

would cause Council decision-making to slip back into the pattern of impasse and delay that had been decisively broken in the mid 1980s. This was one of the constant background issues in the debate about enlargement. Still greater use of majority voting was certainly part of the answer, especially in the revised co-decision procedure discussed above. But as von Donat's note had suggested, other alterations in behaviour also needed to be explored. This was to have been the main business of the Treaty of Nice, but when this proved inadequate it became something that would have to await first the abortive European constitution and then the Lisbon Treaty of 2008.

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### 8.3. From love affair to stand-off: relations with the European Parliament

The relationship between the European Commission and the European Parliament evolved substantially during the years under review. At first this change was largely positive: Jacques Delors would enjoy a generally good relationship with Strasbourg and would be given substantial credit by Members of the European Parliament (MEPs) for transforming the European Community (EC) system for the better. It was Delors seemingly who had been most important in delivering the first substantial increase in the Parliament's powers since 1979; it was Delors furthermore who brought to a mutually satisfactory end the lengthy struggle between the Parliament and the Council/Commission over the setting of Community budgets. More broadly, Delors and his Commissions were given credit for delivering both 'more Europe' — in the form of enhanced integration — and more attention to Europe, both of which were regarded as welcome developments by most MEPs. But this highly positive relationship began to sour as the 1990s advanced, with Parliament–Commission relations becoming that much more antagonistic. And the rise of mutual suspicion would culminate in the biggest single crisis in Strasbourg–Brussels relations to date, namely the row that would precipitate the collective resignation of the Santer Commission in 1999.

It had all started so well. Jacques Delors was not the first Commission President to promise MEPs that he would take Parliament more seriously than ever before; François-Xavier Ortoli, Roy Jenkins and Gaston Thorn had all made similar pledges<sup>(1)</sup>. Nor was he unique in having been a member of

<sup>(1)</sup> See Bussière et al., *The European Commission 1973-86*, p. 231.

the Strasbourg institution; Thorn too had been an MEP, albeit prior to the start of direct elections. But where Delors was able to score substantially in comparison with his direct predecessors was in his perceived success at delivering the political outcomes that the majority of MEPs yearned for. It was political results rather than atmospherics that were the basis of the warm rapport that developed between the Delors Commissions and European parliamentarians.

The first important step in this direction was the Single European Act, and more specifically the introduction of the cooperation procedure, an institutional change that at last gave the Parliament a greater degree of influence over the Community's legislative process. It was true of course that neither MEPs nor the Commission were wholly satisfied with what had been agreed. The Parliament would go on pressing for substantial increases in its power throughout the period from 1986 to 2000. But the cooperation procedure was an important start<sup>(1)</sup>.

It was a step, furthermore, that needed to be followed up with practical alterations in the Commission's behaviour towards the Parliament. In early 1986 Peter Sutherland, as the Commissioner responsible for Relations with the European Parliament, presented an important discussion document to his Commission colleagues, designed to form the basis for 'a broad strategic debate on its relations with Parliament', and advancing a number of tangible suggestions for change<sup>(2)</sup>. Central to this document was the assumption of a broad alliance of interest between Strasbourg and Brussels: 'The Commission should adopt a clear strategic approach, based on the mutual interest of the two institutions in improving relations. The Commission

has much to gain in terms of political support, from good and stable relations with Parliament. Parliament, for its part, can improve its image and effectiveness by good relations with the Commission'<sup>(3)</sup>. But in order for both bodies to derive maximum advantage from their cooperation this needed to be made much more efficient and systematic. This would involve not only greater interinstitutional dialogue and cooperation, but also a change in the Commission's culture leading to a situation in which 'awareness of the Parliamentary dimension is at all times a major strand in the Commission's thinking'<sup>(4)</sup>. Sutherland's ideas were discussed by the Commission in both March and April 1986, aired before the parliamentarians themselves in October and then complemented with a further internal Commission review conducted in November<sup>(5)</sup>. The latter placed particular emphasis on the need for both 'legislative planning' and 'prior consultation' between Commissioners and Commission officials on the one hand, and representatives of the main parliamentary groups on the other<sup>(6)</sup>. The former would help lead to the emergence of the so-called Neunreither Group (later known as Interinstitutional Coordination Group), a monthly meeting of Parliament, Council and Commission officials designed to better coordinate the legislative timetables of the three institutions<sup>(7)</sup>. And the latter would contribute to an important behavioural change within the Commission, with most directorates-general and Commissioners devoting increased attention to informal consultation and the

<sup>(1)</sup> HAEC, SG(86) D/1509, 11 February 1986, 'Note for the attention of Mr O'Toole on the draft communication to the Commission on relations with the European Parliament'.

<sup>(2)</sup> Ibid.

<sup>(3)</sup> For the Commission discussions, see HAEC, COM(86), Minutes No 820, meeting of 25 March 1986; COM(86), Minutes No 822, meeting of 9 April 1986. For the parliamentary presentation, see HAEC, IP(86) 474, press release 'Intervention of Commissioner Peter Sutherland on relations between the European Parliament and the Commission (summary)', 8 October 1986.

<sup>(4)</sup> HAEU, DORIE 734, SEC(86) 1928, 14 November 1986, 'Relations with the European Parliament within the framework of the cooperation procedure provided for by the Single Act — Communication from Mr Sutherland in agreement with the President and Mr Ripa di Meana'.

<sup>(5)</sup> Stacey, J., *Integrating Europe — Informal politics and institutional change*, Oxford University Press, Oxford, 2010, pp. 90-91. See also interview with Una O'Dwyer, 16 February 2018.

<sup>(1)</sup> See also Chapter 15 'Environmental policy'.

<sup>(2)</sup> HAEU, DORIE 734, 'Preliminary discussion paper on relations with the European Parliament', 26 February 1986. This would in due course become SEC(86) 417, 20 March 1986, 'Relations with the European Parliament — Communication from Mr Sutherland, in agreement with the President and Mr Ripa di Meana'.



Meeting between Peter Sutherland (left), Commissioner responsible for Relations with the European Parliament, and Pierre Pflimlin (right), President of the European Parliament, in Strasbourg, on 13 January 1986.

cultivation of good relations with members of the parliamentary committees most relevant to their activities.<sup>(1)</sup>

The second breakthrough was the transformation of the budgetary procedure<sup>(2)</sup>. For most of the period between 1979 and the agreement of the Delors I package in 1988, the annual setting of the Community's budget had become the occasion for a power struggle between the Parliament, the Council and the Commission, resulting in delays, arguments and resentment. In particular, the Parliament disliked its inability to control the vast amount spent on the common agricultural policy, which counted as obligatory expenditure and was hence not subject

to parliamentary control — and the constant rise of which squeezed the non-obligatory spending over which the Parliament did have some say. Runaway bills for the common agricultural policy hence directly eroded the Parliament's financial control. The Parliament had much to gain from the Delors I package, even if the move to multiannual financial perspectives did mean that the leverage it gained over the Council through its role in the annual budget process would be somewhat restricted. It also appreciated the way in which the Commission worked hard to involve Strasbourg in the discussion of the budgetary advance. The Parliament had bitterly resented the way in which it had been presented with a fait accompli by the European Council decisions at Fontainebleau, and was hence relieved to be much more directly involved with the next budgetary settlement. The interinstitutional agreement signed as part of the Delors I package underlined its status as an equal member of the Community's three-headed

<sup>(1)</sup> Testimony of Anne Serizier. The trend would of course become even more pronounced once the co-decision procedure was introduced.

<sup>(2)</sup> See Chapter 9 'The budgetary revolution: from near bankruptcy to stability'.

budgetary authority. And MEPs too were pleased with a cessation of the annual battle over the EC's finances, especially as it permitted more constructive interinstitutional cooperation. Once more therefore, Delors, as the principal architect of the settlement, received a great deal of credit in the eyes of most parliamentarians.

At a more general level, early relations between the Delors Commissions and the Parliament were aided by the extraordinary advances of the integration period during the late 1980s and early 1990s. Most MEPs, after all, were ardent partisans of further and faster European integration; they were hence almost bound to regard with favour a Commission that seemed able to deliver so much. Delors's interaction with Parliament thus benefited from that same virtuous spiral of success that characterised the Commission President's relations with his own staff and with most members of the European Council<sup>(1)</sup>. But rapid progress could also raise unrealistic expectations among MEPs and encourage them to press impatiently for additional powers without waiting for an intergovernmental conference and a new round of treaty change.

This was certainly what the Commission believed was happening by early 1990, as the new Parliament elected the previous year proved particularly hard to work with. In January the Commission held an urgent internal discussion of the deterioration in Parliament–Commission links, basing themselves upon a somewhat gloomy analysis of the relationship between Strasbourg and Brussels drawn up by Martin Bangemann<sup>(2)</sup>. Underpinning Bangemann's analysis was a fear that the Community's efforts to meet its self-imposed 1992 deadline might be compromised if interinstitutional relations were allowed to fester. As Delors put it to his colleagues when introducing the debate: 'The main issue, then,

is whether it is appropriate for the Commission to change the interinstitutional set-up straight away, or if it should hold on to all its prerogatives at the risk of being censured by the Parliament'<sup>(3)</sup>. In the debate that followed, some Commissioners — Christiane Scrivener and Sir Leon Brittan in particular — were hesitant about making any concessions to the Parliament, and others doubted whether there was really any likelihood of the Parliament censuring the Commission, but there was general support for the series of small gestures designed to smooth relations with MEPs suggested by Bangemann. Delors himself undertook to explore the issue with the Parliament the following month<sup>(4)</sup>. The outcome was a code of conduct agreed by the two institutions in April 1990<sup>(5)</sup>. In this document the Commission promised to remind the Council not to come to a political agreement before the Parliament had expressed its views, to keep the Parliament abreast of discussions in the Council and to make certain that the Parliament was consulted again in cases where the proposed legislation had been substantially altered in the course of Council debates. The Commission would also seek the views of the Parliament as well as the Council about the appropriate legal base chosen for draft legislation. In return MEPs promised to make interinstitutional cooperation as effective as possible, and in particular to prioritise the smooth passage of laws needed for the completion of the single market by the end of 1992. These gestures appeared sufficient to restore cooperative relations in the short term.

A rather more serious wave of parliamentary unease became apparent once the ceaseless forward movement of the late 1980s began to falter from about 1992 onwards. Like Delors himself, Strasbourg was not greatly enamoured with the Maastricht Treaty as a whole, since the important advances

<sup>(1)</sup> See the profile of Jacques Delors.

<sup>(2)</sup> HAEC, SEC(90) 175/2, 26 January 1990, 'Relations with the European Parliament — Communication from Mr Bangemann'.

<sup>(3)</sup> HAEC, COM(90), Minutes No 997, second part, meeting of 31 January 1990, p. 17.

<sup>(4)</sup> HAEC, COM(90), Minutes No 997, second part, meeting of 31 January 1990.

<sup>(5)</sup> *Bulletin of the European Communities*, No 4, 1990, pp. 80-81.

## The fight against fraud

One of the most noticeable features of the Commission's activities during the 1986-2000 period was the stepping up of the fight against fraud. 1987 thus saw the Commission's decision to establish its first dedicated internal unit devoted to detecting and responding to cases in which European Community funds and programmes had been misused, whereas the period would end with the creation in 1999 of a stronger and more powerful anti-fraud body. Such forward movement, while significant, would not however prove sufficient to satisfy fully external concern about the issue, whether expressed through the media or by the European Parliament. The perceived inadequacies of Commission efforts to address fraud would thus lie at the heart of the fall of the Santer Commission in 1999.

By the mid 1980s pressure was mounting on the European Commission to increase its efforts to combat fraud involving the Community budget. In part this reflected the rapidly increasing size of the budget and hence, in theory at least, the amount of money 'at risk'. Important too may have been the pressure on the Community budget, meaning that any money wasted was ever more sensitive <sup>(1)</sup>. But it also constituted a response to growing pressure from the European Parliament in particular. In 1986 the Budgetary Control Committee of the Parliament had held a public hearing on the subject; late that same year its chair had written to Commissioner Henning Christophersen with a questionnaire about Commission efforts to combat fraud; and in April 1987 a Parliamentary resolution <sup>(2)</sup> invited the Commission to present a convincing plan to address the issue. The Commission response took the form of a report submitted to President Delors by Commissioners Christophersen and Frans Andriessen in September 1987. This both acknowledged the importance of the subject and recommended the establishment of an internal unit dedicated to the fight against fraud <sup>(3)</sup>. By October the Commission had agreed to take this step, and in July of the following year the Coordination of Fraud

Prevention Unit (UCLAF), was established <sup>(4)</sup>. It would be directly answerable to the President and would operate from within the Secretariat-General.

Over the subsequent decade UCLAF would grow substantially, in terms of both its personnel and its range of activity. In 1989 it had 10 members of staff; a year later this had grown to 30, and by 1993 it had over 50. A further 80-90 staff members, primarily involved in 'anti-fraud tasks', were distributed through other parts of the Commission; the largest number, 40, in DG VI (Agriculture), reflecting the priority attributed to preventing the sizeable common agricultural policy budget from being abused <sup>(5)</sup>. Fraud against the European Agricultural Guidance and Guarantee Fund also assumed a prominent position in the annual report on the fight against fraud that the Commission undertook to compile from 1989 onwards <sup>(6)</sup>. UCLAF built up two sizeable databases called DAF (Documentation anti-fraud), on the legal provisions in place at Community and national levels, and IRENE (Irregularités, enquêtes et exploitation), which catalogued all known cases of irregularities, including fraud, and recorded the countermeasures used. And the Commission's own efforts were flanked by a systematic attempt to improve coordination with the Member States. After all, the largest number of fraud cases against the Community budget took place during policy implementation, most of which was the responsibility of the Member State governments rather than the Commission itself. 1993 was a year that marked a major milestone in the fight against fraud, as on 1 November the Maastricht Treaty entered into force, adding a new Article 209a confirming the Member States' obligation to treat the Community's financial interests in the same way as their own in combating fraud. In addition, improving the Community's regulations so as to make them less

<sup>(1)</sup> See Chapter 9 'The budgetary revolution: from near-bankruptcy to stability'.

<sup>(2)</sup> Resolution pursuant to Article 85 of the financial regulation informing the Commission of the reasons why it cannot at present be given a discharge in respect of the implementation of the budget for the financial year 1985 (OJ C 125, 11.5.1987, p. 45).

<sup>(3)</sup> SEC(87) 1310, 11 September 1987, 'Communication from Mr Christophersen and Mr Andriessen in agreement with the President — Report to the Commission on the strengthening of the fight against fraud to the detriment of the Community budget'.

<sup>(4)</sup> SEC(88) 2007, 15 December 1988, 'Communication from the President — Report to the Commission on the action plan of the anti-fraud coordination unit'.

<sup>(5)</sup> COM(94) 94 final, 23 March 1994, 'Protecting the Community's financial interests — The fight against fraud: 1993 annual report'.

<sup>(6)</sup> See for example: SEC(90) 156 final, 31 January 1990, 'The fight against fraud — Report on work done and progress achieved in 1989'; SEC(91) 456 final/2, 22 March 1991, 'Report on work done and progress achieved in 1990'; SEC(92) 943 final, 26 May 1992, 'Report on work done and progress achieved in 1991'; and COM(93) 141 final, 20 April 1993, 'Annual report from the Commission on the fight against fraud — 1992 report and action programme for 1993'.



Following the accusations that led to the resignation of the Commission, the Unit for the Coordination of Fraud Prevention became the European Anti-Fraud Office with an independent investigative mandate.

vulnerable to abuse became a priority <sup>(1)</sup>. In 1995 this was taken one step further with the approval of a framework regulation on the protection of the Community's financial instruments. This set out a uniform set of administrative penalties that could be used in all cases of fraud against the Community budget and established a broad definition of what constituted an irregularity. The Commission was also able to persuade the Member States to sign up to a convention on the protection of the European Communities' financial interests, designed to make the various national laws needed to prosecute those accused of fraud more compatible with one another <sup>(2)</sup>.

This solid progress could not prevent the rise of public, media and European Parliament concern about the issue of fraud, however. Of particular importance in

this regard was the emergence of a series of allegations about malpractice within the Commission itself. Many of these claims were brought into the public domain by a whistle-blower within the European Commission, Paul van Buitenen, who in 1998 grew so unhappy at what he regarded as the failure of UCLAF to crack down upon abuse within its own organisation that he went public with his concerns, sending them first to the European Parliament and then to the press <sup>(3)</sup>. These charges, in combination with the refusal of the European Court of Auditors to issue a statement of assurance 'as to the legality and regularity of transactions underlying payments for the financial year' — a stance frequently, if inaccurately, simplified in the press as a failure to sign off the Commission's overall annual accounts — became central to the row that would lead to the collective ▶

<sup>(1)</sup> COM(94) 94 final.

<sup>(2)</sup> COM(96) 173 final, 8 May 1996, 'Protecting the Community's financial interests — The fight against fraud: annual report 1995'.

<sup>(3)</sup> Buitenen, P. (van), *Blowing the whistle — One man's fight against fraud in the European Commission*, Politico's, London, 2000.

◀ resignation of the Santer Commission in March 1999.

Part of Santer's response to the parliamentary and media storm set off by the fraud allegations was to promise a new and more effective Commission structure to fight fraud. The new body was to be called the European Anti-Fraud Office (OLAF), and it was to enjoy a much greater level of independence from the Commission than UCLAF had done, thereby escaping some of the problems of the earlier anti-fraud mechanism. On 4 December 1998 a draft regulation to this effect was submitted by the Commission to the Council<sup>(1)</sup>. In the short term, however, this innovation did little to subdue the furore either in the European Parliament or among the press.

It would therefore take until the start of the new century, with a new Commission now in place, for the most far-reaching institutional response to the crisis of 1998-1999. This took the form of a series of reforms, piloted by Neil Kinnock, in the first years of the Prodi Commission<sup>(2)</sup>. While they undoubtedly standardised Commission management practices and clarified lines of responsibility, it is widely felt that they also led to an increase in bureaucratisation and stifled the possibilities of individual initiative<sup>(3)</sup>. The distance travelled from the freewheeling practices of the early Delors years, however, is indisputable. This transformation was not wholly attributable to the fight against fraud; there were other reasons behind the Commission's determination to improve its internal management. But the anti-fraud agenda, and the pressure over this issue exerted by the European Parliament, had clearly been a major vector for change.

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<sup>(1)</sup> COM(1998) 717 final, 1 December 1998, 'Proposal for a Council regulation (EC, Euratom) establishing a European Fraud Investigation Office'.

<sup>(2)</sup> See interviews with Neil Kinnock, 25 October 2016; and Horst Reichenbach, 8 June 2017. See also Chapter 1.3 'The cabinets'; and Chapter 3 'Major changes and colossal challenges: the directorates-general and staffing in the Commission'.

<sup>(3)</sup> See interviews with John Frederick Mogg, 17 January 2017; and Patricia Bugnot, 15 February 2017.

it permitted — especially towards economic and monetary union, but also the extra powers it granted the Parliament — were flanked by what both the Commission and the majority of MEPs regarded as serious design flaws. The main parliamentary groups thus joined the Commission President in calling for the flaws to be redressed by the next round of treaty change due in 1996<sup>(1)</sup>. The new co-decision process, furthermore, altered the power dynamics between the Parliament, the Council and the Commission, enabling much more direct contact between the former two without the Commission acting as intermediary. As noted above, the Commission's fears in this regard were not fully realised, but a subtle change in the balance of power had nonetheless occurred, making parliamentarians less inclined to regard the Commission as their ally in all circumstances<sup>(2)</sup>. And MEPs reacted with dismay to the popular backlash against the Maastricht Treaty that became apparent in the course of 1992, with the Danish rejection of the treaty, the French '*petit oui*' and difficulties experienced in the United Kingdom by John Major's government in securing House of Commons approval. Few blamed Delors or the Commission directly. But just as the spirits of parliamentarians had earlier been lifted by the ease of advance, so their mood darkened as resistance to European integration grew. What did not diminish, though, was the Parliament's appetite for greater power. Rather the reverse, indeed, as parliamentarians seized on outside criticism of the integration process as undemocratic to argue that the only possible remedy for the EC's perceived legitimacy deficit was to further increase the prerogatives and responsibilities of its one directly elected institution. The final stages of Delors's presidency were thus played out against a backdrop of a European Parliament that was anxious and testy about the seeming drop in popular support for 'Europe', but every bit

<sup>(1)</sup> '1991-92 session — Report of proceedings from 9 to 13 December 1991', *Annex to the Official Journal of the European Communities: Debates of the European Parliament*, No 3-412.

<sup>(2)</sup> See Chapter 8.2 'All change with qualified majority voting: relations with the Council' for details about this change.

as ambitious as before to increase its own powers. It would however be his successor, Jacques Santer, who would end up being most harmed by this simmering parliamentary discontent <sup>(1)</sup>.

Santer's first problem with the European Parliament was the manner in which he obtained his job. Many MEPs had hoped that the decision taken at Maastricht to make the Commission presidency and each European Parliament coterminous (i.e. each running for the same 5-year period) would create a real link in voters' minds between their choice in the ballot box and the person who emerged as Commission President. It was thus particularly galling for the Parliament that the manner in which Santer was chosen was not only messy and controversial (John Major having vetoed Jean-Luc Dehaene, who was the preferred candidate for the job), but also a compromise arrived at solely by the European Council members. The President of the European Parliament, Egon Klepsch, had reminded Europe's leaders as they gathered in Corfu to choose the new President that the Parliament would have a say in the process, and that any delay in their choice could trigger a serious crisis <sup>(2)</sup>. And yet Major's veto meant that the Corfu European Council broke up without a choice having been made, Santer's name emerging only from a subsequent emergency Council convened in Brussels a month later. Rather than the process having become more democratic and transparent, the choice of Delors's successor was thus a particularly egregious example of an intergovernmental compromise. As a result, the mood when the Parliament convened in July to vote on the new Commission President was angry and frustrated, and Santer's nomination was only grudgingly



European Parliament poster on the occasion of the fourth European elections in 1994.

passed <sup>(3)</sup>. The new Commission President was approved by 260 votes to 238, with 23 abstentions. It was an inauspicious start.

The Parliament's assertiveness continued when it came to the choice of Santer's colleagues, with MEPs going beyond the strict letter of the Maastricht Treaty to insist that all would-be members of the new Commission undergo individual parliamentary hearings <sup>(4)</sup>. These proved fairly onerous, with several nominees publicly criticised either for failing to take the hearings themselves sufficiently seriously or for lacking the qualities or attitudes that MEPs deemed necessary for the jobs that they had been

<sup>(1)</sup> Jim Cloos, Santer's head of cabinet, claims that Pascal Lamy warned him as he took up the job that the Parliament would topple the Commission. They had tried under Delors but he had been too strong: interview with Jim Cloos, 4 July 2016.

<sup>(2)</sup> 'Address by the President of the European Parliament, Dr Egon A. Klepsch, on the occasion of the meeting of the European Council in Corfu on Friday, 24 June 1994': [http://www.europarl.europa.eu/Summits/cor3\\_en.htm](http://www.europarl.europa.eu/Summits/cor3_en.htm)

<sup>(3)</sup> A selection of the speeches made can be viewed at [https://www.cvce.eu/en/recherche/unit-content/-/unit/02bb76df-d066-4c08-a58a-d4686a3e68ff/\\_d604d31a-0355-472a-96ea-6c36b8a17bd9/Resources](https://www.cvce.eu/en/recherche/unit-content/-/unit/02bb76df-d066-4c08-a58a-d4686a3e68ff/_d604d31a-0355-472a-96ea-6c36b8a17bd9/Resources)

<sup>(4)</sup> On the background to this see interviews with Klaus Hänsch, 30 June 2016; and Michel Vandebaele, 18 June 2017.

allocated. The Irish Commissioner, Pádraig Flynn, for instance, was subject to sharp criticism over sexist comments he was reported to have made in the course of the Irish presidential election campaign won by Mary Robinson. Such views, it was suggested, disqualified Flynn from that part of his social affairs portfolio which dealt with equal opportunities <sup>(1)</sup>. In the event, however, Santer was able to counter-attack well, first by presenting an ambitious and activist programme for his 5-year term, then by promising to treat MEPs as equals, and finally by taking personal responsibility for overseeing policy on equal opportunity, development issues and human rights <sup>(2)</sup>. This helped secure much more clear-cut parliamentary approval than many had expected: the new Commission team received the backing of 416 MEPs, with only 103 against and 59 abstentions. The incoming President's pledge to improve the Commission's financial management and to crack down on fraud would come back to haunt him, however. On management, the new President promised MEPs:

*'Let us be frank: this is an area in which I believe the Commission must make a special effort. Certainly, 80% of Community expenditure is implemented by the governments of the Member States. But this does not relieve us from meeting our responsibilities in respect of the budget. The European Parliament, as well as the Court of Auditors, is constantly reminding the Commission of this fact. My colleagues and I are determined to improve the Commission's budgetary and administrative culture. And I wish to stress here the importance of our constructive relations with the Court of Auditors and this House. When the criticism is justified, we shall take corrective action' <sup>(3)</sup>.*

Despite the unexpectedly strong parliamentary vote in favour of the members of his Commission, Santer still faced problems at parliamentary level. One indication of this would arrive with the renegotiation of the code of conduct that the Delors Commission had given the Parliament in 1990. This, all sides acknowledged, would now need to be adjusted to take account of the treaty changes brought about by Maastricht. But the suggested amendments put forward by the Parliament in December 1994 went far beyond a simple update. Instead, all of those who examined the proposed new text at Commission level concurred that the Parliament's draft amounted to an entirely new set of proposals that both substantially increased the Parliament's powers and rights and threatened those of the Commission. As one of the Commission's legal analyses put it: 'Whilst many of the demands taken individually seem rather anodyne, others would be a serious limitation of the independent role of the Commission. More seriously, taken collectively they would significantly affect the institutional balance and reduce the independent role of the Commission in the interinstitutional process to that of a go-between between Council and Parliament. These proposals would make all negotiations in the Council very difficult' <sup>(4)</sup>. Santer had, however, committed his institution to a new deal when making his investiture speech to the Parliament. The Commission was thus faced with an uphill battle to turn a totally unacceptable text into one they could live with. Quite how difficult this was can be seen from the Commission's internal discussion of the negotiations in February, when Commissioner after Commissioner lined up to criticise the text as it stood <sup>(5)</sup>. But in the end Marcelino Oreja, the Commissioner for Relations with the European Parliament, was able to extract a reworded agreement from his European Parliament counterparts that was deemed acceptable, and a new

<sup>(1)</sup> *Financial Times*, 12 January 1995.

<sup>(2)</sup> For Santer's programme speech, see '1994-95 session — Report of proceedings from 16 to 20 January 1995', *Annex to the Official Journal of the European Communities: Debates of the European Parliament*, No 4-456; for his subsequent pledges, see *Financial Times*, 19 January 1995.

<sup>(3)</sup> '1994-95 session — Report of proceedings from 16 to 20 January 1995', p. 18.

<sup>(4)</sup> HAEU, DORIE 746, 'Note from Ms O'Dwyer to Mr Eeckhout on the code of conduct', Brussels, 16 January 1995.

<sup>(5)</sup> HAEC, PV(95), Minutes No 1236, second part, meeting of 22 February 1995.

text was agreed upon in March <sup>(1)</sup>). The lengthy tussle only confirmed, however, that the Strasbourg–Brussels relationship would not be easy, and that the Parliament's quest for additional authority was unlikely to be tempered by any sense that it and the Commission had a fundamental alliance of interest <sup>(2)</sup>.

Confirmation of this unwelcome reality would be provided by the next serious clash between the Parliament and the Commission, namely that over bovine spongiform encephalopathy (BSE). The basic details of this affair are discussed elsewhere in this volume <sup>(3)</sup>, but what mattered in the context of relations between the Parliament and the Commission is that the former was fully prepared to condemn the Commission's actions and inactions over the affair in the most outspoken of terms. The final report, written by Manuel Medina Ortega and snappily entitled 'Report on alleged contraventions and maladministration in the implementation of Community law in relation to BSE, without prejudice to the jurisdiction of the Community and national courts', did not mince its words <sup>(4)</sup>:

'1. The work of the Committee of Inquiry has revealed that the Commission is guilty of serious errors and omissions. To all appearances, the Commissioners, particularly Mr MacSharry and Mr Steichen in the period 1990-1994 ... bear a clear political responsibility. The current Commissioner, Mr Fischler, must also take responsibility for blatant instances of negligence, above all the Commission

decision ... lifting the export ban on gelatin, tallow and semen and the misleading of the Committee of Inquiry on the issue of the legal basis for a ban on exports of meat-and-bone meal ...

2. Parliament cannot clear the Commission as an institution from responsibility for the errors committed by Commissioners no longer in office. Accordingly, the current Commission must be called on to assume its political responsibilities and take, within a suitable period, the requisite structural, political and staff-related decisions and measures arising out of the instances of negligence and errors noted by the committee.

3. The appropriate sanctions available to Parliament under the Treaty with a view to calling the Commission politically to account are a motion of no confidence, pursuant to Article 144 of the Treaty, or the initiation of proceedings for failure to act/a breach of the Treaty, pursuant to Article 175.

4. The Committee considers that measures must be taken in response to the BSE crisis and the serious failings on the part of the Commission and the United Kingdom, in such a way as to bring about tangible changes for the future. Measures which may bring about or lead to a change in approach of this kind are set out in section II. The Commission should assume its political responsibility and take an active part in the implementation of these measures within the next few months.

5. Finally, the Committee of Inquiry calls upon Parliament to be meticulous in exercising its power of scrutiny vis-à-vis the Commission and to pay particular attention to the way in which the Commission henceforth handles the BSE crisis and acts upon the recommendations in this report.'

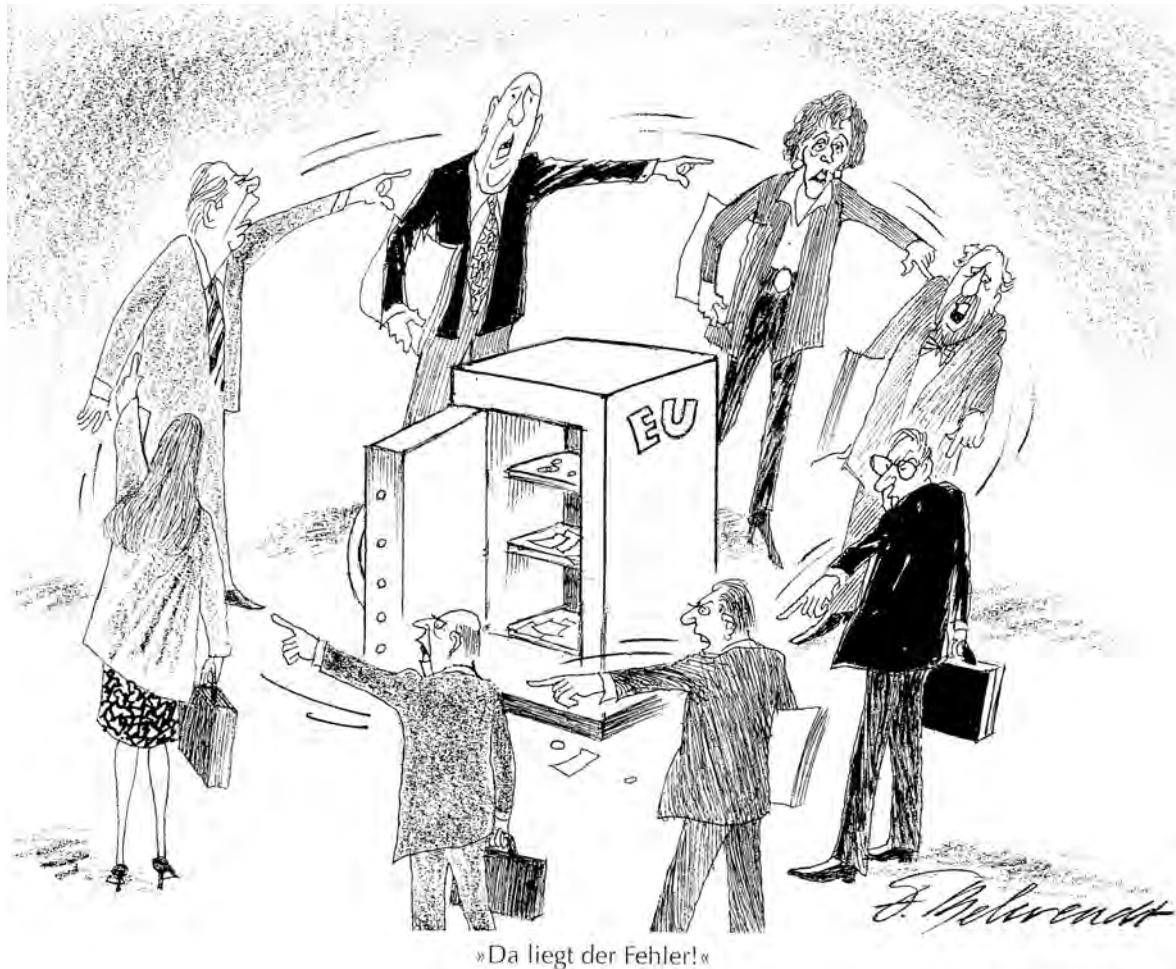
A vote of censure on the Commission's handling of the affair was duly taken in February 1997 but was comprehensively defeated, by 326 votes to 118 (with 15 abstentions). But a further warning shot about

<sup>(1)</sup> For the Commission's congratulations to Oreja for securing a new deal see HAEC, PV(95), Minutes No 1239, meeting of 14 March 1995; for the intermediate steps en route to this deal see HAEU, DORIE 746, SP(95) 729/2, 'Relations with the European Parliament — Note for information from Mr Oreja concerning his meeting with the Conference of Presidents of the European Parliament'.

<sup>(2)</sup> Hänsch acknowledges having been one of those MEPs who increasingly rejected the notion that the Parliament and the Commission were natural allies: interview with Klaus Hänsch, 30 June 2016.

<sup>(3)</sup> See Chapter 14.1 'The common agricultural policy'.

<sup>(4)</sup> European Parliament, A4-0020/97, 'Report on alleged contraventions or maladministration in the implementation of Community law in relation to BSE, without prejudice to the jurisdiction of the Community and national courts', 7 February 1997: [http://www.europarl.europa.eu/conferences/19981130/bse/a4002097\\_en.htm#AI](http://www.europarl.europa.eu/conferences/19981130/bse/a4002097_en.htm#AI)



In 1999, accused of mismanagement, the European Commission underwent a serious crisis.

'The error lies there!'

the Parliament's impatience with Commission mismanagement and negligence had been fired.

It is against this backdrop of stormy Strasbourg-Brussels relations that the crisis that would ultimately provoke the resignation of the Santer Commission needs to be understood<sup>(1)</sup>. The trigger for the trial of strength between the Parliament and the Commission was the coincidence of a critical Court

of Auditors report into the 1996 budget, issued in late 1998, and a mounting series of allegations surrounding fraud within the European Commission. Particularly damaging among the latter were the claims of the Commission whistle-blower Paul van Buitenen, since they combined accusations levelled against very senior members of the Commission, especially Édith Cresson, and the suggestion that the Commission as an institution had been slow and unwilling to act against those of its own accused of impropriety<sup>(2)</sup>.

<sup>(1)</sup> Liikanen is particularly insistent that the Parliament's behaviour needs to be seen as that of 'a young institution' with few of the restraints imposed by national political cultures: interview with Erkki Liikanen, 20 October 2017.

<sup>(2)</sup> Buitenen, P. (van), *Blowing the whistle — One man's fight against fraud in the European Commission*, Politico's, London, 2000.



The Committee of Independent Experts ('Committee of Wise Men') submitted its report on who was responsible for mismanagement by the Commission in March 1999.

From left to right: José María Gil-Robles, President of the European Parliament; Jacques Santer, President of the European Commission; and André Middelhoek, member of the Committee of Independent Experts.

The heady mixture of suggested financial mismanagement, loose internal discipline and alleged wrongdoing by senior figures proved to be exactly what the Parliament had been waiting for in terms of proving its strength against the Commission, and represented irresistible fare for the media too <sup>(1)</sup>. The outcome was a parliamentary and press storm that the Santer Commission struggled to control <sup>(2)</sup>. In December 1998 the President tried to impress the Parliament with his seriousness on the issue by promising to create a new anti-fraud body, the European Anti-Fraud Office, designed to be more independent and hence more effective. But it was too little too late to appease Strasbourg. On 17 December, after several days of stormy debate during which Santer had threatened to resign, the

Parliament refused to discharge the Community's budget and tabled a motion of censure against the Commission. This was narrowly defeated in early January, but the Parliament then decided to set up an independent committee of inquiry to investigate the various allegations. It would be in light of the conclusions of the latter in March 1999 that Santer and his colleagues would submit their collective resignation.

Their key failing, the report made clear, was that of refusing to take responsibility for malpractice. The vast majority of the allegations that had been swirling around about the Commissioners' own abuse of the system were dismissed as unfounded. Instead, the misconduct that was found tended to be concentrated at a rather lower level of the hierarchy, often involving the use of external agents. But what made it impossible for the Santer Commission to ride out the storm was the general criticism of lax management within the Commission, and the

<sup>(1)</sup> For a discussion of the interaction between the press and the Parliament over this issue see interview with Patricia Bugnot, 15 February 2017.

<sup>(2)</sup> Both Bugnot and Kinnock, in rather different ways, stress that Santer was always struggling to react to the crisis, rather than being able to impose his reading of it or his solution: see interviews with Patricia Bugnot, 15 February 2017; and Neil Kinnock, 25 October 2016.

more particular complaint that no one in the system had appeared to feel a personal sense of responsibility for mismanagement <sup>(1)</sup>. The single most damning phrase, added it is claimed in the last hours of the ‘wise men’s’ deliberations, was: ‘It is becoming difficult to find anyone [in the Commission] who has even the slightest sense of responsibility’ <sup>(2)</sup>. It was not fraud itself, in other words, that lay at the heart of the affair, but rather a hands-off management culture in which, even when irregularities were discovered, sanctions against those responsible were slow and half-hearted, and where the problem of abuse was regarded as being much less important than the fulfilment of the Commission’s wider objectives. This helps explain why Neil Kinnock would be asked to embark on an important set of reforms of how the Commission functioned in the first years of the 21st century <sup>(3)</sup>.

What is important to stress, however, is that the crisis that would ultimately force Santer to resign did not emerge suddenly and unexpectedly. Instead it constituted the culmination of an increasingly confrontational and ill-tempered relationship between the European Parliament and the Commission. Indeed the earlier passages of arms between the Parliament and the Commission, detailed above, influenced both the way in which the Commission viewed the row and the refusal of the Parliament to back down on this occasion. Furthermore, the underlying themes of the 1998-1999 row resonated strongly among MEPs who had witnessed the earlier BSE argument. Once again, it appeared, the Commission had both failed in its duty adequately to supervise the behaviour of some of its staff and had then compounded its initial errors by being obstructive and uncooperative with the

Parliament’s attempts to establish what had gone wrong. A second acquittal became much less likely as a result.

Viewed even more broadly, it is also important to emphasise how much the roots of the fall of the Santer Commission lay in the much longer-term push by the European Parliament to increase its own power and authority. For much of the period since 1958 the European Commission had supported this aim, sharing Strasbourg’s belief that it was only through such a development that the European system as a whole could gain democratic legitimacy. But throughout much of the 1990s it proved hard to back this crusade without endangering the Commission’s own power and authority. A much more adversarial dynamic had thus built up in Parliament–Commission relations, with MEPs ever more inclined to regard themselves as the protectors of the European public against alleged negligence or misuse of authority by the European Commission <sup>(4)</sup>. It was not without irony, however, that the main victim of this growing interinstitutional antagonism was not the Delors Commission, under which many of the core management problems had developed — largely it must be said because the Commission was being asked to do too much <sup>(5)</sup> — and that genuinely did exhibit some attitudes that could be regarded as power hungry, but instead the much less forceful Santer Commission that followed. Santer thus was as much a victim of a pattern of interinstitutional relations traceable back to the Delors period as he was of any failings that he and his own Commission exhibited <sup>(6)</sup>.

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<sup>(1)</sup> The full text of the report is available at [http://www.europarl.europa.eu/experts/report1\\_en.htm](http://www.europarl.europa.eu/experts/report1_en.htm)

<sup>(2)</sup> Priestley, J., *Six battles that shaped Europe’s Parliament*, John Harper Publishing, London, 2008, p. 194.

<sup>(3)</sup> For more details see Chapter 1.3 ‘The cabinets’; and Chapter 3 ‘Major changes and colossal challenges: the directorates-general and staffing in the Commission’.

<sup>(4)</sup> Interview with Klaus Hänsch, 30 June 2016.

<sup>(5)</sup> As much of this volume illustrates, the Delors years were a time during which the range of Commission activities expanded enormously. Management structures and techniques did not always keep pace with this relentless change.

<sup>(6)</sup> According to Cloos, Santer ruled out defending himself by pointing out that many of the failings that he was being accused of dated back to his predecessor: interview with Jim Cloos, 4 July 2016.