulfil this mandate. Each member-state should then establish a liaison force within its own police force, in order to assist in investigations and prosecutions which spread across Europe.

This paper has argued that radical reform is needed to create accountability in the Commission, remove secrecy and effectively prosecute cases of fraud. The measures outlined show much progress could be made without the need to establish new federal institutions such as a European Prosecutor. However, problems will persist as long as there are ambiguities about the Commission's role within the EU. It will ultimately be necessary to reconsider the Commission's purpose. An institution that was designed principally to provide policy has become a spending machine with almost half its staff employed in administering programmes. But there has been little thought as to whether the Commission is actually suited for this role. Slimming down the budget and the number of spending programmes will be the best guarantee of a better managed Commission, and in turn, of a more efficient and effective European Union that is capable of regaining the confidence of the European public.