Parliament's investigative powers
Committees of inquiry and special committees

SUMMARY
In the aftermath of the 'LuxLeaks' scandal relating to tax evasion by multinational companies through Luxembourg, Ireland, Belgium and the Netherlands, Parliament decided to set up a 'special committee' to look into unfair tax practices in the EU. 188 MEPs had originally requested a committee of inquiry be established, but the Conference of Presidents found that the legal conditions to set up a committee of inquiry would not be met in this case.

Parliament's right of inquiry is an important instrument for the exercise of its control functions. Parliament's investigative powers, however, fall short of the powers of committees of inquiry in national parliaments, which have quasi-judicial investigative tools at their disposal. Committees of inquiry are limited to examinations of alleged contraventions and maladministration in the implementation of EU law, thus excluding evidence-gathering about general subjects and inquiries into actions by third-country authorities. 'Special committees', on the other hand, can be set up for any parliamentary inquiry and have thus been used more often by Parliament. Although they are not equipped with formal powers, special committees conduct their inquiries using the same investigative mechanisms as committees of inquiry.

The Lisbon Treaty conferred on Parliament the power to propose and adopt a binding regulation on the inquiry rules. A proposal put forward by Parliament during the last parliamentary term met with opposition from both Council and Commission, which claimed that Parliament ought to extend its right of inquiry excessively. The Committee on Constitutional Affairs has appointed a rapporteur to continue the trilogue negotiations in a bid to obtain the consent of the Council and the Commission.

In this briefing:
- Parliament's control function
- Current framework for EP committees of inquiry
- Proposed change of provisions on EP’s right of inquiry
- Special committees
- Investigative powers of Member States’ national parliaments
- Main references
Parliament's control function

The traditional control functions of parliaments in a democracy aim in the first place at monitoring the activities of the executive. To this end, parliaments usually have investigative powers enabling them to inquire, independently of courts or other authorities, into an issue, or to gather information about more general matters to prepare future decisions. For the sake of effectiveness, parliaments delegate their control and investigative powers to specifically established committees, whose powers cannot go beyond the constitutionally defined competence of the parliament concerned.

Although parliamentary investigative powers often borrow tools from legal proceedings, they are aimed at facilitating political rather than legal control. Parliamentary inquiries are thus not quasi-judicial fact-finding proceedings, but rather are driven by political considerations, and seek to put an issue high on the political agenda. In this sense, the parliamentary control function is an important channel for citizens' concerns.

The European Parliament (EP) exercises its functions of political control (Article 14(1) TFEU) by means of instruments such as oral and written questions (Article 230 TFEU), the motion of censure of the Commission (Article 234 TFEU), and also the petition right (Article 227) and the possibility to lodge complaints with the Court of Justice of the EU. Like many national parliaments, Parliament has also been equipped with a right of inquiry as one of the most substantial control instruments at its disposal.

Parliament's investigative power was codified with the Maastricht Treaty. Before that, and since 1981, it was set out only in Parliament's Rules of Procedure. While Article 226 TFEU provides a legal basis for formal 'committees of inquiry', Parliament more often exercises it s investigative powers through 'special committees', regulated only in its Rules of Procedure. In both cases, Parliament's limited powers to enforce its investigative rights have increasingly triggered concerns over the effective exercise of its control function alongside its increased legislative prerogatives.

Current framework for EP committees of inquiry

The Lisbon Treaty (Article 226 TFEU) established a mandate for the EP to adopt, on its own legislative initiative and with the consent of Council and Commission, a regulation with detailed provisions governing the right of inquiry. Until such a regulation is adopted, the right of inquiry is exercised according to a 1995 inter-institutional agreement (Annex VIII to the EP's Rules of Procedure), and the EP's Rules of Procedure.

Conditions for establishment

Committees of inquiry can be established in cases of 'alleged contraventions or maladministration in the implementation of Union law'. 'Contraventions' in this sense mean violations of EU law, while 'maladministration' includes, inter alia, administrative irregularities, omissions, abuses of power, unfairness, malfunction or incompetence, discrimination, avoidable delays, refusal to provide information, and negligence.\(^1\) The right of inquiry cannot be used to examine general policy areas with a view to making legislative and other proposals, but needs to be related to concrete alleged contraventions or maladministration.

Furthermore, investigations exclusively into the actions of third countries' authorities are not covered by the right of inquiry since those are not subject to EU law. In such a case, Parliament often resorts to the establishment of special committees instead, whose scope is not limited to acts bound by EU law (see below).
To ensure separation of powers, cases pending before a court are excluded (sub judice rule). It is often difficult though to determine whether the cases before a committee and a court are identical. However, the fact that a case is before a national court does not exclude per se the possibility of an inquiry by the EP, as long as the committee of inquiry addresses the European and not merely national perspective of the case at hand. Conversely, investigations by other EU institutions and bodies, such as the European Ombudsman (Article 228 TFEU) and the Court of Auditors (Article 285 TFEU) do not prevent the EP from setting up or continuing an inquiry.

In contrast to the European Ombudsman (Article 228(1)1 TFEU), the parliamentary right of inquiry is not limited to maladministration by EU institutions, bodies and agencies. Reflecting the fact that EU law is primarily implemented by national authorities, Parliament has the right to investigate alleged maladministration by national authorities, as well as by natural and legal persons involved in EU law implementation. The Common Foreign and Security Policy domain is no longer excluded from the right of inquiry, as it was before the Lisbon Treaty.

A committee of inquiry may not be set up or re-established on matters that have been the subject of a committee of inquiry until 12 months have elapsed since the submission of the report of the previous committee (Article 2(5) 1995 IIA).

Procedure for establishment and composition
Under Rule 198, a committee of inquiry may be set up at the request of one quarter of the Members of the European Parliament (currently 187 of 751 MEPs). The proposal first needs to secure the backing of the Conference of Presidents of political groups, which cannot change the subject of the inquiry as proposed by the initiators, but must verify that the proposal meets the legal conditions provided for in Article 226 TFEU (‘alleged contraventions or maladministration in the implementation of Union law’). The proposal then needs to be supported by a majority in plenary, without the possibility for MEPs to amend the proposal. Accordingly, in contrast to some national parliaments, a minority in the EP cannot enforce the establishment of a committee of inquiry against the majority of Members. This was different before the entry into force of the Maastricht Treaty, where Parliament’s Rules of Procedure foresaw the automatic setting-up of a committee of inquiry if so requested by one quarter of Members, without a vote in plenary.

The Conference of Presidents proposes the number of Members on the committee and, following nominations from the political groups and the non-attached MEPs, its composition. This should reflect, as far as possible, the composition of Parliament (Rule 199). At least 40 MEPs can table amendments to the composition proposed by the Conference of Presidents, on which a secret vote is taken in plenary.

As in any other parliamentary committee, committees of inquiry appoint a chair and vice-chairs, and can appoint one or more rapporteurs.
Powers
In order to collect evidence, committees of inquiry can invite witnesses or receive their written submissions, request documents, hold hearings with experts and undertake fact-finding visits in Member States and in third countries. A committee of inquiry does not, however, have the power to subpoena individual named witnesses. Rather, upon its request, Member States and EU institutions and bodies should designate and authorise an official or servant to appear before the committee of inquiry (Article 3(3) IIA). In this context, in 1996 for instance, the British Agriculture Minister, Douglas Hogg, refused to appear before the committee examining the BSE crisis and instead sent a high-level official. Member States and EU institutions and bodies can also refuse to authorise such collaboration with the committee of inquiry (entirely, not just refuse to answer specific questions) on grounds of secrecy or public or national security according to EU and/or national law. In particular, persons invited to give evidence before an EP committee of inquiry may claim the rights they would enjoy if appearing as a witness before a court in their country of origin.4

As a general rule, hearings and testimony take place in public, unless requested otherwise by one quarter of the Members of the committee of inquiry, or by the EU or national authorities, or where secret information is considered. Witnesses and experts also have the right to request to make a statement in camera (Article 2(2) IIA). The information obtained by the committee of inquiry may not be made public if it contains material of a secret or confidential nature.

Parliament has no sanctions available against authorities and persons refusing to appear before the committee or refusing to give access to relevant documents. Such powers producing legal effects towards third parties are hardly conceivable in an agreement concluded among institutions. A binding regulation adopted on the basis of Article 226 TFEU could indeed foresee such powers vis-à-vis third parties. If however a Member State refuses to comply with its obligations to cooperate with an EP committee of inquiry (e.g. to designate an official to appear before the committee) according to the principle of sincere cooperation (Article 4(3) TEU), Parliament could ask the Commission to initiate infringement proceedings against that Member State (Article 258 TFEU). Against omissions of EU institutions and other EU bodies, Parliament could lodge a complaint with the Court of Justice (Article 265 TFEU). However, due to their long duration, judicial instruments are unsuited to asserting the powers of a committee of inquiry. Here the political pressure that Parliament can exercise could prove more efficient. In this sense, in 1997, the EP threatened the Commission with a motion of censure if it did not follow up on the recommendations of the BSE committee of inquiry in due time.

### Justiciability of the establishment of a committee of inquiry

It is questionable if a decision of Parliament to establish a committee of inquiry can be brought before the Court of Justice of the EU (CJEU) by means of an action for annulment (Article 263(1) TFEU). The CJEU held in 1986, in a case brought by the then Group of the European Right against a committee of inquiry into the rise of fascism and racism in Europe, that Parliament’s decision to establish such a committee has no legal effects vis-à-vis third parties but concerns only the internal organisation of Parliament’s work. The codification of the right of inquiry in the TFEU could however prompt a different approach, taking further into account the investigative powers conferred upon committees of inquiry.5
Committee report and follow up
Committees of inquiry conclude their work by submitting a report within no more than 12 months. This period can be extended twice for three months by a simple majority in plenary (Rule 198(4)). The report is presented in plenary, and Members of a committee of inquiry may also attach a minority opinion (Rule 56(3)) to the final committee report. The specific expertise on the matter in question gained by the committee Members during their investigation, and the fact that they might have had access to secret information inaccessible to the rest of MEPs, leads to the possibility to table amendments in plenary being excluded, unlike in the case of other (standing and special) committee reports. On the basis of the committee report, and normally a parallel motion for resolution, Parliament can adopt a resolution with recommendations to Member States and EU institutions and bodies. However, these recommendations are not binding, and their addressees 'shall draw therefrom the conclusions which they deem appropriate' (Article 4(3) IIA).

In a follow-up to its recommendations, Parliament can instruct one or several of the standing committees to monitor the actions taken as a result of the work of the committee of inquiry, and to ensure that the conclusions of the inquiry are acted upon in practice. In this respect, the Civil Liberties, the Foreign Affairs and the Human Rights committees have recently been instructed by Parliament to resume investigations into the CIA’s alleged transport and illegal detention of prisoners in EU Member States, in the light of the US Senate’s new revelations of the use of torture by the CIA. It should be noted however that this will be a follow-up to the work of a special committee (that of 2005 on CIA rendition flights) and not of a committee of inquiry.

Former committees of inquiry
Prior to their codification in the Maastricht Treaty, Parliament had set up ten committees of inquiry, with some of them being dedicated to fairly general policy issues. Since the codification of the right of inquiry in the Treaties, only three committees of inquiry have been established: on the alleged fraud in the Community Transit System (1995), the BSE crisis (1996), and the collapse of the Equitable Life Assurance Society (2005). The reason for this scarce use of committees of inquiry, in contrast to special committees (see below), is to a great extent the more limited scope of the right of inquiry according to Article 226 TFEU (concrete alleged contraventions or maladministration, in the implementation of Union law, by EU institutions and bodies or national authorities, but not by international or third-country authorities, etc.). Moreover, special committees have been perceived as less politically prejudicial than committees of inquiries, not least because of their name, and since they often examine a more general policy issue with a view to proposing future legislative measures, rather than focusing on a particular contravention. Moreover, the limited powers of the committees of inquiry to enforce their investigative rights deprive them of their theoretical advantage in comparison with special committees.

In this context, in its final report of 2007, the last committee of inquiry concluded that its powers were 'very limited and not in line with the political stature, needs and competences of the European Parliament'. The committee therefore called for a revision of the 1995 rules, demanding the power to summon witnesses and documents in close cooperation with Member States' authorities, which should be bound to enforce such a request and to cooperate closely throughout the inquiry.
**Proposed change of provisions on EP's right of inquiry**

Under the mandate of Article 226 TFEU, Parliament adopted a proposal elaborated in the Committee on Constitutional Affairs (rapporteur David Martin, S&D, United Kingdom) for a regulation on the right of inquiry, to replace the 1995 IIA. In contrast to that agreement, a regulation is binding in all Member States (Article 288 TFEU), which would allow Parliament to strengthen its investigative powers.

The main novelties introduced by the proposal are:

- Committees of inquiry would be able to 'request' (and not only 'invite') any person residing in the EU to participate in a hearing. The request will be forwarded to the national authorities of the Member State of residence of the witness, who will summon the individual to appear before the committee of inquiry.
- Witnesses may refuse to give evidence according to the national rules applicable to parliamentary committees of inquiry or similar bodies (and not according to national rules for the rights of witnesses before the courts).
- The committee of inquiry would be able to 'summon' a specific EU official or other servant to testify before it. If the EU institution or body to which the EU official belongs refuses to authorise his or her testimony, the official or authority responsible for the refusal must appear before the committee and explain the reasons.
- Member States must designate, upon the committee’s request, an official to participate in the inquiry. If a Member State refuses to designate and authorise an official to this end, a representative of the Member State's government would have to appear before the committee and explain the reasons.
- Infringements of the regulation, such as groundless refusal to provide requested documents, groundless refusal by individuals to appear before the committee, giving false evidence and the bribing of individuals, shall be subject to effective, proportionate and dissuasive sanctions under national law, which correspond to sanctions for similar infringements in relation to the work of committees of inquiry of national parliaments.
- Where alleged contraventions or maladministration in the implementation of EU law involve possible responsibility of a Member State authority, the committee of inquiry would be enabled to ask the parliament of that Member State to cooperate in the investigation, to which end the EP may conclude inter-parliamentary agreements with national parliaments.

With regard to this last point, some national parliaments have cast doubt over the power to impose obligations upon them through EU law. It should be noted however that the regulation on the EP's right of inquiry would need the consent of Council. It could be argued therefore that in this way national parliaments would have a say on the new rules, through their scrutiny of their Member State’s representative in the Council. Moreover, the European Commission expressed concerns over the proposed far-reaching investigative powers which could, in its opinion, turn the political tool of the parliamentary inquiry into a legal one.

The proposal was endorsed by Parliament in 2012, though without adopting a legislative resolution, with a view to achieving agreement with the Council and Commission. Due to deadlock in the negotiations and the approaching end of the parliamentary term, Parliament eventually adopted the legislative resolution in April 2014 and called on the Council and the Commission to resume negotiations with the newly elected Parliament, acknowledging the progress made in past negotiations between the three institutions.
The Council and the Commission have already signalled continuing objections to the draft regulation. As a consequence, Parliament’s Committee on Constitutional Affairs has appointed a rapporteur (Ramón Jáuregui Atondo, S&D, Spain) to give new impetus to the trilogue negotiations.

**Special committees**

Unlike committees of inquiry, Parliament has made extensive use of its right to set up special committees under Rule 197 of its Rules of Procedure.

'Investigative' special committees

Special (temporary) committees were included in Parliament's Rules of Procedure in 1981. There have been 16 such committees to date, the first one from 1983 on European Economic Recovery. Temporary committees normally focus on more general policy issues, such as human genetics (2001), budgetary means of an enlarged Union (2004 and 2010), climate change (2007), the extent and impact of the economic and financial crisis (2009), the post-2013 Multiannual Financial Framework (2010) or the special committee on organised crime, corruption and money laundering (CRIM, 2012). However, some temporary committees have had a more investigative character, resembling to a great extent the essence of committees of inquiry, while also addressing more general policy concerns and future developments. This was the case of the temporary committee on the follow-up of the BSE scandal (1997), on the communications interception system Echelon (2001), on the management of the foot and mouth epidemic (2002), on the safety at sea (Prestige oil tanker) investigation (2003) as well as that on the CIA rendition of terrorist suspects (2006).

**Differences with the committees of inquiry**

**Powers**

Unlike committees of inquiry, special committees are not established in the Treaties as a parliamentary control instrument. As a consequence, special (investigative) committees lack the formal powers of investigation conferred upon committees of inquiry. This does not mean however that Parliament cannot invite witnesses and have access to documents, but it needs to rely even more on the good will of Member State's governments and natural persons than in the case of committees of inquiry.

Within the framework of special committees, Parliament has also conducted fact-finding visits in Member States which proved to be helpful, whenever national authorities refused to cooperate with Parliament by sending officials to meetings in Brussels (for example Echelon). Such fact-finding visits included talks with representatives of national parliaments and national administrations, including heads of national intelligence services (as in the CIA flights case) as well as with national and regional ministers, but also with private stakeholders (such as farmers in the foot and mouth epidemic case). Furthermore, hearings have been organised to allow exchanges of views with EU officials and experts. Meetings are normally held in public, but some sessions have been held in camera when sensitive information was concerned.

Accordingly, the 'informal' investigative powers of special committees are in substance not more limited than in the case of committees of inquiry. In both cases, Parliament sees itself obliged to rely to a great extent on the good will of Member State's governments and private persons invited to give testimony. This would change if
Parliament were to be conferred binding powers of summons and access to documents, as it demanded in the proposed regulation on the right of inquiry.

**Scope**

Although they have limited formal powers, special committees can have a practically unlimited remit. In contrast to committees of inquiry, they can address any issue, including those unrelated to any alleged contravention or maladministration in the implementation of EU law. This led to the establishment of investigative special committees, instead of committees of inquiry, whenever third countries were involved (and the Common Foreign and Security Policy was concerned), for instance with Echelon and the CIA rendition flights. Moreover, the investigative powers conferred upon committees of inquiry are of no avail whenever the issue in question involves national security aspects covered by secrecy. In such a case, Parliament has opted for the establishment of a special committee.

The *sub judice* rule is also not explicitly applicable. However, a special committee may not be used to undermine the separation of powers in case of a parliamentary investigation.

**Procedure for establishment and functioning**

Unlike committees of inquiry, there is no minimum number of MEPs needed to request the setting-up of a special committee. In fact, under Rule 197, the initiator of a special committee is the Conference of Presidents itself. This means that the Conference of Presidents may at any time propose to the plenary the establishment of a special committee, with or without a request from MEPs. The Conference of Presidents' proposal would then need to secure a majority of the votes cast in plenary. The decision to set up a special committee needs also to include arrangements regarding its powers, composition and term of office. This decision is final and the powers of the committee cannot be increased or reduced later.

Special committees are established for a period of up to 12 months, but Parliament can extend this on its expiry, as was the case of the CRIM committee for instance. The Conference of Presidents proposes to the plenary the composition of the special committee to be established, reflecting, as far as possible, the composition of Parliament (Rule 199). The committee elects a chair and rapporteur(s) at its constituent meeting. A rapporteur can be appointed by the committee members to propose a work programme and/or to prepare a draft report. Like committees of inquiry, special committees prepare reports including recommendations for the adoption of legislation, the correct implementation of existing rules or any other measures.

The special committee report is voted in plenary, where, in contrast to committees of inquiry, amendments can be tabled.

**Experience with 'investigative' special committees**

Only one special committee' report has been rejected in plenary so far: that of the special committee on human genetics. The report did not manage to bridge the ideological differences of MEPs across the political groups in Parliament. In general, 'investigative' special committees are regarded as very effective for placing public concerns higher on the political agenda. They have proven particularly helpful where no inquiries were conducted by national parliaments, supposedly due to government pressure or other vested interests.7

However, the CIA rendition flights special committee, in particular, revealed the limited investigative powers of special committees (and also of committees of inquiry), when
many invited witnesses refused to give evidence to the committee. Among these were not only international personalities and those from third countries, like the former NATO Secretary-General and US Congressmen, but, notably, also the then Austrian and Polish Ministers of Foreign Affairs and the Danish Transport Minister. While Member States have been rather reluctant to comply with recommendations issued by special committees (for instance in Echelon), follow-up by the European Commission is seen as generally satisfactory.

**Investigative powers of Member States' national parliaments**

The great majority of EU Member States' national parliaments have the power to establish committees of inquiry or similar special committees. The exceptions are the parliaments of Malta, Slovakia and Sweden. The UK House of Commons does not establish ad hoc committees of inquiry, but the Members of the 'select committees' in charge of scrutiny of each government department can decide to inquire into any specific issue. In some Member States, there is a distinction between committees scrutinising the government and other ad hoc committees inquiring into a subject matter, in order to provide Members of the Parliament with information for their legislative work (e.g. Austria and Hungary).

In some national parliaments, any Member can request to set up a committee of inquiry (e.g. the Netherlands). In Portugal, each Member of Parliament can participate in only one request per legislative session for a committee of inquiry. In Estonia, the national government may also request parliament to set up a committee of inquiry. In general, for a decision to set up such a committee, a majority of the chamber is necessary, except in Greece, where two fifths of the total membership is needed. Only in Germany can a minority of Members (one quarter) enforce a request to establish a committee of inquiry against the majority in plenary. Notably, Hungarian committees of inquiry investigating the government or a government agency are chaired by a Member belonging to an opposition party.

National parliaments' committees of inquiry have quasi-judicial investigative powers applying the corresponding provisions of proceedings in the national criminal law. Often, committees of inquiry may request assistance from courts, prosecutors and administrative authorities during their investigations (e.g. Belgium, Germany, Italy, and Poland). In Slovenia, courts have to submit to the committee of inquiry those parts of their files related to the subject of inquiry.

Committees of inquiry have the power to summon witnesses and to request the police authorities to enforce the summons if a witness does not appear voluntarily. In case of unjustified refusal to give testimony before the committee, it can normally request a court to impose a fine or enforcement custody. An exception is Finland, where only the government is obliged to give information to a parliamentary committee of inquiry, so its sanctions are only of a political nature. In contrast, no obligation to appear and testify may be imposed on private persons. In the UK House of Commons, select committees are conferred the power 'to send for persons, papers and records', although this formal power is reportedly rarely used. In Poland, persons summoned may appoint a representative (legal counsel), which however does not release them from the obligation to appear before the committee and give testimony.

As a general rule, a refusal to appear before a committee of inquiry or to give it access to documents is sanctioned: in France, for example with imprisonment of up to two
years and a fine of up to €7 500; in Germany, with a fine of up to €10 000 or detention. False testimony is also punished under criminal law provisions: for instance in Latvia, with imprisonment of up to two years, community service, or a fine of up to 50 times the minimum monthly wage, and in Luxembourg with imprisonment of two months up to three years.

In several national parliaments, committees of inquiry are given access to secret documents, with the obligation to maintain confidential the information concerned (e.g. Austria, Bulgaria, Germany, and Romania).

**Main references**


**Endnotes**


2 See e.g. Article 44 (1) of the German Basic Law: ‘The Bundestag shall have the right, and on the motion of one quarter of its Members the duty, to establish an investigative committee, which shall take the requisite evidence at public hearings.’

3 In previous cases, between 17 (Community Transit System) and 22 (BSE crisis) Members.

4 See as to the rights of witnesses at a national parliamentary committee of inquiry, C. Syrier, The investigative function of the European Parliament: holding the EU executive to account by conducting investigations, 2013, p. 40.


7 The UK House of Commons for instance desisted from conducting an inquiry into the foot and mouth epidemic in the UK. Some MEPs argued that the reason was political pressure of the government.

8 Report on the alleged use of European countries by the CIA for the transportation and illegal detention of prisoners (A6-0020/2007, 30.1.2007), pp. 70-76.


10 UK House of Commons, Guide for witnesses giving written or oral evidence to a House of Commons select committee, 2014, p. 10.