
Parliament's committees of inquiry and special committees



IN-DEPTH ANALYSIS

EPRS | European Parliamentary Research Service

Author: Eva-Maria Poptcheva

Members' Research Service

June 2016 — PE 582.007

EN

This paper offers an overview of the legal framework and experiences with committees of inquiry and special committees at the European Parliament. It presents the differences and similarities between the two types of committees and draws a comparison with the powers conferred upon such committees in the national parliaments of the Member States. It also takes stock of the practices of the most recent committees of inquiry and special committees, and gives an insight into the controversies surrounding the negotiations concerning a regulation on Parliament's right of inquiry.

PE 582.007

ISBN 978-92-823-9160-0

doi:10.2861/907081

QA-01-16-451-EN-N

Original manuscript, in English, completed in June 2016.

(This publication builds on an earlier one, of [February 2015](#).)

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eprs@ep.europa.eu

<http://www.eprs.ep.parl.union.eu> (intranet)

<http://www.europarl.europa.eu/thinktank> (internet)

<http://epthinktank.eu> (blog)

EXECUTIVE SUMMARY

The traditional control functions of a parliament 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 into an issue, independently of courts or other authorities, 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 has recently made increasing use of its investigative instruments – special and inquiry committees. The TAXE Committee, established in the aftermath of the 'LuxLeaks' scandal to look into unfair tax practices in the EU, was followed by the TAXE 2 special committee on tax rulings. The EMIS committee of inquiry is looking into emission measurements in the automotive sector. The recently revealed 'Panama papers' prompted a new committee of inquiry on tax havens.

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 work 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 from Parliament during the last term failed, however, to obtain the necessary agreement from the Council and European Commission. Whilst Parliament is seeking to equip its power of inquiry with appropriate investigative instruments in order to be able to effectively exercise its control function, the Council and the Commission have expressed concerns that parliamentary inquiry might turn from a political tool into a quasi-judicial one. The Committee on Constitutional Affairs has appointed a rapporteur to resume negotiations.

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1. Parliament's control function

The traditional control functions of a parliament 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 into an issue, independently of courts or other authorities, 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 its 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.

2. Current rules on 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),¹ and the EP's Rules of Procedure.

2.1. 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.² The

¹ [Decision](#) of the European Parliament, the Council and the Commission of 19 April 1995 on the detailed provisions governing the exercise of the European Parliament's right of inquiry.

² European Ombudsman, [Annual report 1997](#), p. 22.

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. Moreover, a case before the CJEU would still not exclude setting up or continuing the work of a committee of inquiry, where the circumstances of the case are not identical.³ 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.

According to Article 226 TFEU and Article 2(3) IIA, a temporary committee of inquiry may not investigate matters at issue before a national or Community court of law until such time as the legal proceedings have been completed. This does not, however, prevent Parliament *per se* from establishing a committee of inquiry after judicial proceedings have been completed and the court in question has handed down a final ruling. Whilst the right of inquiry may not enter into contradiction with the principle of *res judicata* ('a matter already judged'), it cannot be excluded that a parliamentary inquiry is undertaken into facts that were not the object of the proceedings in question.

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).

2.2. Procedure for establishment and composition

Under Rule 198 of Parliament's Rules of Procedure,⁴ 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

³ J. Schoo, EU-Kommentar, J. Schwarze (ed.), 2012, Article 226 TFEU, para. 11. This was the case with the BSE scandal, with several cases pending before the Court of Justice and the General Court referring merely to the acts of the Council and the Commission dealing with the consequences, whilst Parliament's committee of inquiry addressed further circumstances relating also to the causes of the crisis.

⁴ [Rules of Procedure of the European Parliament](#), eighth parliamentary term.

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,⁵ 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 provided for 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 committee⁶ 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.

2.3. Powers

According to Article 3 of the IIA on the right of inquiry, a 'committee of inquiry shall carry out the inquiries necessary to verify alleged contraventions or maladministration in the implementation of Community law' under the conditions laid down in the Decision. In order to collect evidence, committees of inquiry can invite witnesses or receive their written submissions, request documents, and hold hearings with experts. 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 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.

In this context, a committee of inquiry can also only 'request' (any other) person to give evidence before it and only 'in so far as is necessary for the performance of its duties' (Article 3(8) IIA).

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.⁷

Similarly, the authorities of the Member States and the institutions or bodies of the European Communities shall provide a committee of inquiry upon its request or on

⁵ 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.'

⁶ In previous cases, between 17 (Community Transit System) and 22 (BSE crisis) Members.

⁷ Regarding the rights of witnesses at national parliamentary committees of inquiry, see C. Syrier, *The investigative function of the European Parliament: holding the EU executive to account by conducting investigations*, 2013, p. 40.

their own initiative, with the **documents** necessary for the performance of its duties, unless they are prevented from doing so by reasons of secrecy or public or national security arising out of national or EU rules (Article 3(4) IIA). Furthermore, EU institutions or bodies may not communicate to a committee of inquiry any documents originating in a Member State without first obtaining the consent of the Member State concerned (Article 3(6) IIA).

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 provide for 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). Regarding 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.

It should be noted that the 1995 Decision on the right of inquiry does not explicitly mention the possibility of a committee of inquiry undertaking **fact-finding visits** in Member States or in third countries. Both committees of inquiries and special committees have, however, undertaken such visits, which corresponds to standing parliamentary practice in these and in other EP committees, such as the Committee on Petitions (PETI) for instance.

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 CJEU⁸ 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.⁹

⁸ Order of the Court of 4 June 1986, *Group of the European Right v European Parliament*, [Case 78/85](#).

⁹ See for another view, J. Schoo, EU-Kommentar, op. cit., Article 226 TFEU, para. 23.

2.4. 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)).¹⁰ 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, according to the majority of experts,¹¹ to the possibility to table **amendments** in plenary being excluded, unlike in the case of other (standing and special) committee reports. Conversely, a debate can be, and normally is, held in plenary, and votes are taken on a motion for resolution, tabled by the committee of inquiry on the basis of its report. The resolution adopted by Parliament can contain 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 committee, the Foreign Affairs committee and the Human Rights subcommittee were last year 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.¹² 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.

2.5. 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, and up to the current term, only **three committees of inquiry** have been established: on the alleged fraud in the Community Transit System (1995),¹³ the BSE crisis (1996),¹⁴ and the collapse of the Equitable Life Assurance Society (2005).¹⁵ 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

¹⁰ In any case, and according to the principle of discontinuity, committees of inquiry cease to exist with the end of a parliamentary term (Article 2(4) of the 1995 Decision on the detailed provisions governing the exercise of the European Parliament's right of inquiry (Inter-institutional agreement).

¹¹ See for instance R. Corbett, F. Jacobs, and M. Shackleton, *The European Parliament*, 8th edition, 2011, p. 334.

¹² European Parliament resolution of 11 February 2015 on the US Senate report on the use of torture by the CIA ([2014/2997\(RSP\)](#)).

¹³ Temporary Committee of Inquiry into the [Community Transit System](#) (January 1996-March 1997).

¹⁴ Temporary Committee of inquiry into [BSE](#) (bovine spongiform encephalopathy) (September 1996-February 1997).

¹⁵ Temporary Committee of Inquiry into the Crisis of the [Equitable Life Assurance Society](#) (EQUI).

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.¹⁶ 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 2007,¹⁷ the committee of inquiry on the Equitable Life Assurance Society concluded that its powers were 'very limited and not in line with the political stature, needs and competences of the European Parliament'. It 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.

3. Towards a new legal framework for the EP's right of inquiry

3.1. The 2012 report

Under the mandate of Article 226 TFEU, in the last parliamentary term, 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 upon and directly applicable in all Member States (Article 288 TFEU), which would allow Parliament to strengthen its investigative powers.¹⁸ The main novelties introduced by the proposal are:

- A list of **investigative measures**: hear members of EU institutions and members of governments of Member States; obtain evidence from officials and other EU or Member States' servants as well as from any other individual residing in the Union; request documents and experts' reports, conduct on-the-spot investigations.
- Committees of inquiry would be able to '**request**' (and not only 'invite') any person residing in the EU to participate in a hearing.
- It 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 their testimony, the official or authority responsible for the refusal must appear before the committee and explain the reasons (comply or explain rule). The same would apply to Member States, if they refused to designate and authorise an official.
- Infringements of the regulation, such as groundless refusal to provide requested documents and groundless refusal by individuals to appear before the committee, shall be subject to **sanctions** under national law, corresponding to those for similar infringements in relation to the work of committees of inquiry of national parliaments.

¹⁶ C. Syrier, *The investigative function of the European Parliament*, op. cit., pp. 189-190.

¹⁷ Report of 4 June 2007 on the crisis of the Equitable Life Assurance Society ([2006/2199\(INI\)](#)).

¹⁸ European Parliament legislative resolution of 16 April 2014 on a proposal for a regulation of the European Parliament on the detailed provisions governing the exercise of the European Parliament's right of inquiry and repealing Decision 95/167/EC, Euratom, ECSC of the European Parliament, the Council and the Commission ([2009/2212\(INL\)](#)).

- 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 able to ask the **parliament of that Member State** to cooperate in the investigation, to which end the EP may conclude inter-parliamentary agreements.

With regard to this last point, some national parliaments have cast doubt over the power to impose obligations upon them through EU law.¹⁹ It should be noted however that the regulation on the EP's right of inquiry would need the consent of Council (qualified majority) and is, therefore, subject to scrutiny by national parliaments. Moreover, the European Commission expressed concerns over the proposed far-reaching investigative powers which could, in its opinion, turn the political tool into a legal one.

The proposal was endorsed by Parliament in 2012,²⁰ 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.

3.2. Remaining points of disagreement

The Council and the Commission have already signalled continuing objections to the draft regulation, leading particularly to the Council refusing, to date, even to start negotiations on this dossier.

The demands of the Council refer notably to:

- the automatic observance of the **sub judice** rule (an identical case under trial), not subject to the decision of the committee of inquiry;
- the need to include provisions guaranteeing **confidentiality** of information as well as the possibility for witnesses to request a hearing **in camera**;
- the need for the list of **investigative means** at the disposal of a committee of inquiry to be exhaustive and used only according to the principle of necessity;

The Council has furthermore expressed concerns regarding inter alia:

- the obligation for citizens and undertakings to provide **documents** to a committee of inquiry, enforceable by sanctions;
- the '**comply or explain**' rule, which, according to the Council, should be replaced by the possibility to explain in writing the refusal to grant authorisation to appear before a committee of inquiry; and
- the provision of **sanctions**, which, according to the Council, falls outside the scope of Article 226 TFEU.

Article 226 TFEU provides for a special legislative procedure for the adoption of a regulation on the right of inquiry, whereby Parliament has the legislative initiative and the proposal needs to obtain the consent of the Council and the Commission. The decision is adopted in the Council by qualified majority (Article 16(3) TEU).

¹⁹ See for instance [European Scrutiny Committee](#), House of Commons, 3 January 2013.

²⁰ Proposal adopted by the European Parliament on [23 May 2012](#) for a regulation of the European Parliament on the detailed provisions governing the exercise of the European Parliament's right of inquiry and repealing Decision 95/167/EC, Euratom, ECSC of the European Parliament, the Council and the Commission (2009/2212(INI)).

3.3. Current work at the Committee on Constitutional Affairs

In the current legislative term, Parliament's Committee on Constitutional Affairs (AFCO) has acted upon the mandate given by the legislative resolution of 16 April 2014, formally adopting the 2012 proposal,²¹ to resume negotiations with the Council and the Commission on the basis of the progress made in past negotiations at political level and during the informal contacts at technical level. To this end, the Committee appointed a rapporteur (Ramón Jáuregui Atondo, S&D, Spain) to give new impetus to the negotiations. The rapporteur, in consultation with the shadow rapporteurs, has already drawn up two working documents seeking to respond to the Council's and the Commission's concerns, while preserving the aspects that are most important for Parliament. The latter aspects relate in particular to the power to request documents, to summon officials and witnesses and to impose sanctions, as well as to the issue of confidentiality and classified information. To this end, a new negotiating mandate was issued by AFCO on 3 December 2015.

4. 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.

4.1. 'Investigative' special committees

Special (temporary) committees were included in Parliament's Rules of Procedure in 1981. Up to the current term, there have been 16 such committees, the first one from 1983 on European Economic Recovery. Temporary committees normally focus on more general policy issues, such as human genetics (2001),²² budgetary means of an enlarged Union (2004 and 2010),²³ climate change (2007),²⁴ the extent and impact of the economic and financial crisis (2009),²⁵ the post-2013 Multiannual Financial Framework (2010)²⁶ or the special committee on organised crime, corruption and money laundering (CRIM, 2012).²⁷

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),²⁸ on the communications interception system Echelon (2001),²⁹ on the management of the foot

²¹ European Parliament [legislative resolution of 16 April 2014](#), op. cit.

²² Temporary committee on [human genetics](#) and other new technologies of modern medicine.

²³ Temporary committee on [policy challenges and budgetary means of the enlarged Union 2007-2013](#).

²⁴ Temporary committee on [climate change](#) (CLIM).

²⁵ Special Committee on the [Financial, Economic and Social Crisis](#).

²⁶ Special Committee on [Policy Challenges and Budgetary Resources for a Sustainable European Union after 2013](#) (SURE).

²⁷ Special Committee on [Organised Crime, Corruption and Money Laundering](#) (CRIM).

²⁸ Temporary Committee instructed to monitor the action taken on the recommendations made concerning [BSE](#) (bovine spongiform encephalopathy).

²⁹ Temporary committee on the [ECHELON interception system](#).

and mouth epidemic (2002),³⁰ on the safety at sea (Prestige oil tanker) investigation (2003)³¹ as well as that on the CIA rendition of terrorist suspects (2006).³²

4.2. Differences with the committees of inquiry

4.2.1. 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 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 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.

On a [proposal](#) by the Conference of Presidents' working party on parliamentary reform, in 2009 the former 'temporary committees' were renamed 'special committees', to underline their special nature in comparison to standing committees.

4.2.2. 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.

³⁰ Temporary committee on [foot and mouth disease](#).

³¹ Temporary Committee on improving [safety at sea](#) (MARE).

³² Temporary Committee on the alleged [use of European countries by the CIA for the transport and illegal detention of prisoners](#) (TDIP).

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.

4.2.3. 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 with 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.

4.3. 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.³³

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 Austrian and Polish Ministers of Foreign Affairs and the Danish Transport Minister.³⁴ While Member States have been rather reluctant to comply with recommendations issued by special committees (for instance in the Echelon affair), follow-up by the European Commission is seen as more satisfactory.

Please see as to the differences and similarities between committees of inquiry and special committees Table 1 in the Annex.

³³ 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 from the government.

³⁴ [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.

5. Committees of inquiry and special committees in the current legislature

5.1. TAXE 1

5.1.1. Set-up

In the aftermath of the 'LuxLeaks' scandal relating to tax evasion by multinational companies operating in Luxembourg, Ireland, Belgium and the Netherlands, Parliament decided on 12 February 2015 to set up a special committee to look into unfair tax practices in the EU.³⁵ 188 MEPs had originally requested to establish a committee of inquiry, but the Conference of Presidents found, based on an opinion from Parliament's Legal Service, that the legal conditions to set up a committee of inquiry according to Article 226 TFEU (concrete alleged contraventions against EU law) were not met.

The committee was composed of 45 MEPs and was chaired by Alain Lamassoure (EPP, France). It was established for an initial term of six months, which was then extended until the end of November 2015.

5.1.2. Investigation

The TAXE committee³⁶ held exchanges of views notably with Commission President Jean-Claude Juncker, the Commissioner for Economic and Financial Affairs, Taxation and Customs, Pierre Moscovici, and the Commissioner for Competition, Margrethe Vestager. It also debated aggressive corporate tax planning³⁷ with Finance Ministers from Luxembourg, Spain, Italy, France and Germany. TAXE undertook also fact-finding visits to Belgium, the Netherlands, Luxembourg, Ireland, the United Kingdom and Switzerland, during which MEPs held discussions with members of parliament, representatives of finance ministries and tax administrations, academia, business, and civil society.

Various **multinational corporations** from different sectors were invited to explain their tax system before the Committee. After most of them first declined to appear before the Committee, eventually 11 of the 13 original invitees accepted the invitation. Parliament has indeed no sanctions at its disposal which might 'persuade' invitees to follow its requests. However, the refusal of MEPs to respond positively to requests to meet with interest representatives, particularly with regard to multinational companies, has proven to be a powerful leverage. Moreover, companies seem to be increasingly concerned with their good reputation, on which a refusal to appear before a parliamentary committee of inquiry could reflect badly.

With regard to **access to documents**, TAXE encountered serious difficulties in accessing documents of the Code of Conduct Group on Business Taxation.³⁸ At a request from TAXE to access the Commission's minutes from several meetings of the Code of Conduct Group, some Member States agreed to release them whilst others were opposed. Consequently, and after an agreement at political level reached between President Schulz and President Juncker, the Members of the Committee received the

³⁵ European Parliament decision of 12 February 2015 on setting up a special committee on tax rulings and other measures similar in nature or effect, its powers, numerical strength and term of office ([2015/2566\(RSO\)](#)).

³⁶ See the [website](#) of the TAXE committee.

³⁷ See C. Remeur, [Aggressive corporate tax planning under scrutiny](#), EPRS, November 2015.

³⁸ The [Code of Conduct Group](#) was established in 1998 by Member States to coordinate themselves and eliminate harmful individual tax practices constituting harmful tax competition.

requested minutes, to be consulted under conditions of confidentiality in a specifically designated room in Parliament's premises, whereby the pages referring to the Member States opposing the Committee's request were made illegible.

5.1.3. Report

The TAXE report (co-rapporteurs Elisa Ferreira (S&D, Portugal) and Michael Theurer (ALDE, Germany) was adopted in plenary on 25 November 2015.³⁹ It contains, amongst others, recommendations on enhanced cooperation and coordination by Member States on tax issues, including common definitions for tax terms and more transparency and accountability with regard to national tax rulings for companies likely to have an impact on other Member States. It also recommends country-by-country reporting by multinationals of profits taxes paid and subsidies received, a common consolidated corporate tax base (CCCTB), state aid rules, and protection of whistle-blowers.

Parliament called, in its resolution adopting the TAXE report, on the Council and the Commission 'to urgently consent to the pending proposal for a regulation of the European Parliament on the detailed provisions governing the exercise of Parliament's right of inquiry, in order to confer genuine investigative powers needed to exercise its parliamentary right of inquiry'.

5.1.4. Follow-up

On 28 January 2016, the European Commission proposed⁴⁰ to amend the DAC Directive (Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation) including many of the aspects contained in the report of the TAXE committee,⁴¹ although failing to refer expressly to the Committee's report.

5.2. TAXE 2

5.2.1. Set-up

The mandate of TAXE 1 ended on 30 November 2015. In order to address still unresolved issues, Parliament decided on 2 December 2015 to establish a TAXE 2 special committee⁴² to build on and complete the work of TAXE 1. TAXE 2 was first established for six months and its term was then extended for an additional two months, until 2 August 2016. TAXE 2 has the same structure as TAXE 1, and it is again chaired by Alain Lamassoure (EPP, France).

5.2.2. Mandate

The committee is looking into practices in the application of EU state aid and taxation law in relation to tax rulings (and other measures similar in nature or effect) issued by Member States, if such practice appears to be the act of a Member State or the Commission, and into harmful corporate tax regimes and practices at European and international level.

5.2.3. Investigation

The Committee has already **exchanged views** with Commissioner Pierre Moscovici and the Dutch Presidency of the Council, and heard representatives of Andorra, Guernsey, Isle of Man, Jersey, Liechtenstein and Monaco, as well as of multinational companies.

³⁹ European Parliament resolution of 25 November 2015 on tax rulings and other measures similar in nature or effect ([2015/2066\(INI\)](#)).

⁴⁰ [Proposal](#) for a Council Directive amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation, 28.1.2016, COM(2016) 25 final.

⁴¹ See C. Remeur, [Country-by-country reporting for multinational enterprise groups](#), EPRS, April 2016.

⁴² See the [website](#) of the TAXE 2 special committee.

Several officials of major European banks gave testimony to the Committee on the role of offshore tax havens in corporate tax planning.

Drawing on the experience of TAXE 1 with the **access to documents** of the Code of Conduct Group on Business Taxation, TAXE 2 again requested to consult particular minutes from the meetings of the Group. This time, Member States agreed to release to the Members on the Committee all requested minute meetings, to be consulted under conditions of confidentiality. It is the first time in the history of Parliament's practice of special and inquiry committees that Member States have fully responded to such a document request, something that is all the more significant in an area of exclusive Member States' competence such as the one relating to tax policies.

5.3. EMIS

In September 2015 test cycle manipulations at car manufacturer Volkswagen, whereby emissions from diesel vehicles tested lower than in real driving conditions, were revealed. At the request of 283 Members, Parliament set up on 17 December 2015 a Committee of Inquiry into emission measurements in the automotive sector (EMIS).⁴³ The Committee is composed of 45 members and is chaired by Kathleen Van Brempt (S&D, Belgium).

The EMIS Committee⁴⁴ is investigating the alleged failings of the European Commission regarding the review of test cycles measuring emissions, the enforcement of the ban on defeat devices⁴⁵ existing under EU law, as well as Member States' failure to oversee the enforcements of this ban and to establish effective penalties for manufacturers for infringements such as the falsification of test results. The Committee is also investigating whether the Commission and Member States had evidence of the use of 'defeat' mechanisms prior to the Notice of Violation issued by the US Environmental Protection Agency in September 2015.

To this end the Committee is organising several hearings to collect evidence from experts and witnesses, notably with the participation of the Joint Research Centre (JRC). The hearings started with the Joint Research Centre (JRC), whereby EMIS learned that the JRC had produced a report pointing to some problematic test results and communicated it to the Commission. Both the current Commissioner Elżbieta Bieńkowska and former Commissioner, Gunther Verheugen, are also invited to appear before EMIS. The Committee plans also to invite other relevant experts and witnesses, including representatives from Volkswagen and other car manufacturers, taking account of the limitations resulting from their involvement in judicial proceedings in several countries. Members of the Committee are drawing attention in this context to the difficulties encountered in inviting specific persons, in whose testimony they are interested, with current rules leaving it to the organisation or institution to designate a witness to appear before the Committee.

The Committee will issue an interim report within six months of starting its work and a final report within 12 months, when its mandate ends.

⁴³ European Parliament decision of 17 December 2015 on setting up a Committee of Inquiry into emission measurements in the automotive sector, its powers, numerical strength and term of office ([2015/3037\(RSO\)](#)).

⁴⁴ See the [website](#) of the EMIS committee.

⁴⁵ See R. Hotten, [Volkswagen: The scandal explained](#), BBC, 10 December 2015.

5.4. 'Panama papers'

After the leak at the beginning of April 2016 of documents from a law firm located in Panama, revealing information about offshore companies allegedly hiding funds and income ('Panama papers'),⁴⁶ Parliament's Conference of Presidents backed the setting up of an inquiry committee.⁴⁷ The mandate of the committee was determined on 2 June 2016 by the Conference of Presidents.⁴⁸ The Committee will investigate alleged contraventions and maladministration in the application of EU law in relation to money laundering, tax avoidance and tax evasion. The Committee's work will thus tie in with the work done previously by the TAXE 1 and TAXE 2 committees. The Committee will be composed of 65 members.

6. 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.⁴⁹ 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 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

⁴⁶ C. Remeur, ['Panama papers' in a nutshell](#), EPRS, April 2016.

⁴⁷ Press release ['EP inquiry committee into Panama Papers'](#), 14 April 2016.

⁴⁸ The text of the mandate can be found on [Parliament's website](#).

⁴⁹ See W. Lehmann, [Parliamentary committees of inquiry in national systems a comparative survey of EU member states](#), European Parliament Policy Department C, Citizens' rights and Constitutional Affairs, PE 462.427, European Parliament, Brussels, 2010. See also the answers provided to a 2011 survey by the European Centre for Parliamentary Research and Documentation (ECPRD).

unjustified refusal to give testimony before the committee, it can normally request a court to impose a fine or custodial sentence. 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.⁵⁰ 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).

⁵⁰ UK House of Commons, [Guide for witnesses giving written or oral evidence to a House of Commons select committee](#), 2014, p. 10.

7. Annex

Table 1 - Differences and similarities between committees of inquiry and special committees

	COMMITTEES OF INQUIRY	SPECIAL COMMITTEES
Legal base	1995 inter-institutional agreement and EP Rules of Procedure	EP Rules of Procedure
Material conditions	Alleged contraventions or maladministration in the implementation of Union law	Can address any issue
Investigation of actions of national authorities	Yes, when implementing EU law	Yes
Investigations into third-countries' authorities	No	Yes
Application of sub-judice rule	Yes	Yes
Initiator	At least one quarter of the MEPS (currently 187 of 751 MEPs)	Conference of Presidents of political groups
Set-up	Backing by Conference of Presidents Vote in plenary, simple majority	Simple majority in plenary
Duration	12 months, extendable twice for three months by a simple majority in plenary	12 months, extendable
Powers	Invite witnesses, but no power to subpoena individual named witnesses Access to documents, but refusal possible in case of secrecy No sanctions against authorities and persons refusing to appear before the committee	Informal investigative powers, in practice the same as in the case of a committee of inquiry (at least until a Regulation on the right of inquiry is adopted)
Amendments to report in plenary	No	Yes

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M. Kipke, *Die Untersuchungsausschüsse des Europäischen Parlaments*, ZParl 1989, 488.

The European Parliament has recently been making increasing use of its investigative instruments – special and inquiry committees. The TAXE Committee, established in the aftermath of the 'LuxLeaks' scandal to look into unfair tax practices in the EU, was followed by the TAXE 2 special committee on tax rulings. The EMIS committee of inquiry is looking into emission measurements in the automotive sector. The recently revealed 'Panama papers' prompted a new committee of inquiry on tax havens.

Parliament's right of inquiry is an important instrument for the exercise of its control functions. Its 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 work 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.

This is a publication of the
Members' Research Service

Directorate-General for Parliamentary Research Services, European Parliament



PE 582.007
ISBN 978-92-823-9160-0
doi:10.2861/907081

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