

## Breaking the deadlock on strengthening Parliament's right of inquiry

During the June I plenary session, the Council and the European Commission are expected to answer oral questions put by the European Parliament's Committee on Constitutional Affairs (AFCO) on the Parliament's proposal to repeal Decision 95/167/EC (which currently governs Parliament's right of inquiry) and adopt a new regulation to strengthen its investigative powers. Pointing out the Council's unwillingness to engage in political negotiations with Parliament on this file, the AFCO committee asks the reasons for this deadlock and questions the Council and the Commission on whether they would be willing to go back to the negotiating table.

### Background

The European Parliament exercises its oversight power over the EU's executive ([Article 14 of the Treaty on European Union](#)) through many [different tools](#), including its right of inquiry. Although Parliament can conduct inquiries through [different means](#), the possibility to create committees of inquiry ranks high among Parliament's oversight powers. Committees of inquiry are currently governed by [Article 226 of the Treaty on the Functioning of the European Union](#) (TFEU) and [Decision 95/167/EC](#), adopted before the entry into force of the Treaty of Lisbon. This decision is commonly [criticised](#), including by [Parliament itself](#), for regulating Parliament's investigative powers in a very restrictive way.

According to the current legal framework, a **majority in Parliament** may set up a **temporary committee of inquiry** at the request of one quarter of the Members of the European Parliament to investigate specific cases of 'alleged **contraventions or maladministration in the implementation of Union law**' either by EU institutions or bodies, or national authorities (although not by third countries' authorities). Committees of inquiry cannot investigate facts examined before a court 'while the case is still subject to legal proceedings' (*sub judice* rule). In order to collect evidence, committees of inquiry can invite witnesses, request documents from EU and national authorities, hold hearings with experts, and organise fact-finding visits. However, those investigative powers fall short of those attributed to inquiry committees in many [Member State parliaments](#), as the European Parliament's inquiry committees **do not have the power to summon witnesses**, and impose on them an obligation to appear before the committee and provide evidence. In addition, they **cannot formally require witnesses to testify under oath, nor impose sanctions on them** in cases of an unjustified refusal to appear or when they provide false statements. Similarly, their right to access documents is limited as national or EU institutions may object to the forwarding of documents to an inquiry committee, for reasons of secrecy or public or national security.

### European Parliament's proposal

Taking stock of the lessons learnt from the application of Decision 95/167/EC and aiming to strengthen its investigative powers following the Lisbon Treaty's entry into force, Parliament put forward a [proposal](#) to adopt a new regulation governing its right of inquiry in 2012 (rapporteur: David Martin, S&D, United Kingdom). Among the main novelties introduced by the proposal, there were: i) an **exception to the sub-judice rule** for parliamentary inquiries already in progress; ii) the possibility for inquiry committees to '**request**' (and not only 'invite') any **person residing in the EU to participate in a hearing**; iii) the possibility to '**summon**' a specific EU official or other EU servant to testify before inquiry committees; iv) the possibility to **request any relevant document** from the EU's institutions and bodies, Member States (unless contrary to the essential interests of its security, and subject to the provisions of national law) and natural and legal persons (without prejudice to their obligations arising from EU and national law); v) the obligation for Member States' authorities to impose **sanctions** under their national law for specific infringements of the regulation (namely, groundless refusal to provide documents or give evidence, giving false evidence and bribing witnesses); and vi) the possibility to **ask the national parliaments of Member States to**

**cooperate** in an investigation if the alleged contraventions or maladministration in the implementation of EU law possibly involved the responsibility of a Member State authority, to which end the EP may conclude inter-parliamentary agreements.

### Long and unsuccessful negotiations

According to Article 226 TFEU, as modified by the Treaty of Lisbon, the European Parliament has the right of initiative as regards the regulation governing its right of inquiry. However, the **regulation is to be adopted by Parliament** through a special legislative procedure in which it needs the **consent of the Council and the Commission**. Parliament has actively sought the consent of both institutions in lengthy negotiations since the adoption of its proposal in 2012, on the [understanding](#) that the consent procedure requires the institutions involved to work in good faith towards an agreement on a common text. However, such an agreement is still to be reached.

During the 2009-2014 parliamentary term, negotiations among the institutions had positive results in specific areas, including on the rules to guarantee confidentiality of information, the investigative tools attributed to inquiry committees and the power to request documents, as the Secretaries-General of the Council and the Commission [indicated](#) in a letter sent to Parliament's Secretary-General on 4 April 2014. However, both institutions signalled that there were 'legal and institutional concerns' that could make it difficult to reach an agreement on Parliament's proposal. As negotiations had come to a deadlock and with the end of the legislative term approaching, Parliament adopted a [legislative resolution](#) to prevent its 2012 proposal from lapsing.

During the 2014-2019 parliamentary term, Parliament sought to resume negotiations with the other institutions on the basis of its earlier legislative resolution. To this end, it appointed a new rapporteur (Ramón Jáuregui Atondo, S&D, Spain) who drew up three working documents seeking to respond to the Council's and the Commission's concerns, and prepared a **non-paper with new wording for its proposal** that was endorsed by the AFCO committee on **25 April 2018** and sent to the Commission and the Council on 3 May 2018. Although the non-paper was discussed by both the Commission and the Council, the Council [stated its opposition](#) to the main new elements in a letter sent to Parliament on 25 October 2018. On 18 April 2019, after exhausting all possibilities for negotiation and with the parliamentary term again coming to an end, Parliament adopted a [resolution](#) expressing its deepest disagreement with the Council's attitude towards Parliament's proposal, and inviting the Council and the Commission to resume negotiations with the newly elected Parliament.

During the present term, Parliament decided in favour of resuming negotiations with the Council and the Commission, and appointed a new rapporteur (Domènec Ruiz Devesa, S&D, Spain) to give new impetus to the process. The rapporteur presented a first [working document](#) to AFCO on **17 December 2020**, proposing to stimulate the political process by, inter alia: i) considering the creation of a tripartite working group to find a compromise between the Council, the Commission and Parliament on the file; ii) formally answering the Council's letter of 25 October 2018; iii) encouraging the creation of inquiry committees within Parliament to illustrate the weakness of their investigative powers; iv) maximising the political pressure on the Commission and the Council by establishing talks at political level or by linking the file to some other files in which the Council needs Parliament's action; v) proposing an own-initiative report on the implementation of the consent procedure when Parliament has the right of initiative, as is the case as regards the right of inquiry; and vi) addressing the topic in the Conference on the Future of Europe.

Seeking to give new impetus to the political process, the AFCO committee has put questions for oral answer in plenary (Rule 136) to both the Commission and the Council, asking them the reasons for the deadlock on the Parliament's proposal and seeking assurances that the two institutions will engage in political dialogue with the Parliament to reach an understanding that will allow the legislative procedure to be concluded.

Oral questions: [O-000029/2021](#) and [O-000030/2021](#). Committee responsible: AFCO; Rapporteur: Domènec Ruiz Devesa (S&D, Spain).

