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*An Ethical Perspective on the Reform
of the European Commission*

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Abstract¹

This paper examines how the Commission has approached the subject of organisational ethics as part of its post-1999 administrative reform, by explaining the relationship between the Commission resignation and the reform that followed. It then reviews some of the relevant ethics literature, identifying a useful conceptual framework on reform and ethics. The third section introduces the reform proper, arguing that it is loosely in line with new public management thinking. The fourth section then identifies the ethical dimension of the reform package presented during the Prodi Commission, with the aim of explaining the Commission's approach. The paper concludes that the Commission has taken an eclectic approach to ethics, so that while the Commission's approach to ethics is very much in line with new public management ideas, it has been supplemented by compliance-based ethics management, albeit of a modest kind. This approach, it is argued, may have a detrimental impact on organisational ethics within the Commission, though the author accepts that is too early to pass judgement on this final point.

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Introduction

To those familiar with the internal workings of the European Commission, public ethics may not be the most obvious starting-point for an examination of the post-1999 administrative reform. By contrast, to those less familiar with the Commission, the adoption of an ethical perspective may seem entirely appropriate. This is especially understandable if one considers that the initial driver of the reform agenda was, at least in part, the criticism that emerged in and after the publication in 1999 of the two Reports of the Committee of Independent Experts (CIE, 1999a and 1999b), the first of which prompted the resignation of the College of Commissioners in March of that year. Much of that criticism concerned issues of responsibility and accountability. If there was little in the Reports to suggest widespread corruption or ethical misconduct within the Commission, the perception outside the organisation (and fuelled by the media's presentation of this episode) was rather different. Both Commissioners and Commission officials were tarred with the same brush, the assumption being that unethical conduct of various kinds was rife within the European institutions.

But whereas the reform package, introduced in late 1999 and confirmed in the White Paper of March 2000, was initiated as a reaction to negative public perceptions after the resignation of the Commission, this early *raison d'être* of the reform has not been particularly visible as reform has moved from agenda-setting to implementation. One reason for this has been the sheer complexity and comprehensiveness of the reform package, along with the need to respond to and deal with bursts of internal criticism regarding certain aspects of the project. These elements suggest that the *process* of reform has worked against a prioritisation of the ethics dimension and of the communication of ethics outside the Commission. There is, however, another explanation for the low level of visibility of public ethics in the reform: that is, that the Commission leadership have intentionally adopted a minimalist approach to ethics. In order to examine this proposition, the paper examines the Commission's approach to organisational ethics within the reform

package, setting it within the confines of a branch of the ethics literature which explains the relationship between reform and ethics.

The paper begins with the events of 1999, setting the scene by explaining the relationship between the Commission resignation and the reform that followed. The second section briefly reviews some of the relevant ethics literature, which offers a useful conceptual framework on reform and ethics. The third section introduces the reform proper, arguing that it is loosely in line with new public management thinking. The fourth section then identifies the ethical dimension of the reform package presented during the Prodi Commission, with the aim of explaining the Commission approach. The paper concludes that while the Commission's approach to ethics is very much in line with new public management ideas, it has been supplemented by compliance-based ethics management, albeit of a modest kind. Finally, a potential effect of this approach on the ethics of public officials working within the Commission is outlined.

The 1999 Resignation and its Aftermath

The resignation of the Santer Commission on 15 March 1999 set the scene for the reform process introduced at the beginning of the Prodi Commission. It was not so much the resignation that was important, as the criticism that the Commission had received from the Court of Auditors, the European Parliament, and most importantly from the Committee of Independent Experts (CIE), whose reports were published in March and September 1999. Since then, many commentators have noted how ironic it was that the most reformist of Commission Presidents, Jacques Santer, should fall from grace in such a way, criticised for his failure to address problems that had long been facing the Commission (Peterson, 1999a; Stevens, 2000:193; Cram, 1999:59; Kassim, 2004:35). But Santer's downfall was not only provoked by the fact that the reforms he introduced were low-key and low profile and, in many cases, only introduced on a voluntary basis (Stevens, 2000:187), but that he lacked

the leadership to deliver on his original objective (Peterson, 1999b), which was to do 'less, but better' (*The Economist*, 13 May 1995; Cini, 2000:13).

There is a fairly long history behind the events of March 1999, some of which are concerned with the longstanding criticisms of the internal functioning of the Commission (Macmullan, 1999). However, perceptions (and indeed evidence) of misconduct by officials and fraud by those in receipt of funds from the EU budget were also important factors. Indeed, in some cases, the two points are inter-related. For example, numerous European Parliament (EP) reports had criticised the Commission for failing to reform its internal procedures, especially those on financial management; and the Court of Auditors had for many years identified the Commission's own administrative practices as having facilitated fraudulent activity. It is telling that the crisis first came to a head in January 1999 over the Commission's mismanagement of the EU budget, even if ultimately the EP failed to censure the Commission. The crisis was also about the EP flexing its institutional muscles vis-à-vis the Commission, as well as being about the Commission's handling of complaints that had been made to the Parliament by whistleblower, Paul van Buitenen.

The First Report, on Allegations regarding Fraud, Mismanagement and Nepotism in the European Commission (CIE, 1999a) dealt specifically with matters of administration as they touched the College of Commissioners. Even though no fraudulent activities by the College were identified (with the possible exception of the Cresson affair), the CIE identified a number of general and pervasive weaknesses in the management, organisation and administrative culture of the Commission. It recommended reform to remedy the following eight criticisms: that Commissioners had lost control over their departments; that there was a lack of openness and transparency in the Commission's internal decision-making; that there was a failure to think through the implications of policy before it was proposed; that there were internal problems such as 'fiefdoms' which prevent the Commission coping with new tasks; that there were procedural problems associated with auditing and the investigation of fraud; that there were procedural problems associated with calls for and the award of contracts; that there was a failure

by Commissioners to transmit all relevant information to the European Parliament, or, indeed, to the Commission President and other Commissioners. There was also some evidence of favouritism and nepotism in appointments to Commission posts.

The Second Report was more concerned with the Commission's services. Its recommendations included the introduction of a 'genuine contracting philosophy, a remodeled legislative, regulatory, and budgetary frame of reference, and greater responsibility entrusted to authorising officers' in order to 'restore order to the Commission's management' (CIE, 1999a:4). It highlighted problems which made EU policies vulnerable to fraud, particularly within the CAP and the EU's structural policies; and it criticised the operation of financial management within the Commission 'which [was] a major factor in relieving Commission managers of a sense of personal responsibility for the operations they authorise while at the same time doing little or nothing to prevent serious irregularities' (CIE, 1999a:12); it damned the existing framework which sought to combat fraud (via UCLAF/OLAF); and argued the case for changes in the Staff Regulations (CIE, 1999a:19) and better defined codes of conduct (CIE 1999a:23). Finally, it claimed that 'the concepts of political responsibility and accountability remain unclear and the mechanisms for their practical application inadequate' (CIE, 199a:23).

Thus while there is a measure of overlap with more general concerns about administrative weaknesses in the Commission, the tone of the CIE Reports was extremely moralistic. This was also reflected in the media presentation of the events surrounding the College's resignation, which served to compound and reinforce the generally negative public perception of the European institutions. The bad press had really begun with the van Buitenen case. Articles such as those in the *Sunday Times* on 13 December 1998, headlined 'Top Eurocrats in bribery inquiry', and in *The Guardian* on 11 January 1999 in which van Buitenen claimed 'Europe is out to get me' were commonplace around this time. There can be no doubt that reports such as these affected the climate of opinion both towards and within the Commission.

On the whole the analysis and conclusions about specific allegations as presented in the two Reports were based on hard facts. Some of the more general criticisms of the Commission's management methods were also justified. But the Committee also added some very general observations which went beyond anything supported by the individual cases that had been scrutinised. Those general observations were couched in language wholly different in character from that used in the analysis of individual cases. The Committee concluded, for example, that it was hard to find anyone prepared to take responsibility in the Commission. Some, including at least one insider, believed this to be an overblown rhetorical soundbite which detracted from an otherwise convincing report (Brittan, 2000:11).

Whether justified or not, it was not only the content of the Reports, but the language and tone in which it was presented which provoked the resignation of the Commission, making it imperative that the new College of Commissioners be appointed on the basis of a mandate to introduce reform to the Commission as a matter of some urgency. That reform had to speak both to the need to improve the internal workings of the Commission, and to the evidence and perception of ethical misconduct within the organisation. It is in this latter sense that this paper argues that the source or origins of the post-1999 reform was, in part, ethical.

Ethics and Reform

For reformers keen to see an improvement in the ethics of public officials as part of a broader reform project, there is at one and the same time a wealth of information, and a dearth of straightforward, uncontested advice. As Maesschalck (2004:469) has pointed out, the literature on reform and ethics has suffered from its relative youth, from a confusion of empirical with normative claims, and a need to draw on a range of diverse theoretical traditions. In approaching the question of the relationship between reform and ethics from the perspective of the public administration/public management literature, Maesschalck (2004) identifies four positions, which he

argues are essentially compatible and on the basis of which he proposed his own synthetic theory.

The first position he identifies is 'anchored in the NPM [new public management] administrative philosophy' (Maesschalk, 2004:466). While the argument in this literature may be that competition can make unethical behaviour less likely, 'for example, by lessening the opportunities of public servants to corruptly charge monopoly rents' (Maesschalk, 2004:466), more often than not the NPM literature does not explicitly discuss ethics. 'The assumption seems to be that ethical behaviour will naturally follow from an implementation of NPM-reforms' (Maesschalk, 2004:466), in the sense that there will be a 'trickle-down' effect' from other changes to organisational process. Moreover, 'Ethical behaviour is mainly understood as behaviour that strengthens "the three E's" (economy, efficiency and effectiveness)' (Maesschalk, 2004:466), rather than in moral or cultural terms.

The second position identified by Maesschalk is found in the traditional public administration writings, often taking the form of critiques of New Public Management. Here, the rule of law is emphasised, and as such, this emphasises the importance of compliance in maintaining ethical standards. For public servants, ethical choices are understood to be limited by means of organisational processes. In other words, officials have a simple choice: they either follow the rules and act ethically; or they breach them and act unethically. This approach is tied closely to orthodox understandings of public duty and the public service ethos, with the literature frequently decrying the demise of this kind of thinking amongst public officials (Maesschalk, 2004:467), the implication being that ethics will suffer as a consequence.

The third position identified by Maesschalk is derived from what some call the 'New Public Service' literature, and can be presented as a third way between new public management and traditional public administration. This sees the role of officials as helping citizens to articulate and meet shared interests, very much along communitarian lines (Maesschalk, 2004:467). This contrasts with a more traditional image of public bureaucracies as hierarchical and closed off

or unresponsive to citizens. Maesschalk claims that Gawthrop (1998) fits this New Public Service approach neatly as he 'contrasts the "democratic spirit" with the NPM-type "entrepreneurial spirit" and emphasizes that the former should prevail' (Maesschalk, 2004:468). This distinction highlights the key distinction between the New Public Service philosophy and that of NPM. Although this is not spelt out explicitly, one might assume that this involves the adoption of an aspirational approach to organisational ethics.

Finally, Maesschalk identifies a fourth position, which allows for a mix and match approach to ethics. It works on the premise that combination of positions or doctrines may be applied to individual cases as the need arises, but that recognising the importance of ethics, an ethics management element would somehow be incorporated. This ethics management dimension could take the form of either a compliance or an aspirational approach (Maesschalk, 2004:468). There is one proviso here, however: that the

Increased discretion that goes with the reduction of hierarchy in NPM-reforms needs to be paralleled by an ethics management style that supports the public servants in dealing with this discretion, rather than limiting their discretion by developing new rules and control systems (Maesschalck, 2004, p.468).

In other words, this more eclectic approach assumes that the substance of new public management reforms demand some kind of aspirational ethics management programme if public officials are to act ethically in the performance of their functions.

Maesschalk (2004:469) argues, in his article, for a synthesis of these four positions (which he claims not to be incompatible). However, even without adopting his theory, this four-fold categorisation of the literature can help to inform our empirical understanding of organisational ethics by framing the relationship between reform and ethics, so as to provide insights into how reform agents tackle the ethical component of reform. In the case of the European Commission, it can shed light not only on the Commission's

approach to organisational ethics, but also on some of the potential effects or defects of that approach.

The Reform Package

After Romano Prodi had been appointed to the post of Commission President, one of his first decisions was to nominate Neil Kinnock as one of his two Vice-Presidents, creating for the first time a Vice-President for Reform. While the illogical nature of this move has been criticised by some (see Spence, 2000), it did send an extremely strong signal to the outside world about the priorities of the new President. Moreover, the symbolic importance of the choice of Kinnock as the person to take charge of reform did not go unnoticed. Like Prodi himself, Kinnock was associated with domestic reform, that is with the modernisation of the UK Labour Party. Although Prodi did not become Commission President until September 1999, the reform process was kicked into action as soon as he was nominated in June of that year. Even though there was a good deal of continuity over the course of 1999, as Prodi and then Kinnock picked up where Santer had left off, the pressure was on the Commission to act, and to be seen to be acting, to resolve the shortcomings identified in the CIE reports and elsewhere (Kassim, 2004:33). While preparations were made to draft a Consultative, and then a White Paper on Reform to be launched early in 2000, the Reform Task Force began producing documents which appeared speedily on the Commission's newly established reform website.

It is the White Paper which most clearly spelt out the Commission's strategy as it operationalised its reform ambitions. The Paper was released in March 2000, and from that point formed the framework within which the more detailed proposals were implemented. The White Paper brought together the three strands of the reform package proposed by Neil Kinnock and his team. The first strand was summarised in the phrase 'the means to match our ambitions'. This was to involve a new approach to the setting of political priorities and the allocation of resources, to the extent that the Commission might in future

refuse to take on new responsibilities should it not be given the resources to implement them. A new decision-making mechanism (known as 'Activity-Based Management' or ABM) was to be introduced to ensure that responsibilities matched resources, and that the results were to be evaluated as a matter of course. The second strand concerned the reform of financial management. The justification here was one of empowering departments to establish internal control systems, by clearly and unequivocally identifying the responsibilities of all actors involved in financial management, as well as via systematic checks by the Commission's new Internal Audit Service. The third strand was the whole-scale modernisation of the Commission's human resources policy. The emphasis here was to be on 'performance, continuous training and quality of management, as well as on improving recruitment and career development' (Commission, 2000: 6)

There is much in the Reform White Paper that suggests that the Commission was pursuing what might loosely be identified as a new public management (NPM) approach, and not least the kind of language used in that and other reform documents. As the NPM is more an administrative philosophy than a programme, it is possible to make this claim in rather a loose way. It is possible for example to point to the emphasis in the White Paper on managerialism, and on ensuring the individual responsibility of managers.

The new public management places more emphasis than in the past on outcomes and results, rather than inputs. It abandons the traditional focus on central (or national) government, replacing centralised hierarchical structures with decentralised management environments (or networks); it allows for alternatives to direct public provision and regulation here such approaches might be more cost-effective; it places greater emphasis on transparency and accountability through reporting requirements; it focuses more on efficiency in services provided, introducing productivity targets and creating competitive environments within and among public sector organisations; it enhances the strategic guidance (or steering) role of the centre in a more flexible and less costly manner than before; it focuses attention on the matching of authority and responsibility as a key to improving performance; it

rejects the relevance of formal boundaries between private and public institutions; and it supports the introduction of service-wide budgeting and management systems to support and encourage these changes (Mathiasen, 1999:90, 92-3).

Whereas there is no claim here that the Commission bought into some kind of ready-made package of reforms (Reichenbach, 2001: 8), and not all of the description of NPM above relates directly to the Commission reform package, there are sufficient parallels to back up the claim that the reform was inspired at least in part by some of these new ideas that have been circulating in the public sector since the 1980s. This has a bearing on the Commission's approach organisational ethics, which will be explained in the section that follows.

Ethics and Culture in the Reform Package

Within the Reform White Paper, a discrete ethical dimension is difficult to identify. This is largely because 'ethics', as a theme, was not particularly visible (Commission, 2000a and b). This initial lack of priority given to ethical issues formed the basis of a study undertaken in 1999-2000 from a business ethics perspective (Dercks, 2001). The research focused on the 1999 resignation of the Commission, the Report of the Committee of Independent Experts that prompted it, and the Commission White Paper on Reform that followed in early 2000. Its findings stressed that the situation in which the Commission found itself at the end of the 1990s was by no means unique to that institution. Not only the problems it faced, but also the solutions proposed were similar to those found elsewhere in the world, within both public and private-sector organisations.

Dercks' focus rests mainly on the 2000 Reform White Paper. Since its publication, however, the ethical dimension developed a little further. In the 'Action Plan' which comprises Volume II of the White Paper (Commission, 2000b), there are references to an ethical approach to reform. This part of the

White Paper begins with a section entitled 'a Culture based on Service', the first sub-section of which deals with 'Standards of Behaviour in Public Life'. The statement of the objectives outline that the aims of the reform are

To support holders of public office and officials in maintaining high standards of ethical behaviour thereby contributing to the confidence of the public in the functioning of the European Institutions' (Commission, 2000b:3).

It goes on to state that:

Standards in public life are not static. Although ethical standards must be reflected in the legal framework of the European Institutions, an additional explicit ethical framework can help to focus on results and to clarify remaining grey areas. In the context of the current administrative reform the additional challenges that a clear and workable framework for ethics will have to address are greater decentralisation and delegation of authority, new forms of service delivery and a greater focus on the interests of users (Commission, 2000b:3).

All this places emphasis on accountability. 'The purpose of action in this area is to supply a greater framework to support holders of public office and officials in dealing with the more complex ethical issues involved in new ways of delivering public services and new management approach, and to prevent corruption' (Commission, 2000b:3).

In the case of the reference to 'ethics' on the Commission's reform website, a more explicit reference to culture appears, namely that 'All who work within the institutions of the European Union must demonstrate high standards of public behaviour. The desire to do so must be generated from within the culture of the Commission itself so that it is being constantly reinforced' (http://europa.eu.int/comm/reform/ethics/index_en.htm). How such an ambition is to be operationalised is unclear, however. Both the Reform White Paper and the reform website refer to the Commission's three Codes of Conduct, and the latter also includes the rules of whistleblowing. One might

assume from this that these documents form the central plank of the Commission's ethical framework.

In addition and importantly, the Reform White Paper also refers to plans to put in place a 'Committee on Standards in Public Life'. The aim of the Committee was to be the provision of advice on ethical standards in the European Institutions, possibly leading to the establishment of a general Code of Conduct for all the institutions, and specific codes for individual institutions, as well as assistance in their implementation and enforcement. However, the fact that the Committee is to be inter-institutional means that long delays were to be likely before any agreement could be reached. By 2003, Kinnock had already acknowledged the difficulties involved in getting agreement of this kind, and had put the idea of a Committee of this kind on hold.

As mentioned in the White Paper, this explicit ethical framework is intended to complement other institutional structures, rules and procedures, which also serve to ensure the maintenance of high ethical standards within the Commission. Mention should also be made of OLAF, the Commission's internal anti-fraud department (<http://europa.eu.int/comm/dgs/olaf>); and of the new disciplinary procedures which are to be detailed as part of the revision of the Staff Regulations². Changes to procedures as a consequence of the new Financial Regulation are also of relevance here. Indeed, many of the reforms proposed within the White Paper have multiple rationales, operationalising more than one of the fundamental principles which have been identified by the Commission as driving the Reform, as well as instituting more practical and (one might expect) more efficient changes.

From this brief account, the Commission's approach to organisational ethics might seem rather minimalistic. Returning for guidance to the four-fold typology proposed by Maesschalk, the ethical approach adopted by the European Commission in its reform reflects a combination of the first and (albeit rather weakly) the fourth position, in that while it takes a new public management approach to ethics, it supplements this with a rather limited

² http://europa.eu.int/comm/reform/2002/chapter05_eu.htm

ethical management approach. Thus, on the one hand, the Commission is arguing for a NPM minimalism, a kind of trickle-down effect arising from other features of the reform package. But to supplement this approach, the Commission has supported the introduction of specific codes and rules under the rubric of 'Ethics'. This seems to be very much in line with the way in which Neil Kinnock understands the contribution of reform to ethics. In an interview given in 2003, he responded to a question on this subject by stating that, first, the Commission has introduced strong procedures to deter malpractice, as part of a prevention strategy; but that second, the 'modernisation' programme itself implies a clarification of duties and responsibilities, and other changes to the internal functioning of the Commission, which, by implication, would help to prevent wrongdoing of this kind (Kinnock, 2003).

Conclusion

This paper has sought to explain the Commission's approach to organisational ethics following the post-1999 administrative reform, through the conceptual lens of Maesschalk's four-fold categorisation of the public administration/public management literature. It concludes that the approach has been an eclectic one, which fits well with the fourth of Maesschalk's 'positions'. More specifically, the Commission's approach has involved combining two identifiable positions on the relationship between reform and ethics. The first rests on the new public management assumption that ethics will improve as a consequence of more general reforms (that is, reforms along NPM lines), including the possibility that these kind of reforms, in themselves, make ethical misconduct by public officials less likely. The Commission's approach has also involved some tools which appear to be drawn from a more traditional public administration armoury. Here, a more explicit nod to ethics management is visible, albeit one which is somewhat limited, and which probably should not be understood as a comprehensive fully-fledged programme. The actions identified in the section above have been compliance-based, in the sense that they rest on a system of punishments

and penalties, which serve as sanctions placed on inappropriate (or unethical) behaviour.

One potential effect of this mix of strategies has been already been alluded to above. It is that the combination of new public management reforms (including the hands-off approach to ethics implied by NPM) and a system of ethics management which is compliance-based, is likely to exacerbate organisational ethics, unless it is complemented by a more aspirational approach to ethics management. Readers should note that the status of this potential effect is that it is hypothetical, as it is not yet possible – give the fact that the reform is still being implemented - to garner evidence to support or falsify the claim.

Clearly, although this paper has drawn in part on the more general organisational ethics literature, the importance of the political context within which *public* officials act is not to be underestimated when considering ethical matters in *public* organisations. The fluidity of the political environment means that flexibility must be built into any system of effective administration. In practice, this means that it is in the nature of public service that officials have a certain autonomy or discretion, albeit, usually, within a carefully delineated sphere (Rohr, 1998:xii). It is in this sphere of discretion that administrators make choices. By definition, there can only be a limited role for rules in such instances. Indeed, wielding discretion often means having to deal with situations that have ethical implications, not only where rules do not exist, but where existing rules seem to send 'mixed messages', or where they appear to imply equally valid alternative courses of action. If new public management reforms serve to enhance discretion (by managers), it is possible that reform might lead to a worsening rather than an improvement in ethical decision-taking by officials – even if this is far from the intention of reform agents.

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