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Part 1

Collective responsibility, the accountability process and its weaknesses

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Introduction

In the context of the refusal by the European Parliament of the 1996 discharge, in a resolution of 14 January 1999, the European Parliament called for a "Committee of independent experts" to be set up to "examine the way in which the Commission detects and deals with fraud, mismanagement and nepotism, including a fundamental review of Commission practices in the awarding of all financial contracts"¹. The five Members submitted a report on 15 March 1999 which led to the resignation of the Santer Commission, as a body, the following day.

The new Prodi Commission initiated a series of reforms and in March 2000 published a reform White Paper² based on "priority setting, allocation and efficient use of resources", "human resources development", "audit, financial management and control". In the introduction to Volume I the Members of the Prodi Commission declared, among other things:

"The challenges of globalisation and future enlargement require *better governance* at all levels, including the EU. *All political institutions in Europe must rise to this challenge and so must the Commission.*" (Italics by rapporteur). And further: "We want the Commission to have a public administration that excels so that it can continue to fulfil its tasks under the Treaties with maximum effectiveness. (...) The world around us is changing fast. The Commission itself, therefore, needs to be independent, accountable, efficient and transparent, and guided by the highest standards of *responsibility*". (Italics by rapporteur).

In its second report the Committee of independent experts gave a whole range of recommendations concerning "integrity, responsibility and accountability" (chapter 7) in European political and administrative life. The experts gave recommendations on code of conducts, collective responsibility, Commissioner's cabinets and independence, transparency, the role of the Secretary General, the Commission's constitutional duty to provide the Parliament with complete, accurate and truthful information and documentation, the role of the President of the Commission as regards the organisation of the Commission and enforcement of the individual political responsibility of Commissioners.

The central question for a parliamentary control committee is to identify instruments with which it is possible to achieve effective *political control* over strong technical bureaucracies. The recommendations mentioned are such instruments and taken together, they are part of the broader concepts of *accountability* and *governance*.

The purpose of this, as well as the other two working documents, is therefore to discuss *accountability* and *governance* issues which *not* have been dealt with in the reform process and which are of fundamental importance for the completeness and the correctness of the information provided by the Commission. Focus will be put on the quality of the **accountability instruments** by which the European Commission explains to the discharge authority, as well as the general public, its use of public money, its "giving account".

¹ OJ C 104, 14.4.1999, p. 106

² COM(2000) 200) "Reforming the Commission" Volume I and II

Collective responsibility

The baseline for the considerations to be made in the following is the notion "collective responsibility" which involves the relations between Commissioners and between the Commissioners and the President of the Commission.

Collective responsibility arises in connecting with decisions taken by the Commission as a body, according to the Committee of Independent Expert's Second report (7.10.1.). It was suggested that collective responsibility should be defined to mean that "*each Member of the Commission has the right and duty to keep him/herself informed as to the activities of every other commissioner*" (7.10.2).

This means in practice that once a decision has been reached, all Commissioners are responsible for it. They are of course also collectively responsible for failings and problems "about which they know, or should know" (7.10.2.) the experts continued.

The independent experts further explained that as a consequence of "collective responsibility" the organisation of the institution cannot take just any form. Collective responsibility means that there *is no* free choice as regards the way in which the institution has to be organised. Collective responsibility obliges the Commission - and of course first and foremost its President, the Vice-Presidents and the Secretary-General - to provide "mechanisms" whereby "commissioners receive information on matters falling within colleagues' portfolios" (7.10.2.) Such "mechanisms" are part of the overall accountability structure in the Commission.

The accountability process

The main elements by which the Commission gives account of its actions are, according to the Commission, the Synthesis report and the annual activity reports of the delegated authorising officers. The Synthesis report is, states the Commission, "the apex of the Commission's accountability architecture" and the annual activity reports "constitute the pillars"¹.

Two other important elements are the formal adoption of the Synthesis and the reservations expressed by the Directors-General in their annual activity report.

On the basis of these ingredients - 1) annual activity reports, 2) reservations, 3) synthesis and 4) adoption - the Commission considers that it is doing what it is required to do according to Article 274 of the Treaty: "By adopting this synthesis, the *Commission assumes its political responsibility* for management by its Directors-General and Heads of service, on the basis of the assurances and reservations issued by them in their annual activity reports, (...)"².

The meaning of "accountability"

Accountability is the relation between the one who allocates responsibility and the one who accepts this responsibility. The one who accepts the responsibility will also be required to give an account of actions taken in order to assume the given responsibility.

¹ COM(2006) 277, p. 4

² COM (2006) 277, p. 4 and COM (2007) 274 p.2

The Commission must clearly *explain the process* it has followed in order to be able to say that it takes political responsibility. Is the College's accountability statement underpinned by solid statements from the Commission managers and the Commission accounting officer? Can the Commission in a meaningful way assume its political responsibility on the basis of the existing accountability documents, having regard to the process in which these documents are produced?

Weaknesses in the process

Parliament has already on several occasions (in particular in the Wynn and Mulder discharge reports) expressed that it is not convinced about the solidity of the basis on which the Commission claims to "assume its political responsibility".

First weakness:

The Commission does not have a full insight into how 80 % of the EU funds are used by the Member States. It will not get that insight unless Parliament's proposal concerning national management declarations and an audit thereof by the national audit office or another external audit is implemented. The Commission has not taken any serious initiative in order to get *the basis for its own accountability statement* in order. The Commission "assumes its political responsibility" without knowing what happens with the funds in the Member States.

Second weakness:

The quality of the information given in the annual activity reports by the Directors-General is not checked. The Director-General will, without any doubt, do his/her utmost in order to describe the "reality" as objectively as possible. But any "assessment" is also about "what shall be mentioned" and "what shall not be mentioned".

Can we be sure that information which from an "integrity of information" point of view *should* be mentioned also *will* be mentioned in the annual activity report *if* the public access to this bit of information would or could have a negative influence on the reputation/power of the Director-General?

In the process leading up to the Commission's "giving account" there is no one *besides* the managing Director-General who is empowered to give an independent check of the reality as described by the Director-General. One shining example is the problems that have come to light concerning the Office for Infrastructure and Logistics in Brussels, OIB. None of these problems has been touched upon in the annual activity report 2006 and no reservations have been made by the Director-General.

Third weakness:

As no one is checking the reality as presented by the Director-General, individual Commissioners do not get "a second view" on the information and the declaration given by his/her Director-General.

The wording of the Commission's statement: "By adopting this synthesis, the Commission assumes its political responsibility for management by its Directors-General and Heads of service, (...) indicates implicitly that Directors-General implement the budget. This is of course not the case. The budget is implemented by the *Commission* and the Commission's *Commissioners*. The Directors-General are authorising officers *by delegation*."

Fourth weakness:

It follows that the Commissioners - despite their collective responsibility - have no possibility for assessing the quality of information given in the annual activity reports and declarations of *other* directorates.

Fifth weakness:

A service under the Secretary General is drawing up the Synthesis report on the basis of all the annual activity reports and declarations. Yet, the Synthesis report lacks a systematic approach. For readers that have not read the 39 individual annual activity reports, it is not possible to get a clear picture and overview of progress and remaining problems in the Directorates General.

Sixth weakness:

There is no "owner" of the Synthesis report in as far as it is not signed. Therefore, the *formal as well as the effective* takeover of responsibility by the College is lacking. The main thing is of course not the signature in itself, but the *effects* of a requirement to sign-off. When people have to sign-off they will carefully ask themselves: "Do I have the necessary assurance? Can I really sign this?"

The process of producing the Synthesis Report so far, makes it difficult to see how individual Commissioners can have full understanding of what they adopt, when the Synthesis is adopted by the College.

Seventh weakness:

Seven years after the reform the Synthesis Report has still not been converted into an *institutional* assurance statement duly audited by the Commission's Internal Auditor.

The Commission has missed the reform opportunity to create the necessary link between accountability at Director-Generals / department level and the level of the Commission as an institution. It is a step forward that the Directors-General sign an assurance declaration, but it is also a tremendous weakness that the Commission - after seven years of reform - is unable to provide the discharge authority with an assessment of the overall level of assurance for the Commission as an *institution*.

As for now, the discharge authority receives a declaration from the Director-General that - not surprisingly - he/she considers that the control systems he/she has set up are *grosso modo*, effective. But the discharge authority does not receive a statement by the College of Commissioners declaring at an *institutional* level that the institution's controls are effective.

In its Annual Report concerning the financial year 2005 the Court has for the first time dedicated a separate chapter to the financial aspects of the Commission's reform programme in which the Court examines the annual activity reports and declarations, the Synthesis report and the application of the internal control standards. The Court's overall conclusion is the following:

"2.25. Despite the progress made by the Commission in strengthening the annual activity reports as an instrument to improve accountability and communication, the Court's audits revealed significant weaknesses in the supervisory and control systems in several areas of the financial perspectives (...), which have not been taken into consideration in the (annual

activity reports and) declarations of the Directors-General."

Your rapporteur welcomes the Court's specific focus on the internal control system in the Commission by dedicating a separate chapter of the Annual Report to this issue and would encourage the Court to expand the chapter in the future, by including more information as to the relevance of the reservations made, the lifting of reservations and the follow up given by the Commission on the Court's remarks in previous years.

Conclusion

Owing to the way in which the Synthesis report is produced there remains serious doubts about the reliability of the content of the report ("the apex of the Commission's accountability architecture") and - consequently - about the overall robustness of the Commission's way of giving account, which, of course, never will be stronger than the political will behind it.