

Inquiries by Parliaments The political use of a democratic right¹

ABSTRACT

Conducting in-depth investigations is an ancient and essential right of parliaments in Europe. Yet, despite a provision of the Lisbon treaty, the European Parliament still has a limited institutional capacity to conduct inquiries. This study, commissioned by the European Parliament's Policy Department for Citizens' Rights and Constitutional Affairs at the request of the AFCO Committee, discusses the theoretical basis of parliamentary investigation, compares recent committees of inquiries and develops recommendations for up-grading the European Parliament's capacity.

Background

-)] The Maastricht Treaty was the first text to offer a substantial empowerment of the Parliament's investigative authority. Article 226 of the Treaty on the functioning of the European Union granted Parliament the **right to set up temporary committees of inquiry and provided a legal basis for investing these committees with significant powers** regarding their possibilities for action and the political impact of their work.
-)] The negotiations between the three institutions on a regulation based on **Article 226 TFEU has not been successful after ten years.**
-)] Since 1995, the Parliament has set up **five committees** of inquiry, gradually increasing their duration as well as their number of members, but it has faced procedural and political limitations.

Aim

-)] The aim of this report is to assess the investigations led by Parliament in the past, especially through comparing them with practices within national parliaments of the EU.
-)] The report also proposes recommendations on how to strengthen the Parliament's capacities.

¹ Full study in English: [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)

Result 1: the standard justifications for granting legislatures inquiry prerogatives generally apply in the case of Parliament.

- J For a long time, parliaments have been granted investigative powers as a consequence of the **political responsibility** of the government. Indeed, parliaments' basic purpose is to collect information in order to judge the government's effectiveness. Consequently, parliamentary inquiries look backward ('what has been done and by whom?') but also forward ('what should be done and by whom?').
- J Supplementary justifications for these powers are suggested and assessed in the case of Parliament as proposed by the following table:

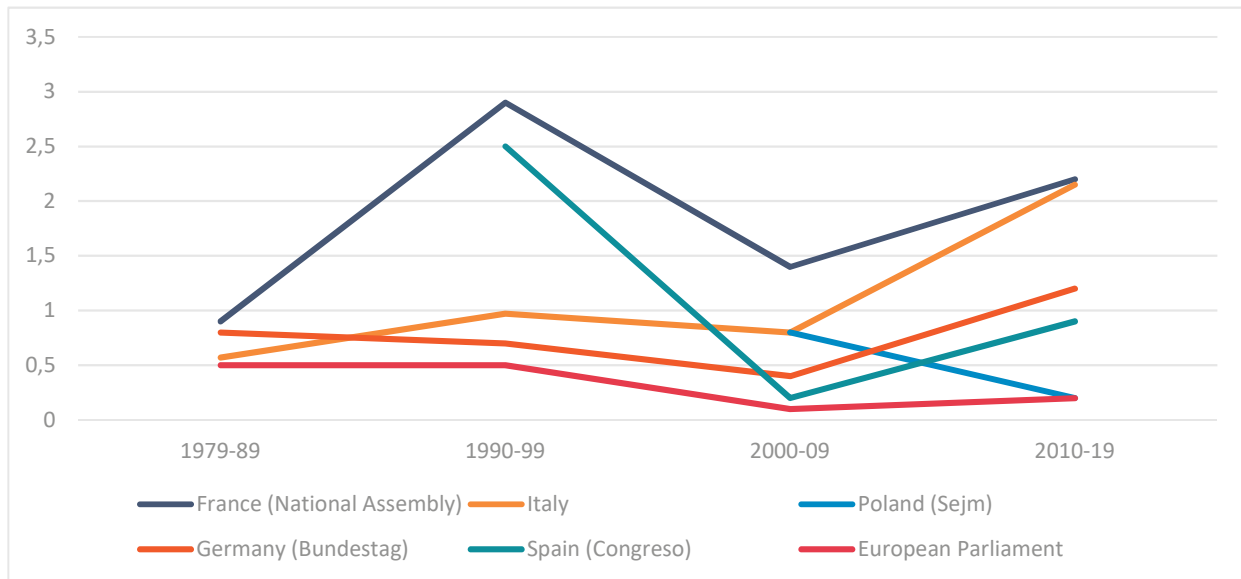
Justifications	Relevant for Parliament	Irrelevant for Parliament
Overseeing government	Accountability of the Commission	Lack of accountability of the Council towards Parliament
Fighting against information loss	Especially since EU law is implemented at the national level	
Compensating for the lack of legislative influence	'Power without influence' syndrome	Parliament has been an active legislator since Maastricht and Lisbon
Granting rights to the opposition	'Policing the bargains'	The identification of the opposition is unclear in Parliament
Feeding public debates	Especially since it is difficult for Parliament to achieve this through law-making	
Restoring civil peace	Possibly	

Note: Parliament refers here to the European Parliament

Result 2: a Parliament 'far way so close' from national parliaments of the EU regarding inquiries:

- J The **issues addressed by the committees of inquiry in Parliament are close, even very similar, to those found in national parliaments** despite the Treaty provision that Parliament should focus on '*alleged contraventions or maladministration in the implementation of Union law*'.
- J As illustrated by the following figure, there are **far fewer committees appointed in Parliament** than in lower assemblies of large Member States and the dynamic of the last decade in national parliaments has not reflected in Parliament. This deficit may result from: a. the institutional weakness of inquiries carried out by Parliament; b. competition with powerful standing committees; or c. an institutional style favouring consensual law making.

Change in the number of committees of inquiry in different parliaments including the European Parliament, yearly averages by decades (1979-2019)



Result 3: Parliament already has a genuine capacity to investigate but also faces real limits:

- J Since 1995, the Parliament has set up five committees of inquiry, gradually increasing their duration as well as their number of members. **It has made strategic use of its prerogatives to scrutinise and control EU policies.** The committees of inquiry have offered an opportunity for Parliament to influence the agenda of the European Commission and shape democratic debate by raising citizens' awareness.
- J **All committees have been faced yet with a lack of sincere cooperation from a number of other EU institutions, both relating to access to documents and the organisation of hearings.** Although the committees fail to hear all the witnesses they wished, they heard most of them through a pro-active strategy based on the mobilisation of the Parliament's presidency, a use of the medias, a mobilisation of the interested parts and a 'blame and shame' strategy.

Three sets of ten recommendations

-] The first set aims **to maintain the Parliament's power of inquiry** without waiting for Parliament, the Council and the Commission to agree on the adoption of a regulation, because the latter remains uncertain, and because investigating is one of Parliament's democratic duties.

1: The Parliament should quickly appoint new committees of inquiry without waiting for a final agreement.

2: The size, duration and cost of the Parliament committees of inquiry should generally be limited.

3: The Parliament should strengthen its inquiry powers through a professional and cross-party approach and by signing with the Commission a transitional agreement on cooperation during inquiries as long as the negotiations on Article 226 TFEU continue.

4: The networking role of the Parliament should be strengthened regarding parliamentary and non-parliamentary non-judicial inquiries conducted at both the EU and domestic levels. The traditional physical and virtual tools for interinstitutional cooperation should be employed to this end.

-] The second set of recommendations advises the **Parliament to strengthen its current bargaining position** in view of implementing Article 226 TFEU. This would entail traditional strategies from past interinstitutional bargains, especially:

5: The Parliament should construct a democratic narrative to support its inquiry role. Each committee of inquiry organised should be an opportunity to advance it. When necessary, a 'name and blame' strategy should be implemented in relation to this democratic narrative.

6: All or nearly all groups should support the Parliament's negotiator. This could be achieved without modifying the Parliament's rules of procedure through a political cross-party agreement giving each of them the right to propose the topic of a committee of inquiry and granting them the role of rapporteur or chair within it.

7: The president on the Parliament's side of any formal and public meetings with the Commission and Council representatives could publicly and systematically mention the ongoing negotiations and the Parliament's concerns.

8: The EP could obtain frank public support from a large number of national parliaments on this issue in exchange for more balanced interparliamentary cooperation with them (generally or on a given issue).

- J For theoretical as well as strategic reasons, the report finally consider that Parliament **lowers the level of ambition concerning the Council.**

9: The Parliament could change its negotiating position and accept that the right to compel witnesses would depend on the level of their organisation, whether EU or domestic. For any EU agent, this right would be maximal and directly enforced and sanctioned at the EU level. For Member States' leaders and agents, this right would not be mandatory, but refusals should be duly communicated. For third parties, a summons would in principle be mandatory and enforced by Member States according to existing regulations for their national parliaments.

10: The Parliament could change its negotiating position and accept that the right to access documents would depend on the EU or domestic level of the organisation in which the documents are situated. For any EU document, access would be total and directly enforced and sanctioned at the EU level. For Member States' authorities, access would not be mandatory, but refusals should be duly communicated. For third parties, access would in principle be mandatory and enforced by Member States according to existing regulations for their national parliaments.

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