

CONV 844/03

CONTRIB 380

NOTE

du:	Secrétariat
à :	la Convention
Objet:	Contribution présentée par M. David Heathcoat-Amory, membre de la Convention:
	- "Système de mauvaise gestion"

Le Secrétaire général de la Convention a reçu la contribution figurant en annexe de M. David Heathcoat-Amory, membre de la Convention.

Systems of Mismanagement

"Mine is not a comfortable position"

Whistleblower

As the Convention turns to "The Policies and Functioning of the Union" (Part III), it may be worth a moment's review of how elements of the Communities are presently being mismanaged; how attempts to correct these failings are being stonewalled; and what the Heads of Government could do to achieve reform and restore public confidence.

Certainly, the system needs to be fundamentally repaired before we contemplate adding even more powers and responsibilities to those who manage it.

I am referring to the issue of fraud, which is close to being institutionalised in key sectors of the Union.

After the scandals which led to the unprecedented resignation of the Santer Commission in 1999, there followed promise of major reform. A Commission Vice-President was charged with overseeing the task. However, the promised reform has failed to materialise. The European Court of Auditors continues its annual tradition of refusing discharge for the budget (a practice now in its eighth year). The last independent audit of the Commission Treasury took place ten years ago. No change to the Commission accounting system has yet taken place, despite three years of promises.

Faced with these management failures, a political solution has been suggested – the European Public Prosecutor. But this is the wrong answer to the wrong question. Quite aside from the political consequences that lie with the establishment of a supra-national agency, and on top of all the concerns over democratic accountability, it will be doomed to follow in the tracks of its predecessor. Just as the anti-fraud unit OLAF adopted its predecessor UCLAF's blinkers and flaws, the proposed new fraud investigative agency will carry over the current operational failings – except that it will have extra powers to ruin honest peoples' lives in the process.

Instead of more political institutions, we need a real reform of the system. To establish how this must be achieved, we have first to analyse something of the fraud and other failings which have come to light, which has only happened because of the determination and selflessness of whistleblowers.

The Price of Truth

Their lot is indeed not a "comfortable position", as one privately explained. The personal experiences of several confirm a general trend. Initial complaints are filed away in the system. The real grief is reserved for the persistent, those who have witnessed too much corruption or nepotism and have had enough. Then, the administrative machine kicks in. The employee is hauled in before his or her senior grades, who try to determine precisely how much he knows before instructing him to keep silent. When the frustrated individual then sees ranks close around the fraud, he is driven outside the "usual channels" – typically to MEPs, MPs, or national authorities.

The price is a heavy one: suspension (perhaps on half pay); transfer to a department to 'count light bulbs'; legal proceedings; pay stoppage; internal isolation; deprivation of support staff; and sometimes the sack, when the whistleblower hasn't been induced to quit. Health frequently suffers. The Sword of Damocles finally falls. Pension entitlements are lost; a promising career is finished.

And all for nothing. Because someone has spoken out, the institutions have an even greater need to cover over their failings. The fraud goes on regardless. To quote senior whistleblowing auditor Robert Watt, "My colleagues have learned how pointless it is to risk their careers for the public interest."

It doesn't end there. Beyond the competent authorities refusing to investigate even claims which are easily checkable (such as nepotism in an institution - a post being created to accommodate a relative, for instance), there have been several reports of attempts to intimidate witnesses. To quote another whistleblower, "Staff are simply too scared to speak out".

Across the Board

Not all Communities' whistleblowers are alike, and while they share a rare combination of propriety and public duty that goes (for them) dangerously beyond their own self-interest, their stories are different ones.

They are to be found across the institutions: the Commission, European Parliament, Committee of the Regions, and Court of Auditors have all faced them in different guises. They might be an *administrative* whistleblower (exposing the breaking of treaty law, for instance); they may be *structural* and expose organised and major fraud; or they might be from a lower staff grade and expose the *systematic* - "common fraud".

Amongst the latter types of fraud have been listed: overclaiming on airline tickets; the disappearance of keyboards; the siphoning off of thousands of six packs of typewriter ribbons and printer cartridges; and sick leave claims. It is fair to concede that cases of such 'petty larceny' are likely in any large and impersonalised institution, but not to the extent where such fraud has become an unofficially-sanctioned bonus that compensates for other elements of the work package. Such a climate engenders fraud higher up the chain. To quote Carol Thompson, a whistleblower at the European Parliament,

"People put on blinkers and see what they want to see. You will never change anything much unless everyone has a crisis of conscience."

There is certainly a great deal of scope for embezzlement at all levels. The annual Communities budget presently stands at some 100 billion Euros. Of this, 85% lies in the Structural and the Agricultural funds. These are run by the member states, but lie under the supervision of the Commission, which has a responsibility to ensure the money is properly accounted for and misspent money is reclaimed. The remaining 15% is managed directly, and was the cause of the fall of the Santer Commission. In any event, what is clear is that all this money should be properly accounted for, whether managed directly or indirectly by the Commission.

The proposal to create a European Public Prosecutor (EPP) as a solution is based on flawed premises. This is demonstrable through case history. In 1993, the Head of Division responsible for tobacco subsidies died suddenly in suspicious circumstances. Ten years

on, the Communities authorities have yet to adequately follow this up, because the old operating practices and attitudes had been passed on to the new investigative body. There is an institutionalised omerta in the higher ranks of the administration - which has, incidentally, been linked to masonry. The failure of the investigating organisation to pursue the case despite the opportunities presented sets a poor precedent for the EPP – "a catalogue of material failures in the performance of the inter-related EU systems of administration, internal control, external control, fraud investigation and political oversight". The stakes are high: representatives of the tobacco industry are reported to have informed the Court of Auditors that the mafia makes 60 million Euros from the tobacco market in Southern Italy every year.

What can be done?

These faults may be serious, but with a new work atmosphere they are surmountable. The institutions need a radical management overhaul and fresh blood, to inject transparency and openness, with an increased role for national institutions (which are harder to subvert, and further removed from the institutions that encourage the political protection of particular Commission members).

The Heads of Government, as they reflect upon the Draft Constitution in its complete form, will have an ideal opportunity to discuss this. There may be opportunities to incorporate elements into the Constitution guaranteeing these changes.

External Input: There has to be an external review of the accounting system of the Communities funds. This could be by providing a formal role for budgetary control committees in national parliaments. Past experience has demonstrated that the European Parliament cannot be guaranteed to rise above party politics in respect to individual Commissioners. If the European Parliament cannot act the role of guarantor, that leaves national assemblies. This could be linked in with individual Commissioners being appointed by national parliaments, being responsible before them, and being sackable by them.

More national secondees should be appointed to replace, on a short-term, rolling basis, key officials of the European institutions. While this may slightly slow down proceedings as new staff come up to speed, this more than offsets the benefit of stopping 'fraud footholds' being created. A study could even be made on the practicality of replacing all European civil servants with nationally-delegated staff in this way, in order to end conflicting political loyalties.

Audit Reform: It should mean something that accounts have to be signed off by the Court of Auditors and the European Parliament. Where a budget is not endorsed in this way, non-essential funding under the budget line should be blocked until it is signed off. If this does not occur within two years, the line is clearly flawed and should fall.

However, the Court of Auditors itself is not above criticism. One option would be to ensure that it is comprised solely of professional national auditors on a short-term rolling basis, headed by an auditor of repute appointed by the national governments, and responsible before the European Parliament and the Council, either of which can fire him for mismanagement. (Presently fifteen 'Principle Auditors' posts operate by roulement, on a renewable two years basis, while the Members of the Court itself are appointed for a renewable six year period.)

To quote whistleblowing auditor Robert Watt, "Financial accountability underpins political accountability; and when neither the accounts nor the audit are reliable, the financial and the political legitimacy of the European endeavour is undermined."

Investigative Reform: The present status of OLAF is untenable. It should be granted operational independence under a respected figure subject to democratic scrutiny and appropriate disciplinary powers. All cases passed to it should be subject to an obligation to pursue, and its findings should be published. Consideration might even be given to providing for its headquarters to be physically at a remove from those of other European institutions. Evidence of malpractice shall be forwarded to national authorities to pursue in their own right; the investigative authority would continue to monitor such pursuit, however.

Transparency: Employees of the Communities should be required to declare membership of societies and organisations likely to affect their activities, particularly freemasonry. Communities officials should also be barred from attending closed meetings of 'bridging organisations' whose purpose (like the Bridge Forum Dialogue or similar 'sponsored' meetings) is to bring together senior officials in private discussion. The Commission for its part should be depoliticised, and its efforts put towards transparency of policy, rather than penning newspapers articles or appearing in campaigns or television programmes espousing partisan political views

EU Whistleblower Rights: In the light of the present lack of options open to employees of the Communities who seek redress against institutional failings, the Convention may care to consider including a *Communities whistleblower clause* setting out the principle of the right of free speech where normal avenues have been blocked. Perhaps this could include the establishment of a right of any employee to appeal directly to the EP Budgetary Control Committee; perhaps there is room for increasing the scope of the Ombudsman; perhaps again, a right of referral to a national parliament Public Accounts Committee by a national appointee. Dossiers presented should not be withheld from the public domain (subject solely to the principles of restrictive classification of national documents, and prejudicing ongoing and genuine investigations). Likewise, European Court of Auditors reports should be made public as a matter of course.

Countdown on fraud: There have been too many promises of reform, and instances of cover up, to expect serious reform without incentive. A fraud deadline should therefore be imposed; a six months period for the present Commission to report on how it has in that timeframe corrected the current abuses in the system. After this period, and failing this turnaround, a temporary ***Fraud Czar*** would be appointed to carry out real reform and the Commission would be sacked, and replaced by figures with a reputation for tackling organised crime, corruption, and gangsterism. This would be a simple extension of the reasoning behind the establishment of the Committee of Wise Men to look into the Santer Commission.

Conclusion

Patently, there are many employees of the Communities who carry out their tasks efficiently, fairly, and honourably. But their activities and the honour of their institutions – and with it, the respect of the European citizens for these institutions – are sullied by the failings around them.

Corruption is a human failing, and without entering into the religious debate in the Convention by an analysis of Original Sin, the fault of the individual. But the systematic cover up of these faults, not once but as a matter of course, is a failing of the system itself.

In one case, the authorities have been seen to have failed to act against fraud through fear of running into Trades Union action. But most employees are honest people, who do not down tools to support dishonest colleagues. There can be no excuse for inactivity.

Inaction suppresses reform, and drives the chance of reform away. "My actions have always been 'in the interest of the Service and the taxpayer'," explained one whistleblower. "I thought I could jump on the bandwagon and deny the existence of these problems but I cannot. However, I am sure that there is more to life than standing by watching the taxpayers' money flow out of control through loopholes in the Regulations."

To quote another whistleblower, "There is no incentive to reveal wrong-doing in the European institutions, other than the self-knowledge of having served the public interest." But the cost of such public service interest is widely known at present to be prohibitively high.

How are we to have faith in the ability of the institutions to manage even more powers, when the suspicion lingers that they cannot even look after the ones they presently hold? The time has indeed come to flood the Augean stables.
