

<b>The resignation of the Santer-Commission: the impact of 'trust' and 'reputation'</b>
<b>Angelina Topan</b>
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<b>Abstract</b>
This contribution begins with reciting the facts behind the resignation of the European Commission under Jacques Santer, followed by theoretical considerations on the significance of trust and reputation from the principal-agent-theory perspective. The third part puts the emphasis on discussing as to which extent a loss of trust and reputation had an influence in the resignation of the Santer-Commission. The author concludes that the Santer-Commission underestimated the increased power of the European Parliament. The inadequate information policy and the increasing practice of manipulating documents led to a loss of trust. After the threshold had been crossed in connection with the BSE-scandal further violations finally led to the destruction of reputation of the Santer-Commission.
<b>Kurzfassung</b>
Der Beitrag beginnt mit einer Schilderung der Hintergründe des Rücktritts der Santer-Kommission, gefolgt von einigen theoretischen Überlegungen über die Bedeutung von Vertrauen und Reputation aus der Sicht der Principal-Agent-Theorie. Der dritte Teil wird die Rolle, die der Vertrauens- und Reputationsverlust beim Rücktritt der Santer-Kommission spielte, fokussieren. Die Autorin schlussfolgert, dass die Santer-Kommission die wachsende Macht des Europäischen Parlaments unterschätzte. Die unzureichende Informationspolitik und die zunehmende Praktik, Dokumente zu ma-nipulieren, führten zu einem Vertrauensverlust. Nachdem eine bestimmte Schwelle des Vertrauens in Verbindung mit dem BSE-Skandal überschritten wurde, führten weitere Verletzungen des Vertrauens schließlich zur Zerstörung der Reputation der Santer-Kommission.
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## 1 The underlying factors behind the resignation <sup>↑</sup>

The trigger for the dispute between the European Parliament and the European Commission was the discharge from the implementation of the budget in 1996, which eventually led to the Commission's resignation. A special report submitted by the European Court of Auditors caused the Parliament to postpone the discharge on 31st March 1998 until the Commission would supply additional information.

On 17<sup>th</sup> December 1998 the Parliament once more refused the discharge and brought forward a vote of no confidence with the Commission under suspicion of withholding information on fraud and mismanagement. The parliament demanded a list of all current internal investigations into cases of corruption among European Civil Servants, as well as a guarantee that legal authorities of member states are to be informed on all suspected cases of corruption. A majority of MEPs also voted in favour of a proposal for the foundation of a European Anti-Fraud Office (Hanse-Office, 2000: 14).

The vote of no confidence proposal was backed by 71 MEPs and initially aimed at supporting the Commission rather than overthrowing it. From the beginning it was clear that a parliamentary majority would be unachievable. It was therefore agreed that after the motion had been rejected, a Committee of Independent Experts would be set up.

On 15<sup>th</sup> March 1999 the Committee submitted its first report whereupon the Commission collectively resigned. This left the Commission politically weakened and incapable of acting in most adverse circumstances: In the middle of the Kosovo-crisis, the Rambouillet peace negotiations had just failed and the NATO operation against the Republic of Yugoslavia was about to start (24<sup>th</sup>

March 1999). Additionally, the Agenda 2000 negotiations were imminently drawing to a close (25<sup>th</sup> March 1999).

These events demonstrated the increased power of the European Parliament since the Single European Act 1986, which the Santer-Commission obviously underestimated. The power of the European Parliament not only increased regarding legislative procedures but also in other areas such as its involvement in the budgetary process and its influence in EU appointments (Hrbek, 2001: 21).

The co-decision procedure (Art. 251) marked the biggest gain in the Parliament's powers, signifying its strongest influence in legislative procedures since the 1992 European Union Treaty. The Parliament has now the right to veto and also the option to take part in a formal negotiating process (Conciliation Committee between Council and Parliament).

Secondly, the Parliament's considerable powers in the budgetary process were clearly demonstrated during 1998 (Art. 272). The Parliament can influence the expenditure within certain limits and it can redistribute spending. It also has the right to discharge the budget (Art. 272,8) as applied to the 1998 budget in April 2000. In this instance the Prodi-Commission could not convince the Parliament to combat mismanagement effectively. (Handelsblatt, 6.4.2000: 3.)

Thirdly, the European Parliament has to approve the choice of the Commission President. It is furthermore allowed to vote on the Commission as a whole, but not on individual Commissioners (Art. 214), and it can finally dismiss the Commission with two thirds of the votes (Art. 204). Above all, the European Parliament is allowed to exercise a certain amount of control over the Council and the Commission; it can put questions, verbally and in writing, to the Council and it can set up temporary Committees of Inquiry.

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However in the medium-term, four factors were largely responsible for the resignation of the Santer-Commission: First of all, since the mid 90s the pro-integrationist mood of the Delors years has changed. Both Jaques Santer and Romano Prodi have been confronted with an increasingly critical public, which appears to be largely sceptical of a further deepening of European integration and generally perceives 'too much' integration rather than 'too little' (Green, 2000: 293; Gretschnann, 2001: 27). This mood affects the bargaining power of the heads of government and MEPs: Not only do they have to consider the voter's preferences, but also, and in fact more and more often, seek to extend their political powers at the expense of the Commission.

The above was another key factor in contributing to the failure of the Santer-Commission: At Lisbon, for instance, the European Council vetoed Prodi's proposals to grant further aid to the Balkans. Furthermore, Prodi earned massive criticism from most heads of government for his stance on Libya (Prodi met Gaddafi in April 2000 in Cairo) (The Economist, 4.3.2000: 40; Wernicke, 16.12.1999: 10; Scheerer/Hoenig, 7.4.2000: 9). According to the Council Prodi herewith violated the limitations his office. As a direct consequence the Council proclaimed for itself more control and co-ordination competence at the Lisbon European Council meeting (24<sup>th</sup> to 25<sup>th</sup> of March 2000) (European Commission, 2000: 8).

The Commission's right of initiative has been further curtailed since Maastricht. Contributing factors have been the powers of the European Central Bank and Javier Solana's appointment as chief representative of the European Foreign and Defence Policy.

While the ECB restricts the Commission's influence on finance and monetary policy, Javier Solana enters into direct competition with the Commission in all of those policy areas, which are linked with

foreign and security policies. This accounts for the fact that Solana is responsible to the heads of governments and not to the Commission (Taylor, 6.12.2000: 4; The Economist, 18.8.2001: 25). Furthermore, the second and third pillars (Common Foreign and Security policy, co-operation in Justice and Home Affairs) still remain largely outside the Commission's political powers – hence intergovernmental decision-making is still prevalent in those areas. On the whole, the Commission has had only minor influence on major projects since Maastricht. These recent developments illustrate that the European heads of government still have a substantial agenda-setting power, which they tend to increase at the expense of the European Commission (The Economist, 20.5.2000: 39).

Yet not only the increasing powers of the Council following on a general mood swing was responsible for the resignation of the Santer-Commission. In contrast to Jacques Delors, Santer did not benefit from the resources and powers of a domestic network, as did the Frenchman.

Two other factors had a major influence on the collapse of the Santer-Commission: The apparent misconduct of some Commissioners and the massive violations of informal rules of conduct – both led to the loss of reputation. The first report issued by the Committee of Independent Experts, which revealed cases of mismanagement and misconduct, made public the violation of informal rules of conduct and therefore undermined not only the trust in the Commission, but also damaged its reputation.

As a result the Parliament ultimately renounced its trust in the Commission, which eventually, among other factors, led to its resignation. This contribution analyses the latter mentioned factors – the cases of misconduct and the violation of informal rules of conduct. It discusses why reputation and trust for co-operation within the EU is of major significance, how a loss of reputation comes about and, finally, which consequences it entails.

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## 2 The relevance of trust and reputation for co-operation <sup>↑</sup>

According to the principal-agent-theory the EU treaties belong to the category of incomplete or relational treaties respectively. This kind of treaty regulates the relationship between as well as within its political bodies and determines their competences. Due to the treaty's assumed durability and the complexity of its environment, it is impossible to anticipate all contingencies and to put them into a legal framework (Williamson, 1993b: 42). For this reason the treaty is partly vague in content and also consists of legal loopholes (Furubotn/Richter, 1991: 21). These gaps are filled with informal rules of conduct for its actors.

Rules, e.g. institutions are defined as normative or behavioural regularities that channel the social behaviour of individuals through bans or bids via sanctions, which are designed to achieve certain goals and that offer standard solutions for recurring problems. Formal institutions are codified rules that can be legally enforced (Priddat, 1996: 15, Weise, 1996: 207). They are supplemented by informal institutions (conventions and "good behaviour"). These rules are non-codified, yet they are socially sanctioned (Priddat, 1996: 79; North, 1993: 20). (1) The control and co-ordination of behaviour by means of formal and informal rules also means that agents learn to generalise. As a result, co-operative behaviour is encouraged since cooperation is rewarded and non-cooperation is sanctioned. The advantages of co-operative behaviour are obvious: All members of a group can profit from it and thus ensure their "survival". In the course of time, those codified and non-codified institutions for the conditioning of behaviour will continue to exist which ensure the "survival" of the group.

Formal and informal rules differ in two fundamental aspects: in the degree of enforcement and in the

process of evolution. Formal rules (for instance the Nice Treaty) are created through external jurisdiction of the member states. Formal rules are being enforced by formalised, centralised institutions such as the European Court of Justice or the European Commission. The latter enforces formal rules in its function as a guardian of the treaties.

Informal rules are developed within a group by means of experience. In contrast to formal rules they are enforced spontaneously and decentralised via bids and bans by the group itself. In case of longliving contracts, planned for an uncertain period of time such as the Treaty on European Union, formal and informal rules complement on another.

„Formal rules are an important part of the institutional framework but only a part. To work effectively they must be complemented by informal constraints (conventions, norms of behaviour) that supplement them and reduce enforcement costs ... But we know very little about how informal rules evolve.“ (North, 1993: 20).

In case of a breach of these informal rules there are only inadequate sanctions which can be imposed by those who are affected by it (Kasper/Streit, 1998: 173). This leaves scope for opportunistic conduct of the relevant actors, ranging from seizing or abusing opportunities to disguising or simply misinterpreting relevant information (Williamson, 1975: 26). Opportunistic conduct includes cases of “honest disagreement”.

“Even when both parties recognise the genuine goodwill of the other, different but honest perceptions can lead to disputes that are costly to resolve (Furubotn, 1991: 19).

Potential scope for opportunism undermines the co-operation of actors. Trust and reputation, however, enable and facilitate exchange and co-operation under incomplete treaties.

Trust is the belief or the expectation in the actor's willingness to co-operate, or in other words to distribute costs and benefits equally and fairly, e.g. through multiple payouts in package deals. Trust is essential for it rarely involves direct reciprocity, but suffers from an inherent time-lag problem between advances and their quid pro quo. To assist in overcoming this problem trust assumes a major co-ordination function between the co-ordination partners (Baudry, 1998).

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Only an actor's confidence in a future co-operation or compensation leads to co-operation. Trust is an actor's commitment to refrain from opportunistic conduct in the short-term; in this sense an actor feels secure enough to take the 'risk' to deliver in advance (Erlei/Leschke/Sauerland, 1999: 230). This simultaneously widens the scope to act, for actions are now feasible, which previously would have been regarded as too risky (Preisendörfer, 1995: 276). As soon as the environment is noticing this conduct, reputation is being created (Bull, 1987: 148).

In order to protect themselves from opportunistic conduct, partners in co-operation utilise reputation as a security. In the event of an apparent breach of informal rules of conduct the trust in the actor's credibility is damaged. As a consequence, the security, namely the reputation, can be damaged or completely destroyed. To make a reputation mechanism work a broad acceptance of norms and values is required. If, for instance, cases of fraud are largely tolerated, the reputation mechanism will soon fail to work (Kasper/Streit, 1998: 201).

To sum up the Theory of Relational Contracts offers a solution for the problem of uncertainty and asymmetrical information before and after a contract is signed. Relational contracts are incomplete contracts or “open-ended agreements to cooperate over time in circumstances in which not all

eventualities can be determined beforehand" (Kasper/Streit, 1998: 173). Relational contracts are characterised by the distribution of resources and competence as well by limiting the possibility of opportunistic behaviour. In an ideal world incomplete contracts would have to be designed in such a way that opportunistic behaviour is not possible and trust evolves. It is evident, however, that risk cannot be ruled out completely but only be minimised.

In the following the principal-agent-theory – in particular the aspects of trust and reputation – is going to be applied to the resignation of the Santer-Commission.

### **3 The impact of reputation on the resignation of the Santer-Commission** ↑

The numerous scandals, in which single members of the Santer-Commission were involved, let the European Parliament rightly assume, that some Commission members have been involved in opportunistic conduct. A fundamental basis for trust was therewith undermined. A breach of trust can be sanctioned through the destruction of reputation; exactly that had been successfully executed by the Parliament's motion for a vote of no confidence. Although the motion failed to succeed, the MEP'S voted instead in favour of a compromise, which included to setting up an independent inquiry. It was on the basis of the inquiry's devastating report on the deplorable state of affairs in the Commission that the Santer-Commission was forced to resign.

#### **3.1 The reputation of the Commissioners and the reputation of the Commission as a political organ** ↑

The resignation of the Santer-Commission, the weakness of the Prodi-Commission and the reappointment of some Commissioners to the Prodi-Commission made clear, that single members of the Commission as well as the Commission as a whole hold their own separate reputations.

There are however dependencies between the reputation of a member of the Commission and the reputation of the Commission as a whole. A single member of the Commission can establish her or his own independent reputation, which is independent from the organ, but will nevertheless be affected by a loss of the latter's reputation.

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Conversely, a member of the Commission can profit from the reputation of the organisation, without effectively having to contribute to it. In such an instance Commissioners find themselves in a free-rider position, which enables them to profit from the reputation of an organisation, without necessarily having to contribute to it themselves.

The dependence of a single actor on the reputation of the organisation is however limited. Each of the members of the Santer-Commission holds their individual reputation, which remained intact even after the destruction of the Santer-Commission's reputation. Some Commissioners remained unaffected by the resignation of the Santer-Commission (for instance Fischler and van Miert), without being able to save the Santer-Commission. However, the fact that some Commissioners were reappointed to the Prodi-Commission had not only been caused by their own reputation. It had rather been influenced by political decisions within the member states, as the member states themselves are responsible for the appointment of the Commissioners together with the President of the Commission.

The President of the Commission is appointed by the heads of government to which the European

Parliament has had to give its approval since 2000 – as mentioned above in part 1.

The election of the Commission members and the President as well as the division of tasks, policy areas and fundamental budgetary questions are part of tough political bargaining between the member states and within the member states.

It is common practice that members states with two Commissioners would appoint one Commissioner from parties in government and one from opposition parties in order to avoid domestic political pressures and to secure a balanced representation of national debates and issues. (Nedergaard, 1995: 15).

Chancellor Schroeder, however, broke this common rule in appointing both Commission members from coalition parties of his government – a Social Democrat (Guenter Verheugen) and a Green Party member (Michael Schreyer).

Schroeder's decision to elect a Green party member over a member of the main opposition party, the Christian Democrats, was a direct result of the negotiations between the two coalition parties in government. As only three instead of four Green party members were appointed to Cabinet, Schroeder decided to compensate his coalition partner by sending Michael Schreyer as Commissioner to Bruxelles.

The reappointment of Edith Cresson, however, who had unequivocally been proven guilty of nepotism and misconduct would not have passed the European Council nor the European Parliament.

Although the reputation of the Commission as a whole is still damaged, there are some Commissioners who have a very strong individual reputation. This is the result of a survey carried out by the Financial Times in spring 2000 amongst accredited Bruxelles analysts and journalists. Mario Monti (competition), Pascal Lamy (trade) and Antonio Vitorino (justice) appeared on top of an unofficial 'ranking list' (Norman, 2000: 2).

The reputation of the organ, which is based on primary Community Law, can be affected, however, if the reputation of some its members has been destroyed. Edith Cresson's conduct was a case in point for damaging the reputation of the Commission as a whole. The Committee of Independent Experts strongly emphasises the damaging effects of incorrect conduct by the Commissioners on the reputation of the Commission and the Community as a whole (Ausschuß unabhängiger Sachverständiger, 1999: 10). The definition of incorrect conduct does not only relate to the violation of Community Law (formal regulations), but particularly to the violation of informal rules such as the breach of conventions. In this context, conventions denote norms for appropriate conduct in public life.

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Violations of these conventions comprise of abuse of power, discrimination and nepotism (the preferred treatment of family members or friends with respect to the awarding of senior positions) etc. The Committee of Inquiry clearly emphasised that an inquiry into common practices of the awarding of contracts with financial implications also formed part of its investigation (Ausschuß unabhängiger Sachverständiger, 1999: 6). The Committee denounced therefore not only the Commission under Santer, but also some of the common practices of the Commission in general.

There are basically three distinctive categories for trust: 'Trust in competence' is the expectation, that the partner in co-operation is capable of fulfilling their part of the agreement. 'Contractual-trust' is limited to the mutual expectation, that agreements will be met. In case of 'goodwill trust' the partners

have faith in the mutual willingness to co-operate with one another (Mari, 1998: 27; Hardy/Phillips/Lawrence, 1998).

The Committee of Independent Experts, which investigated malpractice in the Santer-Commission, reported at least two out of three kinds of breaches of trust. A breach of 'contractual trust', that is the violation of laws and regulations, could not be detected. There occurred, however, serious infringements against informal rules of conduct ('goodwill trust'). Moreover, the experts expressed doubts on the competence of the Commissioners, and also detected negligence and '... a lack of diligence in the execution of public administration tasks' (Ausschuß unabhängiger Sachverständiger, 1999: 129-132).

Some Commissioners had temporarily lost control over their Director-Generals and thus tolerated practices, which, although were not unlawful could however not be accepted ('trust in competence'). Finally, the Committee stressed incidents of nepotism, the wilful withholding of information as well as irregularities in the composition of documents, etc. (Ausschuß unabhängiger Sachverständiger, 1999: 8, 29, 50, 132). Edith Cresson, for instance, failed to eliminate long-known irregularities in the case of the 'Leonardo da Vinci' programme.

Since the members of the Commission are appointed for five years only, whilst the Commission as an institution is in place for an indefinite period of time, the latter establishes its own reputation independent of its personal formation. This signifies a long-term interest in the continuity and endurance of the Commission. With its credibility and thus its reputation as an institution at stake, the Commission had to resign collectively. Otherwise the Commission would have been in danger of forfeiting its basic political functions e.g. the willingness of other actors, such as the European Parliament, to co-operate.

The reputation of the Commission as an institution allows a higher degree of continuity, but can also have a 'boomerang effect' for individual members of the Commission, as the resignation of the Santer-Commission had shown. The Prodi-Commission also proved, that the organisation had forfeited credibility and popularity. As illustrated at the outset, neither the European Parliament nor the European Council were prepared to surrender their newly gained powers (Oldag, 1999: 4; Neue Züricher Zeitung, 4.4.1999: 2).

The apparent misconduct of some Commissioners and the massive violations of informal rules of conduct – which both led to the loss of reputation – will be discussed in the following chapter.

### 3.2 Violation of informal rules

The Commission was mainly weakened by the accusation of mismanagement and by the alleged abuse of power in office by at least two Commissioners. Another major factor was, however, the violation of informal codes of conduct by some Commissioners, which undermined the principle of collective responsibility. According to this principle, the Commission's decisions are supposed to be reached jointly and to be externally represented and justified in unison. The requirement to take a united stance as in the case of a parliamentary bill, for instance, cannot take away the fact that some Commissioners may have been outvoted in the college of Commissioners. The EU's northern enlargement has increased the number of Commissioners from 17 to 20, which means that more Commissioners than before (nine in actual fact) can be outvoted.

Commissioners who have been outvoted on particular issues are subsequently obliged to support these decisions publically. It is apparent that not all Commissioners under Santer have done so.

The collective responsibility principle was broken by mismanaged public relations, which contradicted a previously reached agreement.<sup>(2)</sup> Recurrent public statements made by Karel van Miert and others revealed which individuals won the arguments within the college.

Franz Fischler, for instance, openly distanced himself from the Santer-Commission, which contributed to a further weakening of the Commission's public image (Handelsblatt, 28.12.1999: 7). In doing so Fischler indisputably attempted to save his own reputation.

Prodi sought to eliminate these deficits straight away. Even before taking office he negotiated a code of conduct for Commission members, which demands, for instance, that collectively reached decisions are not be criticised publicly and that comments made at Commission meetings are confidential (Wissdorf, 1999: 3; European Voice, 15.-21.6.2000: 32). These are, however, informal rules, which can only be enforced through mild group sanctions (through isolating individual members, for instance). Leakage of confidential documents and the publication of Ritt Bjerregaad's diaries, which painted a rather unfavourable picture of Santer, further undermined the Commission's reputation. The publication of the diaries was against fundamental informal conventions. Yet Prodi has learned from the mistakes of his predecessors and now demands to be informed in anticipation of any publications of this nature.

Is apparent that faith in the collective responsibility principle is diminishing – at least in the press. On 4.4.2000 the Frankfurter Allgemeine Zeitung reported rumours of a 'planned ousting' Prodi's by influential Commissioners which was closely followed by vehement public denials by Neil Kinnock and Chris Patten on behalf of the whole Commission (Frankfurter Allgemeine Zeitung, 7.4.2000: 57).

The rumours of an alleged 'coup' were circulating despite its legal impossibility. Solely the European Parliament can force the whole Commission to resign. Moreover, as already mentioned, the Commissioners as well as the President of the Commission are appointed by the heads of government. In this context, subjective perception rather than actual conduct of the Commissioners appears to be the all-important factor.

### 3.3 The meaning and significance of reputation

Reputation has several functions. Firstly, reputation is a carrier of information, by which asymmetries of information can be reduced. Secondly, reputation is already earned capital of its owner, which facilitates the coordination with other actors and cuts coordination costs. This specific quality can be destroyed by a denial of trust and the destruction of reputation (Vogt, 1997: 159). Finally, reputation offers the possibility to serve as a security for cooperation partners in order to protect themselves from opportunistic conduct.

In the Commission's case reputation can be seen as a security that the European Parliament receives from the moment the Commission is being confirmed in office. In a way the Commission surrenders itself to the Parliament through its security (Lane, 1998a: 21).

Reputation is very closely linked to the professional assets of the Commission members, who act as the guarantor, i.e. the provider of reputation as a security. In this sense reputation assumes a certain value for the Commissioners, who consequently have, if they act rationally, an interest in supporting the reputation of the organisation.

an 'organisation'. The more universal the organisation's reputation is, the broader it can be utilised to the advantage of individual Commissioners and the Commission as a whole. Accordingly, the higher the security value for its 'owner' is, the higher is its value for the recipient. Projected onto the Commission, this means that a universally good reputation is generally applicable to all aspects of the Commission, similar to a brand name, by which the high quality for one product can be transferred onto other products under the same name.

A destruction of the Commission's reputation through the European Parliament or through the general public would have disastrous effects for future transactions (e.g. the external representation of the EU). Negotiation costs would be strongly increased, due to risen security and control costs. The resignation of the Santer-Commission particularly demonstrated that the breach of trust destroyed the stimulus for the Parliament and the Council to co-operate with the Commission.

Overall control costs had grown due to the abuse of authority by some Commissioners, which weakened the trust in the Santer-Commission as a whole. On the other hand, the interest in a lasting co-operation with the Santer-Commission was seriously undermined. Both incentives for a lasting reciprocal and trusting relationship between the European Parliament and the Commission were not given anymore.

### 3.4 Crossing the threshold

The reputation mechanism works as long as a breach of trust by a member of the Commission does not occur or is not perceived by the partners or a critical threshold, which leads to a loss (or mistrust), is not being crossed. In other words, the recipient of the security, the European Parliament, controls the guarantor by means of thresholds. The crossing of the threshold results in a denial of trust as well as the damaging of reputation and the security respectively. This can culminate in the complete destruction of the security.

Not every incident of a breach of trust jeopardises the reputation and the trust in the co-operation partner (Lane, 1998a: 23). If, however, the 'trust credit' has been fully consumed by such an incident, negative data will carry more weight than positive data. The threshold is crossed in any of those cases, when the co-operation partner generally expects a breach of trust in the future, i.e. when the partner is increasingly inclined to act in an opportunistic fashion.

The very point, at which the Commission lost the trust of the European Parliament and which eventually culminated in the destruction of the reputation of the Santer-Commission, can be identified. Between the European Parliament and the Commission traditionally existed an intensive co-operation over several decades, which adopted forms of an 'unofficial' or 'undeclared' coalition. This coalition frequently operated against the Council, whose power it attempted to contain. Identifiable lack of trust developed, however, in the event of the BSE-scandal in 1996. Then the Commission crossed an 'imaginative' threshold by presenting documents to the Parliament of which many were manipulated and from which the Parliament was not able to conclude what actions the Commission had taken against the scandal.

A year later the European Parliament discovered, that the main actors responsible – particularly those in the Directorate-General for Agriculture – had argued from the start that a 'policy of disinformation' would be necessary in order to protect the beef sector from the BSE-crisis (Bomberg/Petersen, 1999: 126). In doing so, the Commission made public, that it had intended to withhold crucial information. Not only the BSE scandal, but also the rather vague responses of the Commission to enquiries regarding the budget conveyed the impression of a Commission, which did not meet its obligations in co-operating with the Parliament. Here the Commission broke an informal rule, namely to provide relevant information.<sup>(3)</sup> Over the last few years the Parliament had frequently been at the receiving end of the Commission's inadequate information policy and insufficient co-operation efforts. One of the most controversial points between the Parliament and the Commission is the access to EU-

documents. While the Parliament advocates easy access, the Commission supports tight regulations on this issue. This occurred particularly in cases where the Parliament was dependent on the goodwill of the Commission (Taylor, 2000: 7).

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Only the accumulation of cases of apparent misconduct caused the eventual destruction of the security. This might have been due to the fact that the co-operation partners do not have the option to part after a breach of trust. In the EU, actors are forced to continue their co-operation with one another for better or for worse, instead of being able to choose different 'business partners' as is the case in environments different to the EU.

The existence of thresholds means, that minor differences are of no consequence, as long as the threshold is not being crossed. Trust already includes a momentum of uncertainty, which means that divergences between expectation and reality will not damage trust, because they have been anticipated (Luhmann, 1989: 87). A single breach of trust is obviously not being sanctioned by an immediate destruction of the security. Below the threshold the European Parliament, for instance, is indifferent to the actions of the Commission.

With the threshold nevertheless being crossed, even minor incidents can cause major consequences. The reason being that every actor has to rely on their limited ability for rational evaluation of information based on subjectivity, instead of assessing the actual and 'objective' conduct of actors.

The threshold is being crossed if misuse of trust occurs frequently or if mixed signals are being given, which in some contexts can even lead to an increase in trust (Herbig/Milewicz/Golden, 1994). (4) The Santer-Commission appeared to be highly inconsistent: At least two Commissioners displayed misconduct, while other Commissioners did not do anything wrong at all.

## 4 Conclusion

This analysis has demonstrated: To enforce informal rules of conduct with respect to relational contracts reputation can be an effective instrument. Single members of the Commission as well as the Commission as a whole hold their own separate reputations. There are however dependencies between the reputation of a member of the Commission and the reputation of the Commission as a whole. A single member of the Commission can establish her or his own independent reputation, which is independent from the organ, but will nevertheless be affected by a loss of the latter's reputation.

In retrospect, the Santer-Commission was responsible for mismanagement in a number of cases and broke several informal rules of conduct. Above all the Santer-Commission obviously underestimated the increased power of the European Parliament. The inadequate information policy and the increasing practice of manipulating documents led to a loss of trust. After the threshold had been crossed in connection with the BSE-scandal further violations finally led to the destruction of reputation.

The resignation of the Santer-Commission weakened the status of the Commission as a whole. A survey carried out by the author in spring 2000 revealed that 91.2% of Commission civil servants regarded the Commission's influence on the European integration process under Jacques Delors as very high. Unsurprisingly, the majority of them considered its influence under Santer to be much lower – 53 % opted for medium influence and 43 % for low. The survey was carried out too early into Romano Prodi's presidency, to pass a representative judgement on his Commission. However, 47 % voted for medium influence with (somewhat unexpected) 5.9 % opting for high influence.

As of yet, however, Prodi has not been able to dispel the impression of weak leadership. This may also be emphasized by the fact that significant projects such as the Economic and Monetary Union, the common market and Schengen have already been finalised – which in the past gave the Commission the chance to distinguish itself.

In these areas the right of initiative has become incidental, while administrative tasks have come to the fore. The Prodi-Commission still has to deal with unpopular challenges such as the internal reform of the Commission and Eastern Enlargement, of which many participants feel it will be to their disadvantage.

The Commission is now at a crossroads: A stronger administrative role at the expense of political tasks and influence? Is the right of initiative still adequate, or does the EU now enter a phase of growing intergovernmental cooperation?

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## Endnotes <sup>↑</sup>

- (1) Here, a narrow concept of informal institutions is being applied that explicitly excludes internalised social norms. If these were to be taken into account, insights from social psychology would also have to be considered. This is not possible in the framework of this contribution. According to Kasper / Streit the expressions “rules” and “institutions” are applied synonymously.
- (2) The forthcoming European parliamentary elections may also well have had an influence on the downfall of the Santer-Commission (10.-13.7.1999). The scandals surrounding the Commission were good publicity for the Parliament.
- (3) In several interviews with the author, MEPs confirmed their ongoing mistrust. The MEPs often

remarked that the quality of cooperation is dependent on the personality of the relevant Commissioner.

Between 1998 and 2000 35 expert interviews were carried out as part of a research project on informal rules in the decision-making process of the European Commission. The interviewees comprised of Commission and Council civil servants, Bruxelles' lobbyists, as well as MEPs. Additionally, a standard questionnaire was sent to 660 civil servants of the Commission. 33% of these questionnaires (217 in total) were returned. A specific part of the interview and the questionnaire concerned the enforcement of informal rules by means of trust and reputation as well as reasons for the resignation of the Santer-Commission. One of the aims of this survey was to systematize behaviour in order to define a highly accurate set of relevant behaviour patterns. This methodo-logical emphasis on the identification of 'typical cases' did therefore not primarily aspire to be representative also. Accordingly, quantitative measures did not play a role in the choice of interviewees.

(4) An empirical study of Herbic/Milewicz/Golden analysing the parameters leading to the destruction of reputation established, that the recurrence of mixed signals has three to four times more negative effects in comparison with purely negative or purely positive signals. The authors concluded that many more positive signals are required in order to re-establish a reputation than it takes to destroy it. Once a reputation is destroyed it takes a considerable amount of time to rebuild it.

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