EXECUTIVE SUMMARY

Study for AFCO committee

European Parliament

The European Parliament's Right of Inquiry in context
A comparison of the national and European legal frameworks[1]

ABSTRACT

One of Parliament's main tools of political control vis-à-vis the EU executive is its capacity to establish Committees of inquiry. This possibility, now formally recognised in Article 226 TFEU, has existed since 1981 but it has been scarcely used by Parliament.

This study provides an analysis of Parliament's right of inquiry as it stands after the entry into force of the Lisbon Treaty, and examines how it has evolved since it was first introduced. It also compares Parliament's right of inquiry with the investigatory powers of other European Union institutions and bodies, and with the rules governing the right of inquiry of Member State parliaments. The study concludes with some proposals for reform.

Background

In accordance with Article 14 Treaty on European Union (TEU), Parliament is called to exercise political control over the EU executive power which, contrary to what is the norm at national level, is split within the EU, mostly among the European Commission, the Council of the EU, the European Central Bank, and agencies and bodies. To this end, it has several tools at its disposal. Those are varied in nature, and range *inter alia* from its capacity to ask questions to its possibility to adopt a motion of censure against the Commission. One of those tools is also to set up Committees of inquiry.

It has had this capacity since 1981, although this right was only formally recognised to it in the Treaty of Maastricht (1992). The details of its functioning are further defined in an Inter-institutional agreement concluded by Parliament, the Council and the European Commission in 1995. Although the Lisbon Treaty (2009) provided for the possibility to adopt a fully binding and directly applicable regulation to replace the Inter-institutional agreement (Article 226 Treaty on the Functioning of the European Union (TFEU)), and although Parliament made a proposal to this end in 2012, an agreement is yet to be found among Parliament, the Commission and the Council.

[1] Full study in English: http://www.europarl.europa.eu/RegData/etudes/STUD/2020/648708/IPOL_STU(2020)648708_EN.pdf

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Aim and Methodology

Against this background, thiss analyses Parliament's investigatory powers with a view to making suggestions as to the form a reform could, and should arguably, take.

To this end, it examines:

- How Parliament's right of inquiry has evolved over time;
- How Parliament has made use of such right and what practice has revealed in terms of strengths and weaknesses;
- What the proposal for a regulation made in 2012 entails, and what the points of tension among the different institutions have been;
- To what extent Special committees complement the role and tasks of Committees of inquiry and what their practice can teach in the process of reform of the rules governing Committees of inquiry;
- The investigatory powers vested with other parliamentary Committees as well as EU institutions and bodies. This serves to identify strengths and good practices as well as weaknesses to inform the current reform discussions.
- The practice within Member States Parliaments; i.e. *inter alia* whether and how they may set up Committees of inquiry, what the scope of their action is, what prerogatives have been conferred upon them.

Main findings

On the basis of this analysis, this Study finds that:

- **Only very few Committees of inquiry have been set up to date** by Parliament (5 since 1992). Several **explanations** may account for this: their **scope is limited** to cases of 'alleged contraventions or maladministration in the implementation of Union law' (Article 226 TFEU); the **rules governing their set-up** which require an initiative of one quarter of Parliament's members and a vote of a majority in plenary. Further to this, **previous Committees have faced difficulties** in gaining access to the information they needed to conduct their inquiry, and in hearing the witnesses they had called to testify so that this may have limited the attractiveness of this tool of political control. This is all the more so as **Special committees**, whose remit is broader and whose set-up is easier, **exist in parallel** and have *de facto* similar investigatory powers as Committees of inquiry proper.
- Beyond this, it remains that **Committees of inquiry are a powerful tool with heavy political weight**; this may also explain why MEPs have not created many of them.
- **Reform discussions should urgently be concluded** because the rules currently contained in the Inter-institutional agreement must be updated and upgraded with a view to bringing them in line with the legal framework in place, and to providing remedy to (some of) the shortcomings that have arisen in the course of previous inquiries. This would for instance allow to reduce the possibility for EU and national authority to deny access to relevant information on grounds of confidentiality and secrecy, whilst also defining a framework for the adequate treatment of confidential information. Also, the rules governing the conduct of hearings of EU and national representatives and authorities should be reinforced, whilst sanctions for a failure to abide by a request of a Committee should remain of political nature. The adoption of a regulation would furthermore finally provide for rules enforceable on ordinary citizens and undertakings (the rules currently entailed in the Inter-institutional agreement are only binding on its signatories, i.e. Parliament, the Council and the Commission).

Recommendations

Further to this, this Study concludes with the following **Recommendations**:

1. The threshold required to set up a Committee of inquiry should be lowered to one third of the members with no vote in plenary but no change in the scope of the Committees' tasks should be introduced, i.e. it should remain limited to alleged cases of contraventions or maladministration in the implementation of Union Law.

2. Committees of inquiry should remain *ad hoc* initiatives, i.e. no permanent Committee of inquiry should be established.

3. Sanctions for a failure to appear before a Committee or to provide documents should remain political. A duty to comply or explain orally and in public should be imposed on EU and national authorities and institutions.

4. The scope of the possibility to deny appearance on ground of secrecy should be reduced and the safeguards in the use of this ground to refuse cooperation, and in the treatment of confidential information increased.

5. The European Commission should support a Committee of inquiry generally, and where Member States do not respond appropriately.

6. Cooperation with national parliaments should be enhanced.

7. The possibility to conduct fact-finding visits should be formalised.

8. A procedure for the follow-up of the recommendations made Committees of inquiry should be specifically designed.

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