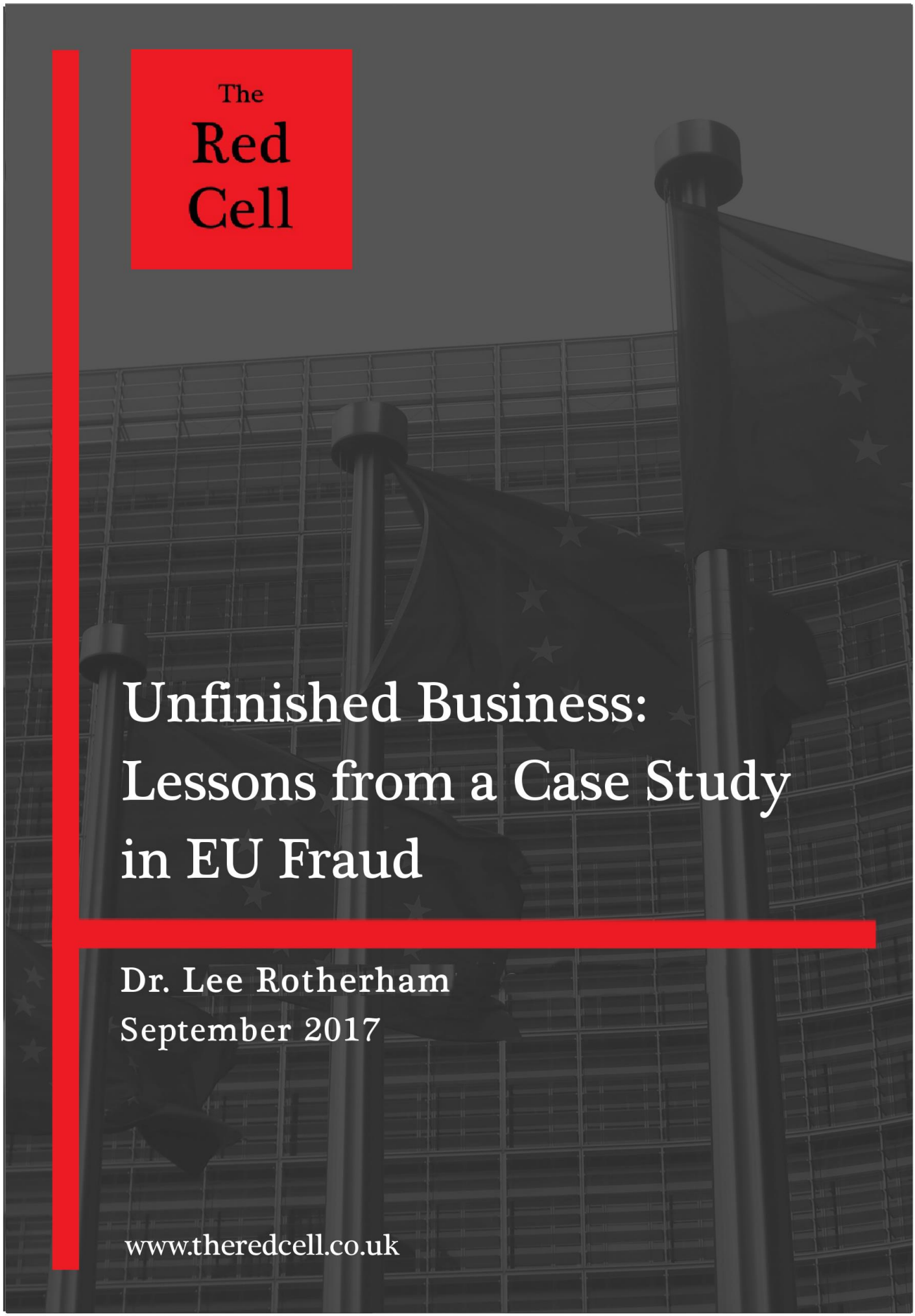

The Red Cell

Unfinished Business: Lessons from a Case Study in EU Fraud

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Lessons from a Case Study in EU Fraud

Introduction

This paper is, first and foremost, a personal story.

It centres on the case history of Mr Robert McCoy, someone who blew the whistle on widespread fraud in an EU institution, the Committee of the Regions (CoR). The consequence of him standing up to protect the public interest was an ongoing, 15 year-long campaign of retaliation, persecution, recognized officially as "individual and institutional harassment,"[1] culminating in lengthy hospitalization, removal from office and constructive dismissal.

Most EU whistleblower stories, let alone EU fraud stories, are kept under wraps by the contractual obligation known as "devoir de réserve". EU officials' contract of employment (the staff regulations) states that "An official has the right to freedom of expression, with due respect to the principles of loyalty and Impartiality".

In practice, this means that staff are required to seek permission before publishing their opinions, but the principle also covers making public details on fraud that might otherwise have been kept in-house. And since the official's employers' are both judge and jury as to whether these principles have been adhered to, this clause has frequently been used as a stick to beat whistleblowers into submission and discipline or even sack them.

It is hardly surprising that as a species, EU whistleblowers live in fear. Unusually though in the case of the primary subject of this paper, so much has entered the public domain (albeit with only partial media recognition) that it is possible to piece together a detailed understanding of the events as they evolved, and to compare them with known aspects of other cases for an overview. The lid is lifted, despite the system.

None of this one suspects will be much comfort to the unfortunate Mr McCoy. Despite the unanimous findings of numerous EU review bodies which have consistently lambasted his now former CoR employers on account of, *inter alia*, "deliberate and organized ostracism and mistreatment"[2] and otherwise "illegal behavior"[3] towards their former Internal Auditor, he is still evidently no closer to obtaining anything approaching adequate redress let alone his loss of earnings and the legal and other costs. Track record suggests the price of honesty will run to several hundred thousand euros.

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[1] European Parliament Resolution of 29 January 2004 containing the comments accompanying the decision concerning the discharge in respect of the implementation of the general budget of the European Union for the 2001 financial year – Section VII - Committee of the Regions – (SEC(2002) 405 – C5-0247/2002 –2002/2107(DEC)

[2] Judgment of the EU Civil Service Tribunal on 7 May 2013 in case F-86/11 (McCoy/ CoR EU Civil Service Tribunal's

[3] EU Civil Service Tribunal's Judgment of 18 November 2014 in case F-156/12 (McCoy/ CoR)

But his story is not an isolated case - it is also an example from which many wider lessons can be learned.

Moreover, it is one of so many which confirm the EU's lamentably ineffective treatment of fraud, and its reluctance to pursue fraudsters. This issue directly resonates with EU citizens and with the British public in particular. This and so many other similar anecdotes undoubtedly constituted a not-insignificant factor which influenced the Brexit referendum result.

Those lessons do not stop applying after Brexit. They continue to apply for those countries that choose to remain members of the EU, and indeed perhaps become more urgent. Conversely, the UK needs to learn the lessons and apply them to whatever new arrangements are being set up in its relationship(s) with the EU in the future, to remove or at least mitigate the problems that have arisen in the past. There is also an important aspect of human justice associated, with a number of cases involving British nationals that still remain unresolved.

So while this paper will focus on one particular institution and one particular individual who suffered at its hands while trying to halt its wrongs (which was his job), the example is unfortunately mirrored in similar problems across the EU institutions. The nature of the problems identified makes it far more than an anecdotal issue, since the example is far from a unique case.

This, then is the story of an individual's personal trauma in fighting for what is right. But it is also about how the EU is run, and how it continues to deal with administrative scandal. It is divided into three parts.

In the first section, we look at the general overview and show the breadth of the issues under consideration. The nature and scale of the situation demonstrates that the issue is not a problem arising in isolation, or a matter merely of historic injustice.

In the second part, we dig into one specific case in some considerable detail. By understanding how events unfurled over time, and exploring the sequence of events and consequences, we can better comprehend both the nature of the problem as well as the immense trials confronting those who are brave enough to dare try to stop wrongdoing.

Finally, we draw out some key lessons for the future.

We suspect that the author will hold very different views on Brexit to those of many of the whistleblowers whose cases are explored. But no doubt all will recognise the existence of longstanding critical flaws on how taxpayers' money is spent and accounted for by the EU, and through it, within EU member states themselves; and all will agree in particular that historical travesties have yet to be redressed concerning a number of people who have striven to do their public duties under - and indeed despite - a system that has long failed to support them.

Part One: An Overview

Why Whistleblowing Has Happened in EU Institutions

'Blowing the whistle' is defined by the OED as "to bring an activity to a sharp conclusion, as if by the blast of a whistle; now usually by informing on (a person) or exposing (an irregularity or crime)."

As it happens, as applied to the EU that definition works badly. Typically after the act of whistleblowing, the activity (in this case fraud and other irregularities) has tended to continue.

It is also a poor definition for other reasons. Firstly, EU staff are driven to whistleblow by different motives than those that often affect other 'leakers' sometimes misdiagnosed by the press as engaging in true whistleblowing. They are not putting material into the public domain because they disagree with a particular policy: the average EU staff member applied for and was recruited into the EU institutions because, by their very interest in the environment, they were not indisposed to the work being undertaken there.

It should also be noted that EU staff have a specific statutory obligation to report wrongdoing, both under the OLAF Regulation and in accordance with the EU Staff Regulations (ie their contract of employment). Since staff have no choice in the matter of reporting fraud, this makes both the institutions' reluctance to deal with the fraud and the almost invariable pressure put upon them by their hierarchy all the more unacceptable.

They are frequently highly idealistic about "Europe" and the "European project". You will find few UKIP voters within the European Commission. EU whistleblowers really do have to be seriously pushed into going public by uncovering bad things. Such idealism conversely also goes a long way to explaining the EU's reluctance or outright refusal to crack down on fraud effectively. Instead of considering any revelation of malpractice as a golden opportunity to show the world that it is serious in good governance, the EU tends to take the 'sacred cow' approach and will not admit to its imperfections, preferring to sweep the whistleblower's revelations under the carpet. This is a damaging and counterproductive response, because fundamentally it is not the fraud that matters so much as how one deals with the fraud.

It further then follows that EU whistleblowing invariably involves blowing the lid not simply on malpractice, but on the malpractice and the inevitable institutional cover up that follows it. In every case, the process involves the individual first trying, repeatedly and persistently, to draw the problem to official attention internally. It is only after persistent rebuffs, indeed push back by the system, that they are then reluctantly pushed to escalate the matter.

It is worth bearing in mind that for every EU whistleblower known to the public, there are a number of others who have pushed as far as they could within the system without crossing that final line; and more again who have witnessed or uncovered fraud, abuse and waste and pursued it, but halted when they realized their careers, livelihoods and personal lives were in jeopardy.

So EU whistleblowing forms a three tier pyramid. Most lies under the sand, occasionally hinted at merely by the numbers of reports submitted in a given year to OLAF (the EU's anti-fraud unit) and by the

annual report of IDOC (the Commission's internal disciplinary committee). As a reference point, the latest annual report available is on the Red Cell website: it is only released though an FoI request, and for that you need to know first that it exists: we will return to it later.[4]

The nature of the cases being made public varies considerably. They come in different types. They may be down to bad management (such as letting grant claimants cut corners); nepotism; false accountancy; outright theft; or abuse of privileges (such as MEPs signing on for a day's work, but then leaving; or CoR members colluding with CoR staff in order to sign on *ex post* in order to receive expenses for attendance at a meeting which had taken place the previous day). The scale may be petty, or massive. The problem may be unknown, or recognized and turned a blind eye to. It may be a specific individual case, or it may constitute generic abuse of gaps in the administrative system.

There are also differences in which institutions are involved in spending the money, and the level of oversight (and therefore failing) at EU level. Some money is spent directly by EU institutions. Other parts of the budget see its institutions and agencies issuing grants directly, particularly in overseas posts. Then there are the large funds that are sent from the central budget back out to EU member states and where they are expected to provide some measure of oversight. The opportunities for identifying fraud correspondingly can vary too: in the latter case, with more intermediaries and national administrators involved there are potentially more people to flag up fraud and flag up fraud to, though this does not always work out that way.

The core problem underpinning why EU fraud happens can actually be set out very succinctly. **The EU is corporately responsible for large amounts of money, but there is no sense of ownership**. The money in passing through the central coffers is made distinct from its sources, the national taxpayers. Public money in national government is often seen as an abstract rather than something that is generated by taxation, and therefore should not be squandered or wasted. The peculiar dialysis machine of the EU budget "sieves" or dilutes the notion of ownership, turning the funds into abstract EU billions that have come from nowhere. **The problem is, at source, that there is no such person as the "EU taxpayer" whose money can be defrauded.**

In tandem with this there is another problem. Where fraud is identified, its existence becomes a political embarrassment. This is not so much an issue with respect to blame falling on national governments who might fail to address fraud. Fraud happens in all member states, so having another country that you can berate for being worse can politically be quite useful for the domestic press. The problem actually arises when the prospect arises of fraud tarring the EU institutions themselves. Rather than acknowledge the problem and tackle it head on, self-destructively the inherent reaction has been to cover it up. By refusing to have a "zero tolerance" policy towards fraud and by declining to be seen and perceived by the general public as to apply such a policy, the EU continues to shoot itself in the foot and lose all credibility in this regard.

The motives behind this are probably several. Self-interest probably is among them, since being found to have mismanaged a multi-million Euro budget will not look good for the CV. In some cases it might be cultural - some EU countries have less robust track records in tackling corruption than others. Peer pressure in some places does play a part. The most critical element though is perhaps that of idealism.

[4] http://www.theredcell.co.uk/research.html. The examples that are cited later come from the preceding year's report (which amongst others we also obtained but which has not been placed online).

Case studies repeatedly point to EU whistleblowers being leaned on because the fraud they uncover, if acknowledged, would undermine the reputation of the institution, and more broadly that of the EU. Senior staff have often automatically defaulted to a defensive position, because to do otherwise is seen as undermining the European Union. This is a bizarre and counterproductive stance, but significantly helps to explain why managers escalate and suppress rather than address EU fraud complaints. For as the Court of Auditors reminds us, "Regardless of the method of implementation applied, the Commission bears the ultimate responsibility for the legality and regularity of the transactions underlying the accounts of the European Communities" (Article 274 of the Treaty).[5]

A Persistent Problem

The fact that fraud has become synonymous with the EU budget is not down to nationalistic mudslinging or plain black propaganda by EU opponents, although it has persistently generated easy headlines for them to prove certain of their points. Let's take a few examples arising from past audits to show the kind of things that do emerge when auditors are allowed to do their jobs.

The 2006 Court of Auditors' Report provided these examples and warnings, amongst many others[6];

- The Commission was set to pay out more than it should have, due to, "weaknesses in the accounting systems of certain institutions and Directorates-General of the Commission" jeopardizing spending, especially on salaries/benefits and cut-off times for projects. A number of early payments were quite simply recorded for the wrong amount. The implication from the CoA is that this was spotted but swept under the carpet.
- "significant risks still exist at the level of the implementing organisations in the newly acceded and candidate countries for all programmes and instruments."
- "structural measures and internal policies show that complicated rules or unclear eligibility criteria or complex legal requirements have a considerable impact on the legality and regularity of the underlying transactions. In these areas, which cover a significant part of the budget, checks on expenditure claims, which are mainly based on the information supplied by the beneficiary are, in many cases, insufficient in number and coverage and often of inadequate quality." (In other words, the CAP remained open to major fraud.)
- 28.9% of payments checked under the Single Payment Scheme contained errors. The situation was as ever bad in Greece: "the Court has confirmed continuing failure to implement key controls, namely: claims handling, inspection procedures, animal database integrity and the Land Parcel Identification System. Some 850 million euro per year is paid to farmers under these unsatisfactory control conditions. For the period 1996-2005 the Commission has imposed corrections totaling 479 million euro, equivalent to some 6% of the expenditure declared."

[5] Annual Report 2006, p13

[6] Many would say (and it is certainly the opinion of the author) that, under the present set-up, EU controlling authorities as the Court of Auditors and OLAF are part of the problem rather than the solution. In the McCoy case for example, when asked by the EP to check the CoR's accounts in the light of Mr McCoy's fraud allegations, the Court of Auditors provided the EP with a one page letter in June 2003 which gave the CoR a clean bill of health; compare and contrast this C of A whitewash with the subsequent October 2003 OLAF report into fraud at the CoR which confirmed all of McCoy's fraud allegations, none of which gave rise to any disciplinary or criminal proceedings.

- The Greek government had been breaking the rules over the payment schemes for sultanas and currants to allow farmers to get the subsidy against the rules. Some €40 million was going awry every year.
- "Inappropriate" farm aid was being handed out, for example to railway companies, horse riding/breeding clubs, and golf/ leisure clubs and city councils.
- Of 177 interim payments for Structural Policies tested, only 31% were free from error.
- The in-house auditors had often themselves failed to do their job – "In nine out of the 15 cases examined by the Court, the certifying auditor had issued an unqualified opinion whereas the Court identified errors with significant financial impact on the cost statements or systems not in line with requirements. In four of the nine cases, the personnel cost accounting systems of the beneficiaries did not comply with contractual provisions. In one of these cases, personnel costs were overstated by more than 50%. In another two of these cases, the beneficiary used a cost calculation method which was not in line with the contractual provisions."
- One eighth of the value of the education and culture contracts audited was overpaid.
- In 9 of 11 projects audited on external aid, on the spot, procedures were not followed (p.185). In 3, money was spent ineligibly; in 4, receipts and such like were not kept.
- Significant errors were found in the pre-accession programme. Money was paid for certain projects which weren't delivered.
- The paper trail in DG Education and Culture was so bad that an accounting task force with an outside accountant had to be brought in to clear up invoices and claims.
- "In significant parts of the EU budget, the Directors-General give a more positive account of the legality and regularity of EU spending than is consistent with the Court's audit."
- The Integrated Internal Control Network was the action plan to secure a robust and common methodology to run programmes across the disjointed Commission departments. Of the 41 objectives and elements, the Commission claimed to have achieved 14 of them. But the Auditors say that in fact all but one even of these were not yet completed.

The report also highlights a particular scandal that appears still not to have been fully put into the public domain. The 'Jordan/Iraq' case related to false proofs of arrivals of exports of meat and poultry involving €35 million euros of alleged irregular payments during the Saddam era. This led to legal proceedings and an investigation by OLAF. It remains unclear quite who was involved, and the nature or extent of collusion by government officials.

These emerge from a report that is ten years old. Despite its date we have picked it for three reasons. Firstly, as we shall see shortly, they form a range of systemic problems that are not unique to the past but keep re-emerging even today. Secondly, the above Court of Auditors' report specifically refers to and confirms the existence of the irregularities raised by Robert McCoy, and so has a broader bearing on the case study we will explore shortly. Thirdly, there are in this year's report a number of specific UK problems that are flagged up.

Here are some key examples of what was revealed to be happening in the UK with EU-sourced funds in that year;

- Money was withheld from the UK and Spain over "weaknesses in their management and control system".

- The Court found “Late or inaccurate entries, omissions and erroneous cancellations were found in a number of Member States” including the UK for their Own Resources book keeping.
- The UK random checking procedure on imports was held to be very low (and might possibly be interpreted as a governmental IT problem). Also, the UK risked facing having to recoup tens of millions of pounds in grants from errors the Government made.
- Under the “ten months rule”, land declared for the Single Payments Scheme must be at the claimants’ disposal for a minimum period of 10 months each year. Contrary to this, in the United Kingdom entitlements were allocated under SPS and aid was paid to landlords, not engaged in farming, who let out their land for most of the year and who did not therefore meet the requirement. In Northern Ireland, for example, more than 176 000 entitlements (worth €13.8 million) were allocated to such landlords.
- In Wales alone, the Court found 4552 illegal entitlements. Astonishingly, it also discovered, “The same parcel can be claimed by different farmers under different EU aid schemes.”
- Some specific examples of UK fraud include one case where two farmers teamed up to switch land between them to qualify for the redistributing grant. The land in question that was being ‘consolidated’ was up in the Scottish Highlands, while the farmer was based in England. Each free range sheep had five hectares of its own to graze on. In another case, a farmer leased his holding to his son, who qualified as a new farmer and the father received transfer payments. Similar examples are given in Scotland and Northern Ireland.
- There also emerges an astonishing side effect of the cattle cull, thanks to the Government’s way of running the grant maths which were being based on annual expenditure rather than on what money was being spent. “In the United Kingdom a 10% increase in income was considered sufficient evidence of an investment. Paradoxically by increasing the number of cattle slaughtered during 2002 (i.e. destocking) farmers could meet this investment criterion. Consequently there was a general run on cattle premiums.”

These UK examples are very important. Recognising them forces us to consider that not all EU fraud, or even simply just ‘playing the system’ and not being blocked, is being committed by fraudsters from other EU member states. Though the scale and extent of the cases are clearly lower in the north west of the continent than in the south and east, the UK has not been immune.

Regardless of the excuse (for it remains that) for these wrong or fraudulent claims, it demonstrates that whatever new funding arrangements are made for what used to be EU grants, and what remain as joint EU funding programmes, will need to include robust auditing and verification and safeguard mechanisms to prevent fraud. In turn, that raises key questions about the need to stop those safeguards generating excessive red tape.

It is of course possible to look at that 2006 date and claim that things may have moved on. They haven’t. The latest (2016) Court of Auditors Report includes examples such as these;

- Unspecified weaknesses in the accounts of an unnamed political group (pan-EU political receive millions in grants: this appears to have been the first time any has been subject to central audit);
- €16,500 awarded to an apparently non-existent Azeri youth club;
- €100,000 of "non-productive investment" in moving Italian dry stone walls;
- €10m of Hungarian farm subs handed out over 3 days on a first-come first-served basis;

- A footpath bill that included a €4,000 bike, €3.500 telescope, and a €10,000 donation to a church;
- A Slovakian silo that used concrete bought at six times the going rate;
- EU farm grants in Lithuania that led to breaches of the EU's own Nitrates Directive;
- Bids to build an EU monorail for olive farmers (!) which was biased by joined bids for sewage, roads, and an aqueduct;
- The possible €152m overpayment to Romania for animal welfare grants;
- Failure of IT covering pastureland grants, with successful claims for overgrown fields of bushes and trees;
- 18 cases where the CoA had spotted error in Cohesion spending but which should have been picked up by governments.

Many of these cases involve bad administration rather than fraud. So let's turn to the Commission's disciplinary committee, IDOC. The 2015 review reveals that the committee was investigating cases that involved;

- Staff rebuked for sexual harassment;
- The abuse of diplomatic status to smuggle in duty free for a friend;
- Trying to dodge tax by supply of a fake document;
- 'Passive' corruption;
- Collusion in a rent scam;
- A staff member operating as an industry insider and changing reports;
- The use of a de facto 'company car' supplied by an outside interest;
- Employment of family members as a quid pro quo;
- Moonlighting;
- A person AWOL for most of the year (while running their own business);
- Supplying a fake certificate with their cv.

On the positive side, this was an improvement on the first report obtained by the Red Cell's director a few years previously, where it was revealed that an EU member of staff was being disciplined for running a brothel.

Investigations led to mixed results that even today do not inspire confidence in the system. Of the 101 cases closed in 2015, 31 were dismissed as "non cases", that is to say not meriting further pursuit, and 30 led to no follow up. 16 members of staff received cautions only. This apparently generous treatment for cases considered serious enough to progress this far contrasts, as we shall see, with the treatment of whistleblowers. The preferential treatment reserved for so many fraudsters finds its counterpart in the VIP treatment almost invariably reserved for those responsible for covering up fraud and/ or whistleblower harassment. In the McCoy case we shall explore later, not only were no charges pressed against those who committed the fraud, but also most of those involved in cover-up operations and the harassment of the Committee of the Regions' Internal Auditor were rewarded - though not of course for "services to fraud" - with promotion to Director level. The very least one can say is that this appears to undermine the credibility of the dictum that 'crime never pays'.

Here it may be worth a short word on the level of involvement in EU fraud by organized crime. Given the scale of the money available, it would be extraordinary if corporate crime had not considered getting involved. It has.

Reported examples include

- The Provisional IRA's involvement in 'carousel fraud' – a cross-border VAT scam;
- The European Commission official whose jump from a window was allegedly linked to a massive mafia tobacco fraud, and possibly Italian freemason contacts within the Commission that were being exploited to suppress its discovery[7];
- Infamous waste dumps in Southern Italy where huge amounts of rubbish and dangerous chemicals are simply discarded by the Camorra while claiming grants (a situation so open and notorious it formed the basis of the film *Gomorrah*);
- In the past, an EU working group even having a delegate from the mafia sitting on it – and privately referred to as such by other national delegates.[8]

Not sitting inside the National Crime Agency or Interpol, we are not best placed to judge the level of current assessed organized crime engagement in defrauding the EU of its budget, though as Europol reports there is clearly major organized crime activity across areas of policy interest for the EU ranging from people smuggling through IT and into identity fraud.

We should at least raise the risk of known historic crime continuing or re-emerging in any new financial arrangements. Given the known level of organized crime in certain EU states, we can legitimately postulate that the greater the amount of money handed over to certain countries to manage, the greater the inherent risk.

An extensive and rather depressing study by the Center for the Study of Democracy, undertaken at the behest of the European Commission, further noted that, "In many Member States, the issue of corruption is a taboo. Complacency gives organised criminals an opportunity to exploit the absence of anti-corruption systems."[9] The core of the report related however to the impact that organized crime had on corruption. Three countries recognized that a link exists: Greece in cases related to illegal migration and prostitution; Latvia in theory; and Romania where the most serious cases of corruption are related to government and to the judiciary. No fewer than eleven countries said that investigation of organized crime was hampered by corruption locally, with two saying it was somewhat hampered.[10] Unhappily, with the single exceptions of Slovenia and Malta, the list covers all the EU states that are net recipients of EU budgetary finances.

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[7] The Antonio Quatraro case: details remain sketchy today, despite some whistleblower revelations, but they have been the subject of some occasional investigative reporting including some relatively recently by Danish reporters. We understand the Belgian police treated it as an unsolved murder.

[8] The source for this is a personal conversation by the author with a retired UK official, who very bravely declined to sign off the sub-standard products where the mafia owned the factories in question.

[9] *Examining the Links Between Organised Crime and Corruption*, CSD, 2010, p14.

[10] Bulgaria, Cyprus, Czech Republic, Greece, Italy, Latvia, Lithuania, Poland, Portugal, Romania, Slovakia; plus Estonia and Hungary partially.

It also then goes on to explore the potential impact on policy, for instance comparing how low a country is on the Control of Corruption Index with how bad its deforestation rates are. But particularly informative is the section on criminal culture. This contrasts the "South West hub", with basic mafia foundations; an Eastern European hub combining post-Communist insider elites, ex-KGB types, the neo-capitalist quick rich, and Balkans Wars criminal overspill; the Dutch-UK(/Northern) drugs hub; and the criminal separatist battlegrounds of Northern Ireland, Corsica and the Basque country. Add to that different expectations over fraud in public life; different standards of living; different levels of expertise in tackling it; and different life expectancies for those that do, and you get a very varied picture of the level of organized crime and the extent to which it affects how countries are run and money is spent – an overview in which the UK's institutions overall compare very well.[11]

We can put all this another way. The more UK tax money is pooled in a European setting, the more we can expect to fall victim to fraud. We might also suggest that this generates some risk of increased acceptance of fraud 'evaporation' percolating into the UK's own system of governance over time.

So, that means what people who blow the lid on fraud are saying is very important – regardless of the type or amount of fraud in question. Fraud is corrosive, and the EU's continuing institutional aversion to addressing these problems when they are identified risks exposing us more to it.

Continued Relevance

It is neither hubristic nor nationalistic to observe that EU finances contain a measure of inherent risk of waste and fraud today. EU expansion into the Balkans over the last decade and a half, and continuing plans for further expansion, have injected an increased risk to state finances. That risk still needs addressing by the UK if public finances will be heavily engaged in EU-run programmes in the future (and that risk can best be mitigated by not allowing them to be pooled and by not remaining a net contributor).

Several institutions have a part to play in providing oversight over public finances. As we have seen, auditors play a high-profile role within the Court of Auditors, while institutions also have their own- in-house auditors. Some recipients bring in external auditors to sign off their accounts. Then there is the role of OLAF and of IDOC. The European Parliament has its own budgetary oversight committees, one in effect for planning budgets and another for managing them (Budgets, and Budgetary Control). After Brexit, depending on the level of UK finances if any that are run through joined schemes, UK counterparts will have to identify mechanisms to feed into and draw out of these entities.

Such mechanisms and those committed resources needs to be applied with a realistic grounding over what is achievable. Occasionally, there will be found to be limited capacity and finite willpower to pursue cases through the EU. The most striking principle underpinning this is perhaps what is known as the *prima facie non case* as applied in criminal investigations. This was intended to cover just cases that

[11] Explaining the interview techniques used, the report (p273) notes, "some interviewees specifically agreed to speak on condition of anonymity. This is understandable bearing in mind the situation in some Member States, where political corruption is rife and the police and the judiciary are not independent."

clearly OLAF didn't need to pursue (because, for example, local police were already involved), but came to develop a different meaning. Although OLAF has stopped using the term and perhaps realigned the thresholds, the principle itself is understood to still broadly apply. Recognising that its capacity to handle cases was limited, OLAF took the decision to prioritise its caseload by simply ignoring cases that failed to meet certain criteria or thresholds, albeit with senior managers and later the Director himself striking out cases. In 2010, 18% of cases were classed in this way, before one even gets into considering cases classed as *closed without follow-up*.

A key but contentious element was the level of the thresholds set. Even after several years of complaints by MEPs, the threshold in 2012-3 in the customs sector was €1,000,000; for SAPARD funds €100,000; for agricultural funds it was €250,000; for structural funds €500,000; for regional aid €1,000,000; for centralised expenditure and external aid €50,000; and in the EU staff sector it was €10,000. While perhaps setting some form of focus was a realistic approach given limited staff, this also sent a clear message that the fight against corruption was simply not being taken seriously. Prudent embezzlers knew their limits for getting chased.

As we have seen from the IDOC report, fraud hasn't gone away. It exists today as officials pretending to own colleagues' motorbikes and boats to dodge tax; or impersonating people to access other people's computers to delete an email; or freelancing as a travel agent for colleagues. Similarly, the same motives to cover up scandal and, ipso facto, persecute whistleblowers into silence still exist in the institutions today. Indeed, the motives are even stronger as the McCoy case at the CoR clearly illustrates since all key individuals associated with the criminality and claimed cover up have escaped legal pursuit. Nor has a decade and more of EU membership eradicated corruption in a number of newer EU member states. Transparency International's Corruption Perceptions Index for 2016 runs as follows for those countries;

EU Country	Score (/100)	Ranking (/176)
Denmark	90	1=
Finland	89	3
Sweden	88	4
Netherlands	83	8
Germany	81	10=
Luxembourg	81	10=
United Kingdom	81	10=
Belgium	77	15
Austria	75	17
Ireland	73	19
Estonia	70	22
France	69	23
Poland	62	29=
Portugal	62	29=
Slovenia	61	31
Lithuania	59	38
Spain	58	41
Latvia	57	44=
Cyprus	55	47=
Czech	55	47=

Malta	55	47=
Slovakia	51	54
Croatia	49	55
Hungary	48	57=
Romania	48	57=
Italy	47	60
Greece	44	69
Bulgaria	41	75

With 81 points, the UK takes joint fifth place out of the EU 28, trailing Scandinavia and narrowly behind the Dutch. For comparison with the EU low scorers, Chile is scored at 66 points, Botswana at 60, Cuba at 47, Senegal at 45, and India at 40. The global average is 43.

Clearly, any international institution runs the risk of lowering standards and dropping the median in values over good governance, potentially. The difficulties arising at UN level will obviously be much worse. International non-state organisations whose remit is heavily engaged with finances and preferment, such as FIFA, run particular risk. Risks can be mitigated depending on selection processes for recruitment, subsequent training, policing, pay and perks (until taken for granted), and by in-house ethic.

One might have more cause for confidence, however, if one did not have in the EU's case the precedent of what happened with the Santer Commission. Having denied there were irregularities, leaked material then proved that certain commissioners were themselves engaged in questionable practices. Both main political groups proved reticent to censure within the European Parliament, though this eventually happened. Following what was in effect a motion of censure from MEPs, the Commissioners then resigned, but then a number took up their posts again as they entered a zombie status pending the appointment several months later of a new team (again incorporating some of the old). The example, while not recent, demonstrated how problems ran to the very top.

Currently, there is no impetus for major management rethinking on fraud and corruption within the EU. The evidently limited success of so-called reforms that followed repeated past scandals suggest that the issue remains today very much a live problem. That problem includes, or rather should include, reviewing the unaddressed injustices the system has cast at the whistleblowers themselves; and the barriers that still remain within the system that hinder reformers within the institutions from sharing information on let alone tackling known cases of malpractice.

When no other options to fight corruption exist within an institution, people are driven to act outside it. That will not change. Whistleblowing will remain a feature of the EU landscape for as long as there are brave men and women who seek to fight corruption and waste, despite being pressurised into keeping silent and suffering the inevitable persecution, harassment and retaliation which invariably accompanies any injunction to "keep the problem in the family."

Part Two: The Case of Robert McCoy

A Short Overview of Whistleblowing in the EU

The Robert McCoy case cannot be taken in isolation. It forms one of a series of cases, some better known than others that have emerged.

Key ones include;

(i) The Bernard Connolly case. Bernard Connolly held an important role in the Commission unit covering the development of the Single Currency. Noting how short cuts kept being made to push for economic union, he published in 1995 a book, *The Rotten Heart of Europe*. This revealed the inside story behind the ERM and EMU, and in particular breaches of the rules meant to govern them. He was fired as a result.

(ii) The Paul van Buitenen case. Paul van Buitenen is a Dutch national who as an auditor identified a number of areas of concern within the Commission, which were ignored. It was his revelations that proved to be the trigger for the fall of the Santer Commission, such was their seriousness. The Commission reaction was mixed. In the event he was subsequently awarded a Dutch knighthood and was elected as an MEP on an anti-fraud ticket.

(iii) The Martha Andreasen case. Martha Andreasen is a Spanish-Argentinian who was the Commission's chief accountant. Repeatedly raising a number of problems, she was ignored. She refused to sign off the Commission's accounts. After providing information on why to the European MEPs responsible for budgetary oversight, she subsequently went public. After being fired, she too became an MEP.

(iv) The Robert Watt case. Robert Dougal Watt was a UK accountant with Whitehall-level experience, who worked in the Court of Auditors. Particularly concerning, his concerns related to apparent evidence of corruption within that body itself, with particular reference to the Quatraro tobacco/mafia/freemason/suicide case (see earlier). After contacting the European Ombudsman, he was downgraded and then sacked. The board based its decision without consideration of the fraud issues themselves.

(v) The Dorte Schmidt-Brown case. Dorte Schmidt-Brown worked in Eurostat, and uncovered localized fraud that turned out to be part of a wider slush fund. She was sacked, but subsequently received a letter of apology from the Commissioner in charge of reform. Demonstrating that exposing fraud is a non-political act, the European Movement in Denmark later awarded her the prize of European of the Year.

(vi) The Carol Thompson case. Carol Thompson held a relatively junior role as part of the administration of the European Parliament. She attempted to bring to the attention of management a significant body of cases of localised fraud, nepotism, and highly irregular

activity. Finding a blank wall, she drew it to the attention of MEPs monitoring the budget. She was, like others, hounded from her job and onto a limited sick pension.

This, it must be noted, is not a complete list. It most certainly is not a list of all staff who have spotted and reported fraud. But it is a list of some of those who have paid the most in opposing it regardless of the personal cost, and whose sacrifice deserves to be recognized and where still possible corrected.[12]

During the Convention on the Future of Europe, an attempt was made to include lessons drawn from these case studies in the work of the drafters. The end document was in the event not used by the Praesidium, but does remain on record as a legacy text showing the systemic faults already diagnosed at the time.[13]

To these we may also add the case of **Hans-Martin Tillack**. Hans-Martin Tillack unlike the others was not an employee of the EU, but was in fact a reporter at *Stern* magazine. He was also a very strong supporter of the EU project politically, but that did not stop him centering his investigative journalism on EU fraud cases and, in particular, the EUROSTAT fraud scandal which was *officially* described as "a vast enterprise for looting community funds". Accusing OLAF of engaging in cover-ups, Tillack was arrested by Belgian police at the instigation of authorities of the European Union, whose bodies he was investigating in relation to allegations of fraud. OLAF suggested that the reporter had bribed EU officials in order to gather documents for an article he published in 2002 on alleged irregularities in OLAF.

An action by Belgian police followed that resulted in the journalist being detained for several hours, his home and office being searched, and possessions including 16 boxes of documents, two archive boxes, two computers and four mobile phones being seized.

In 2007, the European Court of Human Rights judged that Hans-Martin Tillack's right not to reveal his sources of information had been violated and ordered Belgium to pay him €10,000 for moral damages as well as €30,000 in costs.

The suspicion remained that this was done in revenge for previous reporting relating to the Eurostat scandal and the Dorte Schmidt-Brown case.

We may also reflect on other examples where serious issues have been highlighted by **internal whistleblowing** that have not become higher profile examples through the whistleblower turning to outside bodies to break logjams. It is impossible to assess how many cases exist of this sort, but it is striking that this also carries many of the same professional risks even if formal routes to register concerns are adhered to throughout.

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[12] It is also striking that *known* whistleblowers, i.e. those that go the final stretch beyond anonymity, tend to come from the UK and Northern Europe - with one notable exception. That observation, however, needs to be accompanied by a key caveat. Individuals from countries with better reputations can also be found engaged in fraud, exploiting and embezzling despite national stereotypes (and even potentially expecting to get away with it precisely because of them). Senior UK nationals have in particular been as culpable as their counterparts in institutional cover ups. The parliamentary expenses scandal should remain a wakeup call on that score.

[13] http://www.theredcell.co.uk/uploads/9/6/4/0/96409902/plan_b_for_europe_lost_opportunities_in_the_eu_constitution_debate_pdf.pdf, pp28+

Some information on such whistleblowing cases, by people whose names have not emerged into the public domain, has emerged from an FOI request. In turns out that the European Ombudsman has examined a number of such cases. These included:

- A whistleblower reportedly losing his job for denouncing a €100,000 petrol claim and vehicle disposal fraud;[14]
- A whistleblower whose allegations about pensions fraud were not treated confidentially and then not pursued;[15]
- A whistleblower who identified contractual irregularities relating to European Defence Agency staff;[16]
- A whistleblower who claimed that the Commission had amended a supposedly independent audit of an EU network of schools of political studies;[17]
- Five whistleblowing cases in 2014 and 2015 relating to the European Commission, where information is withheld as the cases are classed as confidential.[18]

Attentive followers of the EU's civil service tribunal can occasionally also find low-key pointers across the various EU institutions, for example what we might call **the S. case** (after the reference used in relation to a key party that triggered the problem).

In April 2006, Timo Allgeier, a Procurement Assistant responsible for all matters relating to public procurement, informed the Head of Administration and Deputy Director of the now European Union Agency for Fundamental Rights based in Vienna that the backdating of a contract constituted a fraud intended to disguise the illegality of a financial carry-over.

Despite his warning, Mr Allgeier, at the specific request of both the Head of Administration and the Deputy Director, was instructed to visit a contractor's premises and ask the latter to sign and backdate both the contract and the addendum, and to backdate them to 23 December 2005 and 15 January 2006 respectively in order to "regularize" the (illegal) carry-over of appropriations already completed on the basis of the contract.

On 28 November 2007, OLAF opened an internal inquiry and on 22 June 2009 on completion of its inquiry, OLAF concluded that the allegations of fraud were unfounded and recommended that no disciplinary or legal measure be taken as a result of that inquiry. The report was communicated to the Director of the FRA by letter of 25 June 2009.

As a result of blowing the whistle, Mr Allgeier was removed from the role for which he had been recruited, was ostracized and isolated. Allgeier alleged that the Head of Administration and Deputy Director of psychological had harassed him. As a consequence, an administrative inquiry was opened and revealed the existence of an "intense atmosphere of fear" in the Administration Department but concluded that there was no psychological harassment. Based on Allgeier's evidence, in September

[14] http://www.ombudsman.europa.eu/en/cases/decision.faces/en/11940/html.bookmark
[15] http://www.ombudsman.europa.eu/en/cases/decision.faces/en/11352/html.bookmark
[16] http://www.ombudsman.europa.eu/en/cases/decision.faces/en/10221/html.bookmark
[17] http://www.ombudsman.europa.eu/en/cases/decision.faces/en/4185/html.bookmark
[18] https://www.asktheeu.org/en/request/status_of_whistleblowers

2012, the European Court of Justice ruled that the investigation/administrative enquiry had been vitiated and marred by irregularities and awarded him damages.

However, despite the Court's findings, the Agency did nothing to restore Allgeier's personal and professional reputation which the agency itself had sullied. Further, Allgeier was not reinstated in his former position and continues to slog away in the lowly position to which he was assigned under the "sideways shuffle" principle.[19]

Collectively, the cases demonstrate two key points. Firstly, the issue of misuse of public funds is not limited to a single EU institution, but can be found across them. Secondly, that the problems have been left unaddressed, with focus instead placed on seeking to suppress bad news rather than correcting it.

The unhappy reality is that, despite some advances over the past two decades, as the McCoy case study will shortly demonstrate, much is undertaken just at face value. Legal protection for whistleblowers today exists, but it is effectively non-existent in practice. EU institutions like the CoR have paid mere lip service to the principles of whistleblower protection and the rule of law. Most pointedly, the EU agency (OLAF) tasked with investigating claims by whistleblowers is not the same authority that decides whether to classify the individual as an "accredited whistleblower", the status that affords certain rights and protection. Instead, this can only be done by the human resources department of the very institution which is being whistleblown against.[20]

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[19] Cf "The Peter Principle" by Professor Laurence J Peter.
A list of background material associated with this little-known case, and its context within the FRA, can be drawn from the following;
JUDGMENT OF THE EUROPEAN UNION CIVIL SERVICE TRIBUNAL (First Chamber), 18 September 2012
http://curia.europa.eu/juris/document/document.jsf?text=&docid=127101&pageIspitetndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=669466
"Court Slams EU Human Rights Agency Over Racism Claims," Politico, 9 October 2015
http://www.politico.eu/article/court-slams-eu-human-rights-agency-over-racism-claims/
"Rights Agency Under Fire for Hiring Ex-Judge," Politico, 12 November 2015
http://www.politico.eu/article/fundamental-rights-agency-under-fire-for-hiring-ex-judge-civil-service-tribunal-haris-tagaras/
"EU Court Jolted by Financial Conflict Allegations," Politico, 7 December 2015
http://www.politico.eu/article/eu-court-jolted-by-financial-conflict-allegations-ecj-tagaras/
"EU Anti-Fraud Office Probes Human-Rights Agency," Politico, 4 February 2016
http://www.politico.eu/article/eu-anti-fraud-office-olaf-probes-human-rights-agency-corruption/
"EU Rights Agency Chief Defends Staff Practices," Politico, 19 April 2016
http://www.politico.eu/article/eu-rights-agency-chief-defends-staff-practices-michael-oflaherty-fundamental-rights-agency-haris-tagaras/
The author does not have access at the time of writing to an online version of the OLAF report itself. But the key point is surely this: if the Fundamental Rights Agency is not able to preserve and secure the fundamental rights of its *own employees*, what hope is there for other EU staffers trying to do the right thing under the present system?
[20] https://www.asktheeu.org/en/request/2914/response/9998/attach/3/Reply%20L%20Rotherham.pdf

The McCoy Case: an Overview

Robert McCoy was born in Liverpool in 1950 and went to Merchant Taylors' school before obtaining a top class honours degree in Economics from the University of Kent in Canterbury.

After many years in various top positions in EU financial, budgetary and general administrative management, he was head-hunted by the EU Committee of the Regions' (CoR) first Secretary General, Dieter Pause, in 1996 in the wake of a long series of financial and budgetary scandals which had dogged the Committee from its inception in 1994 under the Maastricht treaty.

Pause (who had left well before McCoy's fraud findings) and his successor, Vincenzo Falcone, had called upon McCoy's vast financial and budgetary experience in order to prevent the continuation of the ferocious criticism which the EU's financial authorities and in particular the EP had leveled relentlessly against the Committee.

This proved to be somewhat ironic, as events turned out.

The Committee's expenditure had always had a reputation for being lavish but when the first CoR President proposed that the Committee reimburse his private jet hire for travel to and from Brussels, and when the dubious "jollies" around the world started multiplying at the same rate as illegal expenses reimbursements to CoR Members, something had to be done.

But at the CoR, McCoy was soon to receive confirmation from his employers of that old maxim that "corruption is what other people do…"

The key to what would ultimately fall out, however, is that his personal and political views had no bearing whatsoever on what was to follow. Indeed, he clearly received unanimous cross national and cross party support at the European Parliament on account of the action he had taken and the mistreatment he had received. This is the story of systemic institutional failure both to "do the right thing" by stamping down on proven fraud, but also to protect a *bone fide* whistleblower.

The following timeline explains consecutively what happened in this case. It goes into a level of detail on specifics. By doing so, putting everything consecutively out shows how deliberate logjams were and are able to develop and to escalate.

But in summary, the case can here briefly be summarized as follows;

- Robert McCoy became the Financial Controller and subsequently Internal Auditor of an EU institution, the Committee of the Regions, reporting directly to the Committee's Secretary General and President on financial and budgetary management
- He discovered wrongdoings
- He reported the wrongdoings and was ignored
- He found more and more wrongdoings
- He reported these too to his Secretary General, and was stonewalled, and threatened
- He faced increased harassment institutionally for wanting to rock the boat, for not being *communautaire* and shutting up
- He found more cases of wrongdoing and was sidelined, ostracized, threatened, and harassed
- He reported them to the CoR President who, yet again, kicked into touch

- At this point and at the end of his tether, he had no other choice but to go outside of the institution ('blow whistle') and report his findings to the EP
- He was institutionally harassed, his support staff were removed, his health began to suffer
- He spent more than 12 weeks in hospital, and was driven out of his job
- Each and every other EU institution and/or EU review body which has been called upon to examine his case has without exception confirmed his allegations of fraud, and confirmed that he was harassed and mistreated
- Enduring feet dragging and procedural filibustering persist today over long running attempts to obtain compensation for loss of earnings, pension rights, and damages which reviews of the case have said are due

So we will now turn to a consecutive review of what happened in the form of a thorough log, sourced from subsequent reviews by other EU bodies. We will in the final section of the paper subsequently step back, to compare this detailed case with lessons learned from other cases, and seek to draw some conclusions.[21]

The McCoy Case: A Log

JAN 2000 — Robert McCoy (RM) appointed Financial Controller of EU's Committee of the Regions (CoR)

MARCH 2000 — RM finds material suggesting numerous cases of embezzlement, fraud and other financial irregularities within the CoR budget particularly on the part of Committee members - with the active indulgence and/ or complicity of senior management. These include travelling on budget airline and claiming for business class, fiddling expenses claims for attendance at fake meetings, or claims for attendance at meetings while the Member was elsewhere.

RM informs his administration. He asks the CoR Secretary-General (SG) for the cases to be reported to OLAF, for the monies to be recovered and for the appropriate measures to be put in place in order to prevent a repetition of such misappropriations. His demands fall on deaf ears. The SG instructs that the fraud be dealt with internally, refuses even to recover the money and generally sets the tone by making it quite clear that McCoy will be sacked if he rocks the boat by refusing to "keep it in the family" by not endangering the cover-up operations set in motion.

Over the next few years, in the normal course of his duties, RM discovers much more widespread abuse of a sort which is both strangely premonitory and very similar in nature to the future 2008/2010 expenses scandal in the UK Parliament, though with very different results and follow-up. Officials would reimburse members for travel, without proof that it had occurred. Some members claimed mileage allowances, totaling

[21] The multiplicity of sources are footnoted. We would be delighted to receive and separately publish any clarifications and comment by the CoR or other parties in the interests of accuracy, fairness, increased transparency, and more widely publicising the core issues highlighted.

hundreds of euros, for journeys in official cars paid for by their cities or councils. Many would overstate their mileage. Others claimed for air and train journeys which had been paid for by their own local authorities, but nobody checked - or if they did, they let it pass. In the most blatant cases, members (including a former and the then- President) had claimed their daily allowance of €206 for bogus meetings or on fictitious official business in order to be able to claim double allowances, on the basis of fake programmes which did not correspond to the official [much shorter] invitations. In 2000 and 2001 both a former CoR President and an Italian member forged their presence at CoR meetings which - according to travel tickets submitted separately for reimbursement - they could not possibly have attended. The list of misdeeds and misappropriation of taxpayer's money is discovered to be widespread and, potentially, the amounts embezzled run into millions of Euros.

The threats and injunctions to McCoy to get him to back off are intensified and general harassment and isolation process is stepped up.

2001/2002 RM discovers fraud (including internal tampering with public tendering procedures for external contracts for printing work by the use of fake offers). RM requests again for OLAF to be called in, for the illegal contracts to be rescinded and for the CoR to withdraw from all contractual relations with the companies which the evidence indicated had colluded with a senior CoR official in tampering with the tendering procedures. The SG refuses. Threats and harassment follow and procedures are put into place in order to limit McCoy's access to the information he requires to verify the existence – or not – of sound financial management. In other words, CoR senior management clips the wings of its own financial watchdog and attempts to prevent him from doing the very job for which he was appointed.

A further contract is then offered to the same company on the basis of what is afterwards audited as an illegal tendering process (involving fake offers, collusion to defraud and other elements). Senior managers apply pressure to get this signed off. RM refuses and again requests that OLAF be informed and for all commercial relations with the company to be broken off.

MAY 02 SG takes the stalled external contract to the President of the CoR to get him to sign it off. The President does so on the advice that the company might sue otherwise.

2002/ 2003 The company instrumental in colluding with the CoR in order to "tamper"[22] with the tendering process for work complains to the EU's Ombudsman that it has been unfairly treated by the CoR. CoR fends off the Ombudsman with incorrect (at best; at worst, false) information and encourages the company to withdraw its complaint.

JAN 03 RM becomes CoR Internal Auditor (a new post created under the new EU financial regulation). His new role is to provide systemic advice on sound budgetary and financial management rather than approve each and every financial and budgetary decision on a transactional basis as he did under the previous system. He thus no longer has the

[22] OLAF investigation report of 8 October 2003 into fraud at the CoR

prerogative to refuse to authorize individual expenditure proposals. CoR immediately starts to make the most of the fact that they no longer have RM monitoring their activity.

The ostracism of RM is institutionalized when, without any explanation or warning whatsoever, he is no longer invited to the weekly Directors' meetings and provided with the information that he requires in order to do his job.

SG writes to RM informing him that, by continuing to discover and draw the CoR's attention to ongoing fraudulent practices and other financial irregularities, he was exceeding his remit. The SG concludes that, he would not hesitate to open a disciplinary enquiry into RM himself for damaging and baseless accusations.[23] In other words, "Back off!"

The CoR focuses its strategy on "shooting the pianist" and also extends its hitherto internal campaign of character assassination and general denigration of RM towards the outside world and to the EP in particular. In the highly apposite words of both OLAF and the European Parliament, the Committee's attitude from the outset had been one of "*disrespect for the institutional role of the Financial Controller"* noting that *"the efforts of the administration were focused on discouraging or destabilising the bringer of the bad news, in this case the Financial Controller, rather than on changing things for the benefit of the Committee of the Regions."*[24]

FEB 2003 In one of the documents the CoR administration had taken the habit of sending to the EP in order to denigrate and belittle its Internal Auditor and cast doubt upon the quality of his work, the Committee unwittingly provides a complete list for internal use of the names of CoR members who had submitted fraudulent and/or irregular expenses claims which RM had drawn up for internal use. The cat is now out of the bag and it henceforth out of the question for RM to give the CoR to give any more time to 'sort things out' and/ or 'keep [the fraud] in the family.'

MAR 03 RM tells the CoR President that he has tried to sort out the fraud and irregularities from within, but that since this was not working and the administration was still refusing to inform OLAF, he would have to go external. Again, no action is taken.

MEPs, checking CoR accounts for 2001 for discharge, review RM's audit of members' expenses. MEP resolution tabled deploring this abuse. The response from the CoR Director of Administration is to ridicule McCoy's findings, to cast doubt publically on McCoy's professional and personal credibility and subsequently downplay the abuse as *"minor administrative problems."*

[23] EU Civil Service Tribunal's Judgment of 18 November 2014 in case F-156/12 (McCoy/ CoR) (available only in French)

[24] OLAF investigation report of 8 October 2003 into fraud at the CoR and **European Parliament Resolution of 29 January 2004** containing the comments accompanying the decision concerning the discharge in respect of the implementation of the general budget of the European Union for the 2001 financial year – Section VII - Committee of the Regions – (SEC(2002) 405 – C5-0247/2002

RM invited to speak to EP Budget Control Committee. MEPs call in the European Court of Auditors and, in the light of the seriousness and extent of the fraud, subsequently OLAF.

CoR hurriedly throws together a so-called internal investigation to try to demonstrate it is on the case. SG reports to the CoR Member's internal committee on financial and administrative affairs and informs that RM's activity in uncovering and reporting illegalities is *"disloyal"* to the institution and cannot be tolerated; a pro-RM counterpart on the committee replies that the CoR had been given plenty of opportunity to solve the problems in accordance with the rules and sound practice. Given that it is the (political) members of the CoR who have been caught red-handed, the CoR 's Bureau, its political executive committee, gives "carte blanche" to the CoR administration to bury the fraud allegations and "deal with" the "McCoy case". A former EU staffer familiar with the case observes, "This typical example of political cowardice goes a long way to explaining the CoR's intransigence in continuing to pursuing its vendetta and its long-standing refusal to implement the EU court's findings and the EP's demands – or even come to an amicable settlement."

APR 03 RM's (already small) support team starts to be whittled away as contracts run out and contracted staff are deliberately not replaced as part of the punishment and isolation process. This increases RM's workload to an intolerable level at a time when he is also assisting OLAF with its investigation on a full time basis anyway.

JUL 03 Court of Auditors' one page report into CoR accounts confirms RM statements but adds that payments of allowances to Members were largely within the rules. The Parliament's Budgetary Control Committee reacts strongly to what it sees as a whitewash by the Court.

AUG 03 RM writes to an MEP, Chris Heaton-Harris and Member of the EP Budgetary Control Committee, in order to provide him with a short summary of the facts in relation to his case.

SEP 03 Three EU reports are published confirming malpractices including secret bank accounts at Eurostat, running at an estimated €3 million. Commission claims that it predates their tenure so they are excused.

SEP 03 *Sunday Telegraph* article puts the McCoy whistleblower harassment issue into the wider public domain.

OCT 03 OLAF reports on the CoR case.[25] It is withheld from the public. The report confirms all of McCoy's allegations regarding fraud and harassment and recommends disciplinary proceedings be brought against 2 senior members of staff, including the now-former SG. Incomprehensibly, it stops short, however, of recommending that the files be forwarded to the Belgian Public Prosecutor. By a curious coincidence, the SG had just been removed from office following the EU Court of Justice's previous month's judgment

[25] OLAF investigation report of 8 October 2003 into fraud at the CoR

which upheld that the SG had rigged the procedures in relation to his own recruitment which he himself was in charge of.

It also notes that the SG had threatened to push for an administrative enquiry into possible disciplinary proceedings against RM if he kept pursuing matters and continued to find and report fraudulent activity at the CoR. The report further observes the CoR *"had attempted to 'discourage or destabilize'* (Mr McCoy) *in the performance of his duties as financial controller and as internal auditor"*

NOV 03 RM formally complains of retaliatory misbehavior and threats of disciplinary proceedings on the part of senior CoR management, generating psychological harassment and intimidation. In a case worthy of Kafka at his best, the CoR charges McCoy's superiors with investigating McCoy's now long proven allegations. These are the very same officials who had refused to report the fraud to OLAF; but also the very same individuals who had been associated with what the Commission's PMO described as the *"reprehensible behavior"* on the part of *"certain CoR senior officials"* towards the Committee's Financial Controller and Internal Auditor.

DEC 03 MEPs confirm in their Budgetary Control report all RM's findings with regard to fraud. They also protest at the CoR's official obstruction and *"individual and institutional harassment"*[26] of RM and his staff in the performance of their duties.

JAN 04 EP Resolution finds the Court of Auditors' report to be contradictory and that the C of A had failed in its remit to report on fraud protection and sound financial management; states that the Auditors had failed to present a "*detailed, full and independent audit"* that had been requested; and listed several specific examples that had been overlooked. It notably concludes by saying it

> *22. Insists that the President, as he has undertaken to do, ensure respect throughout the institution for the office and person of the Internal Auditor, and that his advice and counsel be taken seriously; expects the reform measures to I allow open reporting of irregularity and fraud without risk of individual or institutional harassment as has occurred in the past;*
>
> *23. 'Asks the Committee of the Regions to take the necessary measures to ensure that in future bona fide whistleblowers do not receive the same treatment to which the Financial Controller was subjected;*
>
> *24. Demands that the Internal Auditor receive a formal apology from the President and Secretary-General of the Committee of the Regions as soon as the proceedings initiated by the Internal Auditor under Article 24 of the Staff '*

[26] European Parliament Resolution of 29 January 2004 containing the comments accompanying the decision concerning the discharge in respect of the implementation of the general budget of the European Union for the 2001 financial year – Section VII - Committee of the Regions – (SEC(2002) 405 – C5-0247/2002 –2002/2107(DEC)

Regulations have come to a conclusion, and without prejudice to the outcome of those proceedings.[27]

FEB/ MAR 2004 to 2017 The CoR organizes what the EU's Civil Service Tribunal considered to be a bogus internal enquiry in order to provide a semblance of procedural legality to its decision not to pursue the fraudsters and staff associated with the case.[28] It completely ignores Parliament's findings, demands and recommendations with regard to the RM whistleblower harassment case. Despite overwhelming evidence to the contrary, the Committee refuses to recognize that any fraud was committed, it refuses to press the disciplinary charges demanded by OLAF against at senior CoR officials, it refuses to recover all the misappropriated amounts, and it refuses to recognize that RM was harassed and generally mistreated let alone present the apologies which the EP demanded. The CoR's obduracy now flies in the face of OLAF's findings and recommendations, SEVEN EP resolutions in support of RM, 2 EU C of J judgments in RM's favour, and the Commission PMO's findings that he was harassed and generally mistreated.

MAR 2004 RM proves that he is not a gold digger and just wants to be allowed to get on with his job. He writes to the EP[29] to explain that he would be willing to drop all legal proceedings against the CoR on account of the latter's harassment in return for the Committee making two public statements. The first is that RM *"did the right thing"* and *"has done nothing improper"* and the second that *"the Committee has complete confidence in its Internal Auditor and will respect his prerogatives including his independence and right of access to information"*. Otherwise, *"If the Committee is unwilling or unable to make such public statements as the ones I propose above, then I will be reluctantly forced to go down the road of official legal proceedings in order to create the necessary conditions for me to do my job properly and in order to defend my good name and reputation."*

APR 04 CoR Bureau rejects RM's complaint against CoR harassment but he is unable to appeal and misses an essential deadline since he is now on the way out on medical grounds as a direct result of the CoR's mistreatment.

CoR also announces that, on the basis of a confidential enquiry conducted against RM without his knowledge, it has decided not to bring disciplinary proceedings against RM on account of unknown (secret) charges which the CoR has brought against him.

MAY 04 The CoR's new SG refuses even to acknowledge receipt let alone answer RM's request for the CoR to inform him of the nature of the charges against him which gave rise to the abovementioned internal enquiry.[30]

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[27] A5-0486/2003

[28] EU Civil Service Tribunal's Judgment of 18 November 2014 in case F-156/12 (McCoy/ CoR).

[29] Letter dated 17 March 2004 to Ms Theato, Chair of the EP's Budgetary Control Committee

[30] The decision to look into the advisability of bringing disciplinary charges against RM should be taken into consideration in the light of Art 14 of the EP's resolution of 29 January 2004 which stated that the EP *"Supports the work of the Internal Auditor; condemns, without prejudice to the outcome of the proceedings initiated by the*

The pressure finally gets to RM who falls seriously ill and is put on sick leave on various medical stress-related grounds.

On his sickbed, RM bows at long last to CoR pressure and agrees to step down from his job as Internal Auditor. It is agreed – for the moment it transpires on the part of the CoR – that the Committee would halt its retaliation against him, and maintain his salary and pension entitlements deriving from his position.

AUG 2005 The CoR illegally removes the part of his salary and pension entitlement which is linked to his job as Internal Auditor. RM is unable to contest since he is now in hospital.

AUG 2005: Despite the fact that that McCoy has been "neutralized" and is both out of action and out of the way, the CoR continues its harassment. It takes advantage of McCoy's absence from work on medical grounds to raid his office. The CoR thus recovers and puts into "safe keeping" further compromising documents and incriminating material, in particular the documentary evidence collected by RM in relation to numerous other cases of fraud and embezzlement but which OLAF had been unable to investigate in 2004 due to time constraints.

2005/2006 RM spends a total of more than 12 weeks in hospital for treatment as a result of what the EU's Civil Service Tribunal later described, inter alia, as the CoR's *"illegal behaviour"* towards its Internal Auditor. [31]

OCT 2006 The CoR refuses RM access to its premises. No explanation or justification is provided. A bailiff's report records officially that the CoR has illegally refused entry to RM to his place of work.

JAN 07 Now that the CR has managed to constructively dismiss him from his job as Internal Auditor, RM goes back to work in a new role as "personal advisor to the SG".[32] Despite the impressive title of his new job, his new boss sets the tone by declining to introduce him to the other members of the SG's private office and engineers his complete isolation by assigning him to an office in the technical departments in the remotest building annex possible. It takes five weeks of solitary confinement for a secretary – not his boss – to be dispatched to RM's office to give him instructions on his non-job role.

Internal Auditor under Article 24 of the Staff Regulations, the official obstruction to which the Financial Controller/ Internal Auditor and his staff have been subjected by the administration of the Committee of the Regions in the course of the exercise of their duties under the Financial Regulation; praises the Internal Auditor and his staff for their serious and repeated (but ultimately unsuccessful) attempts at convincing the administration and the Bureau of the Committee of the Regions of the need to take remedial action; recognises that in the absence of the protection normally afforded to officials who report wrongdoing, the Internal Auditor was right to take his concerns directly to the European Parliament and ***should not suffer any adverse consequences as a result****"* (our emphasis).

[31] EU Civil Service Tribunal's Judgment of 18 November 2014 in case F-156/12 (McCoy/ CoR).

[32] The decision to sideline RM, via the "sideways shuffle", the title of his (meaningless) new (non) job and, ultimately, the decision to neutralize him by placing him on extended "gardening leave" before putting him forcibly out to grass on a permanent basis are, once again, perfect examples of the mechanisms described by Professor Laurence J Peter (see Footnote 19).

Meanwhile, *"his new office was isolated, his tasks undefined and his staff report contained negative assessments for the period during which he was on sick leave."*[33]

JUN 07 CoR seeks to solve the "McCoy whistleblower harassment case" by pensioning him off on medical grounds. A longstanding legal dispute begins, as the CoR, on the basis of its own bogus internal enquiry, still refuses to accept that RM was mistreated and continues to stonewall. *Ipso facto*, it refuses to accept all liability or to take any responsibility for the consequences of its own long-proven harassment and general "illegal behavior." The CoR has succeeded in constructively dismissing a *bona fide* whistleblower.

MAY 08 Official medical and administrative report delivered by the Commission's PMO states unequivocally that RM's ill health is a direct result of *"the reprehensible professional conduct of certain officials from the Committee of the Regions".*

NOV 08 Commission's medical service report states *"his clinical mental state is linked to the psychological harassment he has experienced at work and the ensuing burn-out."*

JAN 11 RM instigates proceedings to restore his personal and professional reputation and recoup losses.

MAY 11 CoR, in its comfortable position as judge and jury, rejects the complaint.

MAY 13 EU Civil Service Tribunal finds RM is medically unfit to work specifically because he had been subjected to the CoR's *"deliberate and organized ostracism and mistreatment."*[34] The CoR ignores this judgment and its recommendations.

NOV 14 A second Civil Service tribunal judgment[35] reveals more devastatingly embarrassing detail on the background of historic abuse, and awards damages of €20,000. This would still leave the whistleblower seriously out of pocket since this amount would not even begin to cover his legal and other costs let alone loss of earnings. The case by now clearly demonstrates how the odds are heavily stacked against the whistleblower who is obliged to seek redress through legal process.

July 2015 The CoR yet again abuses its position and continues to manipulate the administrative and legal procedures involved by ignoring all the unanimous official evidence. It decides that there was no link between its long-proven mistreatment of its Internal Auditor and his medical condition which led the CoR to decide to invalid him out *manu militari* against his will.

[33] Judgment of the EU Civil Service Tribunal on 7 May 2013 in case F-86/11 (McCoy/ CoR

[34] Cf above.

[35] EU Civil Service Tribunal's Judgment of 18 November 2014 in case F-156/12 (McCoy/ CoR) (available only in French).

APR 17 The EP adopts its SEVENTH[36] Resolution in support of the McCoy whistleblower harassment case since January 2004.

JUN 17 Over the last 15 years, RM has been forced to spend huge amounts of his own money defending his corner against a bureaucracy which is only interested in defending its own and the *status quo* at the expense of gross injustice to an individual who merely tried to "do the right thing". The CoR continues to totally ignore the essence of the case, and along with it the unanimously-reached independent findings as to the shabby way it has treated the very person it appointed in order prevent fraud. The Committee has unfailingly hidden behind procedural issues in order to avoid having to adhere to both the letter and the spirit of the law. It has always kicked into touch each and every attempt to come to a reasonable compromise. To all intents and purposes, the Committee's behavior, attitude and actions over the years amount to the active institutional condoning of both fraud and whistleblower harassment.

The case reveals a David and Goliath struggle with the CoR not hesitating to spend huge amounts of public money and resources on procedural filibustering in order to bring RM to his personal and professional knees, both financially and psychologically. Today, it still refuses to recognize RM's evident status as a *bona fide* whistleblower. It is still refusing to compensate him for loss of earnings, to pay him his full pension entitlements, or to apologize to him, let alone pay adequate compensation for loss of office or the moral and material damages which anyone who has been put through the wringer like RM would normally be awarded.

Finally, it should be noted that no less an instance than the EU's Court of justice has repeatedly lambasted the CoR on account of its ongoing refusal to recognize the abundant, unanimous

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[36] European Parliament Resolution of 29 January 2004 containing the comments accompanying the decision concerning the discharge in respect of the implementation of the general budget of the European Union for the 2001 financial year – Section VII - Committee of the Regions – (SEC(2002) 405 – C5-0247/2002 –2002/2107(DEC)

- European Parliament resolution of 21 April 2004 containing the comments accompanying the decision concerning discharge in respect of the implementation of the general budget of the European Union for the 2002 financial year - Section VII - Committee of the Regions (I5-0034/2003 – C5-0088/2004 - 2003/2216(DEC))
- European Parliament resolution 12 April 2005 containing the comments which form part of the decision on the discharge for implementing the general budget of the European Union for the financial year 2003, Section VII - Committee of the Regions (C6-0020/2005 - 2004/2046(DEC))
- European Parliament resolution of 27 April 2006 with comments forming an integral part of the decision on the discharge for implementation of the European Union general budget for the financial year 2004, Section VII - Committee of the Regions (N6-0027/2005 - C6-0363/2005 - 2005/2096(DEC))
- European Parliament resolution of 29 April 2015 with observations forming an integral part of the decision on discharge in respect of the implementation of the general budget of the European Union for the financial year 2013, Section VII – Committee of the Regions (2014/2083(DEC))
- European Parliament resolution of 28 April 2016 with observations forming an integral part of the decision on discharge in respect of the implementation of the general budget of the European Union for the financial year 2014, Section VII – Committee of the Regions (2015/2160(DEC))
- European Parliament resolution of 27 April 2017 with observations forming an integral part of the decision on discharge in respect of the implementation of the general budget of the European Union for the financial year 2015, Section VII – Committee of the Regions (2016/2157(DEC))

documentary evidence as to its harassment and mistreatment of RM. Indeed, in article 96 of the CST's judgment of May of 7 May 2013 in case F-86/11 (McCoy/ CoR), the court deplores

> *"In a case such as the present case, in which mention is made of the existence of a workplace conflict between the applicant and his superiors, as well as a working environment that is hostile to the applicant, not only in 10 medical reports but also in 3 official documents originating from external institutions or external review bodies, such as the Parliament's discharge resolution, the Cocobu report and the OLAF report — although it is generally difficult to produce written evidence to demonstrate the existence of mistreatment on the part of superiors."*

Taken together, this case provides an unhappy illustration of astonishing arrogance and moral bankruptcy by EU bureaucracy, here displayed by the Committee of the Regions' administrative hierarchy and by politicians over the years. Unfortunately, it is a standpoint that is far from unique amongst whistleblowers and would-be whistleblowers' cases.

Part Three: Wider Lessons

A Common Thread

In Part One of this report, we demonstrated that fraud and mismanagement feature as a recurring problem across EU institutions. In the equally common absence of the will to address the issues, staff have emerged to challenge malpractice. In some cases, the obstacles they confronted forced them to go public: a decision not taken lightly, and consistently associated with paying an invariably high personal and professional price.

In Part Two, we explored in considerable detail how one attempt to halt fraud failed. The case study explored in this report provides a rare window into the secret reality within EU institutions whose problems are still subject to denial by senior management today.

We now turn to briefly draw some conclusions.

If one explores in more depth the stories behind the other whistleblowers, one quickly uncovers how the case of Robert McCoy is not unique. There are a number of experiences shared by those who are forced to go public on EU mismanagement, even where "going public" involves informing other institutions or public watchdogs of a problem being ignored in-house.

The common storyline basically runs as follows;

- Initial complaints are made, but filed away in the system;
- Persistent complaints are met with a reflex kick by the administrative machine;
- The employee is hauled in before his or her senior grades, who try to determine precisely how much he knows before instructing him to keep silent;

- When the frustrated individual then sees ranks close around the fraud, he is driven outside the "usual channels" – typically to MEPs, MPs, national authorities, the media;[37]
- Intimidation of the whistleblower or of third parties may occur. This may be:
  - Incidental (peer pressure);
  - Managemental (carpeting by senior staff);
  - Actual (use of security personnel to harass as when McCoy was illegally refused access to his place of work, while other cases point to activity away from the buildings for which EU security personnel actually have responsibility);[38]
- Career suppression:
  - Suspension (perhaps on half pay);
  - Transfer to a department to 'count light bulbs' (the "sideways shuffle");
  - Legal proceedings;
  - Pay stoppage;
  - Internal isolation;
  - Depravation of support staff;
  - Frequently the sack, when the whistleblower hasn't been induced to quit of his own accord as a result of the relentless pressure applied ;
- By contrast, the subject of any allegations suffer no adverse effects whatsoever and is promoted in the meantime (promotion being a matter of collecting points over time what can be more deserving of points under such a corrupt system than preventing the whistleblower from rocking the boat?);
- The whistleblower's health frequently suffers;
- The individual is encouraged to jump, or is constructively dismissed but with reduced or lost entitlements;
- The fraud goes on regardless and, henceforth, unhindered.[39]

While institutional abandonment is common, the issue of resolution is one area that varies considerably. Both van Buitenen and Andreasen achieved a form of recognition by subsequently being elected as MEPs on the basis of their reputation for probity. However, unfortunately the system does not otherwise reward honesty, with "troublemakers" typically ending up adrift and abandoned regardless of

[37] Speaking to the media is frequently used by the EU's institutions as convenient stick to beat the whistleblower with and, ultimately, to constructively dismiss him or her.

[38] For example, tailing individuals after work, searching offices, and in one case possible theft of personal belongings form the office. This might be attributed to investigatory activity, were it but actually directed at the fraudsters themselves. EU institutions have their own security personnel, which in the case of the larger ones (Commission, EP) includes a role in more than just physical security of buildings but also counter-espionage. The European Parliament's is called DG SAFE in three directorates, while the Commission's falls under DG Human Resources and Security in four directorates. Paul van Buitenen's whistleblowing included revealing, infamously, Commission security personnel buying two "sub-machine guns" and also two rifles with scopes and silencers. This was probably a case of 'boys with toys' (the excuse for the silencers was to supposedly to keep noise down on the range!) but the example are alarming on several levels. The report was initially denied by the Commission but then the receipts were produced.

[39] This common thread was identified in the submission to the Convention on the Future of Europe that sought to raise fraud and whistleblowing (see earlier).

their institution of origin. In the case of Robert McCoy, a decade and a half on, his case is still not resolved despite, as we have seen, repeated statements confirming his status by official investigations.

Relevance to Brexit

Brexit will change the UK's relationship with the EU. It will have a major impact on the way the UK associates with EU institutions and staff, and will have an as-yet undetermined impact on the amount of money disbursed through common budgets.

It will also generate a spur for other countries to reflect on how, with a net budget contributor gone, EU funds can be better spent.

For both of these reasons, the issue of historic and current financial malpractice is an important one for UK taxpayers but also for counterparts in the EU27.

It looks like the UK will leave the large administrating and institutional blocs of the EU. In particular, this means the EP, the CoR, the ESC, the Commission, but also most if not all of the EU agencies.[40] But that is not entirely given, and there is a rearguard political action to keep the UK both in the EEA and also as a member of as many EU agencies as possible.

If the UK signs up to a common budget, or to large shared budgets, then there is the prospect of funds going amiss.

Any such agreement allowing for common spending lines, and particularly where the agreement is reached that excludes *juste retour*, needs new safeguards as a precondition to them happening. If the UK is no longer a net contributor after all but a gross one, then corruption in other countries is only defrauding the domestic tax payer: if this can be recognized, it will act as a spur to strengthen attempts by honest politicians and civil society to stop it.

For the rest of the EU, Brexit does have a major budgetary impact. Aside from the ending of a large amount of income for the shared budget, less-considered is the detail that it removes a country that is historically, and comparatively, a state with a low level of corruption (albeit with many caveats on individuals and specific cases).

That means the EU 27, or at least some of its members, should now be particularly well-motivated to seize a long-overdue opportunity to review the mechanisms and efficiency of financial oversight. The challenge will be to do so in a way that does not, in keeping with the traditions of the EU, fail to balance the need for proper auditing with the desirability of avoiding extra levels of fresh red tape.

The temptation will be to push on with the **European Public Prosecutor** (EPP), a concept already authorized by its inclusion within the EU treaties. The first problem therein is that it is a political project in its own right, designed in large part to generate a distinct legal concept and framework for a common "federal" budget and the mechanisms to safeguard it. It may be that the rest of the EU institutionally catches up with it as an ambition in common governance, but as things stand it risks generating fresh

[40] Covered by The Red Cell elsewhere: their budget is collectively huge. See *The Tangled Web: EU Agencies After Brexit* and *Research Interests: EU Funding and Academia*. Even if the UK only retains associate status and only with a handful of these bodies, there remain serious implications over financial propriety and oversight.

levels of democratic deficit from an unaccountable new entity, holding investigatory and quasi-judicial powers to supersede those even in states where the authorities are considered competent and trustworthy. The second problem is that it will not address in-house problems which lie at the root of all the cases we have been examining in the paper; indeed, its creation risks EU leaders actually abrogating any responsibility for internal reform on the pretense that the work of the EP on budgets spent within nation states needs to be the focus.

The practical response given that risk is probably to pursue a simpler, practical and pragmatic approach on the lines of the new Dutch legislation on whistleblower protection which came into force on 1 July 2016.[41] There need to be 'whistleblowing autobahns' within the EU institutions that allow for fraud reports to be investigated more rapidly, avoiding in-house choke points. Whistleblowers need unconditional legal support and advice and, in serious cases, the provision of safe personal environments to protect against persecution that can follow. Investigations need to be more independent in their nature much earlier on. Those doing the investigations themselves may be usefully insulated in terms of their career structures from the institutions to which they are attached. Not just fraud but also wider disciplinary issues need to be more transparently reported to MEPs and to national parliamentarians providing democratic oversight, subject to fundamental principles relating to anonymity before any guilt is proven.

Punishment is another key element. Fraudsters need to be more visibly dealt with, and in ways that deter. It should no longer be enough to allow staff caught red-handed to take early retirement in order to remove an embarrassment from the books. But reward also needs to be part of the equation, even if by that term we mean simply the absence of punishment for those doing the right thing.

British ministers, as part of their Brexit work, have a duty of care to UK nationals who blew the whistle on EU fraud. UK negotiators need to factor in as part of their plans consideration of outstanding cases involving UK nationals.[42] **Whistleblowers who have been left high and dry should have their cases taken up and included as part of the budgetary talks**. Where there is no satisfactory resolution, given the small number of cases, the UK Treasury should itself review the cases and set off assumption of outstanding payments against its review of EU assets and the UK share of liabilities for EU staff. For example, it should feature as one element (amongst admittedly many) in the consideration of staff pensions liabilities.

[41] Cf *inter alia* the EP Committee on Budgetary Control's opinion of 7 September 2017 which was initiated by MEP Dennis De Jongon "legitimate measures to protect whistle-blowers acting in the public interest when disclosing the confidential information of companies and public bodies (2016/2224(INI)), the proposals made by the EP's Greens Group (https://www.greens-efa.eu/en/article/news/parliament-moving-forward-on-whistleblower-protection/)

[42] Obviously, outstanding fraud cases involving UK nationals as suspects still need to be pursued by the UK authorities. Post Brexit Day, while the principle of pursuit should stand, this should become a matter of UK operational policy though (for instance, with the decision over prosecution to some degree influenced by the actual prospect of conviction, as is standard CPS practice).

Conclusion

While Brexit will generate opportunities to tackle fraud and to reform how whistleblowers are dealt with, experience amongst recent and current staff in EU institutions suggests that these are unlikely to be taken. Meanwhile, outstanding cases risk being buried entirely.

The central subject this report, Mr McCoy, has fifteen years of experience in trying to effect not cultural change across the entire EU institutional consortium, but simply an admission of historic wrongdoing within just one. To judge from old EU conference reports, he has clearly participated in a number of seminars organised by numerous institutions and bodies, and given participants the benefit of his personal experience (to massive tut-tutting and incredulous shaking of heads) and suggestions and proposals (to general nodding and noises of approval) – yet evidently has seen no reforms taking whistleblowers any nearer effective protection legislation, let alone been awarded the minimum redress.

Understandably, the impression that this provides to analysts is one of the right *mood* amongst fellow staff and interested parties, but of an unsympathetic and unyielding *system*.

Experience consistently shows that pushes for reform, however ambitious and motivated individuals may be at the start, almost always stall and that, while there are many prominent people in the EU bodies and amongst NGOs who genuinely want to improve whistleblower protection, there is also far too much "box-ticking" on the part of many movers and shakers to generate that change. That includes the EP, OLAF, the Commission's Paymaster Office (PMO) and the EU Court of Justice, all of whom are unwilling or unable to require the execution of their own findings, recommendations and demands when faced with the recalcitrance and obduracy of even a minor institution like the CoR.

In other words, as things stand, the nature of the EU's budgetary system is inherently a fraud risk; and there is a profoundly regrettable lack of will to provide thorough oversight.[43] Restoring control of UK taxpayer money to the UK rather than pooling it at EU level reduces that risk. It also incidentally reduces the risk of 'overspill' of bad practise into the UK's own civil services over the coming decades. Or to put it another way, untreated rust spreads.

But at the same time, restoring control over these funds is not enough of itself for the UK. System checks will have to be put in place for whatever replaces these models of spending. The UK has provided its share of complicit staffers and skimming politicians too.

It should correspondingly also be remembered that funds mismanaged or subject to fraud in many cases have fallen under the direct oversight of the national administrations, including where it has been discovered in the UK. If new models of agricultural or regional subsidy are to be invented, modelling needs to be done to ensure that risks of continuing this are minimised, including rewriting the media plan to deliberately highlight cases brought to court as part of an aggressive naming and shaming policy.

Such a shift should be very achievable. To take the example of the case study we delve into in such depth in this paper, it would be inconceivable if, under the UK parliamentary and legal systems, an

[43] All budgets are fraud risks, and Social Security ones are the worst. The point is that the EU is for many reasons corporately a much bigger one than money spent by Whitehall. This applies both to money spent by the EU and to the much more considerable sum spent within/by member states (some much more than others).

organisation such as the CoR would have been allowed so shamelessly to lie blatantly to Parliament as the CoR has to the EP on many occasions since 2000; be, at the very least, economical with the truth towards the UK courts as the CoR has in both the McCoy cases brought to the EU's Court of Justice; circumvent the rule of law; continue to be in contempt of Parliament by refusing to implement the EP's repeated demands; continue to be in contempt of Court by refusing to implement the EU Court of Justice's conclusions and judgments; and after all that, to still have its accounts signed off by the EP (ie the very organisation which continues to allow the CoR to ignore its own injunctions without any sanctions whatsoever). At least after the UK Parliamentary Expenses scandal, there was a price to pay; MPs lost their seats and several ended up facing criminal prosecution. With abuse by mere local politicians within the CoR by contrast, the default was institutionalised cover up.

Meanwhile, the jolt of Brexit may yet encourage continental counterparts, now deprived of a significant share of the common budget, to reflect on better financial management systems. There is an opportunity for the taking, for major administrative reform. Though this author is pessimistic on current signs it will be pursued, further output from others along the lines of this paper may encourage proactive thinking by the less retrenched of Berlaymont senior thinkers – indeed, one would hope to see think tanks closely associated with the EU providing (or now being commissioned to provide) just that.

So there is with recent developments a backdrop both of opportunity and necessity, or watchfulness and of potential. But underpinning all this is a grievous back history of neglect and abuse. The Robert McCoy case as here set out in detail illustrates all too clearly the nature of EU institutional dysfunction, its astonishing and ongoing institutional democratic deficit and immaturity, as well as its institutionalised corruption (and tolerance and *de facto* condonement of corruption, fraud and whistleblower harassment).

Other case studies that we are familiar with, but which are only known 'in-house', unfortunately confirm the unhappy trend sits widely across the institutions. The wider reality of this undercurrent is largely overlooked, because most whistleblowers halt before the final hurdle by going public with the problems. Even approaching the end of the track still short of the line requires considerable courage, and that is particularly true for those who make repeat reports of fraud when they spot it.

Harassment and the prospect of career damage, especially for those with a family to support, are strong disincentives – all the more so when in a foreign posting, or when dependent (as one increasingly is the longer a case goes on) on the civil service healthcare plan. By contrast, whistleblower harassment pays massive dividends to EU embezzlers, fraudsters, and potentially to associates involved in cover ups.

The UK should plan accordingly, and in arranging its future EU relations, minimize its capital risk in terms of the amount it hands over; and maximize the accountability of future EU-channeled funds.

About the Author

Dr Lee Rotherham has been an adviser to John Major's whipless rebels, Eurosceptic MEPs, three Shadow Foreign Secretaries, the Conservative delegate to the Convention on the Future of Europe, a delegate to the Council of Europe, and government ministers.

He was Head of Opposition Research for the No Campaign in the AV Referendum, and Director of Special Projects at Vote Leave, the designated pro-withdrawal campaign during the 2016 referendum.

He has twice been a Conservative candidate in General Elections, in 2001 in St Helens South (the "butler campaign"), and in 2005 in Rotherham standing against the then-Europe Minister. Outside of Westminster he has worked in publishing, teaching, heritage, and in Defence.

He has been very extensively published in academia and across think tanks. His publications as author or co-author include *The EU in a Nutshell*; *Ten Years On - Britain Without the European Union*; *Change or Go*; *Plan B for Europe*; *Controversies from Brussels and Closer to Home*; *Manning the Pumps*; *Hard Bargains or Weak Compromises*; *The Hard Sell*; *Bloc Tory*; *Common Ground*; *A Spotter's Guide to Sound Government Policies*; and the award-winning *Bumper Book of Government Waste* and *Brown's Wasted Billions*.

His historical works include *A Fate Worse Than Debt – A History of Britain's National Debt*; *The Sassenach's Escape Manual*; and tour guides to Roman Britain, colonial North America, the Hundred Years War, and the Apocalypse.

Through a number of years' association with the TaxPayers' Alliance, he has worked extensively on issues of budgetary propriety, public sector waste, and EU funding peculiarities. He coordinated and edited the sole contribution to the Giscard Convention that covered whistleblowing and fraud. His motivation underpinning this paper lies in the astonishingly still-unsettled nature of whistleblowers' cases dating back from that time, and the level of urgency Brexit now brings to their final resolution.

Lee is a reservist in the British army, and has served on three overseas deployments.