

Replies of Mr Heinrich von Moltke to the observations contained in chapter 2 of the first report of the Committee of Independent Experts

Contrary to what is asserted in Section 1.3. of the Report, important information underpinning Section 2 "Tourism" was anything but uncontested from the beginning. Already when the European Parliament debated the reports by Mrs. Rosemarie Wemheuer, MEP, and Mr. Stefano di Luca, MEP, the former Director General of DG XXIII had offered counter-evidence to the so-called facts presented, and had asked for that evidence to be taken into account. When this was not done, - and following a correspondence with the President of the European Parliament, Mr. José-Maria Gil-Robles Gil-Delgado, - the President of the Budgetary Control Commission, Mrs. Diemut Theato, MEP, agreed to distance herself from "the uneven way in which these reports" [that had meanwhile been adopted]" had made use of and weighed the available sources" (see Verbatim report of the proceedings of the the European Parliament of 16-02-1998, page 12, intervention I-015).

Nevertheless, the appraisal of the Director General in the first report of the Committee of Independent Experts relied on the European Parliamentary debates mentioned above, and on other unspecified sources for its assessment of the Director General's performance. In a letter dated 2 June 1999, the Director General protested again and asked for the statements concerning him personally to be re-examined in the context of the Committee's Final report. In support of his request he referred Members of the Committee to a Memorandum attached to his letter, and extensive documentation which he had deposited with the Secretariat of the European Parliament.

The Committee felt unable to re-examine its report and refused to publish the relevant correspondence, on grounds of the limits of its mandate and the fact that it had ceased to exist on 10 September 1999. It argued that the European Parliament was solely responsible for taking such decision. Following intervention by the European Ombudsman and as a friendly gesture, the President of the European Parliament, Mr Pat Cox, has kindly authorized, by letter of 20 June 2002, the publication hereafter of :

1. The letter of the former Director General to the President of the Budgetary Control Commission of 2 June 1999.
2. The letter of the former Director General to the President and the Members of the Committee of Independent Experts of 2 June 1999.
3. The Memorandum of the same date annexed to that letter.

Heinrich von Moltke

Molenberglaan 15

B-3080 Terouren

2 June 1999

**Mrs. Diemut Theato, MEP
President of the Budgetary Control Commission
European Parliament
Rue Belliard 97-113
1040 Brussels**

Dear Madam,

This letter is to inform you of the fact that today I forwarded to the President and the Members of the Committee of Independent Experts a memorandum with supporting documentation that refutes a number of disparaging statements concerning my alleged responsibility for irregularities in the field of tourism which were contained in the first report of this Committee.

The Committee should from the beginning have had sight of these documents, that provide evidence for the arguments I have repeatedly advanced to counter the current allegations. Apparently, this has not been done, nor have I once again been given an opportunity to be heard. I therefore felt compelled to proceed in this way in the hope that all the information vindicating me will be examined by the Committee whose conclusions concerning the exercise of my functions could otherwise be used against me.

Sincerely yours,

Heinrich von Moltke

Mr. André Middelhoek
President

Mrs. Inga-Britt Ahlenius
Mr. Pierre Lelong
Mr. Walter Van Gerven
Mr. Antonio Tizzano
Members of the Committee of
Independent Experts

Secretariat of the Committee of
Independent Experts
c/o European Parliament
Building Leo 5,5 A 03

Brussels, 2 June 1999

Mr. President,
Distinguished Members of the Committee,

The first Report of 15 March 1999 on Allegations regarding Fraud, Mismanagement and Nepotism in the Commission, and in particular its chapter devoted to tourism, concerns me personally in view of the fact that between 1 April 1990 and October 1996, I exercised the functions of director general of the newly created DG XXIII, including the tourism unit.

To the extent that the conclusions of your first report are preliminary, I do not wish to call them in question. However, I have to point out that certain general remarks to be found in this report are of a nature to create an unfavourable prejudice against me.

In the introduction to this report, you take care to stress that "*as regards the cases selected for scrutiny, ... the Committee did not seek "proof" in the judicial sense of the word*" and that "*on the basis of available reports and documentation as provided by the relevant authorities and confirmed through interviews and other sources, it based its judgement on credible information which was either not contested or could be verified by the Committee itself...*" (First report, section 1.3.).

Since, according to your working methods, officials of the European Union other than Members of the Commission could not be heard - which may be understandable in view of the scope of the Committee's task and the short timespan at its disposal - I think it equitable and justified in anticipation of your second report to send you relevant information with

documentary evidence that should permit you, in full knowledge of the facts, to assess not only the responsibilities of individuals but also the attitude adopted by the Commission itself with regard to certain members of the services.

Given the authority of your Enquiry, you will understand my legitimate concern to reply to criticisms at times impugning my honour, as well as my desire to let you have all the information indispensable for a proper understanding of what was going on. This includes objective facts which in my opinion have not always been considered.

With this in mind, I take the liberty to write this letter to which I attach a memorandum and an inventory of the documentary evidence. As to the documents mentioned in this inventory, I will deposit one copy of the file with the Secretariat of the European Parliament for the attention of the Committee .

I am, of course, entirely at your disposal for answering your questions and for giving you any further information you might wish to receive.

Sincerely yours,

Heinrich von Moltke

MEMORANDUM

On behalf of Mr. Heinrich von Moltke, former director general of DG XXIII

Subject : Reply to certain criticisms levelled at the director general of DG XXIII, and in particular the Tourism Unit, in the Report of the Committee of Independent Experts of 15 March 1999 on Allegations regarding Fraud, Mismanagement and Nepotism in the Commission

Preliminary remark

DG XXIII was created on 6 January 1989 with the intention of bringing together within one service a number of homogeneous horizontal responsibilities, among other things those concerning tourism which were transferred from DG VII to DG XXIII.

Mr. Heinrich von Moltke was appointed its director general on 1 April 1990, and carried out his functions until October 1996.

His first task was to provide an existing organization with appropriate administrative structures as well as programmatic and legal bases for its considerable activities. These included winding up the European Year of Tourism which already was in full swing. As far as management responsibilities were concerned, he largely relied during the first six months on the competent and experienced director in office at the moment of his appointment, while familiarizing himself with his new functions .

A. Criticisms directly levelled at the former director general

1. "Failure to exercise his responsibilities as a superior" (Para. 2.9.1. (iv) of the report)

1.1. Allocation of inadequate staff resources : Para. 2.7.3. of the report

The inadequacy of permanent administrative staff resources within the tourism unit was unanimously recognized (see table and documents in annexes 1 to 4).

In a memorandum of 4 May 1990, the services of DG XXIII informed the Cabinet of Commissioner A. Cardoso e Cunha of the untenable situation of DG XXIII resulting from the inadequacy of resources in terms of staff and budgetary allocations (annex 5). This situation, however, did not improve before the end of 1995 - beginning of 1996 (annexes 1, 6 to 18).

All requests aimed at the creation of a budgetary unit, or at least a budgetary sector, in order to remedy the understaffing of the existing budgetary cell were to no avail as shown in annexes 19 to 22, 8, 10 and 24. It was not before April 1996 - i.e. two years after the transfer of the head of the tourism unit in the interests of the service, which the director general had requested for a long time - that a budgetary unit was finally created within DG XXIII (annexes 12, 14, 15, and 18).

Because of serious shortages of staff, it was impossible to allocate tasks to appropriate levels of experience and responsibility, as would have been normally desirable (see Para. 2.7.3. of the report).

1.2. The questionable appointment of the head of the tourism unit : Para. 2. 7. 4.

As opposed to what follows from the report (Para. 2.7.5.), the appointment of the head of unit rested with the college of Commissioners. As shown in successive personal notes made by the director general (annex 25, pages 1, 2, 3, 4, and 5; see also annex 13), he sought in vain, when preparing the organigramme of the new Directorate general XXIII, to nominate another candidate at the head of the tourism unit because of information about the management capabilities of the incumbent that came to his knowledge in 1990.

Having personally verified the shortcomings of this head of the tourism unit as to his management capabilities, the director general repeatedly solicited his removal, first of Commissioners A. Cardoso e Cunha and Mrs. V. Papandreou and their heads of cabinet, later of Commissioners R. Vanni d'Archirafi and Palaiocrassas who can all confirm this (see also annex 88).

It was, however, not until the first specific allegations regarding the probity of the head of unit were levelled against him, that a way was found with the help of the Secretary General to transfer him as of March 1994 to another department in the interests of the service. However, in order to ensure his swift replacement, a candidate who held the same nationality as the one detained by the outgoing head of unit and his predecessor had to be proposed by the director general.

1.3. Instances of administrative negligence : Paras. 2.7.7. et seq.

The problem of the award of ad hoc subsidies mentioned in Para. 2.7.9. of the report had not escaped the attention of the director general. As of 1991, he had directed the head of the tourism unit to resort to public tendering as a general rule. Only limited amounts were to be distributed in ad hoc subsidies, the award of which rested with a committee presided over by a director. However, the director general's instruction was only gradually implemented, due to the frequent administrative delays caused by the head of the tourism unit (annex 62).

The "*serious administrative shortcomings*" mentioned in Para. 2.7.9. of the report were revealed by the enquiry launched by the director general from March 1993 onwards, and in particular after the transfer of the head of the tourism unit in March 1994 (annexes 26 to 30).

However, a special task force and a significant budgetary allocation was required (more than 2 MECU as follows from page 22 of the final report of 14 July 1998 published by the Commission under the title "*Audit of Past Tourism Actions*"), in order to obtain a precise,

if incomplete picture of the irregularities which had escaped all controls, this being largely due to the sense of impunity on the part of the head of the tourism unit, who relied on his political protections (see Para. 2.3.6. of the report), and who shielded himself from any criticism of his management style by pointing to the understaffing of his unit.

1.4. The warning signals : Paras 2.3.7. et seq.

- The written questions mentioned in Para. 2.3.7. preceded the arrival of the director general. Therefore, so far as he was concerned, the first warning signal was the allegation of corruption in the tourism unit as a whole, which was made by Mr. McMillan Scott, the Rapporteur of the Transportation and Tourism Commission during a meeting in June 1990. This allegation, however, was not specific regarding persons or facts.

Nevertheless (see the letter of Commissioner Cardoso e Cunha, annex 31), it was taken seriously by the newly arrived director general. He unsuccessfully sought further details from the Rapporteur, and at a later date urged high officials of the Court of Auditors to take a position on this matter in its report of 1992 (annexes 13, 32, and 43, page 1, § 1).

His concerns were abated when the special report of the Court of Auditors remained silent as to the allegations of corruption, and later when the Member of the Court in charge, Mr. Thoss, gave a negative reply when asked by Members of Parliament about any indications of corruption in his possession during a meeting of the parliamentary Commission in April 1993 (annexes 13, 32 and 33).

- The first precise warning signal throwing suspicion directly on the former head of the tourism unit was the letter of the director general of the European Travel Commission dated June 1992 (see Para. 2.3.9).

This letter, however, appeared to suggest poor judgement rather than fraud on the part of the head of the tourism unit (cf. annex 34). Moreover, it could by no means be excluded that its real purpose was to discredit a competitor, all the more so since the letter pretended that the project in question was not enjoying the support of the three main tourism organizations (cf. annex 34; see also annex 37), whereas shortly after its receipt, the three organizations had actually reiterated their support of the project in writing (annexes 38 to 42).

In any case, the letter was effective in that the project in question was only awarded a part of the available budget while the remainder was attributed to a rival project (annex 41).

The alternative would have been to refuse any support for the project in question and not to initiate an inquiry into its promoter - an inquiry which was launched as soon as the first signs of poor implementation of the project appeared. (annexes 48 and 88).

1.5. The management of the crisis : Paras. 2.8.1. et seq.

Immediately after the appearance of the first specific charges against the head of the tourism unit in connection with the ECODATA project (in a letter of SFT of 16 February

1993, annex 43, which, however, was not exempt of self-interest: see p.4) the director general suspended him from the handling of the project (annex 44), and initiated an inquiry as of March 1993 including local inspections (annexes 45 and 46).

When fresh charges appeared towards the end of 1993, the inquiry was immediately extended to include the entire activity of the tourism unit, and in particular the IPK dossier (annex 47). At the end of 1993 and by intervention of Commissioner Schmidhuber, the director general requested the assistance of DG XX in the form of general and sectoral analyses (annexes 48 and 13, page 2, § 4). In addition, he systematically informed DG IX enabling it to gradually discover the full extent of the irregularities (annexes 49, 26 to 30). At the same time, he requested the transfer of the head of the tourism unit in the interests of the service (cf. Para. A.1.2. above).

Under these circumstances, the director general can hardly be accused of slowness in initiating and conducting the inquiries (see Para. 2.8.1. of the report).

2. Failure of the director general to exercise his responsibilities as authorizing officer : Paras. 2.9.1. (iv) of the report

2.1. Authorizations to sign : Para. 2.2.4.

Contrary to what is said in Para. 2.2.4., the director general was solely responsible for authorizing commitments of expenditure. He had not delegated any authorization for signing commitments (annex 50).

Payment orders were signed exclusively by the directors by virtue of delegations which, contrary to the opinion of DG XX, had not been extended to include officials of lower categories (annex 51, page 21). Only during the first period, and only for contracts with non-permanent staff, was an assistant authorized to sign payment orders.

2.2. The renewal of the contract with EUROCONSEIL : Paras. 2.5.7. et seq.

Since the first renewal of the contract was signed before the director general took over his functions on 1 April 1990, his responsibility can only come into question for the second renewal. This renewal, however, did not include any of the provisions mentioned in the report of the Committee (see Paras. 2.5.7. to 8, 2.5.11) that would have required a new consultation of the ACPC.

In fact, the second renewal of the contract did not contain any sponsoring clause nor did it entail a significant rise in total remuneration. An amount of 500 ECU was allowed per team, comprising one expert and one secretary (whereas the preceding contract fixed it at $373 + 120 = 493$ ECU). By comparison with the two preceding contracts, the second renewal provided for a substantial reduction to 19.500 ECU of the total sum provided for management fees and administrative support (annexes 52 to 55).

2.3. The IPK-ECODATA dossier : Paras. 2.6. et seq.

The report (cf. Paras 2.6.9. and 10) adopts the allegations of the head of the tourism unit as to the preferential treatment which allegedly was given to SFT. However, these allegations are based on papers provided by the head of the tourism unit which were intentionally selective and consequently incomplete.

From the attached documents it is apparent:

- that the initiative to encourage cooperation between IPK and SFT emanated from the staff of the tourism unit and was due to their wish to avoid overlapping with another project already supported by DG XXIII (annexes 56 to 59);
- that the director general had no intention of ensuring preferential treatment for SFT: it should be noted that he actually rejected a subsidy for three other projects proposed by SFT (annexes 60 to 63) ;
- that the director general did not act under pressure, either from SFT or from a member of the German Bundestag (annexes 60, 64 and 65);
- That the refusal to pay IPK the balance of 40 % of the subsidy was solely attributable to the poor implementation of the project, and to the fact that the latter was not terminated within the agreed timeframe due to poor communication between IPK and its own partners (annexes 66 to 75).

B. Criticisms levelled at the Commission involving the director general

1. Failure to launch an administrative inquiry : Paras. 2.5.14 and 2.6.17

Contrary to the facts, the report suggests (cf. Paras. 2.5.14 and 2.6.17) that no administrative inquiry to establish the responsibility of the director general was launched with respect to the EUROCONSEIL and IPK-ECODATA affairs.

In fact the director general himself repeatedly requested such an inquiry from February 1995 onwards (annexes 76 to 78).

This inquiry was carried out by the Secretary General Mr. D. Williamson in August 1996. His report of 8 October 1996 following this inquiry entirely exonerated the senior staff, and in particular the director general (annex 79) :

- firstly, in respect of the circumstances of the conclusion and renewal of the EUROCONSEIL contract;
- secondly, in relation to the assertions of preferential treatment allegedly extended to SFT in connection with the ECODATA project.

2. The application of Article 50 of the Staff Regulation : Para. 2.9.1.(iv)

The report (cf. Para 9.4.21) criticizes the Commission for having applied Article 50 of the Staff Regulation to the director general.

The application of Article 50 of the Staff Regulation is neither a favour nor a sanction.

2.1. The absence of sanctions

The inquiry carried out by the Commission, more particularly by the Secretary general

of his functions, and that these were rendered particularly difficult (see the administrative inquiry and the report of 8 October 1996 which entirely cleared the director general of any reprehensible act, annexes 79 and 80).

Moreover, the application of Article 50 is incompatible with a disciplinary sanction. In the case at issue, it was attributable to external pressures brought to bear upon the Commission (annex 81).

2.2. The absence of any favour accorded to the director general by the application of Article 50

2.2.1. He suffered the loss in pay of 30 %, the pension amounting to 70 % of the basic remuneration.

2.2.2. Contrary to what is alleged in Para. 9.4.21 of the report, and in keeping with the Staff Regulation, the director general was not granted a "comfortable" indemnity (see annexes 82 and 83).

2.2.3. For reasons of professional ethics, the director general did not accept a proposal made in October 1996 by Commissioner Liikanen and Commissioner Papoutsis in the presence of the Secretary general (annex 83).

According to this proposal, the director general could have preserved his remuneration at its previous level by accepting a post as a special adviser. Since the post did not appear to involve significant responsibilities, the director general did not consider it to be in line with his professional ethics to accept the proposal. However, the mere fact that the proposal was made is proof enough, if need there be, that the application of Article 50 was not considered a sanction by the Commission.

3. The lifting of immunity: Para 2.9.1.(iv)

In Para 2.9.1.(iv) the report seems to blame the Commission for tardiness in lifting the director general's immunity, consequently delaying the inquiries conducted by the Belgian judiciary.

The reality is that after receiving the information it had sought from the Belgian authorities (annex 84), the Commission decided to form its own documented opinion of the alleged events - hence the administrative inquiry mentioned above. As a consequence, the Commission suggested that in the first place the Belgian authorities should hear as witnesses all those officials who had not so far been heard. This was concluded before the end of 1996 (annex 85).

However, the Belgian authorities took no further action until 6 November 1997. Moreover, ever since the lifting of his immunity on 13 November 1997, the director general has not once been heard by the Belgian authorities. In this context, it may be worth noting that the report of the Secretary general (annex 79) was not transmitted to them until the decision of 13 November concerning the lifting of immunity - a decision due to a change in the Commission's general attitude concerning the need to protect the institution, rather than to the emergence of any new facts incriminating the director general. There seems little doubt that the judicial authorities have refrained to date from questioning the director general because the report of the Secretary General, well documented and motivated as it is, has cleared the director general of any blame.

Under these circumstances, it would be wrong to charge the Commission with having delayed the inquiries conducted by the judicial authorities.

4. The so-called poor judgement of the director general : Para. 9.2.4.

This memorandum - and the information it contains - is based on the attached documents which have satisfied the Commission that the allegations of Mr. Tzoanos were *not credible*.

That being so, the report (Paras. 2.6.9. -10) should not have taken account of wilfully incomplete information imparted by Mr. Tzoanos as soon as he knew himself to be under suspicion.

Although the allegations of Mr.Tzoanos were *contested* by the director general and he drew a satisfactory reply from President Gil Robles (annex 100), these allegations continued to circulate and thus influence the first report of the Committee of Independent Experts.

A final report could present an opportunity to establishing the real facts, and to give the director general his due concerning the reproaches unfairly levelled against him.

2 June 1999