

The European Parliament's Right of Inquiry in context

A comparison of the national and
European legal frameworks



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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.

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AUTHORS

Diane FROMAGE, Maastricht University (The Netherlands)

ADMINISTRATOR RESPONSIBLE

Eeva PAVY

EDITORIAL ASSISTANT

Fabienne VAN DER ELST

LINGUISTIC VERSIONS

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ABOUT THE EDITOR

Policy departments provide in-house and external expertise to support EP committees and other parliamentary bodies in shaping legislation and exercising democratic scrutiny over EU internal policies.

To contact the Policy Department or to subscribe for updates, please write to:

Policy Department for Citizens' Rights and Constitutional Affairs

European Parliament

B-1047 Brussels

Email: poldep-citizens@europarl.europa.eu

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LIST OF ABBREVIATIONS

BSE	Bovine Spongiform Encephalopathy
EC	European Community
EEC	European Economic Community
EPPO	European Public Prosecutor's Office
EU	European Union
IIA	Inter-institutional Agreement
OLAF	European Anti-Fraud Office
RoP	Rules of Procedure
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union

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EXECUTIVE SUMMARY

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.

Aim and Methodology

Against this background, this study 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 authorities 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.

1. INTRODUCTION

Several European Union (EU) institutions have been attributed investigatory powers which they may exercise in the performance of their administrative or political control (i.e. accountability) functions. This is notably the case of the European Commission acting in the field of EU Competition law, of the European Ombudsman when examining an alleged case of maladministration by Union institutions and bodies, of the European Anti-Fraud Office (OLAF) or of the recently established European Public Prosecutor's Office (EPPO). Also, the European Parliament (Parliament) has the capacity to conduct investigations.

Parliament can make use of its investigatory powers under three circumstances: by setting up a temporary Committee of inquiry, by establishing a temporary Special committee, and in the ordinary performance of the duties of its Standing committees. As is further explicated in the present study, the investigations it conducts in those contexts have different goals: they can contribute to enhancing the EU's executive accountability, or serve other purposes, such as the exercise of Parliament's legislative function.¹

Parliament is the institution in charge of representing European citizens directly;² together with national parliaments, it has been explicitly tasked with guaranteeing democracy within the Union since the entry into force of the Lisbon Treaty. To this end, it is involved in the EU's legislative process, and it scrutinizes the actions of the other EU executive institutions and bodies with a view to guaranteeing political accountability.³ The Treaties have attributed several instruments to it in order for it to fulfil this duty of (political) control vis-à-vis the European Commission, but also vis-à-vis the Council of the EU, the European Council, the European Central Bank, and agencies and bodies. Contrary to what is the norm at national level, the EU executive power is indeed split among a variety of institutions. These tools are varied in their form and strength and they range from Parliament's role in the designation of the European Commission, to its possibility to ask questions and to conduct inquiries, with its most powerful tool being its right to adopt a motion of censure against the whole European Commission.

It should, however, be reminded that the EU's institutional system is one of a special kind which resembles the parliamentary systems existing at national level, whilst still presenting unique features owing to the EU's historical developments, to the division of functions among the different institutions and, more generally, to its character as a supranational organisation. Indeed, its capacity to control the actions of the Council are limited, despite its exercising executive functions. The European political sphere is also still significantly different from the national ones since there are no large pan-European political parties; instead, there are some political groups bringing together several national parties existing within the EU. Consequently, alliances among groups to form a majority tend to fluctuate. Additionally, whereas Parliament is now strongly involved in the nomination procedure of the Commissioners, the composition of the Commission is still primarily determined by the Member States who designate their commissioner-candidates on the basis of the political dynamics existing at the national level, and not on the basis of the composition of Parliament. In other words, the distinction between a parliamentary majority supporting the government (i.e. the Commission in the European case) and an opposition does not exist as such at the EU level. Finally, the EU remains a supranational

¹ This distinction between 'accountability investigations' and 'non-accountability investigations' was introduced by Syrier, C.N., *The investigative function of the European parliament: holding the EU executive to account by conducting investigations*, Wolf Legal publishing, Oisterwijk, 2013, p. 10.

² Article 10 Treaty on the European Union (TEU).

³ See for a summary of Parliament's powers: E. Pavy, Fact Sheet on the European Union, 'The European Parliament: Powers', European Parliament, 2020, available at: https://www.europarl.europa.eu/ftu/pdf/en/FTU_1.3.2.pdf.

organisation which exercises the powers that have been conferred upon it in due observance of the principle of subsidiarity.

It is against this background that this study analyses Parliament's investigatory powers and their potential with a view to making some suggestions as to the form a reform of Parliament's right of inquiry could take. This is particularly needed at this point in time as a new legislative term has just begun (May 2019).

Indeed, Parliament's right to set up a Committee of inquiry is one of the most visible tools at its disposal to exercise its functions of political control as prescribed in Article 14 Treaty on European Union (TEU). It started to use Committees of inquiry to this end soon after the introduction of the direct elections to Parliament (1979) in 1981, although this right was only recognised to it in the Treaties with the adoption of the Maastricht Treaty – which also coincided with the establishment of the European Political Union and the creation of EU citizenship. After tumultuous negotiations among Parliament, the Council and the Commission, an interinstitutional agreement setting out the modalities of the exercise of this right could be adopted in 1995. This agreement is still in force to date despite the fact that the Lisbon Treaty (2009) provided the legal basis for the adoption of a regulation, which is 'binding in its entirety and directly applicable in all Member States'.⁴ Discussions on the reform of Parliament's right of inquiry have been on-going since 2011 with a view to adapting the rules in force to the current legal framework while also seeking to remedy the shortcomings that have become apparent in the course of the inquiries conducted thus far.

With the objective to examine Parliament's investigative capacities and to compare them to those attributed to other EU and national institutions and bodies, this study first examines how Parliament's right of inquiry has evolved over time, and what the current legal framework is (Chapter 2). In this context, it also considers the complementary role played by special committees. It then turns to analysing the investigatory powers which have been vested with its Committee on petitions (PETI Committee), while also considering investigations conducted by its other Standing committees. Other EU institutions and bodies are examined subsequently in Chapter 3. A comparative study of the situation in Member States parliaments follows in Chapter 4. Some proposals for reform are formulated next (Chapter 5), and the final section concludes (Chapter 6).

⁴ Article 288 Treaty on the Functioning of the European Union (TFEU).

2. THE EUROPEAN PARLIAMENT'S RIGHT OF INQUIRY TO DATE

2.1. Historical evolution: From a recognition in Parliament's Rules of procedure to a Treaty provision

2.1.1. The original framework governing Parliament's right of inquiry

The introduction of Parliament's right of inquiry coincided with the first direct elections to Parliament. Indeed, this change invited the then Parliamentary Assembly to assert itself as a stronger and more powerful institution with inquiry powers similar to those of national parliaments.⁵ The weak legal basis supporting such right – Article 137 EEC Treaty establishing Parliament's functions of control – did not, however, allow it to develop a strong power of inquiry. Instead, the Assembly used its capacity to adopt its own Rules of procedure (RoP)⁶ to establish its right of inquiry.⁷ The scope of the inquiries that could be set up on that basis was broad, as they concerned 'specific matters' that had to 'fall within the scope of activities of the Community'. Furthermore, the establishment of a committee of inquiry was relatively straightforward and only required the support of a quarter of MEPs as a motion of one quarter of them was needed and as no prior referral to a committee and no approval in plenary were necessary.⁸ Once established, the committees of inquiry followed the rules applicable to all other parliamentary committees, i.e. no specific (investigatory) prerogatives were attributed to them.⁹

Although the Single European Act did not 'constitutionalise' Parliament's right of inquiry in the Treaties, it did generally reinforce its powers, thereby inviting to a re-interpretation of its powers in this new context.¹⁰ In 1986, the rules governing the committees of inquiry were amended, leading to the reduction of the scope of the possible inquiries which could from then on only concern 'alleged contraventions of Community law or incidents of maladministration with respect to Community responsibilities'.¹¹ The meaning of the term 'contravention' is clearly identifiable as meaning violation of EU (then Community) law. By contrast, 'maladministration' required further definition. The European Ombudsman provided the following explanation: 'Clearly there is maladministration if a Community institution or body fails to act in accordance with the Treaties and with the Community acts that are binding upon it, or if it fails to observe the rules and principles of law established by the Court of Justice and Court of First Instance'. Examples of such cases of maladministration, he found, included administrative irregularities, administrative omissions, abuses of power, unfairness, malfunction or

⁵ Görlitz, N., 'Le droit d'enquête du Parlement européen', *Cahiers de droit européen*, 2013, Vol. 49, No. 3, pp. 783-819, p. 787.

⁶ Enshrined in Article 142 EEC Treaty.

⁷ Article 95 RoP (1981 version).

⁸ The Court of Justice additionally found in 1986 that the decision to set up a Committee of inquiry could not be the object of an action for annulment under what is currently article 263-1 TFEU. It considered that such decision 'could not produce legal effects vis-à-vis third parties' and that '[t]he committees of inquiry which may be set up on a motion under Rule 95 of the Parliament's Rules of Procedure have only investigative powers and, consequently, the acts relating to their setting up concern only the internal organization of the work of the European Parliament.' Order of the Court of 4 June 1986, *Group of the European Right v European Parliament*. It has been argued that this situation may change after the regulation defining Parliament's power of inquiry has been adopted. Poptcheva, E.-M., 'Parliament's committees of inquiry and special committees', European Parliamentary Research Service in-depth analysis, PE 582.007, 2016, p. 6.

⁹ See for a list of the tools available to them: Schoo, J., 'Kontrollen bei der Durchführung von Gemeinschaftsrecht aus der Sicht des Europäischen Parlaments' in Schwarze, J. (Ed.), *Gesetzgebung in der Europäischen Gemeinschaft*, Nomos, Baden-Baden, 1985, pp. 97-119, p. 113.

¹⁰ This was the trigger for the 'Prout report' (A2-100/86) whose aim it was to reinforce and consolidate Parliament's investigatory powers.

¹¹ Rule 91-3 RoP (1986 version).

incompetence, discrimination, avoidable delays, refusal to provide information, negligence etc.¹² This definition was later endorsed by Parliament,¹³ and accepted by the Commission as well.¹⁴

Following the adoption of these amendments, the maximum number of MEPs who could be part of that committee was now defined (15), as was the maximum duration of its existence (nine months). The submission of a report would conclude its mission, and it could not submit any motion for a resolution to Parliament. Ten such committees were constituted between 1981-1992, whilst six initiatives to do so failed.¹⁵ Furthermore, it was also possible to establish Temporary committees (today's Special committees), whose scope of action was not pre-defined, for a maximum of 12 months.¹⁶ It appears, however, that at that time, in practice even the committees which were formally considered as 'committees of inquiry' examined matters other than the cases of infringement or maladministration.¹⁷

2.1.2. Towards a Treaty recognition in the Treaty of Maastricht

Parliament's right of inquiry was 'constitutionalised' in the Treaty of Maastricht.¹⁸ Article 138c of the Treaty establishing the European Community (TEC) foresaw that '[i]n the course of its duties, the European Parliament may, at the request of a quarter of its members, set up a temporary Committee of inquiry to investigate, without prejudice to the powers conferred by this Treaty on other institutions or bodies, alleged contraventions or maladministration in the implementation of Community law, except where the alleged facts are being examined before a court and while the case is still subject to legal proceedings. The temporary Committee of Inquiry shall cease to exist on the submission of its report. The detailed provisions governing the exercise of the right of inquiry shall be determined by common accord of the European Parliament, the Council and the Commission.' The scope of action of those committees – now enshrined in primary law – remained formally identical, although it was slightly better (though more narrowly) defined as it now encompassed 'alleged contraventions or maladministration in the implementation of Community law'. The scope of the 'Community responsibilities' that had been included in the RoP until then was indeed arguably broader than the 'implementation of Community law'.¹⁹ In practice however, they were simply conceived of as bodies capable of investigating a particular question of public interest. Setting up a Committee of inquiry would allow Parliament not only to place the item on the agenda, but also to strengthen its own control and monitoring capacities.²⁰ The Committees' action were also constrained by the fact that no inquiry could be conducted if the facts were pending before court and as long as they were subject to legal proceedings (*sub judice* principle).²¹ Furthermore, this right was to be exercised 'without prejudice to

¹² European Ombudsman, Annual report for 1995, C4-0257/96, 1996, pp. 9-10.

¹³ European Parliament, Resolution of 16 July 1998.

¹⁴ European Ombudsman, Annual report for 1999, 2000, p. 19.

¹⁵ Görlitz, N., 'Le droit d'enquête du Parlement européen', *Cahiers de droit européen*, 2013, Vol. 49, No. 3, pp. 783-819, p. 791.

¹⁶ Rule 91-2 RoP. Please see Section XX below on the temporary committees (designated today as special committees).

¹⁷ Görlitz, N., 'Le droit d'enquête du Parlement européen', *Cahiers de droit européen*, 2013, Vol. 49, No. 3, pp. 783-819, p. 792.

¹⁸ Art. 138C EC Treaty.

¹⁹ Also in this sense: European Parliament, Working Document on Parliamentary committees of inquiry (Musso Report), 1992, p. 3.

²⁰ Görlitz, N., 'Le droit d'enquête du Parlement européen', *Cahiers de droit européen*, 2013, Vol. 49, No. 3, pp. 783-819, p. 794.

²¹ Article 138C EC Treaty. This restriction only applies if the specific issues under examination are identical. The BSE committee of inquiry could for instance conduct its inquiry while other procedures were pending before the Court of Justice. Beckedorf, I., 'Das Untersuchungsrecht des Europäischen Parlaments', *Europarecht*, 1997, Vol. 32, No. 3, pp. 237-260, pp. 239-241. Furthermore, a Committee of inquiry could be set up to examine matters which were not subject to judicial control after the judicial procedures have been concluded. Poptcheva, E.-M., 'Parliament's committees of inquiry and special committees', European Parliamentary Research Service in-depth analysis, PE 582.007, 2016, p. 4.

the powers conferred by this Treaty on other institutions or bodies', meaning that other institutions and bodies could also examine the matter at stake. Note also that primary law specifically referred to these committees as *temporary* committees, and that it foresaw that the details of the exercise of the right of inquiry 'be determined by common accord of the European Parliament, the Council and the Commission', thereby specifically calling for the adoption of an interinstitutional agreement (IIA) among the three institutions.

Negotiations between Parliament, Council and Commission on the common framework for the operation of the Committees of inquiry started soon after the entry into force of the Treaty of Maastricht but the ensuing IIA could only be adopted in 1995.²² Major points of disagreement between Parliament and the Council regarded Parliament's ability to require EU and national officials to testify, and Parliament's access to confidential documents.²³ The text which was finally adopted was in fact a compromise which failed to meet Parliament's expectations fully, although the possibility to set up genuine Committees of inquiry was praised.²⁴

The IIA, adopted in the form of a Decision of Parliament, the Council and the Commission,²⁵ and which is still the main text regulating Parliament's investigatory powers, is a legal act binding on the three signatory institutions which defines the procedural rules, as well as the instruments at Parliament's disposal; these are examined in detail in the next section (2.1.3) on the current legal framework. Between the moment of the adoption of the IIA and the entry into force of the Lisbon Treaty, only three committees of inquiry could be set up between 1995 and 2006.²⁶

The introduction of Parliament's right of inquiry in primary law also triggered a reform of Parliament's rules of procedure. Those rules became more detailed as they provided for instance for the possibility to handle confidential information in a specific manner.²⁷ Also, the Chairman, Vice-Chairman of another member of the Committee could be asked to conduct specific tasks too.²⁸ Most importantly, the President had to 'take all the necessary steps to ensure that the conclusions of the inquiry are acted upon in practice'.²⁹

²² 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 (95/167/EC, Euratom, ECSC).

²³ Monar, J., 'Interinstitutional agreements: the phenomenon and its new dynamics after Maastricht', *Common Market Law Review*, 1994, vol. 31, No. 4, pp. 693-719, pp. 707 and 716f.

²⁴ It was noted that '[t]here [were] still a number of limitations and reservations (e.g. the possibility, under certain conditions, of advocating secrecy or refusing to give evidence; the fact that matters at issue before a national or Community court of law may not be investigated; time limits, etc.), which restrict the scope of the European Parliament's action on the basis of national sovereignty or the separation of powers. However, the establishment of genuine committees of inquiry undoubtedly represents a significant step towards recognition of the European Parliament as the European citizens' legitimate democratic representative body (acting independently of national authorities and, if necessary, against them) and of parliamentary powers which increasingly comply with the parliamentary traditions of the free democratic world'. European Parliament, Working document of the Committee on the Rules of Procedure, the Verification of Credentials and Immunities on the detailed provisions governing the exercise of the European Parliament's right of inquiry (rapporteur: A. Langer), PE 211.818, 3/1/1995, p. 2.

²⁵ 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.

²⁶ An additional attempt to establish one such committee on the French nuclear trial failed in 1995. Corbett, R., Jacobs, F. and Neville, D., *The European Parliament*, John Harper Publishing, London, 2016, p. 388. See the list of the Committees of inquiry established so far in the Annex.

²⁷ Rule 136-7 RoP (1993 version).

²⁸ Rule 136-6 RoP.

²⁹ Rule 136-8 RoP.

2.1.3. The current legal framework under the Treaty of Lisbon

Parliament's right of inquiry is presently recognised in Article 226 of the Treaty on the Functioning of the EU (TFEU),³⁰ which grants it the right to 'set up a temporary Committee of Inquiry to investigate, without prejudice to the powers conferred by the Treaties on other institutions or bodies, alleged contraventions or maladministration in the implementation of Union law, except where the alleged facts are being examined before a court and while the case is still subject to legal proceedings'.

This provision largely reproduces the content of Article 193 TEC. It reiterates the impossibility to set up a committee of inquiry while judicial proceedings are on-going (*sub judice* principle), the co-existence of these powers with other control powers granted upon other EU institutions and bodies, and the temporary character of such committees of inquiry. This notwithstanding, this provision has brought about two changes, in terms of the scope of Parliament's right of inquiry, and in terms of the instrument in which the rules defining its functioning in practice are to be included.

Parliament may now conduct inquiries related to cases of 'alleged contraventions or maladministration of Union law' whereas its actions in this domain had been previously limited to 'Community law' (emphasis added). Consequently, Committees of inquiry could only examine matters related to the former First Pillar, which barred them from considering matters related to the EU's Common Foreign and Security Policy, for example. By contrast, a Committee of inquiry may now investigate any issue covered by Union law.

As to the instrument in which Parliament, Council and Commission are called to define the specific rules governing the right of inquiry, it has undergone an important upgrade. Previously, the Treaty of Maastricht, and the Treaty of Amsterdam after it, made reference to a decision between Parliament, the Council and the Commission: this served as the basis for the 1995 IIA mentioned in the previous section. By contrast, the Lisbon Treaty established that '[t]he detailed provisions governing the exercise of the right of inquiry shall be determined by the European Parliament, acting by means of regulations on its own initiative in accordance with a special legislative procedure, after obtaining the consent of the Council and the Commission'. Accordingly, it is for Parliament – and it alone – to propose the adoption of a regulation which will become fully binding and directly applicable in all Member States once in force.³¹ Beyond the fact that the regulations may extend the substance of Parliament's rights as regards for instance its capacity to summon witnesses, the mere fact that these rights will be enshrined in a directly applicable regulation binding on all individuals and institutions alike will bring about an important upgrade for Parliament. Indeed, so far, the 1995 IIA is only binding on its signatories, i.e. the Parliament, the Council and the Commission. As such, it cannot be enforced against individuals or undertakings.

The 1995 IIA remains in force pending the adoption of a new regulation. It sheds important light on the meaning of article 193 TEC (now Article 226 TFEU) as it clarifies what sort of cases of contravention or maladministration in the implementation of Community law a Committee of inquiry may consider, i.e. those 'which would appear to be the act of an institution or a body of the European Communities, of a public administrative body of a Member State or of persons empowered by Community law to implement that law'.³²

³⁰ Note also that Parliament has been attributed specific investigatory powers in the framework of the Single Supervisory Mechanism. Article 20-9 Council Regulation (UE) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions.

³¹ Article 288(2) TFEU.

³² Article 2(1) IIA.

In addition to this, the IIA contains general rules applicable to Committees of inquiry, in particular in relation to secrecy and the procedure in place to ensure the respect of the *sub judice* principle, as well as the details of the rules governing its capacity to conduct inquiries, and the follow up which is to be made of the conclusion of a Committee. It also entails some procedural clauses, regarding the IIA's revision and publicity.

As to the first type of rules, i.e. the general ones, they seek to strike a balance between publicity and confidentiality/secrecy. The decision to set up a Committee of inquiry is to be advertised widely by means of its publication in the EC's (today: EU's) Official Journal³³ and '[h]earings and testimony shall take place in public' unless one quarter of the Committee's members, Community [Union] or national authorities requests it, or unless secret information is considered.³⁴ The protection of secret information is guaranteed by several other provisions: for instance, the members of the Committee are strictly barred from sharing it even after their duties have ceased,³⁵ and it may constitute a ground on which basis a Member State or an EU institution may refuse to testify as detailed below.

To ensure that the *sub judice* principle is upheld, the Commission may inform the Committee that the alleged contravention of EU law it intends to examine is subject to prelitigation procedures within two months of the publication of the decision to set up the Committee, and 'in such cases the temporary committee of inquiry shall take all necessary steps to enable the Commission fully to exercise the powers conferred upon it by the Treaties'.³⁶

As mentioned above, Committees of inquiry are temporary as per Article 226 TFEU. Therefore, they shall cease to exist either on the date defined when they were set up, or after twelve months or at the end of Parliament's legislative term. Their term may be extended twice for a three-month period.³⁷ Safeguards have also been put in place to avoid artificial prolongations in the form of the set-up of a new Committee on identical matters since any such new Committee may only be set up or re-established after a period of at least twelve months after the submission of the concluding report has passed, and new facts must have emerged for this to be possible.³⁸

In addition to these general rules governing the establishment and the functioning of the Committees of inquiry, the IIA also defines their investigative powers. There are mainly two ways in which a Committee of inquiry may obtain information: it may call witnesses to testify before it, and it may request access to relevant information.

The first of these powers has arguably proven to be the most problematic one in Parliament's use of its right of inquiry so far. Indeed, the wording of the IIA does not appear to set any obligation on Members of EU institutions or bodies or members of national governments to appear before it as it establishes that '[t]he temporary committee of inquiry may *invite* an institution or a body of the European Communities or the Government of a Member State to designate one of its members to take part in the proceedings' (emphasis added).³⁹ It has been argued however that this provision, taken in

³³ Article 2(1) IIA.

³⁴ Article 2(2) IIA.

³⁵ Article 2(2) IIA.

³⁶ Article 2(3) IIA.

³⁷ Article 2(4) IIA.

³⁸ Article 2(3) IIA. Note that this possibility was used once in the past in the case of the Committee of inquiry into the rise of fascism and racism in Europe (see list of the Committees in the Annex). This happened before the adoption of the IIA though.

³⁹ Article 3(2) IIA. Contra Höpfner, S., *Parlamentarische Kontrolle in Deutschland und in der Europäischen Union. Das Recht der parlamentarischen Untersuchungsausschüsse des Deutschen Bundestages und des Europäischen Parlaments*, Verlag Dr. Kovac, Hamburg, 2004, pp. 202-203.

conjunction with Article 230 TFEU on the duty of the Commission to answer to Parliament's or MEPs' questions and the duty of sincere cooperation among institutions lead to the existence of an obligation on Commissioners to appear before a Committee of inquiry that would request it.⁴⁰ In fact, it has been observed in the context of the BSE Committee of inquiry that 'the close institutional ties between the Commission and the Parliament made non-attendance by a Commissioner virtually unthinkable'.⁴¹ On the other hand, Member State ministers have sometimes refused to appear and sent a high-ranked official on their behalf.⁴² As is clear from the wording of the IIA, Committees of inquiry may only 'invite' them so ministers are under no obligation to appear. Yet, by refusing the invitation, they give grounds for political blame and may raise suspicion as it happened in the framework of the BSE inquiry.⁴³

National and EU institutions have to send an official or servant when requested to do so by the Committee of inquiry in a 'reasoned request',⁴⁴ but this person may be of their choosing, i.e. the Committee may not designate the person it wants to hear contrary to what the European Ombudsman may do in the framework of her investigations.⁴⁵ Yet there is an important exception to EU and Member States institutions' duty in this framework: they may rely on 'grounds of secrecy or public or national security [...] by virtue of national or Community [today: EU] legislation' to refuse to designate an official or servant.⁴⁶ Such a blanket right to refuse to testify altogether may seem too extreme considering that other safeguards are in place to avoid secret or security-sensitive data being disclosed.⁴⁷ Witnesses may indeed refuse to answer specific questions, they may also benefit from legal assistance when answering the questions and thereby ensure that they do not reveal sensitive information. Hearings can additionally be organised *in camera*, and the information obtained during the inquiry may not be made public if it contains secret or confidential data.⁴⁸ Even the final report prepared by the Committee must not be published.⁴⁹ Moreover, this all-encompassing possibility to refuse to testify is all the more likely to impair the proper operation of the inquiries as it is coupled with the possibility for Member State to invoke provisions of national legislation that would 'prohibit[] officials from appearing or documents from being forwarded'.⁵⁰

The authorities of the Member States and of the Union are under the obligation to provide the Committee with 'the documents necessary for the performance of its duties [upon the Committee's request or on its own initiative], save where prevented from doing so by reasons of secrecy or public or national security arising out of national or Community legislation or rules'.⁵¹ Besides this rule, additional safeguards have been established to absolutely prevent the disclosure of information without the consent of national or European authorities since European authorities may only supply the Committee

⁴⁰ Syrier, C.N., *The investigative function of the European parliament: holding the EU executive to account by conducting investigations*, Wolf Legal publishing, Oisterwijk, 2013, p. 36.

⁴¹ Shackelton, M., 'The European Parliament's New Committees of Inquiry: Tiger or Paper Tiger?', *Journal of Common Market Studies*, Vol. 26, No. 1, pp. 115-130, p. 119.

⁴² This is notably what the British Agriculture Minister did when asked to appear before the BSE Committee of inquiry.

⁴³ Shackelton, M., 'The European Parliament's New Committees of Inquiry: Tiger or Paper Tiger?', *Journal of Common Market Studies*, Vol. 26, No. 1, pp. 115-130, p. 120.

⁴⁴ Article 3(3) IIA.

⁴⁵ See below Section 3.2.1.

⁴⁶ Article 3(3) IIA.

⁴⁷ Syrier, C.N., *The investigative function of the European parliament: holding the EU executive to account by conducting investigations*, Wolf Legal publishing, Oisterwijk, 2013, p. 38 listing the arguments subsequently included.

⁴⁸ Article 4(1) IIA.

⁴⁹ Article 4(2) IIA.

⁵⁰ Article 3(5) IIA.

⁵¹ Article 3(4) IIA.

with documents stemming from the Member States after having informed them and obtained their consent.⁵²

Another category of potential witnesses is 'any other person'⁵³ but in that case, the Committee has no constraining power whatsoever contrary to what is the rule vis-à-vis the Council and the Commission in accordance with their status as co-signatories of the IIA. Parliament could, for instance, launch an action for a failure to act under article 265 TFEU were an EU authority to refuse to provide it with certain documents, or were they to not designate any official or servant to appear before it. It would nevertheless need to ask the European Commission to launch infringement proceedings against a Member State since the Commission alone can start such type of procedure as per article 258 TFEU. In fact, Parliament tried to avail itself of this possibility while conducting its inquiry on the BSE crisis but the Commission refused to bring an action against the United Kingdom on the ground that a minister had refused to appear before the Committee because it considered that it was bound to fail.⁵⁴

All these provisions to protect Member States and Union institutions arguably contrast with the limited effect of the outcome of the inquiry foreseen by the IIA: it merely calls to 'draw therefrom [i.e. from the recommendations contained in the report] the conclusions which they deem appropriate'.⁵⁵ Parliament may naturally also exercise political pressure on these actors though.

These rules set out in the IIA are furthermore complemented by the relevant provisions contained in Parliament's RoP. Article 208 RoP recalls that the request to set up a Committee of inquiry may stem from one quarter of the component members of Parliament, and that neither the proposed object, nor the proposed length may be submitted to amendments.⁵⁶ The object shall be precisely defined and justified,⁵⁷ as is only logical considering for instance that the scope of the inquiry will serve as the basis to determine which document may be requested or which hearing may be organised. Furthermore, Committees of inquiry should examine precise cases and not general issues which requires their object to be well-defined. The Conference of Presidents then approves the proposal (it checks its conformity with the applicable rules) and a majority in Parliament decides on its set-up and the number of its members.⁵⁸ Besides defining practical rules relating to the practical operation of the Committees of inquiry (in terms of, for instance, linguistic regime, membership or relationship to other committees), the RoP also foresees the possibility for a Committee of inquiry to ask the parliament of a Member State to cooperate when suspicions exist that an authority or body in said Member State may have incurred in contravention or maladministration of EU law.⁵⁹ In this regard, it is interesting to note that even if the provision specifically dedicated to Committees of inquiry does not mention the possibility to conduct fact-finding visits, actually, Committees of inquiry have regularly resorted to fact-finding visits.

The findings and recommendations of a Committee of inquiry are included in a report – to which dissenting opinions may be appended. The report is presented and voted in plenary, but no amendments are permitted. There exists no specific procedure for the follow up of these conclusions, although some initiatives were already taken to this end in the past as detailed below.

⁵² Article 3(6) IIA.

⁵³ Article 3(8) IIA.

⁵⁴ Syrier, C.N., *The investigative function of the European parliament: holding the EU executive to account by conducting investigations*, Wolf Legal publishing, Oisterwijk, 2013, p. 47

⁵⁵ Article 4(3) IIA.

⁵⁶ Rule 208(1) RoP.

⁵⁷ Rule 208(4) RoP.

⁵⁸ Rule 208(4) RoP.

⁵⁹ Rule 208(10) RoP.

2.1.4. On-going reform discussions

As mentioned above, discussions on a reform of the rules governing the functioning of the Committees of inquiry have been on-going since 2011.⁶⁰ the IIA needs to be updated and adapted to the current legal framework, and especially the new standing of Parliament within the EU, and the Lisbon Treaty provided a legal basis for the adoption of a new legally binding and directly applicable instrument, e.g. a regulation adopted on a proposal by the Parliament with the Council's and the Commission's consent. This change matters because whereas an IIA could have hardly granted it with wide-reaching binding investigatory tools, a regulation – which is directly applicable in all Member States – could attribute stronger powers to it (provided that the competences required have been attributed to the EU in application of the principle of conferral).

In its report, MEP David Martin – who examined this question as of 2011 – proposed that Committees of inquiry be vested with very far-reaching investigative powers including the possibility to conduct on-the-spot investigations, hear witnesses, request documents, hear officials or other servants of national or EU institutions and request experts' reports.⁶¹ It went as far as to include sanctions – to be imposed by Member States – for refusing to provide it with the information it requested, for refusing to obey summons and to attend for examination as a witness, for giving false testimony or for bribing witnesses. Therefore, not only was this proposal very detailed compared to the IIA; it would have totally changed Parliament's capacity to conduct inquiries.

Parliament's legislative proposal was definitively approved in 2014, and the newly elected Parliament (2014–2019) was set to resume the negotiations with the Commission and the Council. These negotiations have, however, proven difficult as they have triggered the resurgence of the differences of views on that basis between on the one hand, Parliament, and, on the other, the Council and the Commission, i.e. the primary actors Parliament is called to control. This special legislative procedure is indeed perhaps bound to be difficult for this very reason.

Negotiations have been on-going ever since, and Parliament adopted a resolution on the status of the negotiations on 18 April 2019.⁶² It was particularly critical of the Council's and the Commission's attitudes during the negotiations, and went as far as considering an action before the Court of Justice on the ground of a breach of the duty of sincere cooperation. It called the new Parliament (elected in May 2019) to pursue the negotiations. The Committee on Constitutional Affairs (AFCO), the lead committee, has nominated Domènec Ruiz Devesa as Rapporteur of this legislative file.

⁶⁰ European Parliament, Report 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(INI)), Rapporteur: David Martin, 14/10/2011.

⁶¹ Section 3 of the proposed Regulation included in the Report.

⁶² European Parliament, Resolution of 18 April 2019 on the negotiations with the Council and Commission on the legislative proposal for a regulation on the European Parliament's right of inquiry (2019/2536(RSP)).

2.2. Special committees

Next to the Committees of inquiry proper, Parliament may also establish Special committees. Special committees (previously known as Temporary committees)⁶³ are temporary committees set up for a maximum of twelve months (this term may be prolonged) which 'help to provide the European Parliament with the information and proposals it needs to take political action'.⁶⁴ They are not recognised in primary law, but have been included in Parliament's RoP since 1981 instead.⁶⁵ Since they are not specifically designed to contribute to Parliament's accountability function, no specific investigative powers have been conferred upon them. They may nevertheless still invite witnesses who participate on the basis of their own will, or request documents. Previous Special committees have conducted fact-finding visits too, in whose occasion they exchanged with a range of private stakeholders and national administrations and institutions.⁶⁶ In fact, they have been found to have similar powers as Committees of inquiry in practice since '[i]n 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'.⁶⁷

On a general level, the rules governing Special committees are much less detailed than those applicable to Committees of inquiry. No quorum is defined for the request to set up such types of committees which are created in accordance with the following procedure: '[o]n a proposal from the Conference of Presidents, Parliament may, at any time, set up special committees, the responsibilities, numerical strength and term of office of which shall be defined at the same time as the decision to set them up is taken.' Special committees, like Committees of inquiry, present their conclusions in a report voted in plenary on which proposals for amendments may be made (no such possibility exists with regard to the reports adopted by the Committees of inquiry on the ground that the other Members of Parliament who did not participate in its investigation do not have the necessary information to propose amendments).

It should be added that no specific mention of the *sub judice* rule is made with respect to Special committees. The principle of separation of powers does nevertheless command that no Special committee investigates an issue which is simultaneously under judicial review.

The scope of their action is much broader than that of the Committees of inquiry – whose role is limited to alleged contraventions or maladministration in the implementation of Union law. Special committees have therefore sometimes been used when there was not sufficient political support to set up a Committee of inquiry,⁶⁸ which is possible if the mandate conferred upon the Special committee in question does not encroach upon the (exclusive) competence of the Committees of inquiry as per Article 226 TFEU. They have also been resorted to when the issue at stake affected third States or was

⁶³ 18 such committees have been established since 1979. Please see the list in Annex.

⁶⁴ European Parliament, Working document of the Committee on the Rules of Procedure, the Verification of Credentials and Immunities on the detailed provisions governing the exercise of the European Parliament's right of inquiry (rapporteur: A. Langer), PE 211.818, 3/1/1995, p. 3.

⁶⁵ Rule 207 RoP.

⁶⁶ Poptcheva, E.-M., 'Parliament's committees of inquiry and special committees', European Parliamentary Research Service in-depth analysis, PE 582.007, 2016, p. 11.

⁶⁷ Poptcheva, E.-M., 'Parliament's committees of inquiry and special committees', European Parliamentary Research Service in-depth analysis, PE 582.007, 2016, p. 11.

⁶⁸ Höpfner, S., *Parlamentarische Kontrolle in Deutschland und in der Europäischen Union. Das Recht der parlamentarischen Untersuchungsausschüsse des Deutschen Bundestages und des Europäischen Parlaments*, Verlag Dr. Kovac, Hamburg, 2004, p. 95. See for a detailed analysis of the twelve committees established between 1993 and 2013: Syrier, C.N., *The investigative function of the European parliament: holding the EU executive to account by conducting investigations*, Wolf Legal publishing, Oisterwijk, 2013, p. 134f.

linked to non-EU legal provisions,⁶⁹ or when there were important issues of secrecy.⁷⁰ In one occasion, a Special committee was even set up to monitor the follow up of the report produced by a Committee of inquiry.⁷¹

On top of the Special committees' broader potential remit, they have sometimes been favoured to Committees of Inquiry because they are less politically prejudicial and may consider larger issues which may be subject to future legislation.⁷² Considering the hurdles which Committees of inquiry may face in trying to conduct their investigations, the added-value that the set-up of such Committees would bring compared to the creation of a Special committee has been assessed as limited.

In terms of the issues that these committees have considered, they have been varied but budgetary and financial issues have been the main subject of five (out of a total of 18) committees established since 1979. These committees have had a high profile, and they were chaired by prominent members.⁷³ Other committees have focused on controversial developments, such as maritime disasters after the Erika and the Prestige accidents, the illegal detention of prisoners by the CIA in Europe or the Luxleak scandals. Questions of general concern, such as climate change and organised crime, corruption and money laundering, were also the focus of three committees.

2.3. Practice so far⁷⁴

Having considered the existing legal framework and the co-existence of Special Committees and Committees of inquiry, the next section turns to the use which Parliament has made of Committees of inquiry so far. The focus here lies on the Committees of inquiry established after the Single European Act since those established prior to that operated under rules which defined a scope different from that of the one classically attributed to Committees of inquiries in the Member States.⁷⁵ More specific attention is equally dedicated to the period post-Maastricht which is characterised by a strong reinforcement of Parliament's institutional position visible *inter alia* in its quality as co-legislator set on an equal footing with the Council.

2.3.1. General overview

Before delving into the comparison of the five committees set up so far, it should be noted that MEPs appear to have re-gained interest in this instrument during the past legislature (2014-2019): during that period alone, it is no less than two committees of inquiry that were set up. This could be related to the fact that EU-wide issues became particularly visible politically during that period.⁷⁶ It is also to be

⁶⁹ This was for instance the case of special committee on CIA 2006

⁷⁰ Poptcheva, E.-M., 'Parliament's committees of inquiry and special committees', European Parliamentary Research Service in-depth analysis, PE 582.007, 2016, p. 11.

⁷¹ 2000/1, Temporary committee set up to monitor the action taken on the recommendations made concerning BSE in the report of the BSE Committee of inquiry.

⁷² Syrier, C.N., *The investigative function of the European parliament: holding the EU executive to account by conducting investigations*, Wolf Legal publishing, Oisterwijk, 2013, p. 189-190.

⁷³ Corbett, R., Jacobs, F. and Neville, D., *The European Parliament*, John Harper Publishing, London, 2016, p. 197.

⁷⁴ See also Rozenberg, O., 'Inquiries by Parliaments: The political use of a democratic right' European Parliament, Policy Department for Citizens' Rights and Constitutional Affairs, 2020. Available at: [http://www.europarl.europa.eu/RegData/etudes/STUD/2020/648709/IPOL_STU\(2020\)648709_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2020/648709/IPOL_STU(2020)648709_EN.pdf)

⁷⁵ See for an analysis of these early experiences: Beckedorf, I. *Das Untersuchungsrecht des Europäischen Parlaments*, Duncker and Humblot, Berlin, 1995, p. 221f.

⁷⁶ Porras Ramírez, J.-M., 'Las comisiones de investigación del Parlamento europeo. Un instrumento de control necesitado de reforma', *Revista de derecho comunitario europeo*, 2017, Vol. 56, pp. 201-231, p. 212.

considered against a background in which Parliament has generally been active in seeking to oversee the activities of EU institutions and bodies.⁷⁷

Three committees were set up between the recognition of Committees of inquiry in the Treaty of Maastricht and the entry into force of the Lisbon Treaty. The first one of them dealt with Europe's transit system (Transit Committee), the second one with the BSE crisis (BSE Committee) whilst the third one focused on the crisis of Equitable Life Assurance Society (EQUI Committee). Since 2009, one committee on car emissions was established in December 2015 (EMIS Committee), and a fifth one set up in 2016 focused on the application of Union law in relation to money laundering, tax avoidance and tax evasion (PANA Committee).⁷⁸

The first two committees set up after Maastricht have been considered successful experiences, both in terms of their immediate impact in the subject matter they investigated and in terms of their contributing to assert Parliament's right of inquiry and more broadly speaking of its (political) control.⁷⁹ In the framework of its inquiry on the BSE crisis, Parliament developed an original tool vis-à-vis the Commission: instead of directly resorting to its 'nuclear option', i.e. the capacity it has to adopt a motion of censure, it limited itself to threatening the Commission of resorting to it if it did not take appropriate measures in response to the conclusions of its inquiry. This strategy successfully led to the Commission's acting upon the conclusions of the Committee.

This notwithstanding, Parliament's powers, in particular with regard to its capacity to summon witnesses, was perceived as being too weak, and many MEPs hoped that the review clause applicable after July 1999 would be activated by the new Parliament elected in 1999.⁸⁰ Attempts to change the rules were launched only after the entry into force of the Lisbon Treaty, in 2011.⁸¹

2.3.2. Evaluation

The following section firstly provides an evaluation of Parliament's (scarce) use of its power to set up Committees of inquiry so far. Secondly, an evaluation of the way in which they have operated in practice is offered.

As mentioned in the previous section, few Committees of inquiry have been set up since this possibility was enshrined in Parliament's rules of procedure in 1981: only five have. This situation can be explained by several factors which can be summarised as follows:

Practical conditions for the set up and the operation of Committees of inquiry

⁷⁷ Mosconi, F. and Padoa Schioppa, A., 'Making better use of the European Parliament's powers', in Bonvicini, G. (Ed.), *Democracy in the EU and the role of the European Parliament*, Istituto Affari Internazionali, Rome, pp. 13-21, p. 14.

⁷⁸ Decision setting up a temporary committee of inquiry, OJ 96/C 7/01 (Transit Committee); European Parliament Decision of 17 July 1996 setting up a temporary committee of inquiry (BSE Committee) OJ 96/C 239/01; Decision 2006/469/EC of the European Parliament of 18 January 2006 on setting up a Committee of Inquiry into the crisis of the Equitable Life Assurance Society (EQUI Committee) OJ L 186/58 2006; Decision (EU) 2016/34 of the European Parliament 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 OJ L10/13 2016; Decision (EU) 2016/1021 of the European Parliament of 8 June 2016 on setting up a Committee of Inquiry to investigate alleged contraventions and maladministration in the application of Union law in relation to money laundering, tax avoidance and tax evasion, its powers, numerical strength and term of office, OJ L 166/10 2016.

⁷⁹ Corbett, R., Jacobs, F. and Neville, D., *The European Parliament*, John Harper Publishing, London, 2016, p. 389. See for a comparative analysis of these two committees: Shackelton, M., 'The European Parliament's New Committees of Inquiry: Tiger or Paper Tiger?', *Journal of Common Market Studies*, Vol. 26, No. 1, pp. 115-130, p. 118f and Syrier, C.N., *The investigative function of the European parliament: holding the EU executive to account by conducting investigations*, Wolf Legal publishing, Oisterwijk, 2013, p. 55f.

⁸⁰ Corbett, R., Jacobs, F. and Neville, D., *The European Parliament*, John Harper Publishing, London, 2016, p. 389.

⁸¹ Report by David Martin MEP (A7-352/2011).

-)] The parallel existence of Special committees whose tasks formally differ but whose capacities to conduct investigations are similar in practice, whereby the remit of Special committees is broader and their scope larger.
-)] The resulting limited attractiveness in view of the Committees of inquiry's limited investigatory powers granted upon them and of the fact that especially not all Member State authorities have always collaborated.⁸²
-)] The parallel existence of ordinary Standing committees which also conduct investigations as detailed below.
-)] Generally, the necessary EU-wide nature of the questions investigated, whereby Parliament necessarily fulfils a subsidiary function of control and a control of EU institutions only (as opposed to national parliaments which control national executives).

Political aspects

-)] The political consensus necessary to achieve the majority required to set up a Committee of inquiry combined with Parliament's special relationship to other EU institutions, and the characteristics of the EU's institutional system overall make the establishment of Committees of inquiry difficult and their fulfilment of their functions more difficult.
-)] Committees of inquiry are highly visible and the clear expression of a political will, therefore they bear a high political risk.

In terms of how Parliament's right of inquiry has operated in practice, it should be noted that the context in which Parliament conducted its first inquiries in the 1990s is hardly comparable to the one in which it operates today. Significant differences with respect to the situation twenty years ago include the number of EU Member States (27) and the growing diversity this has brought about or the rise of Euroskepticism and generally popular distrust vis-à-vis the EU, which should arguably trigger higher levels of scrutiny by Parliament. Parliament itself has seen its powers significantly reinforced within the EU institutional framework, and it is thus arguably in a stronger position to hold the EU executive to account.

The weaknesses identified thus far have concerned the conditions of Parliament's investigations and have been related to the Committees' capacity to conduct hearings and the conditions in which they have been held, and to the Committees' access to documents. These two issues are examined in turn in the following paragraphs.

As regards the first aspect, as underlined in Section 2.1.3. above, Committees of inquiry may not summon members of EU institutions or bodies, or members of national governments to appear. They may only 'invite' them. Whereas Commissioners generally accepted to appear, some ministers refused to do so, in the framework of the BSE and of the EQUI inquiries for instance. Similarly, Commission officials have appeared before the Committees; It is admittedly more difficult for it to justify a negative answer to the invitation for one of its officials to appear than for governments of the Member States.⁸³ National representatives have, on the other hand, refused to appear in several occasions. For example, the national representatives, such as the UK Ombudsman or the UK MPs (among others) who did not accept the EQUI Committee's invitation were nevertheless under no obligation to do so as they fall

⁸² This difficulty was faced for instance by the BSE Committee. Görlitz, N., 'Le droit d'enquête du Parlement européen', *Cahiers de droit européen*, 2013, Vol. 49, No. 3, pp. 783-819, p. 811.

⁸³ Porras Ramírez, J.-M., 'Las comisiones de investigación del Parlamento europeo. Un instrumento de control necesitado de reforma', *Revista de derecho comunitario europeo*, 2017, Vol. 56, pp. 201-231, p. 223.

under the category of 'other persons' which is not bound by the IIA under it.⁸⁴ Also the more recent PANA and EMIS Committees faced serious difficulties in trying to hear Member State representatives.⁸⁵ Against this background, the Chairman of the BSE Committee stated that Committees of inquiry should have the right to summon witnesses and should be able to impose (or threaten to resort to) penalties where they refuse to abide by these requests.⁸⁶ In this context, it is also noteworthy that the five Special committees set up between 1993 and 2013 which have fulfilled similar accountability functions to Committees of inquiry⁸⁷ were largely treated in a similar way as 'standard' Committees of inquiries by the first category of witnesses, i.e. EU officials and national government members.⁸⁸ They were also able to hear numerous national and EU civil servants, as well as 'other persons', even if some US congressmen and senators refused the invitation to appear addressed to them.⁸⁹

Another crucial point related to the way in which witnesses are heard regards the absence of a formal mechanism to hear them under oath and, relatedly, to the impossibility to prosecute a witness on the ground of false testimony.⁹⁰ In this regard, Parliament's resort to its capacity of 'institutional engineering', i.e. its ability to develop compensating mechanisms on an informal basis, should be praised. Indeed, the Transit Committee designed an original mechanism to formalise the hearing procedure whereby it asked the witnesses to sign the texts of their declaration after the hearings had taken place.⁹¹

Difficulties in accessing documents were encountered by Committees of inquiry as well.⁹² The Chairman of the Transit Committee actually went beyond the issue of access to documents *per se* by instead requesting that Committees of inquiry be given the power to seize files directly.⁹³ Indeed, in the framework of this Committee's operations the possibility for national and EU authorities to conceal incriminating information had come to light.⁹⁴ Most recently, the PANA Committee regretted the delay of six months with which it managed to come to an agreement with the Commission on access to non-

⁸⁴ See further on this point: Syrier, C.N., *The investigative function of the European parliament: holding the EU executive to account by conducting investigations*, Wolf Legal publishing, Oisterwijk, 2013, p. 92-93.

⁸⁵ European Parliament, Report on the inquiry into money laundering, tax avoidance and tax evasion (2017/2013(INI)), 2017, p. 37; European Parliament, Report on the inquiry into emission measurements in the automotive sector (2016/2215(INI)), 2016, p. 14.

⁸⁶ European Parliament, BSE committee. Chairman's observations on institutional aspects of the work of the committee of inquiry, PE 220.853, 7/1/1997, p. 3.

⁸⁷ These five Committees are: the BSE follow up Committee, the Echelon Committee, the Foot and Mouth disease Committee, the Improving Safety at Sea Committee and the CIA flights Committee. This classification was designed by Syrier. Syrier, C.N., *The investigative function of the European parliament: holding the EU executive to account by conducting investigations*, Wolf Legal publishing, Oisterwijk, 2013, p. 149f.

⁸⁸ Syrier, C.N., *The investigative function of the European parliament: holding the EU executive to account by conducting investigations*, Wolf Legal publishing, Oisterwijk, 2013, p. 184.

⁸⁹ Syrier, C.N., *The investigative function of the European parliament: holding the EU executive to account by conducting investigations*, Wolf Legal publishing, Oisterwijk, 2013, p. 184-185.

⁹⁰ European Parliament, BSE committee. Chairman's observations on institutional aspects of the work of the committee of inquiry, PE 220.853, 7/1/1997, p. 3.

⁹¹ Shackelton, M., 'The European Parliament's New Committees of Inquiry: Tiger or Paper Tiger?', *Journal of Common Market Studies*, Vol. 26, No. 1, pp. 115-130, p. 123.

⁹² Special Committees also faced similar difficulties; this was for instance the case of the TAXE 1 Special Committee. European Parliament, Special Committee on Tax Rulings and Other Measures Similar in Nature or Effect, Report on tax rulings and other measures similar in nature or effect (2015/2066(INI)), 2015.

⁹³ European Parliament, BSE committee. Chairman's observations on institutional aspects of the work of the committee of inquiry, PE 220.853, 7/1/1997, p. 3.

⁹⁴ Syrier, C.N., *The investigative function of the European parliament: holding the EU executive to account by conducting investigations*, Wolf Legal publishing, Oisterwijk, 2013, p. 83.

classified confidential documents in its final report,⁹⁵ and the EMIS Committee too stated that '[i]n the absence of clear requirements and specific deadlines to accept an invitation or deliver the information requested, the preparation of public hearings was very time-consuming'.⁹⁶ Yet, some improvements were visible in recent past, as Member States accepted to submit all the requested documents by the TAXE 2 Special Committee for the first time.⁹⁷

2.3.3. Proposals for reform made thus far

A proposal for a Regulation was made after the entry into force of the Lisbon Treaty, in 2012.⁹⁸ This was both necessary because of the need to update the IIA (which, for instance, only refers to 'Community' i.e. first-pillar matters) but also because a regulation – which is directly applicable in all Member States and does not only bind the signatories to it like the IIA – could attribute stronger powers to future Committees of inquiry.

Whereas the Treaty (Article 226 TFEU) clearly reserves a privileged role to Parliament, it also makes it dependent on the agreement of the institutions whose actions it will later on be led to investigate. Indeed, as specified in Section 2.1.3. above, it is for Parliament to make proposals for regulations, but following a special legislative procedure, this proposal must receive the consent of the Council and the Commission.

In terms of the content of the proposed regulation, it would first of all strengthen Parliament's investigative powers by allowing it to request any person residing in the EU to appear before a Committee of inquiry or by enabling it to choose who should appear before it (similarly to the power the European Ombudsman already has – see Section 3.2.1. below). A Member State or an EU institution that would refuse to send the official nominated by the Committee of inquiry would have to appear before said Committee to justify its decision. The most important change that the proposed Regulation would bring about however relates to the possibility to impose sanctions on the ground that a national authority would simply refuse to provide certain documents or for one of its representatives to appear before the Committee. Those sanctions would be those applicable in similar cases in the context of inquiries conducted by national parliaments. Furthermore, it would also be possible for Parliament to conclude agreements with national parliaments.

Even if the negotiations for a reform started in 2012, an agreement is yet to be found. After the end of the 2009-2014 legislative term, negotiations on this file were resumed on the basis of the mandate given to the Committee on Constitutional Affairs which formally adopted the 2012 proposal.⁹⁹ However, no agreement could be found during that legislature either.

The negotiations have provoked the resurgence of the inter-institutional tensions which had already appeared during the negotiations that led to the adoption of the 1995 IIA. Parliament is demanding

⁹⁵ European Parliament, Report on the inquiry into money laundering, tax avoidance and tax evasion (2017/2013(INI)), 2017, p. 37

⁹⁶ European Parliament, Report on the inquiry into emission measurements in the automotive sector (2016/2215(INI)), 2016, p. 15.

⁹⁷ This was the first time ever considering both Special Committees and Committees of inquiry. Poptcheva, E.-M., 'Parliament's committees of inquiry and special committees', European Parliamentary Research Service in-depth analysis, PE 582.007, 2016, p. 15.

⁹⁸ 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 adopted on 23 May 2012.

⁹⁹ 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)).

far-reaching powers, whereas the Council and the Commission seek to limit those prerogatives. The Commission has for instance considered that the far-reaching prerogatives which would be conferred upon Parliament could potentially lead to a transformation of its right of inquiry from a political tool into a legal one.¹⁰⁰ The Council on the other hand demanded that the *sub judice* rule be automatically respected, and not subject to the Committee's decision, and that provisions guaranteeing confidentiality and the possibility to hear witnesses in camera be included.¹⁰¹ It also wished for the Committee's investigative powers to be clearly listed, and its resort to them limited to necessary cases. It voiced concerns with regard to the possibility to request individuals and undertakings to provide documents to the Committee, and to impose sanctions on them. Generally, it viewed the possibility to impose sanctions as falling outside of the scope of Article 226 TFEU. It additionally favoured a justification in writing where a Member State would refuse to allow one of its officials or servants to appear before a Committee, as opposed to Parliament's proposal which foresees a debate in front of the Committee in those cases. This was the state of affairs at the end of the past legislature. It remains to be seen how negotiations between the new Commission and the new Parliament will now evolve.

2.4. Conclusion

Parliament's right of inquiry and the rules governing it have significantly evolved and indeed been reinforced since they were first introduced in its RoP in 1981. Such right is now enshrined in EU primary law, whereby it is additionally foreseen that the details of the implementation of this right be defined in a regulation replacing the IIA in force since 1995.

Such a reform would be welcome for several reasons. As evidenced by practice, despite the reinforcement operated over time, the rules on Parliament's right of inquiry need updating and reinforcing. They need to be set in line with the provisions of the Treaties currently in force and the shortcomings evidenced by practice should be tackled if this power is to contribute to Parliament's exercise of its duty to ensure political accountability adequately. However, as further developed in Section 5 below, Parliament's status as the representative assembly of a *sui generis* organisation in charge of conducting a political control of the EU executive should also be taken into account when designing the future framework, as should the fact that other EU institutions and bodies have been vested with (potentially complementary) investigatory powers. These are the object of the following paragraphs.

¹⁰⁰ Poptcheva, E.-M., 'Parliament's committees of inquiry and special committees', European Parliamentary Research Service in-depth analysis, PE 582.007, 2016, p. 9.

¹⁰¹ The arguments brought forward by the Council are extracted from: Poptcheva, E.-M., 'Parliament's committees of inquiry and special committees', European Parliamentary Research Service in-depth analysis, PE 582.007, 2016, pp. 9-10.

3. OTHER INVESTIGATIVE POWERS WITHIN PARLIAMENT AND OTHER EU INSTITUTIONS AND BODIES

The other EU bodies and institutions examined here which may also conduct investigations are both internal to Parliament and external to it. The internal organs are examined first (3.1.) and the other institutions and bodies second (3.2.).

3.1. Other European Parliament Committees with investigative powers

Next to the two categories of temporary committees examined in the previous section, also the Committee responsible for petitions (PETI Committee) conducts inquiries (3.1.1), as do the other ordinary Standing Committees (3.1.1).

3.1.1. PETI Committee

A right to petition Parliament, i.e. the right to address any comment or complaint about European policies and their application, has been guaranteed to European citizens, and natural and legal persons resident in the EU since the European Coal and Steel Community's Parliamentary Assembly was first established in 1953.¹⁰² This right was formally introduced in the Maastricht Treaty¹⁰³ and is now recognised in Article 227 TFEU which states that '[a]ny citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, shall have the right to address, individually or in association with other citizens or persons, a petition to the European Parliament on a matter which comes within the Union's fields of activity and which affects him, her or it directly'.

The details of this procedure are contained in Parliament's Rules of Procedure.¹⁰⁴ These rules establish how the PETI Committee is to deal with the petitions submitted to Parliament. The President of the Committee firstly establishes the admissibility of the petition received,¹⁰⁵ and it is discussed either during a regular meeting of the Committee, or by written procedure.¹⁰⁶ The Committee may prepare reports, which it approves directly or which are submitted to a debate and a vote in plenary if the Conference of Presidents agrees to use such a procedure. This latter possibility is nevertheless used sparingly when matters are of particular importance.¹⁰⁷ Similarly, the possibility – and not the obligation – exists for the PETI Committee to ask the President of Parliament to submit its report, i.e. to send its opinion or recommendation to the Commission, the Council or to Member State authorities.¹⁰⁸ Petitions therefore do not always conclude in the submission of a resolution to the plenary;¹⁰⁹ this is only a possibility whilst the outcome of the inquiries conducted by Special committees or Committees of inquiry are presented in a report to the plenary. Considering how numerous petitions are, and the fact that they may be of concern to the individuals affected only, it is only logical that no report be presented to all MEPs on every single one of them.

¹⁰² Rule 39 RoP of the European Coal and Steel Community's Common Assembly.

¹⁰³ Article 21 and Article 194 of the Treaty establishing the European Community (EC) and Article 107(c) of the Treaty establishing the European Atomic Energy Community (EAEC or Euratom); see also Article 20(c) of the Treaty establishing the European Coal and Steel Community (ECSC), which expired on 23 July 2002].

¹⁰⁴ Title IX (Rules 226-230) is dedicated to petitions.

¹⁰⁵ Rule 226(10) RoP.

¹⁰⁶ Rule 227(1) RoP.

¹⁰⁷ Corbett, R., Jacobs, F. and Neville, D., *The European Parliament*, John Harper Publishing, London, 2016, p. 409.

¹⁰⁸ Rule 227(6) RoP.

¹⁰⁹ Rule 227(3) RoP.

In terms of how petitions are investigated, in most cases, the PETI Committee asks the Commission services or the affected Member State to conduct a preliminary inquiry,¹¹⁰ 'with a view to assessing the subject matter of the petition in relation to relevant legislation and policies'.¹¹¹ It may also ask other institutions as well as Member States for further information.¹¹² It is interesting to note that the PETI committee may conduct hearings or inquiries.¹¹³ In that framework as well though, representatives of the Commission may only be 'invited' to attend the PETI Committee's meetings.¹¹⁴ This Committee may also investigate issues in the Member State and conduct fact-finding visits to this end: unlike the Committees of inquiry and the Special committees which conduct fact-finding visits as a matter of informal practice, the right for the PETI Committee to proceed to such type of visits is explicitly recognised and regulated in Parliament's Rules of Procedure.¹¹⁵ This happens after it has first held a full debate. A delegation of two to three members – none of which stemming from the Member State in which the investigation is taking place – will then conduct the visit accompanied by support staff.¹¹⁶ It is noteworthy that the PETI committee, like the committees of inquiry today, originally faced difficulties in obtaining information or assistance by the Member States.¹¹⁷ The Presidents of the Council, the Commission and the European Parliament even signed a solemn Declaration encouraging Member States to respond to Parliament's demands in April 1989.¹¹⁸ This situation has largely improved since, and good cooperation seems to be the norm today.¹¹⁹

In terms of how practice has evolved, it should be noted that the right to petition Parliament was not used very frequently or known until the mid-1970s, but the number of petitions submitted yearly to Parliament rose significantly after the first direct elections in 1979.¹²⁰ Since then, petitions have been regularly submitted to Parliament. For instance, 2 714 of them were lodged in 2014.¹²¹

In practice, the cases examined by the PETI committee fall broadly under two categories: the complaints of general nature which relate to questions such as free movement, difficulties within the internal market or environmental problems, and the complaints related to an individual situation for which the petition seeks to obtain redress. Their scope is hence different from that of Committees of inquiry.

3.1.2. Standing Committees

A fully-fledged analysis of Parliament's investigative powers also demands an analysis of the investigations which its other Standing committees may conduct. Besides the possibilities open to the PETI Committee examined in the previous Section, those prerogatives fall mainly within three categories: inquiry-type investigations, investigations in the course of the discharge procedure and investigations regarding the implementation of EU legislation.

¹¹⁰ Corbett, R., Jacobs, F. and Neville, D., *The European Parliament*, John Harper Publishing, London, 2016, p. 409.

¹¹¹ European Parliament, Guidelines Committee on petitions, December 2015 update January 2018, p. 10.

¹¹² European Parliament, Guidelines Committee on petitions, December 2015 update January 2018, p. 10.

¹¹³ The details of the practical implementation of such fact-finding visits is to be found in Rule 228 RoP.

¹¹⁴ Rule 227(5) RoP.

¹¹⁵ Rule 228 RoP.

¹¹⁶ Corbett, R., Jacobs, F. and Neville, D., *The European Parliament*, John Harper Publishing, London, 2016, p. 409.

¹¹⁷ Corbett, R., Jacobs, F. and Neville, D., *The European Parliament*, John Harper Publishing, London, 2016, p. 411.

¹¹⁸ Corbett, R., Jacobs, F. and Neville, D., *The European Parliament*, John Harper Publishing, London, 2016, p. 411.

¹¹⁹ Corbett, R., Jacobs, F. and Neville, D., *The European Parliament*, John Harper Publishing, London, 2016, p. 411.

¹²⁰ Corbett, R., Jacobs, F. and Neville, D., *The European Parliament*, John Harper Publishing, London, 2016, p. 408.

¹²¹ Corbett, R., Jacobs, F. and Neville, D., *The European Parliament*, John Harper Publishing, London, 2016, p. 409.

Previous examples of inquiry-type investigations conducted by Standing committees have included the investigation into the Management of the H1N1 influenza cases in 2009-2010 in the EU.¹²² They are nevertheless much smaller in scale than those performed by the Committees of inquiry being the responsibility of the rapporteur and some shadow-rapporteurs alone.¹²³ Consequently, they benefit from much less media attention than the fully-fledged investigative temporary committees.

In the framework of the discharge procedure, Parliament's Committee on Budgetary Control is also called to conduct investigations. Contrary to what is the norm in the other circumstances mentioned previously, when proceeding with the discharge procedure, Parliament has a very powerful tool to obtain the information it demands: It may always threaten not to approve the execution of the budget presented to it. In fact, it has used this procedure to investigate allegations of financial mismanagement.¹²⁴

Finally, Parliament conducts investigations when it examines how EU legislation has been implemented. It regularly questions members of the EU executive to this end, but it additionally conducts in-depth inquiries as well. These investigations will then be conducted either by the Standing Committee itself, or by an *ad hoc* temporary committee, or by external experts.

3.1.3. Conclusion

Although several parallel structures capable of conducting inquiries exist within Parliament, with the possible exception of the Committees of inquiry proper and the Special Committees, the risk of overlap between them is close to non-existent; rather, their actions are complementary.

Indeed, the investigations conducted by the PETI Committee and by the Standing committees are much smaller in scale than those performed by the other two types of *ad hoc* temporary committees. Furthermore, their scope differs seeing as Committees of inquiry address systemic (alleged) cases of contravention or maladministration by both EU and national institutions whereas the PETI Committee focuses on individual petitions.

These different types of investigative instruments do not, however, operate in isolation from one another: a significant number of petitions on an identical issue may, for instance, eventually lead to the set-up of a dedicated Committee of inquiry, as it happened in the case of the EQUI Committee.¹²⁵

3.2. Investigative powers within other EU institutions and bodies

Parliament is not the only EU institution or body which has been attributed investigatory powers. Also, the European Ombudsman, the OLAF, the European Commission and the European Public Prosecutor's Office have such type of rights. Their analysis in the framework of this study is particularly relevant considering that the Ombudsman investigates 'instances of maladministration in the activities of the Union institutions, bodies, offices or agencies, with the exception of the Court of Justice of the European Union acting in its judicial role'¹²⁶ which might seem to lead to potential overlaps with the

¹²² Examined by Syrier. Syrier, C.N., *The investigative function of the European parliament: holding the EU executive to account by conducting investigations*, Wolf Legal publishing, Oisterwijk, 2013, p. 205f

¹²³ Syrier, C.N., *The investigative function of the European parliament: holding the EU executive to account by conducting investigations*, Wolf Legal publishing, Oisterwijk, 2013, p. 204.

¹²⁴ Corbett, R., Jacobs, F. and Neville, D., *The European Parliament*, John Harper Publishing, London, 2016, pp. 334f.

¹²⁵ Syrier, C.N., *The investigative function of the European parliament: holding the EU executive to account by conducting investigations*, Wolf Legal publishing, Oisterwijk, 2013, p. 224.

¹²⁶ Article 228 TFEU

activities of the Committees of inquiry at first sight. Additionally, an analysis of the powers attributed to these institutions and bodies and of their functioning in practice may serve as sources of inspiration for Parliament in redefining the operation of its right of inquiry.

The European Ombudsman, which is organically linked to Parliament, is examined first (3.2.1) whereas the Commission, which has long had far-reaching investigative powers in the field of EU competition law, is considered second (3.2.2). The analysis proceeds with the OLAF (3.2.3) and the newly-established EPPO (3.2.4).

3.2.1. European Ombudsman

The European Ombudsman was introduced in the Maastricht Treaty.¹²⁷ It is the object of Article 228 TFEU and its Statute was adopted in 1994 in the form of a European Parliament Decision.¹²⁸ Parliament has also defined its relationship to the Ombudsman in its Rules of Procedure. Finally, the implementing provisions the Ombudsman defined in one Decision detail these rules.¹²⁹

Under Article 228 TFEU, a European Ombudsman 'empowered to receive complaints from any citizen of the Union or any natural or legal person residing or having its registered office in a Member State concerning instances of maladministration in the activities of the Union institutions, bodies, offices or agencies, with the exception of the Court of Justice of the European Union acting in its judicial role' is to be elected by Parliament.¹³⁰ The Ombudsman may therefore not examine issues related to the actions of national administrations contrary to what a Committee of inquiry may do. A duty is set on the Ombudsman to 'examine such complaints and to report on them'. The Treaty additionally specifically establishes that the European Ombudsman is to conduct inquiries on the basis of the complaints submitted to her directly or by an MEP,¹³¹ and the *sub judice* principle is also explicitly recognised (she may not conduct inquiries 'where the alleged facts are or have been the subject of legal proceedings'). If it finds a case of maladministration, the Ombudsman shall inform the institution or body concerned, which has three months to share its views after which she produces a report which she then submits to the institution or body concerned. This report is non-binding. The person who launched the complaint is to be kept duly informed of the outcome of the inquiry.

The details of how the Ombudsman is to conduct her inquiries are laid down in its Statute. A generic right to conduct inquiries is conferred upon her,¹³² and a strict obligation is set on the Community (now EU) institutions and bodies to supply it with the information she requests, and to grant her access to the files concerned.¹³³ Specific safeguards for the access to and treatment of sensitive information are also in place. The Ombudsman may have access to documents originating from a Member State after the Member State in question has been duly informed,¹³⁴ and she may also seek information from

¹²⁷ Article 138e TEC.

¹²⁸ Adopted by Parliament on 9 March 1994 (OJ L 113, 4.5.1994, p. 15) and amended by its decisions of 14 March 2002 (OJ L 92, 9.4.2002, p. 13) and 18 June 2008 (OJ L 189, 17.7.2008, p. 25).

¹²⁹ Adopted by Parliament on 9 March 1994 (OJ L 113, 4.5.1994, p. 15) and amended by its decisions of 14 March 2002 (OJ L 92, 9.4.2002, p. 13) and 18 June 2008 (OJ L 189, 17.7.2008, p. 25).

¹³⁰ The procedure of this election is defined in Rule 231 RoP.

¹³¹ Art. 228(1) TFEU.

¹³² Article 3(1) Statute.

¹³³ Article 3(2) Statute. The details of these procedures are contained in the Implementing provisions.

¹³⁴ Article 3(2) Statute.

Member States directly.¹³⁵ Next to this possibility to request information, the Ombudsman also has the possibility to organise hearings in which EU officials and servants have the duty to participate.¹³⁶

If it were to face difficulties in conducting its investigations, the European Ombudsman may additionally turn to Parliament 'which shall make appropriate representations'. To date, no procedure has ever had to be started on this ground. The nature of the Ombudsman's Statute – an EP Decision – taken in conjunction with the fact that the Treaties do not contain any provisions on how exactly the Ombudsman is to conduct her inquiries lead to the conclusion that Parliament would primarily have to resort to means of political pressure to force the other institutions to cooperate.

Additionally, contrary to the Parliament's Committees of inquiry, the Ombudsman's actions are limited to alleged cases of maladministration by Union institutions, i.e. as mentioned above they may not concern cases regarding Member State institutions. This gives rise to significant limitations as Union norms are mostly implemented by national institutions. Moreover, whereas it appeared that when both the European Ombudsman and the right of inquiry were included in the Maastricht Treaty there could have been some overlaps,¹³⁷ in practice the focus of the two procedures has been a different one with the Ombudsman concentrating on individual cases whereas the Committees of inquiry have addressed larger issues. Direct cooperation may furthermore take the form of hearings of the Ombudsman before the PETI Committee, or of requests of information by the PETI Committee.¹³⁸

The rights granted upon the Ombudsman are therefore far reaching since it is an obligation of cooperation which is set on the other EU institutions and bodies and on national authorities; this clearly contrasts with the provisions applicable to Parliament's temporary committees.

Although the European Ombudsman is elected by Parliament,¹³⁹ it is 'completely independent in the performance of its duties'.¹⁴⁰ As such, the role she fulfils is radically different from the one Parliament does when it conducts its inquiries: the European Ombudsman is not a political actor seeking to guarantee the *political* accountability of other EU institutions and bodies. The Ombudsman's task is to correct unfairness vis-à-vis citizens. This does not bare Parliament and the Ombudsman from cooperating: in fact, the PETI Committee examines the cases of maladministration which the Ombudsman submits to it, and it may draft a report on them.¹⁴¹ It also considers the Ombudsman's annual report on which it may propose a resolution. Theoretically, an MEP seeking the establishment of a Committee of inquiry on a specific matter could try and obtain information on the matter in question by first launching a complaint with the Ombudsman before he or she seeks to obtain the necessary support in Parliament for the establishment of a Committee of inquiry. This would potentially allow him or her to save some of the limited time available to Committees of inquiry and, most importantly, the European Ombudsman may reveal information to which the Committee would otherwise not have access. By resorting to this strategy, the MEP in question might risk losing media attention and political benefit as the case of maladministration would already be revealed by the Ombudsman. Independently from the fact that it would require good planning skills, this solution thus appears little attractive politically.

¹³⁵ Article 3(3) Statute.

¹³⁶ Article 3(2) Statute.

¹³⁷ European Parliament, Working Document on Parliamentary committees of inquiry (Musso Report), 1992, p.3.

¹³⁸ Rule 232(2) RoP.

¹³⁹ Article 228(1) and 228(2) TFEU.

¹⁴⁰ Article 228(3) TFEU.

¹⁴¹ Rule 232(1) RoP.

3.2.2. European Commission

In the area of Competition law, the European Commission has been vested with some investigatory powers to determine whether an undertaking has acted in breach of EU law, specifically Article 101 and 102 TFEU defining rules on agreements among undertakings and abuse of dominant position.

Under Regulation 1/2003,¹⁴² the Commission has the right to conduct an investigation into a sector of the economy or a type of agreement where it appears that there may be a restriction or a distortion of competition.¹⁴³ In the conduct of its investigations, the Commission has mainly two kinds of powers. Firstly, it may request information and conduct interviews. Secondly, it may also conduct on-site inspections.

The requests for information issued by the Commission may take two forms: as simple requests to which an answer must not be provided (though the supply of incorrect information will be sanctioned whether it has happened intentionally or unintentionally), or as decisions requiring information to be provided where it considers this information to be 'necessary' for the detection of a possible infringement of competition rules.¹⁴⁴ It is also noteworthy that the Commission is to indicate in its decision requesting the information that penalties may be imposed and that the undertaking required to supply the information may launch a procedure against the decision before the General Court.¹⁴⁵

Next to this capacity to request information, the Commission may also conduct interviews.¹⁴⁶ Where such interviews take place, National Competent Authorities must be duly informed, and they may be present. There are, however, no penalties for providing incorrect or misleading information.

Finally, next to these powers to request or demand information, the Commission may also conduct inspections in whose framework it is also allowed to seize information.¹⁴⁷ The Commission's powers are very far-reaching as it may conduct 'surprise inspections' and may even visit the individuals' home. The National Competent Authorities are to assist the Commission in performing these operations, and the police or other national equivalent authorities may be involved.

Although a parallel may be drawn between the rights attributed to the Commission in the enforcement of competition law, and the rights granted to Committees of inquiry, such type of comparison may only be relevant to a limited extent because the context in which they operate is totally distinct. In the first case, the Commission is the primary responsible to ensure that EU competition rules are respected. On the other hand, a Committee of inquiry seeks to pass a *political* judgement on a case of maladministration. The only consequences are thus political in nature, and take the form of political

¹⁴² Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty. This Regulation strengthened the investigation powers the Commission had previously had under Council Regulation 17/1962 of 6 February 1962.

¹⁴³ The Commission already had similar rights of investigation under Article 12 of Regulation 17/1962 which Regulation 1/2003 replaced.

¹⁴⁴ Recitals 23 and Article 18 Regulation 1/2003. This raises the issue of one's right not to incriminate oneself as the information provided by the undertaking may prove its having breached EU rules. This risk does not occur where the Commission simply requests information, but is of application when it issues a decision. The Regulation does not contain any provision on the right against self-incrimination but the Court of Justice has been led to fail on such issues. It has found that this right exists to a limited extent under EU law, and that while undertakings may refuse to answer questions that would incriminate them, they cannot refuse to hand in documents that would allow the Commission to establish an infringement on their behalf or on that of another undertaking. Whish, R. and Bailey, D., *Competition Law*, Oxford University Press, Oxford, 2015, p. 285.

¹⁴⁵ The General Court has already ruled both in favour and against of the Commission in similar cases. Whish, R. and Bailey, D., *Competition Law*, Oxford University Press, Oxford, 2015, p. 284.

¹⁴⁶ Article 19 of Regulation 1/2003.

¹⁴⁷ Article 20 and 21 of Regulation 1/2003.

blame and, in the case of the Commission, of the possibility to adopt a motion of censure (or the threat thereof).

3.2.3. European Anti-Fraud Office (OLAF)

The European Anti-Fraud Office (OLAF) is an Office created in 1999 to 'exercise the Commission's powers to carry out external administrative investigations for the purpose of strengthening the fight against fraud, corruption and any other illegal activity adversely affecting the Community's financial interests, as well as any other act or activity by operators in breach of Community provisions'.¹⁴⁸ It was entrusted with the capacity to conduct internal administrative investigations with two main purposes: 'to combat fraud, corruption and any other illegal activity adversely affecting the Community's financial interests' and 'to investigate serious facts linked to the performance of professional activities which may constitute a breach of obligations by officials and servants of the Communities'.¹⁴⁹ Like the European Ombudsman, OLAF is to conduct its investigations in complete independence.¹⁵⁰ While it was established by a Commission Decision, the way in which its investigations are to be performed is detailed in a Regulation.¹⁵¹ It has notably the power to conduct both internal and external investigations, i.e. on-the-spot checks and inspections in the Member States and within EU institutions, bodies, offices and agencies, respectively. When acting in the Member States, the OLAF relies strongly though on the assistance of the Member State authorities. For instance, the Regulation prescribes that 'the Member State concerned shall ensure [...] that the staff of the Office are allowed access, under the same terms and conditions as its competent authorities and in compliance with its national law, to all information and documents relating to the matter under investigation which prove necessary in order for the on the-spot checks and inspections to be carried out effectively and efficiently'.¹⁵² It is also to be granted access to all necessary information 'held by the institutions, bodies, offices and agencies, connected with the matter under investigation, where necessary in order to establish whether there has been fraud, corruption or any other illegal activity affecting the financial interests of the Union'.¹⁵³

In the case of internal investigations i.e. those that are conducted within EU institutions, bodies, offices and agencies, the OLAF's powers are detailed and far-reaching as well: 'the Office shall have the right of immediate and unannounced access to any relevant information, including information in databases, held by the institutions, bodies, offices and agencies, and to their premises. The Office shall be empowered to inspect the accounts of the institutions, bodies, offices and agencies. The Office may take a copy of, and obtain extracts from, any document or the contents of any data medium held by the institutions, bodies, offices and agencies and, if necessary, assume custody of such documents or data to ensure that there is no danger of their disappearance; [Additionally...], the Office may request oral information, including through interviews, and written information from officials, other servants, members of institutions or bodies, heads of offices or agencies, or staff members'.¹⁵⁴ Its capacity to

¹⁴⁸ Article 2(1) of the Commission Decision of 28 April 1999 establishing the European Anti-fraud Office (OLAF) (1999/352/EC, ECSC, Euratom) (OLAF Decision).

¹⁴⁹ Article 2(1) of OLAF Decision.

¹⁵⁰ Article 3 OLAF Decision.

¹⁵¹ Regulation (EU, EURATOM) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999 (OLAF Regulation).

¹⁵² Article 3(3) OLAF Regulation.

¹⁵³ Article 3(5) OLAF Regulation.

¹⁵⁴ Article 4(2) OLAF Regulation.

conduct on-the-spot checks and inspections 'at the premise of economic operators' in that framework is also explicitly stated.¹⁵⁵

Next to these possibilities, the OLAF has the power to interview a person concerned or a witness at any time during the investigation. That person is protected by the right against self-incrimination, and detailed procedural guarantees are spelt out in the Regulation.¹⁵⁶ Rules on confidentiality and professional secrecy have also been devised.¹⁵⁷

Following the investigation, a report is drawn in which the procedure of the investigation is described, and recommendations as to the next steps are stated. These include the recommendation by the Director-General as to whether or not action should be taken, and they should 'indicate any disciplinary, administrative, financial and/or judicial action by the institutions, bodies, offices and agencies and by the competent authorities of the Member States concerned, and shall specify in particular the estimated amounts to be recovered, as well as the preliminary classification in law of the facts established'.¹⁵⁸

It therefore appears that the investigations conducted by the OLAF – like those performed by the Commission in the field of Competition law – fulfil a function radically different from the inquiries Parliament (and the European Ombudsman) conduct. Firstly, their subject is clearly circumscribed as OLAF's task is to uncover those actions which go against the EU's financial interest. Secondly, the consequences to which they may lead are of a very different nature, i.e. they do not lead to the adoption of non-binding report whose value is strictly political but may trigger the beginning of disciplinary, administrative, financial and/or judicial action. It follows that it is logical that the OLAF be entrusted with stronger prerogatives in the performance of its investigations.

3.2.4. European Public Prosecutor's Office (EPPO)

Like the prerogatives attributed to the European Commission in the field of competition law and those entrusted with the OLAF, it should first be stated that the purpose of the investigatory powers conferred upon the newly established European Public Prosecutor's Office (EPPO) serve a strictly different purpose: they do not aim at guaranteeing political accountability but at dealing with individual cases of criminal law. Indeed, the EPPO fights crimes against the EU's budget.

The possibility to establish a European prosecutor was introduced by the Lisbon Treaty. Article 86(1) TFEU now foresees that '[i]n order to combat crimes affecting the financial interests of the Union, the Council, by means of regulations adopted in accordance with a special legislative procedure, may establish a European Public Prosecutor's Office from Eurojust'. As no consensus could be reached among all Member States, the EPPO was created by means of enhanced cooperation among 22 Member States in 2017.¹⁵⁹ It is yet to start functioning, hence the following analysis is solely based on the content of the Regulation in force.

The EPPO is 'responsible for investigating, prosecuting and bringing to judgment the perpetrators of, and accomplices to, criminal offences affecting the financial interests of the Union [...] in that respect the EPPO shall undertake investigations, and carry out acts of prosecution and exercise the functions of prosecutor in the competent courts of the Member States, until the case has been finally disposed

¹⁵⁵ Article 4(3) OLAF Regulation.

¹⁵⁶ Article 4(2) OLAF Regulation.

¹⁵⁷ Article 10 OLAF Regulation.

¹⁵⁸ Article 11(1) OLAF Regulation.

¹⁵⁹ Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ('the EPPO') (EPPO Regulation).

of'.¹⁶⁰ The EPPO is to be assisted 'actively' by the national competent authorities in its investigations and prosecutions.¹⁶¹ Specifically, the EPPO can choose to 'either undertake the investigation measures and other measures on his/her own or [to] instruct the competent authorities in his/her Member State'.¹⁶² Where the offence subject to the investigation is punishable by a maximum penalty of at least four years of imprisonment, Member States have a duty to ensure that the European Delegated Prosecutors have wide-ranging search-investigation powers and they may obtain documents, objects or data they may require.¹⁶³ They should furthermore be able to freeze instrumentalities or proceeds of crime, intercept electronic communications, track and trace an object by technical means. On the ground of confidentiality, certain restrictions may apply on the basis of the national law applicable,¹⁶⁴ and Member States may in any event condition the use of those measures.¹⁶⁵ The possibility to conduct cross-border investigations is also foreseen.¹⁶⁶

It results from the preceding analysis that the investigative powers attributed to the EPPO are far-reaching and built on the model of multilevel administrative cooperation whereby the European Delegated Prosecutors are called to play a key role in their implementation, and national laws are applied in each of the cases. It remains to be seen how this complex structure will operate and perform in practice.

3.2.5. Conclusion

As shown in the previous sub-sections, the EPPO, the OLAF and the European Commission have been attributed far-reaching investigate powers. As the function they aim to fulfil is however strictly different from the one of Parliament's temporary committees, the potential for transfer is limited; it is higher between Parliament and the Ombudsman, whose role is closer to that of Parliament's Committees of inquiry.

This notwithstanding, the experience developed in these institutions and bodies may arguably be helpful in shaping the relationship between the EU and the national authorities, and it may also be insightful in the re-definition of the procedure to deal with confidential or secret information which in its current form may practically hinder the investigation of Parliament's Committees of inquiry. These points are further developed in Section 5 below in which proposals for reform are presented. Before this is addressed, the next Section presents an overview of national parliamentary committees of inquiry and the rules applicable to them.

¹⁶⁰ Article 4 EPPO Regulation.

¹⁶¹ Article 5(6) EPPO Regulation.

¹⁶² Article 28(1) EPPO Regulation.

¹⁶³ The list of the investigation measures is contained in Article 30 EPPO Regulation.

¹⁶⁴ Article 30(2) EPPO Regulation.

¹⁶⁵ Article 30(3) EPPO Regulation.

¹⁶⁶ Article 31 EPPO Regulation.

4. NATIONAL PARLIAMENTS' RIGHT OF INQUIRY¹⁶⁷

National parliaments' right of inquiry, and the rules applicable to their committees, are oftentimes used as an element of comparison to assess the framework in place within Parliament. Their practice has sometimes been set as a standard Parliament should tend to with a view to becoming a 'true' parliament. Hence, a comparative analysis of practice at Member State level is warranted in the present study.

Most Member State parliaments within the EU may set up Committees of inquiry with a view to exercising their task of political control vis-à-vis the executive power, i.e. their governments primarily.¹⁶⁸ The exceptions to this are Slovakia and Sweden.¹⁶⁹ In the case of bi-cameral parliaments, only one of the two Chambers may be vested with this right, as is the case in Austria and in Germany where the Bundesrat (Federal Council representing the *Länder*) may not set up any Committee of inquiry. In Slovenia, the Državni Svet (National Council) can act as an initiator, whereas only the National Assembly has the right to establish Committees of inquiry. Also, in Poland it is only the Sejm that has such a power. This section intends to present a comparative overview of the situation in the 18 responding Chambers of the 39 EU national parliamentary assemblies.

4.1. Legal and administrative framework

In almost all of the Member States surveyed, the right for Parliament to set up Committees of inquiry is constitutionally recognised.¹⁷⁰ Only in Estonia is it enshrined in Parliament's Rules of Procedure.

In terms of procedure, the right to request the creation of a Committee of inquiry is granted to the minority in Austria (Nationalrat) and in Germany (Bundestag). Even if this right is not guaranteed to a minority, in other parliaments the initiative may be brought for a vote in plenary by a minority (for example, in the Czech Chamber of deputies, in the Portuguese Parliament and in the Spanish Congress one fifth of the members have this right, whereas in the Slovenian National Assembly and the Latvian Saeima one third of the members may make such a proposal). Note that in Slovenia this initiative also belongs to the other parliamentary chamber, the National Council, whose members may invite the National Assembly to set up a Committee of inquiry by a vote of a majority of its members.

In some parliaments, the time reserved to the Committees of inquiry to perform their duties is particularly short: it is of six months only in the French National Assembly and in the Romanian Chamber. By contrast, in the Spanish Congress no specific duration is foreseen for the existence of the Committees of inquiry which shall cease to exist when they have performed their duty or at the end of

¹⁶⁷ This part of the analysis builds up on a survey entitled "Right of Inquiry in National Parliaments", Pavy, E., Policy Department for Citizens' Rights and Constitutional Affairs, European Parliament, 2020. Available at: [http://www.europarl.europa.eu/RegData/etudes/IDAN/2020/649524/IPOL_IDA\(2020\)649524_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/IDAN/2020/649524/IPOL_IDA(2020)649524_EN.pdf)

¹⁶⁸ In some parliaments such as the Portuguese one, Committees of inquiry are, however, also used to control the respect of the Constitution or other legal provisions.

¹⁶⁹ This possibility existed until 1996 when it was deemed unconstitutional by the Constitutional Court.

¹⁷⁰ Note that although the Danish Constitutional Act does foresee the possibility to set up Committees of inquiry in its Article 51, none have been established on this basis since the adoption of this Act, i.e. since 1953. However, the possibility exists to set up commissions of inquiry outside of the Danish parliament since 1999. The Minister of Justice must do so if the Parliament passes a resolution requesting it. Where this is the case, the Minister has the duty to consult with the Standing Orders Committee of the Folketing prior to defining the terms of reference of the inquiry. Given that these commissions operate outside of parliament and may be chaired by a judge, they present certain specificities. In particular, when they are chaired by a judge, they have mostly the same powers as a court dealing with civil or criminal matters. Additionally, this also has an influence on the duration of the existence of the commission which is independent from the length of the parliamentary term.

the legislative period. In the Slovenian National Assembly, a new Committee of inquiry may be set up if a Committee established during the precedent legislature did not have the time to conclude its work due to the end of the legislative period.

Only four of the 18 responding chambers foresee the possibility to set up a Committee of inquiry jointly with another institution. One or more prosecutors may participate in the work of the Committees set up by the Latvian Parliament, and Committees of inquiry may be joint initiative of both chambers of the Romanian and the Spanish Parliaments. In Italy, the Chambers may decide to conduct an inquiry together where they are both investigating the same issue.

In terms of the scope of the Committees of inquiry, they may generally focus on matters of public interest. Some limitations may apply owing to a State's federal character, like in Austria where the Nationalrat may examine matters regarding matters in which the Federation is responsible for implementing the laws or in Germany where no investigation may be conducted in an area whose responsibility exclusively lies with the *Länder*. In some States, such as Bulgaria, Croatia, France, Hungary or Romania, the *sub judice* principle is explicitly stated. On the other hand, in a majority of the States surveyed here (Austria, Belgium, Czech Republic, Estonia, Finland, Germany, Italy, Latvia, Poland, Portugal, Slovenia or Spain), the continuation of ongoing inquiry investigation when legal proceedings on the same facts are initiated after the set-up of the committee is explicitly allowed (under certain conditions). In the Czech Republic and in France for example, the Committee of inquiry may additionally inform the appropriate law enforcement authorities if facts obtained during the investigation indicate that a criminal offence may have been committed. In Denmark where the Commissions of inquiry are established outside of parliament though possibly upon its request, no specific recognition of the *sub judice* principle exists. In fact, an investigation by the police or the prosecution may be conducted in parallel to that of the Commissions, but where this has happened in the past, the terms of reference establishing the Commission specifically stated that the inquiry should not cover the chain of events object of the criminal case. Finally, in Germany (Bundestag), specific safeguards exist in case part of the object of the motion to set up a Committee of inquiry is deemed unconstitutional: in such cases, its scope is reduced to the part which is not considered to be unconstitutional. This happens regardless of the possibility open to MPs to launch an appeal against this decision before the Federal Constitutional Court.

In Latvia, this tool has, in most cases, been used by the opposition to enforce parliamentary control. Consequently, inquiries have been conducted in sufficiently serious cases where there was a presumption of misconduct by the government or an official, i.e. that he or she had committed a condemnable or criminal act. There should also be public interest in the matters investigated.

When conducting their inquiry, a Committee of inquiry, its members and officials or other servants are generally submitted to the rules of procedure applicable. They should also respect the rights of natural and legal persons concerned by an investigation. If these obligations are not respected, there are not always sanctioning mechanisms in place. Those exist for instance in Austria, Belgium, Czech Republic, Estonia, France, Hungary, Latvia, Portugal and Slovenia but do not in Finland or Spain. In Germany, only the violation of rights of natural and legal persons may be punished.

Finally, as regards the consequences the task of the Committees of inquiry may have, it should be stated that none of them are binding. In Finland, there is however a duty on the Government to give an account of the measures it has adopted in response to the resolution in its Annual report to Parliament. In France, a follow up is made six months after the publication of the report: the member of the competent standing committee designated by that committee shall report to it on the implementation of the conclusions of the Committee of inquiry. In Denmark, the Standing Orders of

the Folketing contain a procedure for the follow up of the outcome of the inquiries conducted by the extra-parliamentary commissions where those concern ministers.

4.2. Investigative powers

Although most Member States parliaments have a right of inquiry, their investigative powers vary largely.¹⁷¹

The table below summarises their powers and these differences:

Table 1: National Parliaments' investigative powers

Investigative power	On-the-spot investigations/ fact-finding visits	Hear officials/ servants	Hear members of the government	Request documents	Request expert reports
Number of Chambers	11	17	17	17	17

The survey conducted among national parliaments reveals that 11 of the 17 responding Chambers may conduct on-the-spot investigations/fact-finding-visits, although these are conducted by special investigators in Germany (Bundestag) and the Czech Republic (Chamber). The Portuguese Parliament and the Slovenian National Assembly have rights similar to those of the judicial authorities.

By contrast, they may all hear witnesses independently of whether these are officials or government members, request documents and expert reports. In Bulgaria, Croatia, Czech Republic (Chamber), Estonia, France (National Assembly), Hungary, Poland (Sejm) and Portugal for instance, attending such hearings or providing documents requested by the Committee is even an obligation, followed for example by the imposition of a fine where it is not respected in France. In Finland, no sanctions may be imposed but in practice officials and servants do participate.

In some cases, some restrictions however apply: in Portugal, current or former Presidents of the Republic, Speakers of Parliament and Prime Minister may choose to testify in writing, and in France, secrecy, national defence, foreign affairs or security are all valid grounds to refuse the supply of information. It is interesting to note as well that in Spain perjury under oath may lead to imprisonment

For what concerns the capacity of these Committees to summon private persons, some differences exist. No investigative hearings may be held in Bulgaria, whilst in Finland their participation is

¹⁷¹ The Danish case is not included in this analysis for the investigative powers of its extra-parliamentary commissions of inquiry depend on the quality of their chairs, i.e. particularly whether they are judges or not (all of the commissions that have been established so far have been chaired by judges, even if this is not an obligation). Where this is the case, as noted above the Commission has most of the powers ascribed to a criminal or a civil court, including the possibility to compel testimony and written statements from witnesses and to demand the production of tangible and documentary evidence. If a witness refuses to testify, it may be subject to the same sanctions as those applicable in the procedure before a court. Further to this, the Commissions of Inquiry Act which details their operation is based on the premise that inquiries are to be based on oral testimonies and written statements and documentation; no specific possibility to conduct fact-finding visits is included, although they could presumably take place with the consent of the public or private body affected. Experts may be involved on a voluntary basis, and they may be remunerated for their services.

voluntary. In Austria, anyone who is an Austrian resident may be summoned to appear whilst this applies only to citizens (as opposed to residents) in Bulgaria and Croatia. In the Czech Chamber of deputies, this duty applies to any person, even if residing in the Union and outside of the Czech Republic. In Germany, three different types of situations arise: those resident in Germany have a duty to appear; Germans resident abroad have a duty to testify but summoning them to do requires the consent of the third state of which they are a resident; and no obligation to testify exists on foreign national who do not live in Germany.

These differences result in different consequences where a person refuses to be heard or to provide the information requested. They are summarised in Table 2 below.

Table 2: Possibility for National parliaments to adopt administrative or criminal sanctions

Motive	Groundless refusal to provide any documents requested	Groundless refusal by natural persons of the request to be heard	Giving false evidence	Bribing individuals
Number of Chambers	11	12	13	10

Where a person requested to be heard refuses to do so, some measures may be taken. For instance, in Austria (Nationalrat), the Committee of inquiry may request the Federal Administrative Court to impose a penalty for contempt, and in Belgium this can lead to both imprisonment and the imposition of a fine. By contrast, in Hungary this 'only' results in a public announcement of the violation of the obligations at the next sitting of the National Assembly.

In case a witness gives false evidence, parliaments may not always take measures themselves, but the judiciary may. In Austria, prison may be ordered by a court for up to three years in such cases for example. In Belgium, imprisonment and the withdrawal of voting rights are possible. Bribes are also punishable acts, both for the person who is bribed and for the briber.

Lastly, the sources of the information and documentation Committees of inquiry may request also vary: in Finland, those reports may come from the Government or ministries only. In Belgium, the Chamber may even request information from the Prosecutor General of the courts of appeal or the Auditor General of the military courts when information is to be requested in criminal, police or disciplinary matters. In the Czech Republic, the Chamber of deputies primarily cooperates with public bodies and offices, but it may also address or investigate any subject or institution in the matter of public interest. In Germany, an obligation exists on federal public bodies, i.e. the Federal Government, federal authorities and federal public corporations, institutions and foundations to provide the information requested by a Committee of inquiry. However, limitations exist for instance on the basis of the protection of trade or professional secrets, or because of the strictly personal character of the information in question. Further acceptable reasons to refuse to provide documents relate to the separation of powers, and to the safeguard of the welfare state.

4.3. Conclusion

It results from the preceding comparison of the situation at Member State level that Committees of inquiry set up by national parliaments have, in their majority, a broader remit than the Committees of inquiry which Parliament may set up; they encompass both the scope of the Committees of inquiry and that of the Special Committees.

Furthermore, their capacity to summon government members or State officials and to request documents is much stronger, although not in all Member States are private individuals set under such strong obligations. Besides this, it should be noted that not all national systems punish the failure to appear before a Committee of inquiry or to provide information with the same strength: whereas in some Member States such type of conducts may lead to fines or even imprisonment, in others, such as Estonia or the Czech Republic, the parliamentary power of inquiry is considered a tool of political control in whose framework the refusal to co-operate may 'only' result in political consequences.

5. PROPOSALS FOR REFORM

On the basis of the preceding analysis, the following recommendations may be formulated. They regard: the conditions for the setting up of Committees of inquiry, their operation and in particular their powers, and the follow up of their recommendations.

The overarching recommendation is naturally that a regulation should replace the IIA currently in force as soon as possible.

5.1. Conditions for the establishment of the Committees

1. Lowering the threshold required to set up a Committee of inquiry to one third of the members with no vote in plenary but no change in the scope of their tasks

Only five Committees of inquiry could be set up so far. By contrast, more were prior to the introduction of the vote in plenary, and all the committees set up between 1981-1992 were supported by more than one quarter but less than a majority of MEPs.¹⁷² Introducing such a reform would not only make this right of control more accessible to MEPs (from smaller groups especially). It would allow to go back to the intentions of the Committee on the Rules of Procedure and Petitions which originally included the right of inquiry in Parliament's Rules of Procedure in 1981: This Committee's draftsman indeed justified this right of the minority by stating 'that a majority should not have the possibility to prevent investigations of unpleasant or embarrassing events'.¹⁷³ While it is true that inquiries should not be too frequent as they are a political instrument and have strong consequences,¹⁷⁴ the fear that there may be too many requests for Committees and that, consequently, their political weight would decrease,¹⁷⁵ may not necessarily be justified if sufficient (procedural) safeguards are established. Instead of reverting back to a system of automatic creation of committees on the request of one quarter of Parliament's component members, the Conference of Presidents' role of formal control could be maintained with this objective. Furthermore, even if the EU system does not have a clear division between majority and opposition, in an ever-fragmented EP like the one which was elected in 2019, giving a powerful tool to the minority to hold the executive to account may be even more justified and in fact may contribute to the vivacity of the political debate.

2. Committees of inquiry should remain *ad hoc* initiatives

The recent PANA Committee proposed the establishment of a permanent Committee of inquiry following the model existing in the US Congress.

This possibility is, however, not only impossible to put in place under the current Treaty, but it would arguably also defeat the purpose of the set-up of a Committees of inquiry. Their added value lies in the combination of expertise they bring together, which would not exist with a permanent Committee of inquiry.¹⁷⁶ Their aim is also to raise awareness and be visible, which would presumably also be more difficult for a permanent Committee to achieve, especially seeing as its members would lack the political motivation which currently exists for the chairs of those *ad hoc* Committees. Such a conclusion

¹⁷² Görlitz, N., 'Le droit d'enquête du Parlement européen', *Cahiers de droit européen*, 2013, Vol. 49, No. 3, pp. 783-819, p. 787, p. 792.

¹⁷³ European Parliament, Working document on the interpretation of Rule 95 of the Rules of Procedure (PE 80.257, 3.9.1982), p. 5 as quoted by Syrier, C.N., *The investigative function of the European parliament: holding the EU executive to account by conducting investigations*, Wolf Legal publishing, Oisterwijk, 2013, p. 16.

¹⁷⁴ Contra Porras Ramírez, J.-M., 'Las comisiones de investigación del Parlamento europeo. Un instrumento de control necesitado de reforma', *Revista de derecho comunitario europeo*, 2017, Vol. 56, pp. 201-231, p. 229 who argues in favour of a major use of Parliament's right of inquiry (alongside the use of its other instruments of control) in view of the success of the committees established so far in having an impact.

¹⁷⁵ As put forward by Syrier, C.N., *The investigative function of the European parliament: holding the EU executive to account by conducting investigations*, Wolf Legal publishing, Oisterwijk, 2013, p. 27.

¹⁷⁶ For instance, the TRANSIT Committee had 17 members and 17 substitutes; the BSE Committee 19 and 19 whereas the Committee on the crisis of the Equitable Life Assurance Society had 22 members and 15 substitutes.

is also confirmed by the example of the Transit Committee: when it was first established in 1995, also the budgetary committee wanted to lead investigation on the basis that the issue at stake had important consequences for the EU's budget. Eventually a dedicated Committee of inquiry was created as it was considered to be better suited to raise public awareness and as it could focus on this issue only.¹⁷⁷

5.2. Committees' powers

The scope and the strength of the investigatory powers granted to Parliament have always been a point of tension among institutions, notably between Parliament and Member States i.e. already when the IIA was negotiated post Maastricht.¹⁷⁸ Parliament's nature as a *political* organ conducting a political inquiry arguably calls for its use of means of political pressure.

1. Sanctions for a failure to appear or to provide documents should remain political

Parliament should follow the model in place in some of the Member States, and in the operation of the Ombudsman's tasks and resort to political consequences instead of sanctions where a Member State or an EU authority does not provide it with the requested information or refuses to appear before it. Such an approach will not only make an agreement among the Council, the Commission and the Parliament easier to find; it is also better in line with the type of subsidiary, political control Parliament is called to exercise. An institution's denial to cooperate is already an element to be considered in the inquiry. For the conduct of the inquiry to be viable however, there should be a clear obligation on the Member States and the EU institutions to submit to hearings or provide the requested information. Furthermore, a specific deadline to provide the requested information or to accept an invitation to appear before the Committee of inquiry should be defined. The design of specific procedures for the swift access to information from both EU and national authorities, including perhaps the possibility to directly interact with national governments instead of contacting with the Permanent Representations only, should be considered. Where a Member State or an institution fails to abide by the Committee's request, it should have to explain its reasons for it in public. Furthermore, this denial should be pointed at during the next plenary session of Parliament.

2. Reduce the scope of the possibility to deny appearance on ground of secrecy and increase safeguards in the use of this ground to refuse cooperation and in the treatment of confidential information

At present, reasons of secrecy may be widely used to refuse to appear, answer a question or provide documents. This possibility should be much more limited, but detailed procedure should be established with a view to guaranteeing the protection of such sensitive data. In this sense, the example of the treatment of information in the framework of the TTIP negotiations may be of use.

3. The European Commission should support a Committee of inquiry where Member States do not respond appropriately.

Committees of inquiry should additionally benefit from the support of the Commission in the conduct of their investigations regarding Member States.

4. Cooperation with national parliaments should be enhanced

National parliaments are the primary institutions in charge of holding national executives to account. As such, their role is complementary to that of Parliament. Furthermore, they not only have a longer tradition in conducting investigations at Member State level, they also have better tools to do so, be it

¹⁷⁷ Görlitz, N., 'Le droit d'enquête du Parlement européen', *Cahiers de droit européen*, 2013, Vol. 49, No. 3, pp. 783-819, p. 798.

¹⁷⁸ Shackelton, M., 'The European Parliament's New Committees of Inquiry: Tiger or Paper Tiger?', *Journal of Common Market Studies*, Vol. 26, No. 1, pp. 115-130, p. 116.

only because they are anchored in national institutional systems and have a deeper knowledge of the political culture and dynamics. Therefore, an EP Committee of inquiry could request a national parliament to start an inquiry, whilst one or more of its members would be involved in their operations. This type of multilevel cooperation could be inspired by the cooperation between the Commission and National Competent Authorities in competition law. Furthermore, the fact that many national parliaments already foresee the possible involvement of MEPs in their tasks would facilitate such type of cooperation. In light of the EU's duty to respect Member States' institutional autonomy, there would nevertheless not be an obligation on the national parliaments to accede to Parliament's request.

5. Possibility to conduct fact-finding visits.

Although Committees of inquiry do not formally have the power to conduct fact-finding visits, they have done so in the past. This possibility should be formalised mirroring the possibility which the PETI committee has.

5.3. Follow-up of the recommendations

1. Formalisation of the follow-up of the recommendations

In some cases, some formal initiatives to follow up on the recommendations of the Committees of inquiry were taken. This should be formalised following the practice existing in the French National Assembly whereby the responsible standing committee follows up six months after the publication of the final report.

Additionally, the EU and the national executive authorities object of the investigation should be submitted to a hearing to discuss the conclusion of the report, and their actions upon it. This duty should naturally be stronger on the European Commission, whose accountability Parliament is primarily in charge of guaranteeing.

6. CONCLUSION

At a time when the European integration process is increasingly threatened by a variety of phenomena including the recent Brexit, the rise of Eurosceptic parties, and the threats to some of the EU's core values such as the rule of law and democracy, Parliament is arguably more than ever before called to play a key role in guaranteeing democratic legitimacy by *inter alia* holding the EU's executive actors to account. As is evident from the examples of the inquiries which Parliament has conducted thus far, its role is, however, not limited to controlling their actions; it goes beyond this and embraces a duty to bring EU-wide systemic issues to the fore.

Yet, this remains a tool of last resort and a complementary one: it is complementary to what other (permanent) EP committees can do, and to the scrutiny function exercised by national parliaments: Parliament may investigate questions which national parliaments are not able to consider due to political pressure for instance.¹⁷⁹ Parliament is also in a subsidiary position in the sense that whereas the scope of its investigative powers may also concern cases of maladministration by national authorities (contrary to what is the case for the European Ombudsman), it remains that it is primarily in charge of ensuring the political accountability of EU bodies and institutions, and not of national governments, this task being within the remit of Member State parliaments' powers.

It follows from this situation that Parliament's powers *vis-à-vis* EU institutions and bodies should be reinforced, and that they should be stronger than those it has *vis-à-vis* national authorities, and that it should in fact seek the support of national parliaments when it needs to consider matters involving national authorities. This is not only in line with the principle according to which EU bodies should be accountable at EU level whilst national bodies should be held accountable by national authorities; it is also arguably the most efficient way to achieve results since national parliaments have – in most cases – stronger investigative capacities than Parliament and since they are embedded in their national institutional systems and may use this knowledge. This does not imply that Parliament should lose all its powers to interact directly with national government officials or civil servants. It only means that where a significant part of the inquiry requires the collection of evidence at national level, the necessary investigations should be conducted by the national parliament of the Member State in question with the participation of MEPs members to the Committee of inquiry.

As has been shown in this study, the setting up of Committees of inquiry is however but one of the instruments at Parliament's disposal. As the Conclusions by MEP Musso formulated in 1992 still perfectly reflect: 'It is clear [...] that the circumstances in which Parliament can set up a committee of inquiry are rather limited. This is not necessarily a defect. One could take the view that Parliament should set up committees of inquiry only rarely and only on issues having a considerable political impact, and in which it can play an important role. However, to achieve this, a system based on considerably wider powers for committees of inquiry would have to be established'.¹⁸⁰ Hence, this right

¹⁷⁹ The Special committee on the foot and mouth disease is an illustration of this situation as the EP conducted an inquiry where the UK Parliament could not do so. Poptcheva, E.-M., 'Parliament's committees of inquiry and special committees', European Parliamentary Research Service in-depth analysis, PE 582.007, 2016, p. 12.

¹⁸⁰ European Parliament, Working Document on Parliamentary committees of inquiry (Musso Report), 1992, p. 4.

should be reserved to the few particularly serious questions. It carries a very heavy political weight and will attract public attention. But if it is resorted to, then Parliament should have the instruments it needs to carry out its investigation properly.

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ANNEX

Committees of inquiry set up by Parliament so far (1979-2019)¹⁸¹

Name	Year of establishment	Specific result?	Specific follow up structure?
Committee of inquiry on situation of women in Europe	1979	Yes, permanent committee on women's affairs	
Committee of inquiry into the treatment of toxic and dangerous substances	1983/84	Yes, new legislation	
Committee of inquiry into the rise of fascism and racism in Europe	1984	Yes, Joint declaration by Council, Commission and Parliament	Yes (new committee of inquiry in 1989 – below)
Committee of inquiry into the drugs problems	1985/86	Yes, triggered Member States' interest and inclusion of legal basis in the Maastricht Treaty	
Committee on agricultural stocks	1986/87	Yes, contributed to defining future Common Agricultural Policy	
Committee of inquiry into the handling and transport of nuclear material	1988	Yes, raised awareness on procedural problems faced by committee of inquiry (difficulties in obtaining testimony of Belgian government officials)	
Committee on hormones in meat	1988/89	Endorsed continuation of Community's restrictive policy in this matter.	

¹⁸¹ As explained in Section 2.1.1., Committees of inquiry set up between 1981 and 1986 were not limited to the investigation of cases of maladministration.

Name	Year of establishment	Specific result?	Specific follow up structure?
Committee on the application of the joint declaration against racism and fascism (follow up to previous committee)	1989/90		
Committee on trans-frontier crime linked to drug trafficking	1991	Yes, possibilities for concerted European action inserted in Maastricht Treaty	
Committee on Europe's transit system and associated issues (TRANSIT)	1995	Yes, Commission took measures even before publication of final report	BUDG committee
Committee on the BSE crisis (BSE)	1996	Yes	Temporary committee
Committee on the crisis of Equitable Life Assurance Society (EQUI)	2006	Yes, both by Parliament itself and by the Commission; not by UK government (most blamed in final report)	
Committee on car emissions EMIS	2015	Yes	
Committee on the application of Union law in relation to money laundering, tax avoidance and tax evasion (PANA)	2016	Yes, reforms in the field of Anti-Money Laundering for ex.	

Special Committees (SC) set up by Parliament so far (formerly known as Temporary Committees (TC))

Year of establishment	Name
1983	TC on European Economic Recovery
1984	TC on budgetary resources
1987	TC on the Commission's proposal 'Making a success of the Single Act'
1990	TC on the impact on the European Community of German reunification
1992	TC on the Delors II package on future financing of the European Community
1994/5	TC on employment
1997	TC entrusted to monitor the action taken on the recommendations made concerning BSE
2000/1	TC established to verify the existence of the communications interception system known as ECHELON and to assess its compatibility with European law
2001	TC set up to examine the problems and opportunities offered in the area of human genetics and other new technologies of modern medicine
2002	TC established to analyse the management of the foot and mouth epidemic
2003/4	TC on Safety at Sea
2004/5	TC on policy challenges and budgetary means of the enlarged Union 2007-2013
2006/7	TC on the alleged use of European countries by the CIA for the transportation and illegal detention of prisoners
2007/9	TC on climate change
2009/11	SC on the financial, economic and social crisis
2010/11	SC on the policy challenges and for a sustainable EU after 2013
2012/13	SC on organised crime, corruption and money laundering
2015	SC on tax rulings

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.