

12-1-2000

Recommendations for the Curbing of Corruption, Cronyism, Nepotism, & Fraud in the European Commission

Kelly Li

Follow this and additional works at: <http://lawdigitalcommons.bc.edu/iclr>

 Part of the [European Law Commons](#)

Recommended Citation

Kelly Li, *Recommendations for the Curbing of Corruption, Cronyism, Nepotism, & Fraud in the European Commission*, 24 B.C. Int'l & Comp. L. Rev. 161 (2000), <http://lawdigitalcommons.bc.edu/iclr/vol24/iss1/6>

This Notes is brought to you for free and open access by the Law Journals at Digital Commons @ Boston College Law School. It has been accepted for inclusion in Boston College International and Comparative Law Review by an authorized administrator of Digital Commons @ Boston College Law School. For more information, please contact nick.szydowski@bc.edu.

RECOMMENDATIONS FOR THE CURBING OF CORRUPTION, CRONYISM, NEPOTISM, AND FRAUD IN THE EUROPEAN COMMISSION

KELLY LI

Abstract: The European Commission consists of twenty appointed members including a Commission President, and serves primarily as a policy initiator and administrator for the European Union. Allegations of corruption had long surrounded the Commission and, through a series of events, an independent panel of experts was charged with the duty of investigating specific allegations of corruption. On March 16, 1999, the independent panel issued a scathing report of a "sad catalog of negligence and mismanagement" by the Commissioners. This report not only identified individual instances of mismanagement, cronyism, nepotism, and fraud but also excoriated the Commission for lacking "even the slightest sense of responsibility." As a result, in an unprecedented and sensational move, the entire Commission resigned immediately. The European Commission's inherent structure may encourage governmental abuses, inefficiency, and corruption, and the author discusses the deficiencies of this structure. In light of these deficiencies, the author reviews a variety of recommendations posited by the panel of independent experts and other critics for increasing accountability and preventing corruption. Of these, she concludes that the creation of an Independent Prosecutor's Office would be pivotal in the curbing of corruption by increasing the efficiency and accountability of the Commission.

INTRODUCTION

On March 16, 1999, twenty members of the European Commission (Commission) appointed by the fifteen Member States resigned after an independent panel accused the group of chronic cronyism and fraud.¹ The document by the independent panel not only identified individual instances of mismanagement, cronyism, nepo-

¹ See Craig R. Whitney, *Group Running European Union Quits en Mass*, N.Y. TIMES, Mar. 16, 1999, available at LEXIS, News Group File, Most Recent Two Years.

tism, and fraud, but also excoriated the Commission for lacking “even the slightest sense of responsibility.”² This Note posits that the structure of the Commission encourages governmental abuses and sets forth recommendations for curbing corruption and revamping the Commission in light of the “New Era of Change” that the Commission’s new president, Romano Prodi, pledged upon his appointment.³

Part I provides the necessary background to understanding corruption in the Commission. First, it documents the dramatic events surrounding the Commission’s mass resignation. Second, it describes the function of the Commission. Part II outlines the various recommendations for the curbing of corruption, cronyism, nepotism, and fraud in the Commission. Finally, Part III explores the effectiveness in curbing corruption of one of these recommendations, namely the institutionalization of a Prosecutor’s office, in light of the inherent structural problems of the Commission.

I. BACKGROUND

A. *Structure and Function of the Commission*

The Commission is cited as one of the most powerful institutions governing the European Union (EU) because of its primary role as policy initiator.⁴ The Commission has a variety of functions that include: (1) *the initiative role*, since with few exceptions the Commission has the responsibility for initiating legislation; (2) *the administrative role*, in areas such as agriculture, which has been delegated to the Commission by the Member States; (3) *the normative role*, both as guardian of the Treaties and the *acquis communautaire* (i.e., all the Community’s legislation) and as the conscience of the Community in proposing ideas and recommendations whether or not covered by the Treaties; (4) *the mediative role*, i.e., mediating among the Member States and between the institutions in order to reach agreement and a decision; and (5) *the representative role*, the diplomatic representation

² Comm. of Indep. Experts, First Report on Allegations Regarding Fraud, Mismanagement and Nepotism in the European Commission, at 9.4.25, available at <http://www.europarl.eu.int/experts/en/report1.html> (Mar. 15, 1999) [hereinafter First Report].

³ See Alex Blair, *Britain Takes Key European Posts*, THE SCOTSMAN, July 10, 1999, available at LEXIS, News Group File, Most Recent Two Years.

⁴ See George A. Bermann, *Regulatory Decision Making in the European Commission*, 1 COLUM. J. EUR. L. 415, 415 (1995); *The Role of the Commission*, available at http://europa.eu.int/comm/role_en.html (last visited Sept. 30, 1999) [hereinafter *Role of the Commission*].

of the Community in third countries and in many international organizations.⁵

The Commission, with its twenty Commissioners and fifteen thousand staff members, is the largest of the three primary institutions (in addition to the European Parliament and the Council of Ministers) with roughly half of the total employed by all the European institutions.⁶ The Commission consists of a hierarchical structure starting with the Commissioners and including one Commission President.⁷ The Commission is divided further into thirty-six Directorates-General (DG) or policy areas headed by a director-general.⁸ A director-general, the equivalent to a top civil servant in the government ministry, reports directly to the Commissioner in charge of that portfolio or policy sector.⁹ Commissioners typically are responsible politically and operationally for one or more DGs.¹⁰ Each DG is divided further by subject matter into Directorates and then into Units, the departments that generate most of the work.¹¹ In addition, each Commissioner has his or her own Cabinet of six individuals who “give political support and advice,” “help to coordinate policy and mediate among competing interests . . . and provide a useful lens through which to view the intricate and informal processes of Commission policy making.”¹²

The President of the Commission is elected by the EU Heads of State or Governments meeting in the European Council, whereas the other nineteen Commissioners are nominated by the fifteen Member States in agreement with the President.¹³ The elections of both the President and Commissioners require the approval of the European Parliament (EP).¹⁴ Commissioners serve five-year terms and enjoy remarkable amounts of stability since no individual can be dismissed.¹⁵

Legislative initiatives typically originate from the Commissioners and then are assigned to a director-general.¹⁶ The director-general

⁵ See GEOFFREY EDWARDS & DAVID SPENCE, *THE COMMISSION* 4 (1995).

⁶ See *Role of the Commission*, *supra* note 4.

⁷ See *id.*

⁸ See *id.*; EDWARDS & SPENCE, *supra* note 5, at 97–101.

⁹ See *Role of the Commission*, *supra* note 4.

¹⁰ See *id.*

¹¹ See Bermann, *supra* note 4, at 420.

¹² EDWARDS & SPENCE, *supra* note 5, at 40–44.

¹³ See *Role of the Commission*, *supra* note 4.

¹⁴ See *id.*

¹⁵ See EDWARDS & SPENCE, *supra* note 5, at 34.

¹⁶ See Bermann, *supra* note 4, at 421.

forms a working party which formulates a Working Document, with input from various interest groups, that it thereafter sends to the Council of Ministers for comments.¹⁷ After comments and revisions, the Council votes on the proposal.¹⁸ Over the last few years, the EP has received increased power and, in certain legislative areas, the EP must be consulted by the working party.¹⁹

B. *Events Leading to Resignation*

Some believe that the Commission's mass resignation is "the most sensational event in the history of the European Union."²⁰ The events leading up to the resignation of the entire Commission, as well as the continuing pressures on the Commission, are dramatic and unprecedented.

In December of 1998, Paul van Buitenen, an assistant auditor in the Commission's financial control department, handed to the EP a thirty page dossier and a carload of evidence documenting rampant Commission malpractice.²¹ Tales of corruption and mismanagement had long been brewing and the EP, traditionally one of the least powerful and most maligned of the EU's institutions, for the first time declined to approve the Commission's budgetary accounts.²²

Following the refusal, Pauline Green, a member of the EP, put forth a censure motion against the Commissioners.²³ As a compromise, the EP elected an independent committee of auditors consisting of five "Wise Men"—three auditors and two lawyers—who began an investigation into a series of specific scandals.²⁴ The investigation lasted only three months and sought "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."²⁵ What originally started as an

¹⁷ See CLIVE ARCHER, ORGANIZING EUROPE 118-24 (1994).

¹⁸ See *id.* at 118.

¹⁹ See *id.* at 122.

²⁰ Roy Denman, *Europeans Need an Accountable, Efficient Commission*, INT'L HERALD TRIB., May 22, 1999, available at 1999 WL 5110302.

²¹ See Katherine Butler, *Europe In Crisis*, THE INDEP. (LONDON), Mar. 21, 1999, available at 1999 WL 5990084.

²² See *id.*

²³ See Peter Conradi & Stephen Grey, *Rudderless EU Faces Wholesale Shake-Up*, SUND. TIMES (LONDON), Mar. 21, 1999, available at 1999 WL 14484566.

²⁴ See *id.*

²⁵ First Report, *supra* note 2, at 1.1.4.

inquiry into specific allegations of corruption raised in Parliamentary discussions culminated in a 144-page scathing report of a "sad catalog of negligence and mismanagement."²⁶

Less than seven hours after the report was released, on March 16, 1999, the Commission President Jacques Santer announced in a press conference that all twenty members of the Commission had resigned.²⁷ By resigning nine months before the termination of their collective five-year term, the Commissioners preempted the highly probable EP censure motion.²⁸ A censure motion would have been tantamount to immediate termination, while resignations allowed the Commissioners to remain on salary for three additional months and also to receive a severance bonus equivalent to three years of salary.²⁹

The report examined specific "cases" of fraud, mismanagement, cronyism, and nepotism that arose in the course of parliamentary discussions.³⁰ These included Tourism, MED Programs, ECHO, a youth training program called Leonardo da Vinci, the Security Services office, Nuclear Safety, and Allegations of Favoritism.³¹ The most sensational of the corruption scandals charged the Commissioner of Research and Education, Edith Cresson, of nepotism through her hiring of her dentist to write reports on AIDS research for a large salary.³² The dentist, who lived and traveled extensively with her using public expense, lacked qualifications for the post and allegedly was unable to perform his job due to illness.³³ In addition, Ms. Cresson frequently wrote herself checks from the Leonardo da Vinci youth program for

²⁶ Conradi & Grey, *supra* note 23.

²⁷ See James Graff, *A Euromassacre*, TIME MAG., Mar. 29, 1999, available at 1999 WL 15940661.

²⁸ See John Laughland, *Viewpoint: The Rascals are Creeping Back*, THE EXPRESS, May 7, 1999, available at 1999 WL 5816762.

²⁹ See *id.*

³⁰ See First Report, *supra* note 2, at 1.1.2.

³¹ See generally *id.* "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." First Report, *supra* note 2, at 3.1.1. "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." *Id.* at 4.1.1. The Leonardo da Vinci program was responsible for matters concerning education, training and youth. See *id.* at 5.2.1.

³² See Butler, *supra* note 21.

³³ See *id.*

no documented reason.³⁴ Furthermore, the report charged Jacques Santer with negligence in his responsibilities as Commissioner of Security Service by allowing a “state within a state” to develop.³⁵ Security Service functions were outsourced without any form of oversight and, thus, the firm that received the contract fixed parking tickets for Commissioners, passed out jobs improperly, and even kept tabs on individuals who spoke to internal auditors.³⁶ Other charges included that of Emma Bonino, the Commissioner who misused 2.4 million euros from her Africa and Bosnia “humanitarian aid” budgets and misplaced 600,000 euros, as well as that of Manuel Marin, the Commissioner in charge of the MED program who engaged in false contracts, theft, and favoritism.³⁷ Finally, the report is replete with charges that many individuals hired brother-in-laws and friends while others granted contracts to favorites.³⁸

The panel of experts did not find cases where a Commissioner directly and personally committed fraud or gained financially from any corruption.³⁹ The panel, however, did find “instances where Commissioners or the Commission as a whole bore responsibility for instances of fraud, irregularities or mismanagement in their services or areas of special responsibility.”⁴⁰ Most of the panel’s charges related to general mismanagement resulting from policies initiated with knowledge that they would be understaffed.⁴¹ Because the Commission was understaffed, many of the daily responsibilities were outsourced but with nominal oversight or forethought by the Commissioners and, thus, waste, fraud, and corruption burgeoned.⁴² The independent panel ultimately concluded, “It is becoming difficult to find anyone who has even the slightest sense of responsibility.”⁴³

By September 1999, President Prodi was designated Commission President and, in April 1999, the nineteen other Commissioners were

³⁴ See *Will Someone Please Stand Up*, THE BULL., Mar. 30, 1999, available at 1999 WL 2274219.

³⁵ Graff, *supra* note 27.

³⁶ See *id.*

³⁷ See Laughland, *supra* note 28.

³⁸ See First Report, *supra* note 2, at 8.1–8.6.

³⁹ See *id.* at 9.2.3.

⁴⁰ *Id.*

⁴¹ See Michael Berendt, *European Scandal*, CMA MGMT. ACCT. MAG., June 1, 1999, available at 1999 WL 14113310; Richard Watson, *Europe’s Rising Tide of Fraud*, PUB. FIN., June 4, 1999, available at 1999 WL 15502617.

⁴² See First Report, *supra* note 2, at 9.2.7; Berendt, *supra* note 41.

⁴³ First Report, *supra* note 2, at 9.4.25.

nominated and approved by Prodi and the EP, respectively.⁴⁴ Four out of the twenty former Commissioners emerged from the inquiries unscathed and were reelected.⁴⁵ Ironically, these reelected individuals, though “innocent” of fraud, mismanagement, and corruption, still benefited from resigning by cashing in on their severance bonuses.⁴⁶ Both President Prodi and Neil Kinnock, a surviving Commissioner from the clean-up who was elevated to vice president of administrative reform, vowed that there would be “zero tolerance” for corruption and also a “continual and insistent emphasis on efficiency, transparency and accountability.”⁴⁷

In September 1999, the committee of “Wise Men” issued a follow-up report focusing on internal reform of “financial procedures, control mechanisms, personnel management, [and] measures aimed at combating fraud.”⁴⁸ The report cited that the entire legal framework for fighting against fraud was incoherent and incomplete and must be overhauled.⁴⁹

II. DISCUSSION

A. *Reasons for Corruption*

The Commission’s structure encourages governmental abuses, inefficiency, and corruption because it provides insufficient democratic accountability within its inherent structure.⁵⁰ The Commission’s deficiencies range from an absence of sufficient checks and balances to general structural flaws such as the lack of individual oversight and

⁴⁴ See John Rossant, *Europe’s First Prime Minister*, BUS. WK., Sept. 27, 1999, available at 1999 WL 27295205.

⁴⁵ See *Prodi’s People*, TIMES (LONDON), July 15, 1999, available at LEXIS, News Group File, Most Recent Two Years.

⁴⁶ See Laughland, *supra* note 28.

⁴⁷ Stephen Castle, *Kinnock Vows to Clean Out Brussels Sleaze*, THE INDEP. (LONDON), Sept. 10, 1999, at 2, available at LEXIS, News Group File, Most Recent Two Years; see Martin Fletcher, *Bumpy Start for Kinnock’s Big Clean-Up*, TIMES (LONDON), Sept. 8, 1999, available at LEXIS, News Group File, Most Recent Two Years.

⁴⁸ Comm. of Indep. Experts, Second Report on Reform of the Commission—Analysis of Current Practice and Proposals for Tackling Mismanagement, Irregularities and Fraud, Vol. I, at 1.1.2–1.1.4, available at <http://www.europarl.eu.int/experts> (Sept. 9, 1999) [hereinafter Second Report].

⁴⁹ See *id.* at 5.14.1.

⁵⁰ See Peter L. Lindseth, *Democratic Legitimacy and the Administrative Character of Supranationalism: The Example of the European Community*, 99 COLUM. L. REV. 628, 628 (1999).

accountability, weak democratic oversight by the EP, and a weak institutionalized fraud-busting program.⁵¹

1. Lack of Individual Oversight and Accountability

This system does not make the individual Commissioners accountable.⁵² The bureaucratic layering ensures that the Commissioners can easily shirk responsibility and that it is difficult to uncover what transpires.⁵³ Each Commissioner is insulated from enacting the policies that the Commission puts forth first by his or her Cabinet, then by the director-general, then by the staff.⁵⁴ Moreover, since the Commission is understaffed, much of the work is outsourced, which further removes those involved from the oversight of the policy initiatives.⁵⁵

Another factor that contributes to corruption is the “psychological gap” between the twenty Commissioners and the Directorates-General that form the European civil service.⁵⁶ Commissioners feel responsible for policy but not for administration and, thus, do not feel obliged to resolve the issues; instead, they duck under criticisms of administrative failures.⁵⁷

Changes have been installed to amend the situation, such as the Amsterdam Treaty, enacted in June 1997, which was an instrumental attempt at instilling accountability among the EU institutions by increasing the role of the President in overseeing the Commissioners.⁵⁸ First, the President of the Commission gained the power to veto the

⁵¹ See Andrew Gumbel, *The Saturday Profile: Romano Prodi, President Elect of the European Commission: A Gentleman Among Thieves*, THE INDEP., Apr. 17, 1999, available at LEXIS, News Group File, Most Recent Two Years.

⁵² See First Report, *supra* note 2, at 9.4.1; Francesca E. Bignami, *The Democratic Deficit in European Community RuleMaking: A Call For Notice and Comment in Comitology*, 40 HARV. INT'L L.J. 451, 452 (1999).

⁵³ See *Recycling Cars, Scrapping Democracy*, WALL ST. J. EUR., Jul. 26, 1999, available at 1999 WL-WSJE 18409978 [hereinafter *Recycling Cars*].

⁵⁴ See First Report, *supra* note 2, at 9.3.4; Thomas Christiansen, *A Maturing Bureaucracy?*, in EUR. UNION POWER AND POLICY MAKING, 84–85 (Jeremy Richardson ed., 1996).

⁵⁵ See First Report, *supra* note 2, at 9.2.7; Berendt, *supra* note 41. Much of the criticism, such as in the MED case, ECHO, Leonardo, Security, Nuclear Safety, involved “under-resourcing . . . [and thus] the need to delegate public-sector responsibilities to outside consultants.” See First Report, *supra* note 2, at 9.2.4–9.2.9.

⁵⁶ See Berendt, *supra* note 41.

⁵⁷ See *id.*

⁵⁸ See *The Challenge Awaiting Romano Prodi*, THE ECONOMIST, Apr. 3, 1999, available at 1999 WL 7362332; *Keeping the EC Clean*, THE ASIAN WALL ST. J., May 11, 1999, available at 1999 WL-WSJA 5433274.

appointees of the Member States.⁵⁹ Second, the President gained the power to remove portfolios from individual Commissioners if they failed to adequately manage those portfolios.⁶⁰ The enlarged role of the President was intended to strengthen the executive position and to establish a leader who was willing to take responsibility and could keep individuals accountable.⁶¹ The mass resignations illuminate the need for the President to expand his powers and to increase oversight and accountability.⁶²

2. Weak Democratic Oversight by EP

The existence of the EP is meant to provide a democratic check against the Commission; however, democratic scrutiny does not play a vital role in formulation of policy.⁶³ The EP is the only directly elected body of members.⁶⁴ Elections are held every five years in each Member State according to national laws.⁶⁵ Although the EP is the closest thing to a democracy, "the standard complaint is that the only directly elected body, the European Parliament, does not have sufficient legislative power and cannot adequately control the Community's executive process."⁶⁶ Moreover, election turn-outs have been extremely low and, thus, do not nearly represent the populous.⁶⁷ During the July 1999 elections, a mere fifty-percent turned out, perhaps voicing their disenchantment over the government due to the mass resignation.⁶⁸

In the successive Luxembourg, Maastricht, and Amsterdam Treaties, the EU governments have expanded the powers of the EP.⁶⁹ The

⁵⁹ See *Keeping the EC Clean*, *supra* note 58.

⁶⁰ *See id.*

⁶¹ *See id.*

⁶² *See id.*

⁶³ See DAVID M. WOOD & BIROLA A. YESILADA, *THE EMERGING EUROPEAN UNION* 112–13 (1996); *Recycling Cars*, *supra* note 53.

⁶⁴ See WOOD & YESILADA, *supra* note 63, at 112–113; Bignami, *supra* note 45.

⁶⁵ See NICHOLAS MOUSSIS, *ACCESS TO EUROPEAN UNION* 56–59 (1997).

⁶⁶ Bignami, *supra* note 52, at 452.

⁶⁷ See Peter Norman, *Low Vote May See Less Abrasive Assembly*, *FIN. TIMES* (LONDON), JUNE 14, 1999, available at LEXIS, News Group File, Most Recent Two Years.

⁶⁸ *See id.*

⁶⁹ See David Earnshaw & David Judge, *From Co-operation to Co-decision*, in *EUR. UNION POWER AND POLICY MAKING* 96–125 (Jeremy Richardson ed., 1996); WOOD & YESILADA, *supra* note 63, at 101–03; *Keeping the EC Clean*, *supra* note 58; *Little Respect, Less Love, But Growing Power*, *THE ECONOMIST*, JUNE 12, 1999, available at 1999 WL 7363411 [hereinafter *Little Respect*].

EP has the authority to amend legislation in many areas, reject treaties and the EU budget, as well as veto the Commission's appointments.⁷⁰

3. Weak Institutionalized Fraud Busting Programs

The Commission's fraud investigation department was called the *Unite de Coordination de la Lutte Anti-Fraud (UCLFA)*.⁷¹ Traditionally, the UCLFA was weak and had limited powers to investigate allegations of fraud brought against the Commissioners.⁷² Two months after the mass resignation, however, in July 1999, the Commission, along with the EP and Council of Ministers, adopted Regulation 1073/99/EC governing the establishment of the *Office pour la Lutte Anti-Fraud (OLAF)*.⁷³ The statute replaces UCLFA with OLAF and defines the broadened scope, procedures, and rules of OLAF's investigations, as well as the rights of those concerned.⁷⁴ Most importantly, it lays out the rules for civil servants under investigation.⁷⁵ OLAF is an independent department that investigates allegations of fraud, corruption, and mismanagement.⁷⁶

At the same time, as the Independent Experts noted in the Second Report, the UCLFA, now OLAF, does not have much strength because it is an ineffective organization with limited powers.⁷⁷ It can do little other than refer the allegations to each Member State's police.⁷⁸ The police, in turn, fail to understand the complexity of EU-wide fraud, assign it low priority, and fail to coordinate investigations.⁷⁹

⁷⁰ See *Little Respect*, *supra* note 69.

⁷¹ See Second Report, *supra* note 48, at 5.4.

⁷² See *id.* at 5.9.5. The weaknesses include 1) weak policy on organizational arrangements for inquiries, 2) incorrectly implemented security measures and procedures, 3) insufficient permanent agents, 4) inoperational and ineffective electronic databases, 4) inadequate management and handling of case file information, and 5) difficulties in UCLAF cooperation with Member States. See *id.*

⁷³ See *Commission Amends Statute of Anti-Fraud Office*, EUR. REP., July 3, 1999, available at 1999 WL 8306305 [hereinafter *Commission Amends Statute*].

⁷⁴ See *id.*

⁷⁵ See *id.*

⁷⁶ See *id.*

⁷⁷ See Second Report, *supra* note 48, at 5.9.5–5.9.9 & 5.14.1. For an assessment of OLAF, see generally *id.*, at 5.11.

⁷⁸ See *Commission Amends Statute*, *supra* note 73.

⁷⁹ See Geoff Winestock, *Naming of EU Fraud Prosecutor Urged*, WALL ST. J. EUR., Sept. 13, 1999, available at 1999 WL-WSJE 18413597; see also Gert Vermeulen, *A Judicial Counterpart for Europol: Should the European Union Establish a Network of Prosecuting and Investigating Officials?*, 2 UCLA J. INT'L L. & FOREIGN AFF. 225, 225 (1997) (arguing for coordination of network of Member State police through establishment of central unit).

B. Proposed Recommendations To Curb Corruption

Many critics are calling for a major overhaul of the institutions and procedures.⁸⁰ The Second Report generated by the Independent Panel also proposes extensive recommendations.⁸¹ The following paragraphs detail the recommendations to curb corruption and increase accountability in the Commission, as derived from the Second Report as well as from various critics.⁸²

1. Increased Accountability and Transparency

Individual accountability can be increased through a variety of methods. First, the President's ability to fire individual Commissioners would increase individual responsibility as compared to the current system of censuring the entire Commission.⁸³ Second, reducing the number of Commissioners and making the Commissioners more responsible for the operations of policies would also increase accountability by focusing the Commissioners and reducing red-tape.⁸⁴ Furthermore, transparency would increase accountability by breaking the "culture of secrecy" which magnifies the opportunities for corruption and mismanagement.⁸⁵ A more effective press and information policy would increase transparency and, consequently, accountability.⁸⁶

In addition, the institutionalization of tougher fraud investigative powers are required for investigative, punitive, and deterrent effects.⁸⁷ Whistle blower laws also would open the door inside the Commission.⁸⁸ Currently, there does not seem to be any protection afforded whistle blowers as evidenced by the treatment of Paul van Buitenen, the financial analyst who came forward with a dossier of allegations of

⁸⁰ See *Recycling Cars*, *supra* note 53. "It will take a cultural revolution at the heart of the Commission to change many of the practices and expectations which have made it a lumbering out of control bureaucracy where nationality counts more than merit and where cronyism is a fact of life." Butler, *supra* note 21.

⁸¹ See Second Report, *supra* note 48, at ch. 2.

⁸² See *id.*; Christiansen, *supra* note 54, at 85-91.

⁸³ See Denman, *supra* note 20; William Echikson, *Remake the EC from the Top Down*, BUS. WK., Apr. 5, 1999, available at 1999 WL 8226799; Julie Smith, *Twenty Honest Men (or Women)*, WORLD TODAY, Aug. 1, 1999, available at 1999 WL 12485452.

⁸⁴ See Christiansen, *supra* note 54, at 90-91; Echikson, *supra* note 83.

⁸⁵ See Barry James, *Ethical Laxity Undermines EU Executive Body*, INT'L HERALD TRIB., July 23, 1999, available at 1999 WL 5112678.

⁸⁶ See *id.*

⁸⁷ See *Commons Warns of Need for Tougher Fraud Probes*, FIN. TIMES (LONDON), Aug. 25, 1999, available at LEXIS, News Group File, Most Recent Two Years.

⁸⁸ See Second Report, *supra* note 48, at 7.6.8-7.6.11; James, *supra* note 85.

fraud.⁸⁹ Mr. Buitenen was suspended on half-pay and was charged with breaking confidentiality rules.⁹⁰ Currently, he is employed in a department ordering furniture and supervising building contracts.⁹¹

2. Strengthening the EP and OLAF

There is a need for more democratic accountability.⁹² Since the EP is the only institution that provides democratic accountability, its role and powers should be increased.⁹³ As conferred by the Treaty of Amsterdam [Treaty] effective on May 1, 1999, the EP's co-decision role has been expanded so that it, along with the Council of Ministers and the Commission, jointly shapes issues related to the environment, social policy, health and consumer protection, freedom to provide services, and the free movement of workers.⁹⁴ Strengthening the EP would further ensure democratic legitimacy.⁹⁵ Allowing the EP to elect the President is another remedy.⁹⁶

At the same time, the EP's effectiveness as a democratic check must be called into question given the below fifty percent electoral turn out in June 1999.⁹⁷ Many critics have claimed that the EP is also corrupt, which further keeps citizens from participating.⁹⁸

Furthermore, the Second Report recommends strengthening OLAF, the European fraud investigation office.⁹⁹ On July 1, 1999, two months after the mass resignation, the Commission already had increased OLAF's powers through the adoption of an amendment that enshrines the principles for internal investigations.¹⁰⁰ However, more needs to be done to increase the effectiveness of OLAF, such as ensuring supervision and independence of OLAF.¹⁰¹

⁸⁹ See Stephen Bates, *EU Fails To Halt Book By Man Who Revealed Frauds*, THE GUARDIAN (LONDON), Oct. 13, 1999, available at LEXIS, News Group File, Most Recent Two Years.

⁹⁰ See *id.*

⁹¹ See *id.*

⁹² See Butler, *supra* note 21; *Recycling Cars*, *supra* note 53.

⁹³ See Lindseth, *supra* note 50, at 672-77.

⁹⁴ See *Business Prepares for New EU Parliament with Teeth*, FIN. TIMES (LONDON), June 10, 1999 available at LEXIS, News Group File, Most Recent Two Years.

⁹⁵ See Butler, *supra* note 21.

⁹⁶ See *id.*

⁹⁷ See Bignami, *supra* note 43, at 462-68; Norman, *supra* note 67.

⁹⁸ See Smith, *supra* note 83.

⁹⁹ See Second Report, *supra* note 48, at 5.6.

¹⁰⁰ See *Commission Amends Statute*, *supra* note 73.

¹⁰¹ See Second Report, *supra* note 48, at 5.11-5.12.

3. EU Public Prosecutor's Office

Another potential remedy is to institutionalize an independent EU Public Prosecutor's Office, which would have full power to investigate allegations.¹⁰² "An EU public prosecutor's office should be designed to provide the necessary competence to present criminal cases relating to EU fraud throughout the Union, while leaving the jurisdiction of national courts untouched and without implying any fundamental effects on national legal systems."¹⁰³ This suggestion has arisen not only from the panel of independent experts, but also from the Commission's own proposals for establishing a uniform code of criminal offences relating to fraud, otherwise known as *Corpus Juris*.¹⁰⁴

The central EU Public Prosecutor (EPP) would be independent of the EU institutions, supported by a network of prosecutors within the national systems, and would work alongside OLAF to investigate and prosecute offences within national courts.¹⁰⁵ The prosecutor would hold "unrestricted jurisdiction" for offences committed by members of EU organizations and work through national prosecution offices for EU offences and refer prosecutions to "appropriate national courts."¹⁰⁶ "The legal basis would be Article 29 of the Treaty ('to provide citizens with a high level of safety within an area of freedom, security and justice,') Article 34 (which provides for framework decisions on legal cooperation or Treaties which enter into force as soon as half of the signatory states have ratified them) and Article 280 (on protecting the financial interests of the EU)."¹⁰⁷ The prosecutor

¹⁰² See *id.* at 5.12.10–5.12.12.

¹⁰³ *Id.* at 5.12.11.

¹⁰⁴ See Second Report, *supra* note 48, at 5.12.13–5.12.17; John Mason, *Peers Criticize Proposals to Fight Fraud Against EU*, FIN. TIMES (LONDON), May 31, 1999, at 8, available at LEXIS, News Group File, Most Recent Two Years. *Corpus Juris* sets up a single legal area covering all of the EU over which the EPP would have jurisdiction. It allows for cross border prosecution, detention, arrests, and investigation and is the "embryo of a future European Criminal Code." See *id.*; see also, Michael Shrimpton, *Freedom's Flame Flickers*, TIMES (LONDON), Mar. 23, 1999, available at 1999 WL 7981916.

¹⁰⁵ See Second Report, *supra* note 48, at 5.12.10–5.12.12.

¹⁰⁶ *Id.*; see Michael Smith and Emma Tucker, *EU Must Set Up Prosecution Office To Tackle Fraud*, FIN. TIMES (LONDON), Sept. 11, 1999, at 2, available at LEXIS, News Group File, Most Recent Two Years.

¹⁰⁷ *European Commission: Independent Experts Look into European Commission Shortcomings*, EUR. REP., Sept. 11, 1999, available at 1999 WL 8306916.

would be solely accountable to an independent board with a strong parliamentary constituency and could only be fired by this board.¹⁰⁸

III. ANALYSIS: BENEFITS OF ESTABLISHING AN INDEPENDENT PROSECUTOR'S OFFICE

The charges that brought upon the mass resignation of the Commission herald the need for institutional changes.¹⁰⁹ Most of the charges involve the Commissioners' negligent administration of policies, favoritism in allocation of contracts and in employment decisions, and also oversight of allegations of fraud or irregularities.¹¹⁰ This type of deficient and ineffective administration not only hampers the functioning of effective government but also increases the potential for fraud.¹¹¹ Thus, the prevention of fraud, along with other changes, is a necessary component of any systemic change.¹¹²

The Independent Experts' primary recommendation for combating fraud was the institutionalization of an independent Public Prosecutor's Office.¹¹³ The Public Prosecutor's Office would be implemented in three stages.¹¹⁴ Stage One would include the appointment of an independent public prosecutor.¹¹⁵ Stage Two would include the creation in each Member State of a national Prosecution Office for European Offences (POEO), and Stage Three would include the creation of a single, indivisible European Prosecution Office.¹¹⁶

When analyzing the effectiveness of creating an Independent Public Prosecutor's Office in light of the structural weaknesses enumerated above, the benefits must be examined. First, the prosecutor must have the power to investigate allegations and individuals to a much greater extent.¹¹⁷ The prosecutor also must have the ability to use the resources of the Prosecutor's Office in the individual Member States, as well as the aid of the individual police forces if further inves-

¹⁰⁸ See *EU to Set up Fraudbuster in Drive to Clean Image*, FIN. TIMES (LONDON), May 25, 1999, at 3, available at LEXIS, News Group File, Most Recent Two Years [hereinafter *EU to Set up Fraudbuster*].

¹⁰⁹ See *Commission Amends Statute*, *supra* note 73.

¹¹⁰ See *First Report*, *supra* note 2, at 9.2.3.

¹¹¹ See *Second Report*, *supra* note 48, at 5.1-5.2.

¹¹² See *id.* at 5.2.1.

¹¹³ See *id.* at 5.12-5.14.

¹¹⁴ See *id.* at 5.14.8.

¹¹⁵ See *Second Report*, *supra* note 48, at 5.14.8.

¹¹⁶ See *id.*

¹¹⁷ See *id.* at 5.13.3-5.13.7.

tigation becomes necessary.¹¹⁸ This system is far superior to the limited UCLFA system, where allegations were delegated to the Member State's police forces for further investigation.¹¹⁹ The difficulty in delegation was that Member States' police units were not knowledgeable regarding the complex laws and were not particularly interested in cases that were delegated without supervision or direction.¹²⁰

Moreover, the establishment of a Prosecutor's Office may increase the likelihood of accountability among the Commissioners.¹²¹ The Prosecutor's Office should publicize all of its information—investigations and findings—thereby increasing the accountability of the Commissioners by informing the public of possible misappropriations.¹²² Exposure to the public throughout Europe as well as to a negligent Commissioner's Member State constituency would likely be a strong deterrent against corrupt behavior.¹²³

Although the Prosecutor's Office might overreach, the prosecutor would be accountable to a board, heavily composed of parliamentary members; thus, democratic accountability would be increased.¹²⁴ In sum, the Prosecutor's Office would be a vital check against fraud and corruption in a system that inherently lacks the systemic checks and balances that are necessary to ensure accountability.¹²⁵

CONCLUSION

The Commission's mass resignation mandates a closer look at the presence of corruption and mismanagement. Such an examination reveals the inherent deficiency in the European Commission's structure. The lack of sufficient checks and balances to ensure accountability and prevent corruption helped to foster the types of behavior that resulted in the ouster of the Commissioners. Three categorical weaknesses can be derived from the incidences: lack of individual accountability, lack of democratic oversight, and weak institutionalized fraud investigation programs. The panel of Independent Experts and other critics have proposed a variety of recommendations. Of these, the creation of an Independent Prosecutor's Office, working along with

¹¹⁸ *See id.*

¹¹⁹ *See* Second Report, *supra* note 48, at 5.9.5.

¹²⁰ *See id.*; Winestock, *supra* note 79.

¹²¹ *See* Smith, *supra* note 83.

¹²² *See id.*

¹²³ *See id.*

¹²⁴ *See* EU to Set up Fraudbuster, *supra* note 108.

¹²⁵ Second Report, *supra* note 48, at 5.12–5.14.

OLAF, would be pivotal in the curbing of corruption by increasing the efficiency and accountability of the Commission. With these changes, the Commission may well be on its way to the “New Era of Change” promised by the Commission.¹²⁶

¹²⁶ Blair, *supra* note 3.