

AKIN, GUMP, STRAUSS, HAUER & FELD

BRUSSELS OFFICE OF AKIN, GUMP, STRAUSS, HAUER & FELD L.L.P.

Avenue Louise 65, B. 7

1050 Brussels

Belgium

Telephone (32.2) 535.29.11 - Fax (32.2) 535.29.00

SPECIAL REPORT: EUROPEAN COMMISSION RESIGNS EN BLOC

March 16, 1999

As you know from this morning's press, the European Commission, the EU's chief executive body, resigned en masse late yesterday in the face of a damning report issued by a group of independent investigators. Virtually the equivalent of an unthinkable resignation of the entire U.S. Cabinet, the Commission's resignation throws Brussels into a political crisis at a time when significant EU decision-making looms. This report provides further information on these events and examines some of the potential implications.

I. Background

Late last year, the EU Court of Auditors criticized the European Commission for failing to aggressively fight internal fraud and financial mismanagement. The European Parliament held a censure vote over the Commission which, if successful, would have required the resignation of the Commission as a whole. The vote failed, but the political message and criticism of the Commission remained, prompting the Parliament's appointment of the so-called "Committee of Independent Experts" to examine fraud, mismanagement, and/or nepotism by the Commission as a whole, or by individual Commissioners.

The Committee was directed to issue a report by March 15 establishing the extent to which the Commission or individual Commissioners bore responsibility for recent examples of such corruption. In the next stage of its investigation, the Committee will issue a final report on procedures by which the Commission: (1) awards financial contracts to temporary Commission staff for program implementation; (2) detects and deals with cases of fraud, mismanagement or nepotism; and (3) addresses such activity by Commission staff. The second report also will include recommendations for improving Commission procedures and other appropriate reforms.

II. Summary of the Independent Experts' Report

The First Report of the Committee of Independent Experts sets forth the Committee's findings with respect to the six specific cases it was charged to examine and its general conclusions regarding the failings of both the Commission and individual Commissioners. The harsh nature of the report is made clear by the Committee's concluding statement that "it is becoming difficult to find anyone who has even the slightest sense of responsibility." Similarly, the Committee attributed inappropriate

deployment of personnel, in part, to the existence of “as many fiefdoms as there are Commissioners.” The Report also states that during the course of the Committee’s investigation, other cases were brought to its attention that merit further examination.

The overall thrust of the Report is the Committee’s identification of a serious failure of Commissioners to take responsibility for the management of their respective spheres of policy. While there were no findings of direct responsibility for fraud or financial gain by individual Commissioners, the Committee did find that “the Commissioners or the Commission as a whole bear responsibility for instances of fraud, irregularities or mismanagement in their services or areas of special responsibility.” The Committee concluded that “Commissioners must be held to know what is going on in their services, at least at the level of the Director-General, and should bear responsibility for it.”

The Committee also found instances of nepotism and the failure to employ officials in accordance with applicable Staff Regulations. While the most serious findings of irregularity concerned the activities of Commissioner Edith Cresson, a former Prime Minister of France, the Report states more broadly that “Commissioners allowed, or even encouraged, conduct which, although not illegal *per se*, was not acceptable” and suggests a more fundamental failure to comport with principles of “openness, transparency and accountability.”

In addition, the Committee reported the pervasive denial of knowledge and/or responsibility by Commissioners and their tendency to blame irregularities and mismanagement on personnel shortages. In the Committee’s view, the repeated claims of ignorance regarding the functioning of their offices or officials in their services further proved the validity of the Committee’s criticisms. Further, the Committee found no attempt by the Commission to assess in advance, the resources required or new organizational structures needed when new policies or tasks were identified by the Community Institutions.

The Committee concluded that controls and audit mechanisms in the system failed because proper attention was not given to reports of irregularities by the Commission, irregularities were not investigated quickly enough, or that responsibility for conducting such audits has been given, in practice, to institutions that were not established for such purposes. Similarly, administrative and disciplinary actions were either not taken by the Commission when they should have been, were initiated too late to be effective, or resulted in the imposition of penalties that were too lenient. The Report also noted the generous use of retirement, rather than discipline, for high-ranking officials whose activities were questionable.

European Commission President Jacques Santer issued a brief response to the Report, emphasizing that none of the individual Commissioners were personally implicated in instances of fraud or corruption and suggesting that the Report’s description of a total lack of responsibility on the part of the Commission is disproportionate to the “tiny” number of cases of malfeasance. He further noted that many of the cited instances of fraud and corruption pre-date the Commission’s adoption of significant reforms since 1995.

III. Implications of the Commission's Resignation

A number of questions arise from the Commission's unprecedented resignation. Chief among these are how and when the Commissioners will be replaced and the extent to which these events will affect the current business of the Community. European Commission President Santer and the other members of the European Commission will remain in office until a new interim Commission has been established to serve the remainder of the current term, which expires at the end of this year. While some of the Commissioners who resigned may be reappointed, others, including President Santer, are unlikely to survive the political fallout.

A prerequisite to the establishment of the interim Commission will be the appointment of a new Commission President by the Member States in consultation with the European Parliament. At next week's special meeting of European Heads of State (the "European Council") in Berlin, Member States are likely to take the first step in this process by nominating a candidate for the office of President. Likely nominees include former Italian Prime Minister Romano Prodi and former Spanish Prime Minister Felipe Gonzalez. Alternatively, they may simultaneously nominate candidates for both President and the remaining Commissioners.

In fact, the Member States will play the key role in appointing replacement Commissioners, new or old, but whether the European Parliament will be involved in this decision remains to be seen. The Parliament's desire to play a role in approving Commissioners is likely to generate a power struggle with the Member States next week. The extent to which the Parliament insists on involvement will signal its intent to assert ongoing control over the Commission's political future.

While political and legal questions regarding the role of the Parliament remain unresolved, Belgium and the United Kingdom have already indicated their intentions to re-nominate their current Commissioners. Other Member States will be compelled to nominate new Commissioners, as a consequence of the Independent Committee's findings. Still others may simply take this opportunity to field a new Commissioner. One possible result of these developments, therefore, is that the choice of new, replacement Commissioners could provide a forecast of the composition of the next full Commission for the 2000-2006 term.

It is too early in this crisis to know exactly how events will unfold and whether the Commission will be able to even approximate the conduct of "business as usual." Regardless of how well the Commissioners function in the near term, given the aggressive conclusions drawn by the Independent Committee and the political fallout, Member States are likely to be under intense pressure to quickly establish a *functioning* Commission led by an *effective* President. As a result, they cannot allow the resigned Commissioners to simply complete their terms. Whether the Parliament's power will be strengthened as a result of this blow to the Commission or whether it will itself become the next target of investigation will only be known in time. The long-term effect of these events on the balance of power among Community Institutions may depend, in part, on the extent to which Member States take swift and effective action to end this crisis.

We will be following these events closely in the days and weeks to come and would be pleased to provide you with additional information or analysis upon request.