EUROPEAN PARLIAMENT

COMMITTEE ON BUDGETS

2000 BUDGET PROCEDURE

WORKING DOCUMENTS Nos 10, 11 and 12

on the future of the TAOs: supervision or dismantling?

- Part I – Strategies
- Part II – Approaches
- Conclusion – Timetable

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WORKING DOCUMENT No. 10

Introduction

'The cases examined by the Committee of Independent Experts and mentioned in its report of 15 March 1999 concern directorates-general which have a high rate of external resources.' This quote from the document summarising the screening exercise known as the Decode report highlights, in the most effective and dispassionate way possible, the central nature of the problems posed to the Commission in recent years by the increasing externalisation of certain of its administrative tasks. The authors of the Decode report go on to note that 'of the seven departments which show a substantial degree of dependence on outside staff, five have been the subject of specific consideration by the Committee of Independent Experts'[1]. It is no exaggeration to say that it is the problems relating to subcontracting, which became acute as a result, in particular, of the maladministration affecting the Echo programme and the Leonardo TAO, which led directly to the resignation of the Santer Commission in March 1999.

Since the technical assistance offices (TAOs), which are generally defined as private bodies performing administrative or technical tasks, integrated to varying degrees, on the basis of contracts awarded by the Commission, represent the culmination of this trend towards externalisation, it is natural that the issue of their future should be at the centre of the new Commission's concerns and reform projects. Moreover, that body will find that it has inherited a draft guide, published by the outgoing College on 1 July 1999, laying down a regulatory and procedural framework designed to eliminate the abuses and problems previously brought to light in connection with the management of the TAOs. It will thus fall to Mr Prodi's team to decide whether the nature of that document is such as to enable it to achieve the desired objective and, more generally, to choose between additional efforts to supervise the existing offices and a more radical approach, recommended by Parliament in its budget guidelines of 23 March 1999, that of dismantling a system which has been built up, with no guiding philosophy behind it, in response to short-term political requirements and in the light of the tactical interests of the Community administration.

The aim of this document is to consider the strategies employed hitherto by the two main protagonists, the Commission and Parliament – the Council has kept remarkably quiet on this issue – to outline the principles of a reform, the scope of which, although not the need for which, is a matter of discussion, and, finally, to put forward guidelines on the basis of which the Commission and Parliament could take action in the context of the 2000 budget procedure.

[1] Decode report, 'Designing tomorrow's Commission', pp. V and 19.

PART I: STRATEGIES

The crisis and the issues at stake

The interinstitutional crisis caused by the Commission and Parliament's differing perception of the problems linked to the management by the Community administration of its external resources came to a head in winter 1998-1999, but it had been building for many years, leading to a series of confrontations and compromises between the two institutions based around three main issues:

1. efficiency

The concern for efficiency, i.e. productivity, the wish to make optimum use of public funds (value for money), has been fuelling a partly ideological debate between those who condemn the excessive cost of a public bureaucracy composed of established, well-paid officials and those worried about the scope of the misappropriation of public funds which the philosophy of 'farming out' which underpins the establishment of the TAOs would offer unscrupulous co-contractors.

2. adequacy of resources

The Commission regards itself as facing a structural shortfall in human resources, when set against the regular increases in the volume of its tasks, and has been seeking, by means of a variety of procedures, including the use of TAOs, to free itself from the constraints linked to the imposition of a ceiling on Heading 5 (administrative expenditure) of the financial perspective.

3. transparency

The parliamentary arm of the budgetary authority is particularly keen to combat the unlawful use of operating appropriations entered in Part B of the budget to pay staff performing administrative tasks, given that, under the Financial Regulation, such payments should be entered in Part A of the budget.

The Commission and Parliament have reacted very differently to the conundrum posed by these three issues.

The Commission's objectives

It has pursued three distinct objectives, of which only the first has been clearly and consistently acknowledged:

1. Improving cost-effectiveness by means of more flexible administrative management

Evidence of this ambition, which is posited on the comparative analysis of the costs generated by the various forms of management (benchmarking), can be seen in all the documents drawn up by the Commission on the subject, in particular SEM 2000, MAP 2000, the Decode report and, now, the guide to TAOs. It is significant that the latter document makes cost-effectiveness the sole criterion governing the decision to use a TAO, stipulating that this option will be chosen once the relevant departments have demonstrated that the delegation of certain tasks meets the

objectives of sound financial management and the flexible management of programmes and measures[2]. Although Annex 1 – and not the body of the guide itself – seems to exclude 'public authority' tasks from the scope of the arrangements, those tasks are defined in such vague and loose terms that, ultimately, it is the economic criterion which is clearly intended to determine, practically alone, any decision to use a TAO.

Moreover, this is what the Commission makes abundantly clear when its issues the following general warning: 'insisting that the Commission departments should be in a position to deal with all the aspects of the implementation of Community policies would not only be unrealistic, but also undesirable. It would imply an internalisation of responsibilities and tasks which would create a need to increase substantially the number of Commission staff involved in that implementation'[3]. Explanations come no clearer than this: the primary purpose of a TAO is to make available, even if only indirectly, relatively cheap para-administrative staff.

The Commission has not tried to solve the problem by means of the more effective use of its in-house human resources, even though recently, in the context of adjustments linked to transfers of appropriations, it justified reductions in the appropriations entered against certain budget headings with reference to savings achieved in respect of studies or technical assistance tasks carried out in-house, despite the fact that the initial appropriation was based on forecasts for outside assistance. Moreover, the Inspectorate-General's report shows that the cost of a TAO employee is equivalent to that of an A5 post.

There is every justification, therefore, for putting the following question: has the Commission tried to subcontract tasks it did not wish to perform, or has it continued to perform tasks it did not wish to delegate?

2. Availability of the human resources needed to implement Community policies

Long denied on the grounds that it was dictated by the desire to escape the straitjacket imposed by Heading 5 of the financial perspective and thus led the Commission to disregard the wishes of the budgetary authority, the use of TAOs as a means of overcoming the shortfall in administrative staff was finally acknowledged, in very clear terms, by President Santer at the height of the crisis in winter 1998-1999. Whilst appearing to accept the objective of zero growth in staff complements announced by the budgetary authority, the Commission in fact pursued a very different objective. Starting in 1993, the Commission has developed, not without success, a four-pronged approach:

a. The creation in Part A of the budget of *1 830* new posts[4] negotiated between 1993 and 1998 in return for an agreement to reconsider the principle of mini-budgets and obtained by converting operating appropriations into administrative posts (CAP). The Commission can thus be said to have reaped the benefits of its own sharp practice.

b. Continued recourse, on the basis of a derogation, to substantial technical and/or administrative assistance separate from the TAOs and funded from Part B of the budget, assistance estimated by the Commission at 710 persons/year[5]. This took the form, for

[2] Guide, p. 4.
[3] Outline paper of 30 November 1998 on the inquiry into the use of external technical and administrative assistance by Commission departments, p. 2.
[4] Assessment report on the policy of converting appropriations into posts (CAP), Annex I, p. 5.
[5] Outline paper of 30 November 1998 on the enquiry into the use of external technical and administrative assistance by Commission departments, p. 4.

example, of residual mini-budgets (Structural Funds, research) or 'STAP facilities' granted by Parliament to Mr Liikanen in 1996 with a view to improving the management of the Phare, Tacis, Meda and, subsequently, Echo programmes. For the record, one could quote here the funding of certain staff involved in the management of the Echo programme and paid on the basis of a contract with the firm Perry Lux, in flagrant breach of the STAP agreements and, moreover, under terms revealed as fraudulent.

c. The increase in the number of posts charged to Part A of the budget resulting from the creation, over the four years between 1993 and 1997, of 2 618 posts, i.e. 1 448 more than were created by means of the CAP exercise.

d. The establishment of TAOs, whose numbers were put by the Decode report at 51[6], and which accounted, as far as could be ascertained from the opaque arrangements, for an ever increasing volume of appropriations (for example, an increase of EUR 30 m between the 1999 budget and the 2000 draft budget). According to the Commission inquiry[7], the TAOs today perform work totalling some 1000 person/years and consume annually, for their own administrative needs, EUR 190 m, of which EUR 170 m is entered in Part B of the budget. In that connection, the report by the Inspectorate-General[8] clearly illustrates the link between the restrictions on appropriations entered in Part A of the budget and the use of TAOs funded from operating appropriations[9]: the report notes that there is clear evidence to show that the charging of TAO-related costs to one part of the budget rather than another is more and more being determined by the shortage of resources in Part A by comparison with those in Part B and that the distinction between 'administrative' and 'operating' technical assistance costs is becoming more and more artificial and is not being drawn on the basis of objective, harmonised criteria.
The report fails to mention that, whilst making use of outside staff, the Commission has left a very large number of posts in its establishment plan vacant.

3. Establishment of a buffer between the Commission and 'people on the ground'

Although this would of course be strenuously denied, it is difficult not to see the establishment of these buffer areas around the Commission as the expression of a culture which might be termed 'Platonic', one which sought to free the institution from the day-to-day management tasks which the Greek philosopher might have termed 'servile' and to protect it from unpleasant contact with the public. Traditionally more inclined towards the framing of policy than its implementation, and having at its disposal powerful intermediaries in the form of the national civil services, when exercising the direct responsibilities conferred on it in recent years the Commission has sought, unprompted, to create structures to protect it against the risks inherent in an overly intimate relationship with the ultimate beneficiaries of its work. Under these

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6 Decode report, point 1.7.1., p. 20.

7 Inquiry into the use of technical and administrative assistance, p. 3.

8 Inspection report by the Inspectorate-General on the Commission's use of technical assistance offices (TAOs), Brussels, 4 February 1998, p. 37.

9 On 14 May 1993 the Directors-General of DGs IX, IXX and XX had sent all the directors-general and heads of departments a note seeking to clarify the procedures for charging staff expenditure to each of the two parts of the budget. According to that note, 'expenditure on technical assistance provided to the Commission by a legal person (or a natural person) in connection with the implementation of a policy, because the Commission does not have sufficient staff or staff with the specific qualifications required, must be entered in Part A. In contrast, technical assistance funded from the budget in connection with the implementation of a policy and designed to offset the lack of administrative or technical skills in the recipient countries should be entered in Part B. (Inspectorate-General's report, p. 39).

circumstances, and regardless of the careful formulations excluding 'public authority' tasks from the remit of the TAOs, it is hardly surprising that the latter have often had administrative responsibilities handed to them, since recourse to private bodies was justified not so much by the nature of the tasks performed as by the need to create an ersatz bureaucracy to fill the organisational vacuum created by the lack of any formal administrative structure to assist the Commission.

Faced with what they might regard as exaggerated accusations of bureaucratic over-cautiousness, the Commission officials are no doubt tempted to justify their actions by pointing to the substantial number of projects, and therefore contracts, which they are required to manage and which could not be managed on a centralized basis without creating bottlenecks. Without calling into question the acute nature of the mangement problems created by the proliferation of small-scale Community measures with high unit administrative costs, there must be some doubt as to whether the TAOs represent a commensurate response to this challenge, since, according to official estimates[10], they employ roughly one thousand persons per year, a figure equivalent to less than one-twentieth of the Commission staff complement and one barely greater than the number of posts currently vacant. It is thus a qualitative issue of freeing official from management responsibilities deemed too prosaic rather than a quantitative issue of scaling up the resources mobilized for the same purpose, which explains the Commission's predilection for private administrative intermediaries in the form of the TAOs and, beyond that, consultancies and consultants.

The increase in the number of TAOs seems to have been prompted by three main types of concern, economic, administrative and cultural, felt by the Commission, some of which were more legitimate than others and more clearly acknowledged by the institution, but which go to explain the vigorous nature of the phenomenon and the determination displayed by the Community administration to find accommodations with Parliament which would safeguard the existence of the TAOs.

C. Parliament's concerns

1. Understanding the needs, identifying the abuses

Parliament has long fought shy of challenging the principle underlying the use of TAOs. In recent years its attitude has been characterised by a mixture of support, reservations and hostility: support for the determination to modernise the public administration in the light of the need to implement new programmes, reduce costs and make Community administrative arrangements more flexible, in line with the Union's new political priorities; reservations concerning the idea of a direct or indirect increase in staff numbers not accompanied by sufficient efforts to reduce the number of vacant posts and redeploy staff; finally, open hostility to the unlawful use of operating appropriations to cover staff expenditure in complete disregard of the Financial Regulation and the most basic requirements of transparency.

2. The search for a balanced compromise

Very logically, the complex nature of its expectations and concerns led Parliament to avoid open confrontation with the Commission in favour of a reformist, watchdog approach and efforts to seek an agreement between the two institutions with a view to laying down a framework for the development of the TAOs and preventing abuses, without calling into question the basic

[10] Inquiry into the use of technical and administrative assistance, p. 3.

principle of their existence. It was inevitable that a number of compromises would be secured between Parliament, which was cautious but open to dialogue, and the Commission, which was aware of the need to make minor concessions in order to ward off major sacrifices. Those compromises were all more or less based on a dual balance:

- balance between the Commission's deliberate vagueness as to the nature of the tasks which the TAOs might perform and the legislative and/or budgetary authority's concern to ensure that the use of TAOs went hand-in-hand with procedural guarantees concerning the assessment of costs, competitive tendering, performance appraisal and price and quality control. In other words, tacit acceptance in return for constant administrative supervision in a variety of forms!

- balance between the acknowledged right to use to certain operating operations to fund administrative tasks, i.e. staff expenditure, and, in return, efforts to restrict the use made of such facilities (abolition of some of the mini-budgets) and to illustrate in budget documents the share of operating appropriations earmarked, on a de facto basis, for staff expenditure. In other words, transparency as a prerequisite for a derogation!

3. The agreement on the 1999 budget: an important first step towards transparency

The horizontal amendment at the start of Part B of the 1999 budget represented the culmination of these efforts to seek a compromise acceptable to the three institutions. It is based on four main ideas:

- The division of TAOs into three categories, with reference to the beneficiary of the proposed task: depending on whether the TAO acts solely to the benefit of the partners, to the mutual benefit of the Commission and its partners or solely to the benefit of the Commission, the charging of its administrative expenditure to Part B of the budget is automatic, authorised by the legislative and/or budgetary authority or quite simply prohibited.

- Continued application of the traditional derogations from the principle that the mini-budgets should be abolished, in respect of research and the Structural Funds.

- The drawing of a distinction between established and new measures: in the case of the former, expenditure on technical or administrative assistance can be charged to Part B of the budget on the authorisation of the budgetary authority (remarks); in the case of the latter, however, the approval of both the legislative authority (legal bases) and the budgetary authority is required, under what is termed the 'double-key' system.

- Imposition of a ceiling on the share of operating expenditure which can be earmarked for technical and administrative assistance and disclosure of the relevant figures in the remarks in the budget or in a specific report.

D. The Parliament/Commission dispute

1. Parliament's tougher approach in the context of the 2000 budget guidelines

The vote on the budget guidelines for the 2000 financial year, on 14 April 1999, was marked by an unmistakable toughening of Parliament's position: aiming its remarks at the Commission

whose members had just resigned, it reiterated the two requirements laid down a few weeks before by the Committee on Budgets:

a. The call for a survey of staff requirements. Parliament called on the Commission to produce a report by 30 June 1999 which sets out its staffing priorities and real staffing requirements, both in terms of numbers as well as nature, to ensure the effective operation of EU policies in the 21st century'.

b. The call for the dismantling of the TAOs. Parliament included among its priorities 'the gradual dismantling of technical assistance offices carrying out duties which the Commission administration should discharge itself'. In this way, the Committee on Budgets, which had gone beyond the rapporteur's proposals on each of these two points, was informing the Commission that administrative and budgetary 'quick fixes' were a thing of the past. Parliament's message was that an in-depth review of policy with regard to the Commission's administrative and human resources had become essential, a review which would clarify the two major areas of uncertainty preventing any rational approach to the problem: the lack of any definition of the tasks suitable, by their nature, to be delegated by contract to private bodies and the genuine or professed ignorance of the resources required by the Commission to carry out its work properly.

c. The interpretation in the nomenclature of specific sub-items to cover technical assistance. During the 2000 budget procedure, Parliament split the budget headings which included a maximum amount earmarked for technical assistance by creating in each case a sub-item BA to which only expenditure on technical assistance and administrative expenditure directly linked to the measure funded under the corresponding B heading can be charged. The amendment prohibits any funding of such expenditure under the B heading and stipulates that any transfer between the B headings and the BA sub-items must be authorised by the budgetary authority, pursuant to Article 26(3) of the Financial Regulation. The appropriations entered against the BA headings may be used to fund decentralised implementation units (DIUs) which enjoy administrative-management autonomy, provided that management and supervision is carried out by officials who are appointed, and can be dismissed, by the Commission. The establishment of these structures requires the adoption of an internal Commission regulation, after consultation of the budgetary authority and the Court of Auditors. In conjunction with this exercise involving the nomenclature, Parliament has entered 90% of the appropriations for each BA sub-item in the reserve. They will be released in two stages once certain conditions, involving the dismantling of the TAOs in accordance with a precise timetable, the forwarding by the Commission of a report on its staff priorities and the establishment by the Commission of the DIUs, have been met.

2. The Commission's refusal

The Commission reacted anything but positively to this unmistakable call from the parliamentary arm of the budgetary authority. Its response was doubly inappropriate. As regards the assessment of its requirements, it quite simply refused not only to submit the report on the agreed date, but even to give an undertaking that such a report would be drawn up, merely inviting Parliament to consider the Decode (Designing Tomorrow's Commission) report, a document which, although very valuable, in that it provides an interesting snapshot of the current administrative situation, is so lacking in forecasts for the future that it should perhaps be renamed 'Designing Today's Commission'. As regards the call concerning the TAOs, it prompted the drafting of the guide published on 1 July, which, far from prefiguring any 'gradual dismantling' instead seeks to make

the operation of the TAOs subject to an impressive system of regulatory and procedural constraints – a frightening example of red tape gone mad.

Whilst Parliament was inviting the Commission to lay down, on the basis of sound intellectual principles, a division between those activities which in the future should and should not be managed directly by the Community administration, the guide merely proposed arrangements by means of which the existing system could be institutionalised and perpetuated.

3. Towards a broader reform

The position to which the Commission appeared to cling throughout spring 1999 was in fact completely untenable and it is to the credit of the new Commission that it has seemingly acknowledged this, through the mouth of its Vice-President, Mr Neil Kinnock, although it is not yet possible to determine the scope of the changes which the latter seems prepared to envisage. The Commission's volte-face on this sensitive issue has been prompted by both political and intellectual considerations.

a. Parliament cannot accept the outgoing Commission's refusal to acknowledge the problem

The new Commission would be wrong to see the toughening of Parliament's stance in the discussions on the 2000 budget as nothing more than a whim. As pointed out in the introduction to this working document, it is the crisis affecting subcontracting in the broad sense of the term which led to the resignation of the Santer Commission earlier this year and it is the reform of the Community administration which now constitutes the Prodi Commission's first priority. Coming on the heels of the Echo scandal, the crisis involving the Leonardo TAO revealed just how unsuitable the traditional arrangements governing administrative subcontracting were and, in particular, the structural problems affecting the delegation, by contract, of certain administrative tasks to private bodies. The history of the TAOs can be divided into two eras: before and after Agenor.

If it is capable of displaying political determination, in the context of the budgetary procedure Parliament has every means of exerting strong pressure on the Commission, since it has the final say in any increase in staff resources adopted in Part A of the budget under Heading 5 of the financial perspective and, perhaps more importantly, the continued availability of certain administrative resources, as used by the TAOs, drawn from Part B of the budget containing operating appropriations. Moreover, in this area, that of compliance with the principle of budgetary discipline and the confinement of the Commission's administrative resources to the appropriate heading of the Financial Perspective, Parliament can be sure that its concerns will be shared by the Council.

b. The Commission cannot ignore the intellectual logic underpinning the critical analyses of the current system

Parliament's traditional criticisms of the TAO system, to which the Community administration ordinarily responds with a mixture of scepticism and inaction, has now been backed up by the very severe attacks launched by the Committee of Independent Experts on the current arrangements for the contracting out of certain administrative tasks. The Committee's second report has not only called into question the TAO system in particular, but the arrangements governing Community subsidies in general.

Although the Commission never seems to tire of fighting to safeguard the administrative and budgetary facilities it has managed to secure for itself in the past, there is every chance that it will react positively to the two-pronged attack by Parliament and the

Committee of Independent Experts. It is all the more likely to do so because it is ultimately convinced of the need to abandon a conservative and defensive strategy and launch substantial reforms. By way of an example, in his remarks on the Inspectorate-General's report Mr Steffen Smidt, who was at the time Director-General of DG IX, quite rightly sought to put the debate in context. Writing in 1998, he saw a need to go beyond the simple issue of the TAOs in order to tackle that of the mismatch between the Commission's current organisational structure and its management needs. In future, the Commission should focus on the framing of policies and delegate to its external partners an increasing share of the work involved in their implementation. One solution might be the development of a new generation of bodies established under Community law. These new administrative structures, different in nature from the 'agencies' operating today, would be responsible for implementing programmes and projects, on the basis of instructions from the Commission but employing a more flexible management structure. A suggestion based on nothing more than a senior official's personal views has now been taken up at political level. At his hearing Mr Neil Kinnock, the Commission Vice-President responsible for internal reform, emphasised the new College's interest in this type of administrative innovation and its willingness to seek with Parliament a more precise and more satisfactory definition of the core functions which the Commission would not be able to delegate to outside bodies.

The time is clearly ripe for a revamping of the Community administration. Let us hope it is carried out on the basis of well-defined principles.

WORKING DOCUMENT No 11

II. APPROACHES

A new policy on the technical assistance offices (TAOs) must be posited on a new approach to administrative and technical externalisation based on three main approaches.

A. Putting the issue of the TAOs in context

1. The Commission's subcontracting policy must be completely rethought

The issue of the externalisation of certain administrative tasks can clearly not be reduced to a simple choice between two management models: on the one hand, direct administrative management by officials answerable to a public authority, and, on the other, private management carried out, on the basis of a contract, by bodies independent of the administration and employing staff recruited on private law contracts. The theoretical range of possibilities between these two extremes is characterised by differing combinations of four variables: the status of the staff employed, the degree of autonomy enjoyed by the co-contractor, the latter's legal status and the arrangements governing the financial assistance provided by the Commission. Externalisation could be described as a kind of Jacob's ladder stretching between the two extremes of centralised public management and privatisation. In order to be effective, it requires a tailored approach based on a detailed analysis of the objectives pursued and the corresponding resources required.

It would thus be a serious error to follow the lead set by the guide and artificially focus the efforts to make the system more ethical and more rational solely on the reform of the TAOs. The TAOs fall into a legal and administrative category which is both ill defined and too restrictive:

- ill-defined in that the criteria used by the Commission to distinguish them from other contractors are largely artificial;
- too restrictive in that the TAOs maintain conventional contractual relations with the Community administration, so that any reform must embrace all these contractual practices.

Focusing reform efforts on the TAOs alone would certainly prove counterproductive and almost inevitably lead, in a boomerang effect, to the increased use of externalised management methods regarded as less sensitive than the fully-fledged TAOs. It is subcontracting policy as a whole which must be the subject of a review, therefore.

2. The criteria used by the Commission to define the TAOs are artificial

The Commission has not succeeded in defining and determining the exact nature of a body which can barely be distinguished from the other categories of legal person with which the Community administration concludes contracts. The arbitrary nature of the criteria used in past years to characterise the TAOs is striking. Here are four examples:

a. Duration. The definition excludes offices which conclude with the Commission contracts of less than one year's duration, with the result that the rigorous provisions

laid down in the guide do not apply to them. The assumption seems to be that it is more difficult to waste public money when it is granted on an annual rather than a multiannual basis, clear evidence of excessive confidence in the virtues of the annuality of the budget.

b. Externality. It has come to be regarded as a crucial criterion that TAO staff should work out of house, with the result that the physical location of the staff of bodies under contract has become one of the defining characteristics of a TAO. How strange it is that an institution which is itself spread over 53 separate sites should seek, in the era of teleworking, to erect a virtual barrier dividing those who work on its behalf. In the Commission nomenclature, freelance interpreters are regarded as working out of house, which would seem to prove that it is possible to be both out of house and in the booth, or 'extra muros' and 'in camera', at the same time!

c. The nature of the beneficiary. This is a much more serious example of flawed logic, since it has long served as the basis for the Commission's entire approach to the supervision of the TAOs and is confirmed by the guide. For many years, the prevailing principle has been that different arrangements should apply to TAOs depending on whether they act solely in the interests of the Commission, in the mutual interest of the Commission and the beneficiaries of its assistance or solely in the interests of those beneficiaries. In the first instance, staff expenditure is entered in Part A of the budget, but the establishment of the TAO is not contingent on the adoption of a legal basis, this being a decision covered by the Commission's implementing powers. In the second instance, appropriations to cover staff expenditure are charged to Part B of the budget, but must be authorised by a legal basis, referred to specifically in the budget remarks and subject to a ceiling. Finally, in the third case, the TAO is regarded as an entirely different kind of body and the provisions of the guide do not apply.
This hair-splitting is confusing. It is difficult to see the relevance of a criterion based on the identity of the beneficiary of Community assistance, since the ultimate purpose of that assistance can only be to benefit someone outside the institutions and taxpayers are just as interested in knowing that their money has been properly spent in the performance of administrative tasks than whether these directly or indirectly help the final beneficiary. Abandoning an approach based on uniform, consistent authorisation, assessment and supervision procedures is not the ideal response to the problem at hand. In fact, the only valid criterion, which is theoretically laid down in certain Commission documents, but which in practice tends to be ignored, is not that of the final beneficiary of the appropriations, but rather that of the Commission's ultimate accountability for their use. In other words, it must be determined whether, if the TAO in question did not exist, the appropriations would be managed by the Commission, by the beneficiary of the programme or by a joint structure.

d. The nature of the measure. TAOs are often defined with reference to the high degree of administrative complexity and integration of the service they are supposed to provide. In fact, the tasks delegated to outside bodies by means of contracts are above all highly varied. More often than not, they represent compromises between two key models:

- The proconsular model. Here, the co-contractor plays the role of a subordinate administration, carrying out, on behalf of the Commission and subject to its in practice largely theoretical supervision, a set of integrated administrative tasks, including relations with the recipients of funding, the processing of applications and the preparation of decisions concerning the allocation of appropriations.

- The ancillary model. Here, the co-contractor does not stand in for the administration, but supplies it with certain basic services or resources, whether material, intellectual or human, intended to enable it to carry out its task more effectively and at lower cost. The ancillary model is posited on the non-participation of the co-contractor in the decision-making process, but in many cases requires its integration into the administrative machinery.

  Implementation of the ancillary model might therefore result in the handing over to outside bodies of whole areas of administrative work (security, chauffeurs, archiving, secretarial services, etc.) currently entrusted to administrative staff and give rise to reactions of frustration and opposition on their part. However, it is the proconsular model which most seriously calls into question the view which the Commission may take of its political and administrative responsibilities, since, unlike the proconsular system, it goes to the very heart of the decision-making system in the implementing sphere.

3. All the Commission's contract-related practices must be reformed.

   If the TAOs are defined as external bodies carrying out a set of technical and/or administrative assistance tasks, which may be integrated to a greater or lesser extent, on the basis of powers delegated by the Commission by contract, it becomes clear that it is not the nature of the TAO itself which characterises its relationship with the Community administration. As the second report of the Committee of Independent Experts strongly emphasises, what makes a contractor a TAO, and determines its remit, remuneration and powers, is a traditional contract for the provision of intellectual services of which the TAOs by no means have a monopoly. The fact that such contracts seek to delegate to outside bodies, whose legal status may vary very substantially, tasks involving a high degree of intellectual complexity and administrative integration should not blind us to the key point: the problems affecting the TAOs represent only the tip of the iceberg formed by all the Commission's contract-related practices and it is these practices which must be reformed.

   In this connection, the second report of the Committee of Independent Experts contains valuable recommendations and opens up avenues which the Commission should explore without delay, whether this concerns the simplification and codification of public procurement law (Recommendation 1), clarification of the specific role of contracts as against other arrangements for the disbursement of public funds (Recommendation 3), the need for a distinction to be drawn between contracts and subsidies (Recommendation 6), the need for systematic planning of intellectual service contracts (Recommendation 8), the introduction of strict transparency rules applicable to contractors (Recommendation 9), the reform of the procedure for the consideration of matters by the ACPC (Recommendation 13), or, finally, the establishment of a central database of contracts and contractors (Recommendation 14).

   The aim of this document is not to set out a detailed, exhaustive list of the reforms required to place the Commission's contract-related practices on a sound footing. However, it is incumbent on Parliament to draw the Commission's attention to the administrative, political and moral necessity of such reforms, covering all the stages of the procedure: decision to conclude a contract, choice of award procedure, choice of contractor, funding and monitoring of the contract, etc.

B. Defining the tasks which must not be privatised

The Commission has not yet provided a strict definition of the tasks whose management cannot be handed over to outside bodies. The vagueness of the criteria set out in the various documents reflects the wish not to reduce the current operational scope of the TAOs. The repeated allusions to 'public authority' or 'public service' tasks or 'core functions' which cannot be delegated to outside bodies remain worryingly imprecise. Thus, as we have seen, the guide states that use can be made of TAOs if the departments concerned can show that the delegation of certain tasks is consistent with the objectives of sound financial management and the flexible management of programmes and measures. This strange definition confuses means and ends and makes improved cost-effectiveness the sole criterion governing the subcontracting of tasks to an outside body.

The guide refrains from providing an exhaustive list of the tasks which may be handed over to a TAO and, by way of illustration, merely describes some of those tasks, a description which is vague enough not to exclude any of the duties traditionally carried out by an administrative authority responsible for the implementation of a programme: identification and assessment of projects, organisation of tender procedures, 'technical' assessment of the proposals and bids, preparation of decisions concerning the award of subsidies and contracts, etc. The carefully phrased remark to the effect that the Commission departments retain 'responsibility' for fixing the selection criteria and 'sole decision-making power' in respect of the award of contracts appears somewhat hypocritical, in that these services find themselves in a situation of complete technical dependence on a single body which has control over every stage in the implementation of the programme.

It is to the credit of the Vice-President of the new Commission that, at his hearing, he acknowledged the intellectual laziness of the Community administration, given its inability to produce a clear, binding definition of 'core functions', and that he asked Parliament to help him remedy the current lack of guiding principles. This is a daunting task, since, as with the implementation of the subsidiarity principle, there is no way of drawing up a precise, relevant and exhaustive list of the tasks which must under all circumstances remain the direct responsibility of the Community administration. Such decisions can be taken only on a case-by-case basis, in the context of legislative and budgetary procedures. However, on a case-by-case basis does not mean arbitrarily. To our mind, the contracting out of administrative or technical duties to a body independent of the Commission must be prohibited in two clearly defined instances: if the delegated task involves the direct or indirect exercise of a discretionary power, or if the influence of market forces is not such as to ensure that the delegated task is implemented in an optimum manner.

1. The direct or indirect exercise of a discretionary power

In common with other Commission documents, the guide acknowledges that tasks involving the exercise of a discretionary power cannot be delegated to an outside body. Agreement must now be reached on the actual substance of that principle and its implications. Discretionary power is defined as the opposite of the requirement to comply with instructions. It implies both the granting to the decision-maker of a degree of discretion and the idea that that discretion must take account of relevant political and moral considerations, rather than simply technical and financial criteria.

The obvious temptation for the Community administration is to take the view that most of the decisions it is required to take, in particular those concerning the allocation of Community funds, its single most important direct management task, are specifically and solely based on legal

obligations and objective criteria. It might conclude from this that the 'core functions' can be restricted without problem to the exercise by the College of a very small number of political or para-legal powers, such as the right to propose legislation and the budget, international negotiations, appointments to senior posts, decisions relating to competition and mergers and, taking things to the very limit, the allocation of Community funds. Realistically, however, it must be acknowledged that this is not the case and that, never mind how strict, clear and binding the criteria governing public intervention laid down by the political authority are, the decisions taken by the administration at whatever level always involve, whether officially or tacitly, a considerable degree of political arbitration and, hence, arbitrariness.

Prudence dictates, therefore, that the exercise of tasks which have a direct or indirect bearing on the process of allocating Community funds, such as the assessment of needs, the fixing of eligibility criteria, the processing of applications or the submission of proposals that subsidies be granted to particular individuals or bodies, should be reserved for administrative departments subordinate to a competent political authority. Just as it seems right and proper to ask an external body to provide specific, specialist intellectual services designed to supply the administration with certain information it needs to take a decision, or technical services which have no bearing on the decision itself, under what is described above as the ancillary model, equally it seems dangerous to grant outside bodies decision-making responsibilities in connection with the implementation of programmes. The Commission departments' legitimate need for flexibility and autonomy in the performance of their implementing role must be met by means other than the contracting out of tasks to outside bodies (cf. D.3.).

2. Tasks which cannot be regulated by the market

The contracting out of certain administrative tasks to an outside body leads to the market replacing the hierarchical authority as the chief means of regulating the activity concerned. The process of contracting out a task is based on the conviction that competitive forces will be more effective than any other means of regulation, and in particular the exercise of hierarchical authority within a public administration, in ensuring that optimum use is made of public funds and that the best cost-benefit ratio is obtained in connection with the service contracted out. In other words, externalisation both entails a risk, inherent in the transfer of responsibility from the administrative authority to an independent body, and implies a hope, that of seeing the invisible hand of competition prove more effective than the all too visible and clumsy grip of the Community administration. It is thus a wager whose outcome is uncertain.

Any contracting out of administrative tasks to an external body in return for payment immediately brings with it a risk of financial problems, not because the co-contractor is necessarily dishonest, but simply because his responsibility as the head of a business or the manager of an independent body requires him to exploit the scope offered by the contract to maximise its profit or, at least, put its balance sheet firmly in the black, prompting him to divert into its coffers as high a proportion as possible of the appropriations made available.

The procedure is simple: all the co-contractor needs to do is to minimise the cost of the administrative service it provides by using inadequate numbers of poorly-skilled casualised staff, the inevitable consequence being that the quality of the service provided, and, in particular, the quality of the co-contractor's relations with the public, suffers. The risk here is the development of what one might term the 'farmer general' syndrome, named after the private individuals who, under the Ancien Régime in 18th century France, accumulated substantial fortunes by collecting royal taxes on behalf of the administration and, if one can put it this way, 'at their own expense'. This syndrome is by no means a thing of the past: the Commission's own analysis of the

conditions under which the first major aid programmes for the countries of Central and Eastern Europe and the former Soviet Union were implemented revealed that the consultants involved were sometimes raking off more than 50% of the budgets!
How can the Community administration be protected against this risk? The wide range of procedures involving audit, assessment or supervision by the Commission or other institutions, as provided for by the guide, must in itself be seen as paradoxical, in that its aim is none other than that of creating an exact equivalent of the hierarchical system which the contracting out of tasks to an outside body was specifically designed to do away with. Once voluntarily abandoned, administrative responsibility cannot be recovered by means of outside supervision. The Commission cannot have its cake and eat it.

It is clear, therefore, that the success of a policy of delegating certain tasks to outside bodies is entirely contingent on the ability of the market to exercise on co-contractors pressure which is sufficiently strong and consistent to force them not only to optimise their own management by curbing its administrative costs, but above all to provide the administration with high-quality services, even if this entails keeping their own remuneration within relatively strict bounds. However, the market can play its regulatory role only if full rein is given to competitive forces. This presupposes three things:

a. A clear assessment in advance of the service to be contracted out. Any tendering procedure is intrinsically flawed if the nature, scope and, therefore, cost of the service to be contracted out cannot be clearly and precisely defined. However, the report of the Committee of Independent Experts notes that the lack of any such definition is a recurring feature of the intellectual service and administrative management contracts concluded by the Commission. Only relatively simple services, such as maintenance, security, transport or even the production of technical studies or audit tasks, can be defined and assessed in advance in a relatively precise manner.

b. The possibility of substituting one contractor for another. The relative ease with which a contractor can be substituted for another is a key component of the system. If the tendering procedure is to prove effective, it is not enough simply to comply with the wording of the rules. It is also essential that the administration should not find itself forced to work permanently with the same partner and that it should thus be in a position to replace one outside partner with another, at no detriment to the service concerned. This implies not only that the appropriate tendering procedures should be complied with, but also, and this is a more subtle point, that the administrative and financial cost of replacing a co-contractor with another should not be prohibitive for the parties concerned. Here again, the following rule applies: the more complex and integrated the administrative and intellectual service concerned, the higher the cost of replacing one body by another. It is higher for the Community administration, forced to place itself without warning in the hands of an inexperienced co-contractor and witness the dissipation of the store of knowledge and experience accumulated by the previous incumbent. It is significant that after the 'closure' of the Agenor TAO, which was responsible for managing the Leonardo programme, the administration was compelled to retain the TAO staff, albeit now under the direct responsibility of the competent Commission departments. In other words, the shortcomings displayed by the co-contractor did not prompt the Commission to replace it with a new body, but instead to bring its staff in house.

   The cost of replacement may also be excessively high for the administration's partner forced by the tender procedures and the need to establish the relevant infrastructure to

make an investment inflated in relative terms by the short life of the contract. This points up the perverse impact of measures to introduce the systematic rotation of co-contractors, who are left demotivated, since they can be sure that they will not be judged on their merits, and forced to squeeze the maximum profit out of what can only be a short-term contract.

Here again, the degree of sophistication of the services contracted out seems to be inversely proportional to the scope for competition among and the replacement of co-contractors. If the administrative or intellectual service concerned is highly complex, the Community administration is left with a choice between an open-ended agreement with its favoured TAO, an arrangement which may be disguised to a greater or lesser extent, or costly disorganisation resulting from the sudden transfer of the work involved to a new partner. In short, the TAO becomes a prison from which the administration can only escape by force, the price being substantial collateral damage. Restricting the standard duration of contracts concluded with a TAO to a period of between 12 and 24 months, as the guide does, makes little sense, since this principle of short-termism leaves the administration with a choice between the virtually automatic renewal of contracts or repeated, needlessly expensive terminations of those contracts.

c. Ex post facto assessment. The contractual relationship with the co-contractor, and the degree of autonomy which the latter enjoys as a result, are difficult to reconcile with the principle of continuous supervision by the Community administration responsible for monitoring the provision of the service. In fact, they imply a kind of time-lag between the production of the good or the provision of the service concerned by the co-contractor on the basis of the autonomy granted to it by the contract, and the ex post facto scrutiny of the finished product which the administration must carry out.

A simple comparison can be used to illustrate this point: vis-à-vis its partner, the administration must be in the position of a customer in a restaurant who, in order to assess the establishment, has no need to inspect the kitchens or carry out a management audit, but can merely base his judgment on the dishes served and the bill to be paid. Of course, in this scenario dishes, i.e. finished products, must actually be served to the customer, the Community administration, by its supplier, the private contractor. If the service concerned is not clearly defined and is not easily subject to ex post facto assessment, the only way of determining whether the service provided by the outside contractor represents value for money is by means of continuous administrative scrutiny. In keeping with the approach chosen by the guide, this entails calling into question the actual autonomy of the outside body through the systematic and unfair use of every imaginable undermining tactic. Before concluding a contract with an independent body with a view to handing over to it a specific administrative or technical task, checks should be carried out to establish that the service delegated in this way will result in the submission of a 'finished product' which can be correctly assessed on an ex post facto basis without this generating excessive additional administrative costs. Here again, only relatively basic services, such as those described as 'ancillary', fall into this category. It is thus easy, through the use of a few well-chosen indicators, to conduct ex post facto checks on the quality of a maintenance, security or transport service, but much more difficult to establish, by any means other than continuous administrative scrutiny, the quality of the service provided by a TAO which is responsible for managing a complex administrative process involving the implementation of a programme, a process which in itself does not give rise to any clearly identifiable and easily assessable 'output'.

In short, the Community administration must refrain from contracting out any task to an independent body if it is not able to answer 'yes' to each of the four following questions:

- is the service contracted out extraneous to the direct or indirect exercise of any form of policy-making or discretionary power in connection with the implementation of a Community policy?
- is it possible to conduct in advance a reliable and accurate assessment of the nature and cost of the service contracted out?
- can one contractor be replaced by another without adding to the cost or jeopardising the quality of the service concerned?
- does the service contracted out give rise to a 'finished product' which can be easily assessed on an ex post facto basis?

Thus, all the parameters proposed to determine which administrative or technical tasks cannot be handed over to an outside body because they form part of the Community decision-making process or because they cannot be fully regulated by the market come together to exclude from the desirable scope of the subcontracting process the chief activity of the TAOs, i.e. the performance of complex and highly integrated administrative tasks. Taking up the distinction drawn above, ancillary tasks can be contracted out to an external body, even if it is private, but proconsular tasks must remain a matter for the Community administration, performed by its services or externalised services.

C. Reorganising the externalisation process

1. Determining the objectives of externalisation

It is not enough to give a negative definition of the tasks which cannot properly be handed over to outside contractors by the Community administration. What is needed is a clear philosophy determining the positive objectives which the Commission may legitimately be pursuing when it decides that a specific responsibility should not be exercised directly by its own departments. Only scrutiny of the promised benefits of the externalisation decision, the results of which should be clearly set out, in one form or another, in the legislative and/or budgetary acts defining and earmarking the appropriations for the Community measure, can determine whether externalisation is justified and point to the most appropriate arrangements.

Without this being an exhaustive list, use of a particular form of externalisation can be regarded as legitimate if it meets one of the three following objectives:

a. Flexibilisation. By virtue of the fact that it involves outside staff, recruited on fixed-term private contracts, in the implementation of Community measures, externalisation can play a key role in flexibilising the Community administrative apparatus:

- Flexibilisation in terms of time, by making available to the Community, on a temporary basis, the human resources required to implement certain programmes. However, the temporary nature of the programmes to be implemented must not constitute the sole criterion by which to judge need for flexibility, since, for example, the same regional or international development aid task may take the form of a permanent programme requiring the use of established officials or a series of short-term multiannual programmes requiring regular changes in the posting of those established officials, but not necessarily successive waves of recruitment on short-term contracts. In other words, it is not the temporary or permanent nature of the programme, but rather of the

Community task in connection with which that programme is implemented, which justifies or rules out the use of a more flexible staff policy.

- Geographical flexibilisation. The same thinking, and the same restrictions, apply to the requirement for geographical flexibility. The Community administration is perfectly justified in recruiting temporary staff on the spot in order to meet temporary needs in a very specific location. However, this form of flexibilisation should not come to be used to offset the fundamental reluctance on the part of Commission staff to accept mobility and geographical redeployment, particularly as its convenience is made only more attractive by the fact that it is less costly and can be funded from operating appropriations.

  The opposition to internal redeployment among Commission staff makes it impossible to suppress the thought that subcontracting as a means of increasing flexibility too often represents the inevitable response to bureaucratic inertia, serving both to limit its drawbacks and perpetuate its existence: paradoxically, external flexibility is one of the prerequisites for the survival of a bureaucratic, rigid system, in that it helps to offset the most striking problems it generates.

  In this connection, the comparative assessments of requirements intrinsic to the implementation of 'activity-based budgeting' should be rigorously used to identify sectors and departments which are over-staffed in relative terms and which should be the subject of energetic redeployment measures. The rule which states that an official works where he or she is useful, and not where he or she wishes to work, is the legitimate counterpart to the tenure enjoyed by Community civil servants.

In more general terms, efforts to seek greater management flexibility through the use of staff recruited under private law contracts must be conducted with a much greater degree of rigour than has hitherto been the case. In particular, the Community administration should:

- establish that savings can actually be achieved by means of subcontracting, at a time when the doubtful nature of some of these savings is coming to light. Taking over figures supplied by the Inspectorate-General, the report of the Committee of Independent Experts shows that the average cost of a TAO post is equivalent to that of an A5 official. Moreover, when it brought the duties and staff of the TAO Agenor, which was responsible for implementing the Leonardo programme, in house the Commission acknowledged that this generated a budget saving, funds which were immediately allocated to other programmes under global transfer 53/99;

- ensure that resources are tailored to real needs. The drive to flexibilise staff management can take various administrative forms, ranging from the direct recruitment by central Commission departments of staff under private law contracts, very much the most common practice judging by the figures in the Decode report, to the handing over of whole areas of administrative work to outside bodies such as the TAOs. This raises the legitimate question of whether the use of the extreme form of externalisation constituted by the TAOs is not specifically designed to camouflage the use of staff recruited under private law contracts to perform administrative tasks, the expression of a broader Commission policy of abandoning the exercise of its responsibilities. Firm action is needed to guard against the fundamentally perverse temptation to play with fire in this way.

b. Giving staff an increased sense of responsibility. The externalisation of an administrative task may be designed to give specific individuals a free hand in its implementation and thereby make them feel responsible for its management. It is at the forefront of broader-based moves to make administrative staff more aware of their management responsibilities, one of the key features being the introduction of 'activity-based budgeting'. This policy of giving individuals in a department or a legally autonomous body responsibility for administrative management no more necessitates the use of TAOs than does the objective of flexibilising staff management. It would be enough simply to delegate authority to bodies which are separate from the Commission's central departments, but which, as the report of the Committee of Independent Experts suggests, nevertheless have the basic features of an administrative department. In this connection, and despite the imbalance in the representation of the Commission and the Member States on the administrative board, the establishment of the Obnova agency for the reconstruction of Kosovo represents an interesting and promising initiative. In other words, it would be a mistake to confuse the externalisation of tasks with the privatisation of management.

c. Involving outside partners. One of the most legitimate objectives of externalisation, and one of those least often mentioned, is the establishment of a structured legal framework for the performance of an administrative task involving various public partners. This requirement arises in connection with:

- the implementation of international development programmes which are essentially managed jointly by the Commission and one or more partner states;

- the implementation of Community programmes necessitating the involvement of the state on whose territory the measure concerned is carried out;

- the use of specialist scientific or economic staff, who, even if they were to be employed by the Community administration on a permanent basis, could properly exercise their responsibilities only by remaining outside the administration – one example being research activities which can be carried out only by fully-fledged members of the scientific community working for specialist bodies. Mention might also be made of promotional or advertising activities which can properly be performed only by professional bodies working on behalf of a wide range of clients, rather than exclusively for the Community administration.

The externalisation arrangements will inevitably vary depending on whether the aim is to develop administrative machinery to be used jointly by several public partners or to delegate to an outside body a specific task in the broader context of a measure implemented by the Community administration. In the first instance, what is required is an administrative tool specifically designed for the purpose. In the second, it is enough simply to conclude a service contract with a specialist body.

2. Broadening the range of externalisation instruments

a. Tailoring externalisation strategies. As we have seen, effective administrative management is posited on the implementation of a tailored externalisation strategy. Administrative policy must not amount to a simple choice between direct management by established officials in the Commission's central departments and the handing over of

whole areas of administrative work to an independent body using staff recruited under private law contracts. The range of possible solutions between these two extremes includes the following:

- direct management by established officials from the Community administration working in the Commission's central departments;
- direct management in the same framework, but with some staff recruited on private law contracts;
- management by administrative bodies which are autonomous but headed by representatives of the Community administration and whose staff consists in full or in part of established officials;
- management by administrative bodies run, in various configurations, by representatives of the Community administration and of other public authorities, Member States or partner states of the Union;
- management by bodies separate from the Community administration acting as the administration's private contractor and using staff recruited solely on private law contracts.

Any rigorously conducted externalisation policy involves an analysis of the comparative merits of the various forms of management available, taking into account the range and nature of the objectives to be achieved. However, the existing administrative instruments cannot cover the full range of models outlined above, so that new instruments are required.

b. Creating new administrative instruments. Under the present Community administrative system, no Community body combines the four following characteristics:

- the legal autonomy of the implementing body, which presupposes that it should have legal personality;

- indirect Commission responsibility for the body in question, entailing administrative supervision provided by Commission officials and the presence, on the body's management board, of representatives of the Commission; those representatives should be in a majority if the body in question has the task of implementing a policy in respect of which operational responsibility rests solely with the Commission;

- the possible inclusion on the body's management board of representatives of certain partners, in particular states which are the European Union's partners in development aid programmes, and qualified individuals;

- up to 75% of the body's executive staff recruited on private law contracts.

The establishment of administrative bodies with these four characteristics must be a priority for the Community administration. These bodies might well be termed Decentralised Implementation Units (DIUs) in order to avoid the ambiguities inherent in the term 'agency', which suggests an existing type of body differing from the DIUs in the following key respect: the presence of large numbers of representatives of the Member States on the agencies' management boards, a presence which, in the case of the DIUs, would represent a breach of the budgetary implementing powers conferred on the Commission by Article 274 of the Treaty.

Such bodies would deal with all the programmes and measures whose implementation

would benefit from being externalised, but in cases where this cannot be done on the basis of a private law contract concluded with an outside body on the grounds that the twin conditions referred to above (B.1.2.) – no involvement in the exercise of a discretionary power, possibility of genuine regulation by the market – cannot be met. In practice, the establishment of such bodies would no doubt be contingent on the adoption of a framework regulation requiring the agreement of the Council.

Contrary to what is sometimes claimed, this new administrative instrument should not give rise to the creation of large numbers of posts. If the numbers of staff currently used by the TAOs are put at 1 000 persons per year, and given that some 25% of the total staff complement of the future DIUs will be drawn from the Community administration, it can be seen that the Commission will have to earmark some 250 members of staff to supervise the DIUs. It should be borne in mind that some 2 500 posts were created between 1992 and 1997, that the number of vacant posts in the Commission amounts to almost 700 and, finally, that a fair number of staff in the Commission's central departments are already responsible for monitoring programmes and supervising the TAOs.

3. Ensuring budgetary transparency

a. Bringing an end to the funding of administrative expenditure from operating appropriations. The policy of subcontracting administrative tasks, as reflected in the use of the TAOs, plays the same role today as the mini-budgets did in the past: it seeks to ensure that administrative expenditure can be funded from operating appropriations. This practice is unacceptable. It represents a breach of the Financial Regulation, which carefully divided the budget into two strictly separate parts, Part A for administrative expenditure and Part B for operating expenditure. It pays no heed to the interinstitutional agreement and the financial perspective, since it results in the funding under all headings of expenditure which should be dealt with solely under Heading 5. Finally, it disregards the requirements of democratic transparency, in that citizen-taxpayers, and their parliamentary representatives, are deprived of any fair and accurate assessment of the share of the budget which is actually devoted to the operation of the administrative institutions. It is astonishing that such a serious and lasting breach of the current rules should have been tolerated for so long by the two arms of the budgetary authority.

b. Reforming the budget nomenclature. Any genuine reform of the budget nomenclature entails changes to the Financial Regulation, a cumbersome procedure requiring the unanimous agreement of the Member States. A distinction must therefore be drawn between measures which can be carried out under the existing regulatory framework and those which require changes to that framework.

As regards the former, the Commission should include in the documents submitted to the budgetary authority a volume setting out a cross-referenced survey of expenditure for the financial year classified by nature (operating expenditure, itself divided into staff expenditure and other operating expenditure) and by purpose, i.e. by policy. This presentation, which would provide a breakdown of the appropriations in Chapter A-70 of the budget, would be consistent with the amendment to the nomenclature adopted by Parliament at the first reading of the 2000 budget and which seeks to enter operating appropriations used for administrative purposes under a separate heading deliberately entitled BA. Logically speaking, this reclassification should have clear implications for the financial perspective: all the administrative expenditure should appear under Heading

5, even if this entails raising the ceiling for that heading.

Ultimately, in keeping with the recommendations of the Committee of Independent Experts (recommendation 2.4.4 of the second report), the entire budget nomenclature should be revamped. The aim would be to bring an end to the archaic and rigid division of expenditure between Parts A and B of the budget and take the opportunity offered by the establishment of 'activity-based budgeting' to introduce a cross-referenced double-entry nomenclature which puts the classification of appropriations by nature and purpose on a systematic, official footing.

c. Guaranteeing the powers of the legislative authority and the budgetary authority. The revision of the nomenclature will ensure that budgetary decisions are more transparent than at present, but the requirements of democracy do not stop there. If the legislative authority, in the context of the procedure for the adoption of texts and programmes, and the budgetary authority, in the context of the budget procedure, are to play their respective roles to the full, the Commission should inform the Council and Parliament systematically and in detail of the arrangements it proposes to make to implement Community acts and programmes. Thus the financial statement accompanying Commission proposals should include a set of administrative information specifying the implementing method or methods chosen by the Commission, the staff complement required, the legal status of the various categories of staff used and, finally, the volume of appropriations required for management purposes. This administrative statement, updated annually by the Commission, would be annexed to the documents forwarded to the budgetary authority as part of the annual procedure.

4. Rationalising and streamlining the management and supervision of externalised activities

a. Rejecting the bureaucratic excesses of the guide

As things stand, relations between the TAOs, with their supposed legal autonomy, and the Community administration responsible for supervising them are deeply unhealthy. In this connection, a reading of the guide published in July 1999 is edifying: whilst virtuously proclaiming the need to integrate into the cost of the service contracted out to a TAO the expenses incurred in connection with the tendering, supervision and assessment of the work of the body in question, the guide sounds an all-out attack on the TAOs in general. Admittedly, the proposed introduction of certain ethical rules concerning incompatibilities, conflicts of interest and confidentiality is in itself very welcome, and the rules could usefully be extended to cover all service contracts concluded by the Commission, even those involving co-contractors which do not fall into the very select category of fully-fledged TAOs. However, the extremely cumbersome nature of the administrative procedure laid down by the Commission document is striking. That procedure begins with a cost-effectiveness analysis. However, the more complex and less well-defined the service to be contracted out is, the more cumbersome, involved and, therefore, costly that analysis will prove to be. As the Community administration seems to have a horror of simplicity, the guide stipulates that the analysis may be carried out jointly by the managing department in the directorate or the directorate-general department responsible for resources, involving, 'if possible', the department carrying out the assessment. For good measure, the proposal to use a TAO is to be made contingent on an opinion delivered by the TAO monitoring agency assessing the accuracy of the cost-effectiveness analysis. Before a start has even been made on the implementation of a procedure theoretically designed to save taxpayers' money, no fewer than three assessments, which may very well turn out to be lengthy and costly if they are properly conducted, must be carried out by three separate administrative

departments.

Far from allowing the TAO, once it has been established, to carry out its work and then judging the results at the appropriate juncture, the Commission regards it as essential, with a view to ensuring that it retains control over the use of TAOs and the tasks contracted out to them, to set up in the managing service a system to monitor and scrutinise all their activities. After giving three separate departments responsibility for a priori assessment, the Commission is now making two responsible for management, on the basis of a strange division of responsibilities: implementation on the one hand, monitoring on the other! Moreover, supervision accounts for a significant proportion of the co-contractor's activities, it being required, for example, to supply a regular statement of the costs relating to the various types of service with a view to the establishment of comparable unit costs. The thinking behind this provision is easy to understand, particularly as the inquiry into the TAOs by the Inspectorate-General revealed up to fivefold differences in the cost of the staff used by these bodies, without these differences necessarily reflecting disparities in structure. However, given management arrangements of this kind, just how much is left of the principle of autonomy which theoretically justifies the decision to conclude a contract!
Moreover, duplication is not a strong enough term, since the guide provides for a plethora of checks. Not only does the Community administration, which seems to be as distrustful of itself as it is of others, organise the entire range of in-house checks – managing department, TAO monitoring agency, financial control with a 'nucleus of expertise', it also recommends systematic and regular external audits of the work of the TAOs, not counting, of course, the monitoring by the Court of Auditors and the entirely legitimate scrutiny by Parliament in the context of the discharge procedure.

In truth, instead of reducing administrative costs, an administrative system which seeks in this way to contract out a substantial number of tasks without being prepared – or in a position – to allow contractors a free hand will perversely tend to multiply those costs threefold, since it is posited on the presence, alongside the person who performs the work, of two additional types of employee, the first of whom would have the task of assessing the work performed and the second the task of reacting to that assessment – and this overly optimistic hypothesis assumes that we are dealing with a Commission assessment unit. In this connection, a reading of the guide is enough to leave any well-intentioned person who is keen to see the Commission demonstrate a modicum of administrative efficiency dizzy with the implications. In realistic terms, the guide offers a choice between the disastrous paralysis which would be the inevitable result of its own implementation and, a more probable and less democratic scenario, the de facto circumvention of these provisions by an administration which is accustomed to transforming into a simple formal exercise compliance with those procedures and constraints which it regards as excessively strict.

b. Doing away with the paranoia characterising relations between the Community administration and the TAOs

The contradictory requirements of autonomy and supervision thus gradually gave rise to a relationship akin to paranoia between the administration and the TAOs, precisely because the activities contracted out to the latter were very ill-suited to regulation by the market as understood in point II.B.2. It is as if the Community administration was seeking, by means of a constant process of awkward and pernickety supervision, to forestall potential abuses of their autonomy by TAOs and found itself forced to play cat and mouse with its contractors. The combination of declared contractual autonomy and the inability of the market to regulate contractors' activities satisfactorily, exacerbated by Parliament's keenness to monitor and

punish, has given rise to a relationship between the Community administration and its partners which is fundamentally distrustful, prompting an astonishing proliferation of supervisory and assessment measures.

The only solution is to restrict the contracting out of administrative work to external bodies to those tasks which can be regulated by the market in the manner we have outlined above and to impose on all remaining activities a form of regulation, based on the regular exercise of hierarchical authority and the more sporadic exercise of supervisory power, consistent with any properly organised administration. This presupposes two things:

- the establishment of the Decentralised Implementation Units (DIUs) referred to above, which must have genuine management autonomy whilst being subject, through their management structures, to Commission supervision; the latter must monitor the services contracted out so effectively that the checks can be made less frequent and less time-consuming for the persons monitored.

- The planning of supervisory activities by the Commission's departments. The concentration of supervisory power in a single department is no doubt unrealistic, given the variety of administrative or political units with the independent authority to act in this area: in their individual areas of responsibility, OLAF, the Court of Auditors and Parliament's Committee on Budgetary Control all have good reason to take an interest at a given juncture in a specific aspect of administrative work. Nevertheless, the Commission's departments should organise themselves in such a way as to prevent the dispersal of administrative monitoring instruments and the uncontrolled proliferation of bodies exercising fragmented authority.

WORKING DOCUMENT No 12

CONCLUSION: TIMETABLE

At the first reading of the budget for the 2000 financial year Parliament adopted Amendment 3117 laying down a very strict and very ambitious timetable for the reforms to be carried out by the Commission in connection with the preparation and implementation of that budget. Initially drawn up in July, this timetable has since been the subject of a number of exchanges of views with the Commission, which has drawn attention to the administrative and political problems it would face in meeting within the relevant time-limits all the conditions laid down by the amendment. Some of these problems stem from the Commission's own reluctance to act: for example, it refused to take any steps to carry out a survey of its staff requirements, as requested by Parliament in March when adopting its budget guidelines. Other problems, however, would seem to be outside the Commission's control. For example, the establishment of the Decentralised Implementation Units, which are intended to supersede the TAOs, no doubt calls for the adoption of a framework regulation necessitating the implementation of a relatively complicated legislative procedure and the Council's political agreement. In one way or another, the arrangements for the dismantling of the TAOs will inevitably be affected. By the same token, the vitally needed reform of the Financial Regulation will only be achieved by means of a long, complex and laborious legislative process involving all three institutions. Finally, it is clear that some of the proposed reforms, such as those of the Commission's contract-related practices, form part of a broader administrative strategy which the budget procedure cannot pre-empt.

Nevertheless, a few fine words from the Commission will not be enough to persuade Parliament, in the context of the second reading of the budget, to release the appropriations entered in the reserve at first reading. Bureaucratic inertia is a ubiquitous phenomenon and the consistently vigorous nature of the Community administration's opposition to the reform of the TAOs demonstrate that it is only with a heavy heart that the Commission will abandon practices which, however unhealthy, have become vital to its administrative arrangements.

Although the timetable laid down by Amendment 3117 should be 'interpreted intelligently', it cannot be called into question during the second reading of the budget. By the same token, although the rapporteur for the budget is loath to propose to his colleagues that sums be placed in the reserve in volumes and for periods which are such as to jeopardise the proper implementation of the appropriations adopted, he does not intend to deprive himself, at second reading, of a tactic which is all the more justified because the uncertainties regarding the nature and speed of the administrative reform under way make it difficult to determine the volume of financial resources which will be required during the 2000 financial year.

The timetable adopted by Parliament in Amendment 3117 made provision for the following:

A. Before the second reading of the budget

1. The adoption of a decision of principle banning any further delegation of administrative tasks to bodies independent of the Commission;
2. The submission of a timetable for the dismantling of the existing TAOs by 15 November 2000.

The Commission has drawn attention to two types of problem in connection with the implementation of such a timetable:

- problems linked to the existence of contracts expiring after 15 November 2000. It would no doubt be unfair to demand the early termination of contracts concluded before 23 March, the date on which the EP adopted the budget guidelines, and whose duration does not exceed two years. The situation is very different, however, with regard to contracts concluded after 23 March 1999 in complete disregard of the budget guidelines laid down by Parliament and the call for the dismantling of the existing TAOs: it is now up to the Commission to repair the damage caused by its disrespectful treatment of the budgetary authority and bring its contractual links with the bodies concerned to an end by the date laid down in Amendment 3117.

  As regards the contracts concluded before 23 March 1999 and due to expire after 2001, their systematic termination during 2001 should be negotiated before September 2000.

- Problems linked to the time needed to adopt a framework regulation providing for the establishment of new administrative instruments, described in this document as Decentralised Implementation Units and intended to take over the role played by the TAOs in the implementation of certain Community programmes. Although Parliament is well aware of the cumbersome nature of the Community decision-making process, it cannot accept that this pretext should be used to justify the maintenance of the status quo. As things stand, there is nothing to prevent the Commission from drawing on its experience and prior to the adoption of the 2001 budget, administrative arrangements for its departments which enable it to carry out, on the basis of supervision by officials from the relevant directorates-general and with the assistance of some of the staff recruited under private law contracts by the TAOs, the tasks currently performed by the latter. Indeed, the reverse is true: this administrative experiment would serve as a full-blown test of the advantages and, possibly, drawbacks of decentralised administrative management of Community policies involving a mix of officials and outside staff.

3. The drafting and publication of a report proposing changes to the presentation of budget headings in accordance with the principles outlined in II.C.3.

4. A Commission undertaking to submit before 15 February 2000 a report on its staff priorities and its real staff requirements.

B. Before 15 April 2000

1. Submission of a list of services hitherto performed by the Commission and which could be performed more cheaply on the basis of privatised management. In the course of its dialogue with Parliament the Commission pointed out that the drafting and submission of such a list would provoke adverse reactions within the administration. The rapporteur on the budget can only acknowledge that this warning is justified and state that, in making its request, Parliament chiefly wished to show that its criticism of the TAOs did not rule out the use of other forms of externalisation when justified.

2. The adoption of a formal decision on and a timetable for the establishment of the Decentralised Implementation Units. Since a framework regulation is required, it goes without saying that this will entail the adoption by the College of a formal proposal and that the timetable can only be indicative in nature, even if the time needed by the

institutions to establish this new administrative tool can under no circumstances be used as a pretext to justify the continued use of administrative and technical assistance, in its current form, beyond the deadlines laid down in point II.A.2.