The European Commission’s business ethics: a critique of proposed reforms

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Introduction

The 1999 scandal-driven resignations of the European Commission members must be examined in the context of the global business ethics movement. Neither the Commission’s problem nor its solution is unique. Governments and corporations across the world have been forced to come to grips with the costs and consequences of unethical behavior, and much effort has gone into devising effective remedies.

Unethical conduct in government undermines the very foundations of democracies. Significant distortions in governmental and societal operations result when corruption involves high-level public officials. Strong ethics in government promotes public confidence, and strengthens government’s legitimacy. Corruption is not an issue confined to developing areas of the world; instead, it can shake the foundations of even the most advanced nations. Business ethics is key to solving this problem, as it is one of the “important checks and balances against the arbitrary use of ... public power. It is a vital factor in creating and maintaining confidence in government and its institutions.”

The purpose of ethics and compliance management is to reduce the incidence of unethical and illegal behavior in the organization. To achieve the desired result, ethics and compliance must become an integral part of the organization’s culture. Consequently, culture should be the first area of concentration in any ethics program.

Developing an effective ethics management program is a difficult and time-consuming process. Cultures can be influenced, but not completely remade, at least so long as the majority of employees remain in place. Change that is process-led is unlikely to be successful. Instead, it must be based on an understanding of the values and loyalties in the existing culture and how and why employees and management think the way they do. New rules, standing alone, will not be effective.

Evidence of malfeasance in the Commission

In December 1998, the European Parliament received a letter from Paul Van Buitenen, entitled “How the European Commission deals with its internal irregularities and fraud.” Mr. Van Buitenen, then an assistant internal auditor in the Commission, recounted his ill-fated attempts to bring his concerns to the attention of the Commission and to have the Commission bring them to the attention of the European Parliament. In numerous annexes, Mr. Van Buitenen laid out his allegations regarding Commission corruption.

In response, in January 1999, the European Parliament called for a committee of independent experts to be convened under the auspices of the Parliament and the Commission. On 15 March 1999 the Committee of Independent Experts (Committee) issued its First Report, and within hours the entire Commission resigned.
Corruption is the misuse of public power for private gain. The First Report exposed the Commission’s cover, revealing embezzlement, conflicts of interest, fraud, nepotism, favoritism, nationalism, incompetent contract management, circumvention of established and required processes, delays in dealing with misconduct and malfeasance, willful ignorance of problems, inadequate and inequitable disciplinary actions, and general management incompetence.

The Commission culture revealed in the First Report was one where obvious consequences were ignored, rules and processes were routinely circumvented, and internal communications were dysfunctional. For example, in the MED programs (for decentralized cooperation with Mediterranean countries), “everything was completely out in the open, right from the start. But it is exactly this that almost takes one’s breath away . . . Commission officials took an active and decisive part in bringing about the establishment of a system . . . which was almost bound to lead to a confusion of interests which would have serious consequences.”

Another example, ECHO (the European Community Humanitarian Office), demonstrated the “lamentably poor state of internal communications within the Commission . . . [M]ost information on the progress of the case was generated . . . via . . . rumours, off-the-record briefings, misinformation, leaks and indiscretions, etc.” Another example is the Commission’s Security Office, which had a sub-culture characterized by personal relationships, a system of ‘give and take’ and a withdrawal from the overall system of control and surveillance.

Although the Commission’s management responsibilities had increased substantially since the early 1990s, its culture did not keep pace. As the Committee noted, “[t]he senior hierarchy in particular remains more concerned with the political aspects of the Commission’s work than with its management.” In addition, the Commission and other EU Institutions have a tradition of secretiveness, resulting in “a lack of openness in matters where no real justification for confidentiality exists.” Most telling in terms of culture was the fact that the Commission, after learning of the issues being investigated by the Committee, viewed it as “a case of bad management (and not fraud), however obvious the former and however implausible the latter may appear.”

It is significant that there is exclusive national jurisdiction over criminal activities involving EU financial interests. When criminal acts occur within the Commission, a Commission agency, UCLAF/OLAF (Task Force for Co-ordination of Fraud Prevention/ European Anti-fraud Office), is the only investigative body able to initiate fraud inquiries. Compounding the problem, the court has jurisdiction over a criminal case involving the Commission “until such time as, in effect, the Commission grants such jurisdiction by waiving the immunities of officials and/or the inviolability of Commission premises.” Unfortunately, this is precisely the kind of environment in which senior public officials are most likely to become corrupt. When public officials believe that they can obtain immunity from prosecution and that the chance of their criminal activity being discovered is low, the stage is set for malfeasance.

An effective plan for culture change can be devised, but requires far more than the Commission has proposed

Changing the culture of any workplace, particularly one accustomed to patronage, favoritism, and corruption, is far from easy. The need for fundamental culture change in the European Commission is obvious from the reports of the Committee. But attempts to change culture once scandal has arisen are likely to fail. Crises generally cause politicians to feel the need to act quickly, frequently at the expense of solid planning. As a result, reform efforts are often unsuccessful.

The difficulty of changing the Commission’s culture has been acknowledged. It will, in fact, take nothing short of a cultural revolution. Erkki Liikanen, a current Commissioner who was also a member of the previous regime, has stated that the Santer Commission was unable to change the culture, and that he is “sure this new commission will not be able to change it at all.”
The Commission has propounded an ambitious yet ultimately inadequate plan for reform

The Committee issued a Second Report on 10 September 1999, setting forth its analysis of the Commission’s practices, and proposing reforms. Most of the Paper’s reform proposals are process-based, planning much needed improvements in human resources, auditing systems, and in priority setting. Certainly new rules and processes are necessary, and the Second Report recommended them. The White Paper effectively plans implementation of many process improvements suggested by the Committee, and is a success on that level.

What is lacking is a comprehensive plan to ameliorate the Commission’s culture. Without culture change, improved processes will simply be words on paper. It must be remembered that most of the corruption reported by the Committee arose in the context of rules and regulations that, if followed, would have precluded the misconduct. As the Committee made clear, it is “impossible – and utopian to boot – to ignore the influence that a given collective culture may have over the manner in which rules, procedures and legislation operate in practice.”

Little in the White Paper addresses the cultural idiosyncrasies contributing to corruption in the previous regime. If one’s understanding of the situation were limited to the contents of the White Paper, one would remain unaware that the Commission had been embroiled in a corruption scandal. Instead, one would assume that the Commission had been taken to task for inefficiency, extravagance, and discrimination.

To illustrate the problem, the White Paper calls for several training programs, but none of them involves training on ethics or ethical decision-making. The Paper plans a new system of performance appraisal and merit promotions, but does not include ethical conduct as a performance measurement or promotion factor. It lists steps to be taken to improve the working environment in the context of work/family balance issues and non-discrimination, but does not include steps to improve the integrity of decision-making in the work environment.

The Paper also plans an Audit Progress Committee, to audit audit work, as it were. In the absence of culture change, it is unclear how this will be more effective than the reports from the existing process. One must remember that the Commission’s audits revealed almost every problem discussed by the Committee, but they were simply ignored.

Both the European Parliament and the Council have approved the Commission’s reform approach. However, the importance of culture-change in achieving a corruption-free Commission has apparently been underestimated. President Prodi views the White Paper as the fulfillment of his promise to revolutionize the Commission. According to Prodi, the purpose of the reform was to “provide the Commission with an administration which is a model of excellence, an administration which is also exemplary in its use of information technology [IT], working towards a paperless Commission.” (Neither of the two Committee reports dealt with the Commission’s IT capability.) A focus on achieving administrative excellence can lead an organization down many paths (such as IT), and allow it to ignore the difficult but essential work of building an ethical culture.

An effective plan for culture change can be achieved in thirteen steps

It is possible to devise a plan which would have a positive influence on the Commission’s culture. The elements of such a plan, together with specific recommendations, are outlined below.

(i) A primarily teleological approach is best suited to the Commission

A primary consideration in ethics program design is the choice between teleology and deontology; i.e., should the approach be values- or compliance-based? The values-based approach, sometimes referred to as ‘integrity-based’, focuses on desired
rather than the undesired behavior. The compliance-based approach emphasizes the negative, concentrating on preventing and punishing wrongdoing. Of nine countries in an OECD survey, the New Zealand approach was closest to a purely values-based, and the United States approach was closest to a purely compliance-based system. Government ethics programs fall on a continuum between the two approaches, but “there appears to be a definite tendency towards a more integrity-based approach.”

In corporations the same continuum exists. European companies tend to favor values-based approaches, concentrating on building a culture that encourages and supports integrity. In most Fortune 1000 companies in the United States, values- and compliance-based approaches coexist; however, compliance-based approaches predominate. This can probably be attributed to the influence of the US Sentencing Guidelines, a framework strongly emphasizing prevention and punishment of wrongdoing.

A recent study evaluated various approaches to ethics and compliance management, including comparison of values- versus compliance-based methods. Although the study involved employees of US corporations, and not European public servants, the results are still instructive for the European Commission’s purposes. It determined that the “values-based cultural approach to ethics/compliance management works best.” When properly implemented, values-based ethics programs generate impressive results:

They produce highly committed employees who are aware of ethics and compliance issues, who seek advice within the organization, and who are willing to deliver bad news to their managers or report ethical/legal violations. Results also include less unethical/illegal behavior in the organization and better decision making because of the organization’s ethics/compliance efforts.

A properly implemented compliance-based approach will also have a positive impact on business culture, but “the relationships [in the study] were not as strong as with the values orientation.” Many governments and corporations find the approaches can be combined, where accountability and discipline supplement the values-based program. Given the Commission’s recent experience, this approach would seem most suitable.

Recommendation 1: Adopt a hybrid values-based approach, including accountability and discipline.

(ii) Organizational values must be determined

The first step in creating a values-based program is, of course, identification of the organization’s values. Because employees must understand that the program is about shared organizational values, employees at all levels of the organization must participate in the values development process. The Commission’s “Dialogue on Europe,” which invites input from a variety of stakeholders, could provide a template for a conversation about values. Following the Dialogue model would also help the Commission achieve another essential component: input from citizens.

The White Paper does include a list of values for the Commission. Those values/principles are independence, responsibility, accountability, efficiency, and transparency. Since publication of the White Paper, the Commission has stated on its web site that its values are high quality, honesty, openness, and integrity. It is not clear that either set of values were adopted through dialogue with staff and other stakeholders, which means they are unlikely to be perceived as shared organizational values. In such a dialogue, additional or different values could come to the fore. The Standards in Public Life, for example, include values such as selflessness, integrity, objectivity, honesty, and leadership.

Recommendation 2: Conduct a dialogue on values with internal and external Commission stakeholders, to determine shared organizational values.

(iii) A Code of Conduct must be developed

With values agreed upon, the organization can proceed to draft a code based upon those values. To be meaningful, codes must be inextricably intertwined with the organization’s values. Codes help “shape a culture reflecting high standards of
behaviour notwithstanding national differences," and have become a common public sector technique “to restore respect for the ethical values inherent in the idea of public service." Once again, the entire staff must be involved. The goal is employee ownership of the finished product, which means the code cannot simply be imposed from on high.

The desired outcome of the code development process is a series of stated norms to which those affiliated with the European Commission can be held accountable. The code must be broad enough to inform public servants of “the basic principles and standards they are expected to apply to their work and where the boundaries of acceptable behavior lie.”

While broad-based, the code must be simply written, not only to ensure policies are understandable, but also to facilitate accurate translation. In the Commission’s multi-lingual environment, each person to whom the code applies must have the opportunity to read it in the language with which he or she is most familiar.

Before the Santer Commission resigned, it proposed two codes of conduct, both of which were amended and then adopted by the Prodi Commission. The Committee reviewed the draft codes, and pronounced them a first, albeit modest, step in the right direction.

The Committee criticized the draft code for Commissioners in several respects. First, it noted that the code’s concept of ‘collective responsibility’ was limited to prohibiting Commissioners from either questioning Commission decisions or disclosing what transpires during Commission meetings. Collective responsibility should include the Commission’s responsibility as a whole, and also Commissioners’ individual responsibility, for collective decisions. In addition, the concept encompasses not only relationships between Commissioners, but also between Commission departments, relations between the Commission and the Council, and the Commission’s accountability to Parliament. The Committee noted these issues were not addressed in the Santer Commission’s draft.

Second, the Committee criticized the draft code for allowing Commissioners to be active members of political parties and trade unions. The code’s only limitation in this regard is that the activity cannot impact the Commissioner’s availability for Commission work. As the Committee noted, “[i]t is not availability, but political neutrality, which should be the decisive criterion, at least under present Community law where the Commission, unlike a national government, is not the emanation of an elected political majority.”

Third, the Committee determined the draft code as a whole was overly narrow, and expressed hope that the Prodi Commission would issue a “more comprehensive code,” with prior input from Council, Parliament, the Court of Justice and the Court of Auditors. Consistent with this suggestion, other code additions should include human rights, a safe and effective means for raising ethics-related issues, and assurance that raising issues will not result in retaliation.

The Commission might also reconsider its gift policy, which allows Commissioners to accept gifts valued under EUR 150, but does not limit the number of such gifts from the same giver a Commissioner may accept per year. Many codes provide monetary caps per gift and annual caps for gifts from the same source.

The Commissioner’s code is also too narrow when it comes to family members. It neither prohibits Commissioners from hiring family for their private offices, nor requires disclosure of financial interests of family members other than Commissioners’ spouses. This latter failure raises conflict of interest concerns, and the possible divestment of financial interests to a non-spouse family member in order to avoid disclosure.

The second code of conduct drafted by the Santer Commission applied to Commissioners and their departments; this, too, received constructive criticism from the Committee. Most recommendations related to establishing responsibilities within the Commission. First, the code should clearly state that Commissioners are responsible for what transpires in departments that report to them; the draft merely references Commissioners’ political responsibilities. Second, the code should give substance to the Commissioners’ ability and obligation to supervise how departments implement policy. Third, the draft code reflects the “distant, needlessly hierarchical and bureaucratic
“approach” in the Commission whereby Commissioners’ cabinets “often act as screens and fences, impeding direct communication between the Commissioner and departments.” This should be modified to ensure that the sole role of cabinets is to be the alter ego of the Commissioner.

Unfortunately, the Codes of Conduct for Commissioners and for Commissioners and Departments adopted by the Prodi Commission are virtually the same as those the Committee criticized in its Second Report.

The Santer Commission did not issue a code for officials other than Commissioners, and this task falls to the Prodi Commission. The Committee recommended the code be drafted “following the principles laid down in other international or supranational documents”, such as the OECD Principles. The Committee delineated three areas of particular concern regarding Commission conduct: 1) overcoming the tradition of secretiveness; 2) encouraging reporting of wrongdoing, including clear rules and procedures for officials to follow and the protection of whistleblowers; and, 3) establishing clear ethical standards when public servants deal with the private sector, such as in procurement, outsourcing, and recruiting.

The White Paper indicates the Commission is currently consulting staff representatives on a draft Code of Good Administrative Behavior, in development since 1997. The fact that the same code has been in process for three years and was drafted by the Santer Commission sends mixed messages about the willingness to create a new culture. It has yet to be seen whether the code will take account of the Committee’s recommendations.

It is not clear why one Institution needs several different codes. The behavior expected of Commissioners, of Commissioners and their departments, and of staff in general should not be so inconsistent as to require separate documents. In the effort to establish one ethical culture for the entire institution, the development of a single code, with, where appropriate, special sections for Commissioners, would be more suitable.

Recommendation 3: In consultation with staff, use the three Commission codes, Committee comments, and other resources, for development of a single code.

(iv) An Ethics Committee must be established

Once values and a code are in place, an ethics committee is needed to support the other program elements. In governments, ethics committees provide oversight, counseling and/or promotion of the program. They can be established as special agencies, and “given absolute independence from the government of the day in order to avoid the appearance of being used for political purposes.”

An example of such an organization is the OGE, which is a separate agency within the executive branch of the US government. Another example is Hong Kong’s Independent Commission Against Corruption.

The Committee recommended the creation of a Committee of Standards in Public Life to supervise general standards of conduct applying to all Institutions. Each Institution would create a specific code of conduct to complement the general one. To help establish and restore the Institutions’ credibility, the Committee of Standards would keep the code current, monitor its application and implementation in the more specific codes, and give advice on issues. As envisioned by the First Report, however, the Committee on Standards would only have “moral authority” to enforce its opinions.

The White Paper action plan followed the Committee’s suggestion, and did not propose additional powers. In the Commission’s current circumstances, an independent body with greater authority would be more appropriate.

Recommendation 4: Establish a Committee on Standards, with greater authority than currently proposed.

(v) A mandatory Ethics Training Program must be established

The Committee recognized the challenge of ensuring that a code pervades a culture. Training exercises help to achieve this, and are a “common, accepted and fruitful practice throughout modern
private-sector organizations. Ethics training constitutes a “key socialization mechanism” through which “public servants learn and inculcate ethos, values, ethics and standards of conduct.” As it is potentially one of the most effective means of improving the Commission’s culture, an ethics training program is indispensable.

Ethics must be integrated into the Commission’s annual training programs. The duties of the European Commission are too complex and its members too diverse for it to assume that even the most ethical staff could automatically understand what is required to ensure legal and ethical behavior. If employees are expected to engage in ethical conduct, they are entitled to be trained in what that conduct entails.

Ethics training must be included in new employee orientation, as well as in ongoing employee education. Orientation training would instruct new staff in the fundamentals of appropriate ethical business conduct, whereas ongoing ethics education would update and refine those skills. Training on ethical decision-making procedures will help staff make decisions consistent with an ethical business culture.

Training is a critical but frequently neglected element in ethics programs. Approximately half the large UK and US companies that have codes do not train their employees in their meaning and use. The Commission’s White Paper falls into this same trap.

Recommendation 5: Include mandatory orientation and ongoing ethics training in the Commission’s training programs.

(vi) Ethical conduct must be connected to employment-related incentives

Ethics programs must be linked to employment incentives to help ensure ethics becomes imbedded in the culture in a positive way. Where ethical behavior is rewarded, employees are more committed to their work and more likely to report ethics problems. Formally incorporating ethics into performance appraisals is one means of creating this linkage. Another obvious means of linking ethics and incentives is to make ethical conduct a prerequisite for promotion. The White Paper does not link ethical conduct to incentives.

Recommendation 6: Make ethical conduct a prerequisite for promotion, and incorporate ethical evaluation in performance appraisals.

(vii) Violators must be disciplined

Disciplining violators of the ethical rules is a requisite counterpart to rewarding appropriate conduct. When sanctions are “sufficient, enforced, and respected” they deter unethical conduct. As a practical matter, both prevention and sanctions are required to keep corruption and wrongdoing under control.

The White Paper sets forth a plan to improve the Commission’s disciplinary rules and processes, a good first step toward ensuring those who violate the rules are appropriately sanctioned. However, it fails to mention discipline for ethical violations; it also fails to discuss a methodology for ensuring discipline that will be effective in preventing such violations, and that will be consistently applied. Consistency in disciplinary actions is necessary to ensure fairness, which in turn enhances an ethical culture.

Recommendation 7: Develop and impose effective and consistent sanctions for ethics violations.

(viii) There must be a safe and effective way for ethical issues to be raised within the organization

For corruption and other forms of wrongdoing to be detected, insiders must report it. It is obviously unlikely that anyone will complain if they fear reprisals, which means ethical risks can go unchecked until the risks are realized and preventive action is no longer an option. The key is to guarantee non-retaliation and allow employees to remain anonymous when reporting problems: this also provides an environment that demonstrates ethical conduct is rewarded and unethical conduct is punished. A critical part of the non-retaliation guarantee is avoiding an overly hierarchical organization in which orders cannot be questioned; in
such a culture, no employee would bring ethics issues forward.

Providing a safe and anonymous reporting mechanism shows organizational commitment to openness and transparency, which is critical to the reform of public management. The Inter-American Convention Against Corruption recognizes the importance of protecting those who bring information forward, and calls for systems to be put in place “for protecting public servants and private citizens who, in good faith, report acts of corruption, including protection of their identities...”49 When, as with the Inter-American Convention, the procedures are “also available to the public... they help to cultivate civil society as a watchdog over administrative action.”50

The ‘hotline’ is a common US method for reporting unethical conduct. This is successful only if callers can choose to remain anonymous and feel protected from reprisal. Some US companies utilize hotlines guaranteeing anonymity, in addition to having code provisions prohibiting retaliation. However, in many parts of Europe, there “are strong social pressures against whistleblowing”,51 which undermines the effectiveness of this method. Many companies attribute these social pressures to “the unhappy legacy of governmental and occupation forces’ use of informers.”52 This prejudice in the European public and private sectors may explain why, until recently, the duty of confidentiality or loyalty has won out over encouraging employees to report financial improprieties.53

This European attitude appears to be changing, perhaps because of increased exposure of fraud and corruption and the growing understanding of the damage they cause.54 The Council of Europe has agreed to conventions on criminal and civil law, both of which mandate those who report offenses are protected against retaliation.55 The Council of Europe’s agreement to the conventions evidences a turn in European attitude toward whistleblowers.

The UK’s Public Interest Disclosure Act of 1998 is further evidence of a potential attitude shift. This Act does provide some protection for whistleblowers at work, and applies in the public as well as private sectors. However, an employee must surmount many hurdles before receiving protection for whistleblowing within the organization, and even more hurdles to receive protection for public disclosures. Despite its limitations, the Act still provides much-needed protection, and may evidence a greater willingness to value the public interest in disclosure over loyalty and confidentiality.

This change in attitude is only partially reflected in the White Paper. On one hand it acknowledges the “need to clarify the rights and obligations of officials who report alleged wrongdoing” and that “necessary protection” must be provided to such officials. On the other hand, it emphasizes the need to assure fairness to people accused of wrongdoing, the need to avoid “untimely disclosures of evidence”, the need to define the limits of reporting issues externally, and the need to “provide safeguards against frivolous or malicious allegations.”56

The White Paper asserts that the OLAF regulation from June 199957 provides channels for reporting irregularities. This regulation states that problems should be reported to the employee’s Head of Service or Director-General, or, if he considers it useful, the Secretary-General of the Commission or the Office direct. It does not offer any means of making anonymous reports, and does not provide for a neutral source to which such reports can be made. It does state that those who make reports shall in no way suffer inequitable or discriminatory treatment. Unfortunately, there are many ways to retaliate against employees that can make their work lives miserable but do not rise to the level of the regulation’s prohibitions. In addition, if there is an assertion the report is frivolous or made maliciously, the employee could be unprotected even if he or she made the report in good faith. OLAF does not fulfill the requirements necessary for an effective reporting mechanism.

Another possible mechanism is the Ombudsman’s Office, which was established in 1993 by the Maastrict Treaty.58 The Ombudsman is empowered to receive and investigate complaints regarding maladministration in the Community Institutions, with the exception of the Courts when they are acting in their judicial roles. As is
appropriate, Maastrict created an entirely independent Ombudsman.

To be an effective avenue for reporting unethical conduct, certain modifications need to be made to the Ombudsman’s Office. At the present time, in order to register a complaint with the Ombudsman the complainant must clearly identify him or herself, and must have already complained to the Institution concerned. The Institution is given a copy of the complaint, even if it has been classified as confidential; only Parliament is kept unaware of the complainant’s identity. Anonymous complaints would need to be accepted, and the prerequisite of a previous complaint removed, before this could become an effective method for reporting Commission problems.

In addition, the Ombudsman has very limited authority to act, even if he finds wrongdoing. Currently, the biggest gun in the Ombudsman’s arsenal is to attempt a friendly solution with the wrongdoing Institution. If this fails and the Institution does not satisfactorily respond to the Ombudsman’s subsequent report and draft recommendations, he can draw up a report and send a copy to the offending Institution and to the European Parliament as a special report. The Ombudsman’s power would have to be increased for this avenue of reporting to become truly effective.

The Ombudsman’s staff and budget would also have to be increased. Presently, the Ombudsman has a budget of only 3 million euros and only 16 staff; in comparison, Finland’s Ombudsman’s office has 40 staff. A final problem is that very few people know about the Ombudsman, and consequently few trust him. By mid-2000, only thirty-three percent of Europeans surveyed had heard of the Ombudsman, compared with ninety-one percent who had heard of the European Parliament; twenty-nine percent trust the Ombudsman, compared to fifty-two percent who trust Parliament. Before the Ombudsman could be an effective conduit for reporting ethical problems in the European Commission, an active public relations campaign would have to be waged.

On the positive side, the Ombudsman’s independence is without question. In early 2000, the Ombudsman took the Prodi Commission to task for failure of transparency in its newly adopted proposal regarding public access to European Parliament, Council, and Commission documents. Ombudsman Soederman accused the Commission of offering “token measures of transparency while making it possible for some of the Commission’s most important work – as well as its more venal aspects – to remain cloaked in secrecy.” Prodi, apparently stung by the attack, issued a personal response, strenuously denying Soederman’s charges. Clearly, the device of the Ombudsman has potential as a means for raising ethical issues.

To ensure ethics is managed in a coherent manner, the method for raising issues must be formally connected to the ethics committee. To accomplish this objective, the Ombudsman’s activities must be coordinated with the Committee on Standards in Public Life.

Recommendation 8: Give the Ombudsman’s Office increased powers and resources, change his mandate to provide for anonymous complaints without prerequisites, institute an educational campaign to inform citizens and staff of his role, and formally connect his Office with the Committee on Standards in Public Life.

(ix) Leadership must ‘walk the talk’ of ethics

Public servants, like other employees, pay more attention to what their leadership does than to what it says. When the top level pays attention to ethics, so does the next level of management. Top management’s conduct must demonstrate it is “strongly and unequivocally committed to the code.” Consistency between stated policies and leadership action helps to ensure creation of an ethical business culture. If, however, staff perceives the ethics program exists only to protect senior management, it can result in “more unethical conduct than if [the organization] had no ethics program at all.” This means that the Commission must ensure staff does not view its Reform as an attempt to protect current Commissioners from the fate of their predecessors, but instead as a genuine effort to improve the organization. Staff
must see the Commission follow through by making ethical decisions, rewarding ethical behavior from subordinates, disciplining those who behave unethically, and effectively responding to ethics issues raised by staff. It is absolutely critical that Commission staff see consistency between stated ethics policies and the actual conduct of Commission business.

The White Paper fails on the level of ethical leadership because it neither openly acknowledges past failings nor provides a method for improving the culture going forward. When management is apparently ignoring the problem, staff will do the same. It is incumbent upon Commissioners and senior staff to set a clear example to facilitate creation of a culture where fraud, nepotism, and corruption cannot thrive.

One past failure that the Commission must protect against is its proclivity to be more lenient with those higher in the organization than with their subordinates when it comes to discipline for ethical lapses. Due to the importance of leadership, an ethical violation by a Commissioner or a DG creates far more damage to the organization than a violation by someone lower in the hierarchy. For example, by giving the DG retirement in the Tourism debacle, rather than pursuing financial liability claims against him, the Commission sent the message to staff that unethical conduct was not really that serious. In the MED Programs, when the panel of DGs decided that no disciplinary measures were needed and responsibility lay with the Head of Unit instead of with more senior officials, the same negative message was sent.

Recommendation 9: Separately train Commissioners, DGs, and other top officials in the importance of ethical leadership, and hold them strictly accountable for any acts or omissions inconsistent with the Commission code or values.

Staff must perceive fairness in the work environment

If public servants believe they are being treated unfairly, or that unethical behavior is rewarded, it is highly unlikely that they will follow new standards or procedures designed to improve ethical conduct. The reality of this is demonstrated by the unions’ opposition to merit-based promotions, caused by the perceived unfairness of the rank-and-file having a system changed which had benefited them, while senior officials from the previous Commission, whose ethics they view as suspect, remain in place. Employee perception of fair treatment is strongly correlated with “employee commitment and with the perception that it’s acceptable to deliver bad news to management.” Employees who see themselves as being treated fairly at work are more open to initiatives designed to create an ethical business culture.

The White Paper’s Chapter IV on Human Resource Development does evidence a Commission desire to create a more equitable work environment. For example, the White Paper’s plan for merit promotions is a good one, because under normal circumstances merit promotions are perceived as fair and less likely to be based on nepotism, favoritism, or other unethical considerations. Relying on merit in making employment-related decisions will also improve the diversity of Commission staff, further promoting an equitable environment.

The White Paper’s emphasis on equal opportunities is an additional positive step toward improving fairness. The Paper promises movement toward eliminating age discrimination, recognizing non-marriage partnerships, consideration of means for improving cultural and ethnic diversity, and gender mainstreaming.

The White Paper is a good start in establishing a fair work environment. Now the Commission must build on those plans and ensure fairness throughout its culture, including instances where violations by senior staff must be dealt with.

Recommendation 10: Implement the Commission’s HR plans and create mechanisms to ensure Commissioners and senior officials are appropriately sanctioned for unethical conduct.

Transparency is necessary for other elements of the program to work

Changing culture depends largely on employee perceptions. Ethics programs must be sufficiently
open; employees must be given information upon which they can formulate opinions. If no information is available, it is extremely unlikely they will assume all is well. In President Prodi’s words, “[w]here there is no transparency, there is no trust.”

Transparency is also essential outside the organization, to enable the public to understand and evaluate Commission behavior. Without internal and external transparency, it would be very difficult for Commission reform to be successful.

Recommendation 11: Provide more openness and transparency than the Commission deems necessary or desirable, to overcome its culture of, and reputation for, secrecy.

(xii) Standards of public service must be reflected in the legal framework

Employing OECD Principles, the Committee made it clear that ‘a coherent legal framework’ must be created to reflect ethical standards and to communicate the minimum standards and behaviors that every public servant will be obligated to follow. It specifically mentioned that the framework should clarify “the legal protection to be given to whistleblowers, as required by Principle 4 of the OECD Principles.”

The White Paper notes that ‘certain measures need changes in law to be adopted by the European Parliament and the Council’, which means those Institutions must participate for reform to be realized. However, the White Paper fails to suggest significant legal reforms required for an effective framework, including adequate whistleblower protection.

Recommendation 12: Implement laws and regulations that establish “the fundamental values of public service and . . . the framework for guidance, investigation, disciplinary action, and prosecution.”

(xiii) System audits must be instituted to ensure proper functioning and continued effectiveness

To achieve the aims of an ethics program, companies need to have their compliance with codes of conduct externally verified. This independent social monitoring enables corporations to determine whether their ethics programs are working and, when made publicly available, allows customers, regulator, and other stakeholders to determine if the company is walking its own talk. Although external verification is needed, very few corporations actually submit themselves to independent monitoring and public dissemination of results.

Independent auditing of the Commission would provide it with the same benefits available in the corporate world. External social auditing is the only way the Commission will be able to accurately gauge the effectiveness of its Reform. In addition, as part of transparency, the audit results should be made public because public scrutiny would be an effective disincentive to further misconduct. A wide variety of social audits have been developed to assist with external verification. These tools could be modified for use at the Commission.

The Commission is planning broad-based reform of financial auditing, which, as the Committee noted, is urgently needed. However, this will not satisfy the additional need for a social audit of the Commission’s ethics program, should it put one in place. Accountability mechanisms must exist, focusing “both on compliance with rules and ethical principles and on achievement of results.”

Recommendation 13: Require annual independent social auditing of Commission ethics, and publication of the results on Europa, the EU’s web site.

Positive culture change is possible for the Commission

Implementing the thirteen recommendations above, in addition to the process improvements set forth in the White Paper, would result in significant reductions in the incidence of Commission malfeasance. Although no organization can attain ethical perfection, misconduct can be controlled with an appropriately implemented plan.

Without culture change, the White Paper’s process improvements can do little to prevent a
recurrence of the events that led to the 1999 resignation of the European Commission. Even the modest improvements the White Paper processes offer will not be realized without the Commission’s complete dedication to its reform agenda.

All societies experience public corruption and misconduct to some degree. The goal of reducing misconduct through ethics programs is to improve the quality of government. Although anti-corruption reform is rarely successful, in approaching Commission reform the words of Oscar Arias Sanchez should be borne in mind:

We must not despair of arresting the cancer of corruption. As much as we speak of the globalization of corruption, we must also welcome the global tidal wave of public demands for good government. Today, national leaders are beginning to accept that corruption must be discussed on the domestic and international stages.78

The Commission must do more than plan improved processes; it must improve its culture. It is up to the European Commission and the other Institutions to set the EU on track to increase public support and create a stronger and more effective Union.

Notes

1. This paper is based on a LL.M. Thesis completed by the author in March 2000.
5. Ibid, quoting Jay Bevington of KPI Consultants.
7. See, e.g., Rose-Ackerman, Susan, Corruption and Government: Causes, Consequences and Reform, Cambridge University Press, © 1999, at page 91. (Cited in this paper as Rose-Ackerman.)
8. Committee First Report, paragraph 3.5.12, supra n. vi.
9. Ibid, paragraph 4.2.32.
10. Ibid, paragraph 9.4.1.
11. Ibid, paragraph 7.6.3.
12. Ibid, paragraph 3.6.7.
13. Ibid.
14. Transparency International Bribe Payers Survey, http://www.transparency.de/documents/cpi/bps.html/bpi. “Transparency International commissioned Gallup International Association (GIA) to conduct in-depth interviews with private sector leaders in 14 emerging market economies, which combine to account for over 60% of imports of all emerging market economies, namely India, Indonesia, Philippines, South Korea, Thailand, Argentina, Brazil, Colombia, Hungary, Poland, Russia, Morocco, Nigeria, South Africa. The survey was conducted from April to July 1999.”
21. Ibid.
24. Ibid.
25. Ibid.
30. Committee Second Report at paragraph 7.4.1, supra n. xvi.
33. Committee Second Report, supra n. xvi, paragraph 7.5.3.
34. Ibid. paragraph 7.5.4.
35. Ibid. paragraph 7.5.11.
36. Ibid. paragraph 7.5.13.
37. See, e.g., Ethics Manual for Members, Officers and Employees of the US House of Representatives, The Code of Official Conduct, House Rule XLIII: “4. A Member, officer or employee of the House of Representatives shall not accept gifts (other than personal hospitality of an individual or with a fair market value of $100 or less) in any calendar year aggregating more than $250, directly or indirectly from any person (other than from a relative) except to the extent permitted by written waiver granted in exceptional circumstances by the Committee on Standards of Official Conduct.”
38. Committee Second Report at paragraphs 7.9.2–7.9.4, supra n. xvi.
39. Ibid. paragraphs 7.9.6–7.9.7.
41. Ibid. paragraph 7.12.1.
42. Ibid. paragraph 7.6.1; see OECD Principles, supra n. xiii.
43. Washington and Armstrong at page 39, supra n. iii.
44. Committee Second Report at paragraph 7.7.4, supra n. xvi.
45. Ibid. paragraph 7.7.9.
46. Washington and Armstrong at page 35, supra n. iii.
47. Klebe Trevino, supra n. xiii.
48. Washington and Armstrong at page 30, supra n. iii.
50. Washington and Armstrong at page 54, supra n. iii.
54. Ibid.
55. Article 22 of the Council of Europe, Criminal Law Convention on Corruption, ETS No. 173, Strasbourg 27 January 1999, requires that the protection be ‘effective and appropriate’; Article 9 of the Council of Europe, Civil Law Convention on Corruption, ETS No. 174, Strasbourg 4 November 1999, merely requires that the protection be ‘appropriate.’ Unfortunately, not much progress has been made by Member States in signing or
implementing the conventions, but once in effect they should assist in creating a significant deterrent to financial malpractice.  


58. Article 195 (ex Article 138e) TEC.


65. “Principles of Stakeholder Management: The Clarkson Principles”, Clarkson Centre for Business Ethics, Joseph L. Rotman School of Management, University of Toronto, © 1999 The Clarkson Centre for Business Ethics, (cited in this paper as “The Clarkson Principles”).


67. Committee First Report at paragraph 2.8.3, supra n. vi.

68. Ibid. paragraphs 3.2.33–3.2.35.


70. Klebe Trevino, supra n. xiii.

71. Prodi, supra n. lxv; see also Prodi, Romano, Speech by the President-designate of the European Commission to the European Parliament 14 September 1999, http://www.europa.eu.int/comm/commissioners/prodi/speeches/designate/140999_en.htm: “I want to bring Europe out from behind closed doors and into the light of public scrutiny…. Transparency is vital for the democratic health and accountability of the European Union.”.

72. First Report, supra n. vi, paragraph 7.4.5, referencing OECD Principle 1, supra n. xxxii.

73. OECD Principle 1, supra n. xxxii.

74. Ibid. OECD Principle 2 commentary.


76. An informative website containing a variety of social-audit links is maintained by Better World on Social Assessment, http://infoseek.go.com/Titles?qt=social+audit&col=WW&sv=IS; a specific example of a social audit tool is AccountAbility 1000, Institute of Social and Ethical Accountability, www.accountability.org.uk.

77. OECD Principles, Principle 11 and comments, supra n. xxxii.