

## EDITORIAL COMMENTS

### **The report of the Committee of Independent Experts: an ill wind. . .**

The report of the Committee of Independent Experts which was established in January to investigate claims of fraud, mismanagement and nepotism within the European Commission has rightly been described as a “damning document”.<sup>1</sup> No evidence was found of Commissioners’ having been directly implicated in fraudulent activities, but there were cases where responsibility must be borne for such activities; and individual Members of the Commission were named as having secured favours for friends and relatives. Indicative of a malaise affecting the institution as a whole was the judgement that: “It is becoming difficult to find anyone who has even the slightest sense of responsibility”. The temptation to deprive the concept of responsibility of all substance is a dangerous one. That concept is the ultimate manifestation of democracy”.

It is not the function of a journal like this one to comment on the political implications of the report, or of its dramatic sequel, the resignation *en bloc* of the Commission which since 1995 has been presided over by Mr Jacques Santer. However, the events of 15/16 March 1999 have a clear constitutional impact on the European Union, and that is very much our concern.

The failings of management of the Santer Commission, and the gross misconduct of some of its Members, must not be allowed to cast doubt on the central role the institution itself is called upon to play in the constitutional order established by the European Treaties. An independent Commission, formulating its legislative proposals in the light of the general Community interest, is an indispensable counterweight to a Council, still predominant in decision-making, where bargains have to be struck through balancing the often competing interests of the Member States. Nobody with experience of negotiations within the Council could fail to appreciate the importance of the careful preparatory work that goes into Commission texts, or of the active participation by representatives of the Commission at all levels of the Council’s process, from Working Parties through to meetings of Ministers, in helping to ensure an acceptably coherent outcome.

1. See *Financial Times*, 16 March 1999, Editorial Comment, p. 23.

Equally crucial is the Commission's task at the stage of implementing Council decisions. To describe the Commission as the European Union's "executive" is misleading, since the range of powers normally associated with the conduct of government are shared in the system of the Treaties between the Council, the Commission and the national authorities. Nevertheless, there is a huge range of activities – the adoption of detailed secondary legislation in the field of agriculture, trade relations with third countries, the application of the rules of competition or programmes of development co-operation to mention only the most obvious example – which the Commission alone among the present set of Union institutions is equipped to undertake; and on which, it must be said, many hundreds of Commission officials will quietly continue to work all through the present crisis, with their usual dedication and their unrivalled expertise.

All of that needs to be recalled, because there are bound to be demands for advantage to be taken of the Commission's disarray, to clip the wings of what has become too easy to portray as a self-serving beaureaucracy. The right reaction for friends of the Commission, it is submitted, is to insist that the report of the Committee of Independent Experts be accepted unreservedly, and ruthlessly acted on, by the Commission and by its Services, with none of the defensiveness which has characterized previous responses to criticism. A thorough cleansing process will be the only way to restore confidence in the Commission's competence and, more importantly still, its independence.

This sorry episode does, nevertheless, have a positive side, namely the coming of age politically of the European Parliament. It used to be a truism that the Parliament's power to adopt a motion of censure under Article 144 EC was a "nuclear option", too devastating in its consequences ever to be resorted to. Nobody can believe that any more: the threats of censure that were being uttered by leading Members of the Parliament on 15 March had a deadly serious ring to them, and they may well have helped to persuade the Santer Commission to jump before it was pushed. Moreover, the requirement under Article 158 (2) EC, for the approval of the Parliament to be given to the Commissioners nominated by the Member States, will surely never again be the virtual formality it seemed when the present College was appointed in 1994; while the new rules – under which the nominee for President must be separately approved by the Parliament, and will then have a veto over the nomination of fellow Commissioners – have taken on a significance the authors of the Amsterdam Treaty may not have anticipated. Through its involvement in the choice of the President, a newly confident Parliament would be in a position to lay down guidelines for the latter in reaching a common accord with the governments of the Member States as to the identity of the other Members of the Commission. Considered alongside the reform of the co-decision procedure, and the extension of the use of that procedure at the

expense of old-fashioned co-operation and consultation, those developments go a considerable distance towards supplying the democratic deficit in the constitutional order of the European Union.

Perhaps most significantly, the European Parliament has at last found a role it is uniquely fitted to perform. The Court of Auditors has done an excellent job in the past, in ferreting out instances of maladministration by the Commission; however, as a technical institution, it lacks the means of bringing home its criticisms on a political level. For their part, the Member States and their representatives in the Council have singularly failed to back up the Court of Auditors; and again on this occasion they seemed ready to meet well-documented accusations with a shrug of the shoulders, presumably because of the political connections between Ministers and individual Commissioners, as well as for reasons of national *amour propre*. The performance of the Parliament last January, when a censure motion was lost, may have appeared inglorious to critics in the media, but the wisdom of settling for the appointment of an Independent Committee of Experts has now been demonstrated. MEPs will in future be able to present the Parliament to their electorates as the only Union institution able and willing to hold the Commission to account politically for its conduct as an administration. The thread of democratic responsibility linking the Commission to the Parliament, which once seemed so tenuous, has become a rope of steel.

A question bound to resurface, in view of the findings of the Independent Experts, which were mainly directed at named individuals including the President himself, is whether, instead of or in addition to the power under Article 144 EC to dismiss the Commission as a body, the European Parliament should be enabled to force the resignation of an individual Commissioner. That might seem incompatible with the amendments to Article 158(2) which the Amsterdam Treaty will bring, designed to enhance the position of the President as captain of a team he will have helped to pick; arguably it should be for the captain and the team as a whole to ensure that all its members come up to scratch. In the future, perhaps an informal vote by the Parliament registering its lack of confidence in a Commission Member may be enough to galvanize the President and the other Commissioners, under the threat of losing their own jobs, to force the resignation of defaulting colleagues. Recent experience has shown, however, that peer group pressure is liable to be ineffective against recalcitrant individuals who are still receiving the backing of Member State governments.

A further point needs to be made about the complex interplay between independence and responsibility in the relationship between the Commission and the European Parliament. The shortcomings on which the report of the Committee of Independent Experts has shone such merciless light all had to do with the exercise by the Commission of powers of implementation. It is

right and proper that the Commission be held accountable in detail by the European Parliament for exercising such powers without fear or favour and with probity and efficiency. However, the Commission's power of initiating legislation is a different matter. This has to be a monopoly, or the task of imagining and advancing the general Community interest may be compromised. The European Parliament does indeed have its say, but at a later stage in the legislative process, through consultation by, or in co-decision with, the Council.