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European Parliament's right of inquiry

Proposal adopted by the European Parliament on 23 May 2012 for a regulation of the European Parliament on the detailed provisions governing the exercise of the European Parliament's right of inquiry and repealing Decision 95/167/EC, Euratom, ECSC of the European Parliament, the Council and the Commission (2009/2212(INI))¹

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

THE EUROPEAN PARLIAMENT,

Having regard to the Treaty on the Functioning of the European Union, and in particular the third paragraph of Article 226 thereof,

Having regard to the Treaty establishing the European Atomic Energy Community, and in particular Article 106a thereof,

After transmission of the draft legislative act to the national parliaments,

¹ Parliament decided to postpone the vote on the motion for a resolution, pursuant to the third paragraph of Rule 41 (A7-0352/2011).

Having regard to the consent of the Council¹,

Having regard to the consent of the Commission²,

Acting in accordance with a special legislative procedure,

Whereas:

- (1) The Treaty of Lisbon created conditions for a renewed and enhanced institutional balance within the Union, allowing its institutions to function more efficiently, openly and democratically. In this context the European Parliament's functions in relation to political control were reinforced and extended. Therefore, in accordance with both national parliamentary practice and the requirements under the Treaty on European Union, the Treaty on the Functioning of the European Union and the Treaty establishing the European Atomic Energy Community (hereinafter 'the Treaties'), the European Parliament's committees of inquiry should be reinforced and should be granted specific, genuine and clearly delimited powers which are more in line with its political stature and competences, while respecting the principle of proportionality as set out in Article 5 of the Treaty on European Union. The powers of the committees of inquiry, which are exceptional instruments of political control, should be without prejudice to the responsibilities of other institutions.
- (2) On 19 April 1995 the European Parliament, the Council and the Commission adopted Decision 95/167/EC, Euratom, ECSC³, which laid down the detailed provisions governing the exercise of the European Parliament's right of inquiry. That decision alluded to the possibility that its provisions might be revised in the light of experience.
- (3) With a view to the renewed institutional balance created by the Treaty of Lisbon and to the experience gained from the work of the European Parliament's committees of inquiry, Decision 95/167/EC, Euratom, ECSC should be repealed and replaced by a new regulation.

¹ OJ ...

² OJ ...

³ OJ L 78, 6.4.1995, p. 1.

- (4) In line with the principle of utility as recognised by the case-law of the Court of Justice¹, the powers which are indispensable in order to carry out the tasks flowing from the right of inquiry should be conferred on the European Parliament and its committees of inquiry. To that end, it is also essential that the institutions and bodies of the Union as well as the Member States take all steps to facilitate the performance of those tasks.
- (5) No committee of inquiry should be set up where the alleged facts are being examined before a court and while the case is still subject to legal proceedings. However, in order to avoid any conflict between inquiries of a political nature and those of a judicial nature, the European Parliament should be able to examine whether it is necessary to suspend the investigation of a committee of inquiry if, after it has been set up, legal proceedings bearing a relation to the alleged facts are initiated.
- (6) It flows from the principles of openness, good governance and democratic accountability that proceedings of committees of inquiry and in particular hearings should take place in public. On the other hand, provision should also be made for the possibility of in-camera proceedings and appropriate rules on confidentiality in order to ensure the efficiency of the inquiries, the protection of the vital interests of Member States, the protection of privacy and the integrity of an individual, in particular in line with Union legislation on the protection of personal data, or the protection of commercial interests of a natural or legal person.
- (7) The right of inquiry, as an important element of parliamentary supervisory powers, is aimed at determining the way in which the existing body of law has been implemented in the past. It is thus essential that a committee of inquiry be able to rely on factual evidence gathered in the course of its investigation. For this purpose, a committee of inquiry should be able to hear members of Union institutions and members of governments of Member States, obtain evidence from officials and other servants of the Union or of Member States, obtain evidence from any other individual residing in the Union, request experts' reports, request documents and conduct on-the-spot

¹ Judgment in Joined Cases 281, 283 to 285 and 287/85 *Germany, France, Netherlands, Denmark and United Kingdom v Commission* [1987] ECR 3203, at paragraph 28.

investigations.

- (8) Investigations should be conducted with full respect for human rights and fundamental freedoms, in particular the principle of fairness, and for the right of persons involved to express their views on the facts concerning them.
- (9) Committees of inquiry should respect in full the rights of those called on by them to testify, in accordance with the European Convention for the Protection of Human Rights and Fundamental Freedoms and the Charter of Fundamental Rights of the European Union.
- (10) Investigations should also take into account the principle that the conclusions of an inquiry should be based solely on elements which have evidential value. To that end, a committee of inquiry should be able in particular to have access to any relevant documents in the possession of the Union's institutions or bodies, of Member States or, if the document is considered pertinent for the success of the inquiry, of any other natural or legal person.
- (11) In line with the principle of sincere cooperation and with the commitment to contribute to the upholding of the legal order of the Union, the Union's institutions and bodies or the Member States should designate the officials or other servants whom they authorise to appear before a committee of inquiry when the committee invites them to do so. Furthermore, it should be possible for a committee of inquiry to hear the Members of the Commission responsible for the matter under investigation if their testimony is considered to be of material importance and necessary for a thorough appraisal of the matter under investigation.
- (12) However, in order to ensure that a committee of inquiry can be certain that its conclusions are based on elements which have evidential value, it should also have the right to request the hearing of any individual who is resident in the Union as a witness who should be obliged to answer questions willingly, fully and truthfully. Moreover, if officials and other servants of the Union are not authorised pursuant to Articles 17 and 19 of the Staff Regulations of officials of the European Union, laid down in Council

Regulation (EEC, Euratom, ECSC) No 259/68¹, and Article 11 of the Conditions of employment of other servants of the European Union, laid down in the same Regulation, to obey the summons by the committee, to attend for examination and to submit statements and give evidence in person, the official or authority responsible for denying the authorisation should appear before the committee and should explain the reasons therefor.

- (13) In ratifying the Treaty on the Functioning of the European Union, the Member States also agreed to confer on the European Parliament the right to investigate alleged contraventions or maladministration in the implementation of Union law. Consequently, they should undertake that their national authorities, in conformity with the provisions of national law, give the necessary support to enable committees of inquiry to fulfil their task.
- (14) With a view to strengthened democratic control at Union level, the provisions of this Regulation grant extended powers to committees of inquiry. In order to give effect to those provisions, to increase the efficiency of inquiries and to bring them more in line with national parliamentary practice, this Regulation should provide for the possibility of effective, proportionate and dissuasive sanctions in well-defined cases. It should be up to Member States to ensure that certain infringements are subject to appropriate sanctions under their national law and that they bring appropriate proceedings against the perpetrators of such infringements.
- (15) The doctrine of the separation of powers, should be respected, according to which, in order to prevent power from being abused, the legislature (parliament), the executive (government) and the judiciary (the law courts) should be separate from one another.
- (16) This Regulation respects fundamental rights and observes the principles recognised by the Charter of Fundamental Rights of the European Union,

HAS ADOPTED THIS REGULATION:

¹ OJ L 56, 4.3.1968, p. 1.

Section 1

Subject matter and general rules on the establishment of committees of inquiry

Article 1

Subject-matter

1. This Regulation lays down detailed provisions governing the exercise of the European Parliament's right, in the course of its duties, 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 by an institution or a body of the Union, by a public administrative body of a Member State or by any person empowered by Union law to implement that law.
2. Provisions governing the internal organisation of the committees of inquiry shall be laid down in the European Parliament's Rules of Procedure.

Article 2

Setting-up and mandate of committees of inquiry

1. Subject to the conditions and limitations laid down by the treaties, the European Parliament may set up temporary committees of inquiry.
2. The European Parliament may set up such committees of inquiry at the request of one quarter of its component members.
3. The decision to set up a committee of inquiry shall specify its mandate, comprising in particular:
 - (a) the subject-matter and the purpose of the inquiry, referring to the relevant provisions of the law of the Union;
 - (b) its composition based on a balanced representation of political forces;

- (c) the time-limit for submission of its report, which shall not exceed 12 months from the date on which it first meets and may, by reasoned decision of the European Parliament, be extended twice by no more than three months.

Article 3

Cessation of existence of committees of inquiry

The committee of inquiry shall cease to exist:

- (a) on the submission of its report; or
- (b) upon reaching the time-limit for submission of its report; and
- (c) in any event, at the close of the parliamentary term.

Article 4

Renewed inquiries

A committee of inquiry may not be set up or re-established with regard to matters into which an inquiry has already been held by a committee of inquiry until at least 12 months have elapsed since the earlier committee of inquiry ceased to exist pursuant to point (a) or point (b) of Article 3, unless any new facts have emerged. A committee of inquiry may be set up in any case where new and serious facts have emerged that are deemed likely to alter substantive findings.

Section 2

General procedural rules

Article 5

Incompatibilities

1. A committee of inquiry may not investigate alleged facts which are being examined before a court for as long as the case is still subject to legal proceedings.
2. If after the setting-up of a committee of inquiry legal proceedings bearing a relation to

the alleged facts are initiated, the European Parliament shall examine whether it is necessary to suspend the committee's investigation for the duration of such proceedings in accordance with Article 226 of the Treaty on the Functioning of the European Union.

The period of the suspension shall not be counted in the time referred to in Article 2(3), point (c).

3. Within a period of two months either of the setting up of a committee of inquiry or of the Commission being informed of an allegation made before a committee of inquiry of a contravention of Union law by a Member State, the Commission may notify the European Parliament that a matter to be examined by a committee of inquiry is the subject of a Union pre-litigation procedure. In such cases the committee of inquiry shall take all necessary steps to enable the Commission fully to exercise the powers conferred on it by the Treaties.

Article 6

Public nature of proceedings

1. Proceedings of the committee of inquiry, and in particular hearings conducted by the committee, shall take place in public.
2. Exceptionally, proceedings shall take place in camera if this is requested by one quarter of the members of the committee of inquiry, by an institution or a body of the Union or by national authorities concerned. Where a person giving evidence or an expert requests to be heard in camera, the committee of inquiry shall consider that request and the alleged reasons for it in camera.

Confidential information as referred to in Article 8, shall be examined in camera.

Article 7

Persons named in the course of an inquiry

The committee of inquiry shall inform any person named in the course of an inquiry to whom this might prove prejudicial. It shall hear such a person if that person so requests.

Article 8
Confidentiality

1. The information obtained by the committee of inquiry shall be used solely for the performance of its duties. It may not be disclosed if it contains material of a confidential nature. Confidential information shall be handled and protected by the European Parliament in compliance with its internal rules applicable to "EU classified information" and non-classified "other confidential information".
2. Paragraph 1 applies accordingly to information disclosure of which would:
 - (a) undermine the protection of privacy and the integrity of an individual, in particular with regard to Union legislation on the protection of personal data,
 - (b) undermine commercial interests of a natural or legal person, including intellectual property, or
 - (c) cause significant prejudice to the interest of the Union or of one or more of the Member States.
3. The members of the committee of inquiry and any other persons who, by reason of their duties, have become acquainted with facts, information, knowledge, documents or objects in respect of which secrecy must be observed pursuant to provisions adopted by a Member State or by a Union institution shall be required, even after their duties have ceased, to keep them secret from any unauthorised person and from the public.

Article 9
Cooperation

The institutions and bodies of the Union and the national authorities of the Member States, acting in conformity with provisions of Union and national law, shall assist the committee of inquiry in carrying out its tasks in accordance with the principle of sincere cooperation.

Article 10
Communications

Any communication addressed to the national authorities of the Member States for the purposes of applying this Regulation shall be made through their Permanent Representations to the Union.

Article 11

Results of inquiries

1. The final report of the committee of inquiry shall be submitted to the European Parliament.
2. The final report of the committee of inquiry may include minority conclusions provided that such conclusions are supported by at least one quarter of the committee's members.
3. The European Parliament may forward to the institutions or bodies of the Union or to the Member States for transmission to the competent authorities any recommendations which it adopts on the basis of the final report.

Section 3

Investigation

Article 12

Conduct of investigation

1. In order to carry out investigations, within the limits of its mandate and subject to Articles 14 to 18, the committee of inquiry may:
 - hear members of Union institutions and members of governments of Member States;
 - obtain evidence from officials and other servants of the Union or of Member States;
 - obtain evidence from any other individual residing in the Union;

- request experts' reports;
 - request documents;
 - conduct on-the-spot investigations.
2. The committee of inquiry may ask national authorities for assistance in the course of its investigations.
 3. Where alleged contraventions or maladministration in the implementation of Union law involve possible responsibility on the part of a body or authority of a Member State, the committee of inquiry may ask the parliament of the Member State concerned to cooperate in the investigation.

To that end, the European Parliament may conclude interparliamentary agreements with the parliaments of the Member States.

Article 13

On-the-spot investigations

The committee of inquiry may conduct on-the-spot investigations. These shall be conducted where appropriate in cooperation with the national authorities, in conformity with the provisions of national law.

Article 14

Requests for documents

1. At the request of the committee of inquiry addressed to the Union's institutions and bodies, any relevant document in their possession shall be made available to the committee.
2. At the request of the committee of inquiry addressed to Member States' authorities, any relevant document in their possession shall be made available to the committee in conformity with the provisions of national law, subject to the rules set out in points (a) and (b) of Article 346(1) of the Treaty on the Functioning of the European Union.

3. The committee of inquiry may ask any other legal or natural person concerned to make available such documents as it may consider pertinent for the success of its inquiry. Such persons shall, without prejudice to their obligations arising from Union and national law, comply with the committee's request. They may claim the rights which they would enjoy under national law in the case of seizure of objects by national law-enforcement authorities.
4. Requests for documents shall state the legal basis and the purpose of the request and shall specify what documents are required and fix the time-limit within which the documents are to be provided. They shall also state the possible consequences of groundless refusal to provide the documents requested.

Article 15

Witnesses

1. For the purpose of this Regulation, 'individual' means a natural person who gives evidence at a hearing of a committee of inquiry pursuant to the provisions of this Article.

The committee of inquiry may request any person who is resident in the Union to participate in a hearing before it, if this is necessary in order for it to be able to fulfil its tasks.

Every request shall contain the name, forenames and address of the individual concerned and state precisely about what subject and for what reasons the committee of inquiry wishes to hear that individual. It shall be forwarded by the committee to the competent national authority of the Member State where the individual is resident in conformity with Article 10. In accordance with the principle of sincere cooperation and the relevant legal provisions, the competent national authority shall summon the individual to appear before the committee of inquiry.

2. Individuals shall willingly, fully and truthfully answer questions put to them by

members of the committee of inquiry. They may claim the right to refuse to give evidence which they would enjoy if requested to be heard by a parliamentary committee of inquiry or similar body in their Member State of residence or, in the absence of such committee or body, in the Member State where the hearing is held.

Individuals shall be informed in advance of their rights and obligations and of the possible consequences of groundless refusal of the request to be heard, of giving false evidence and of the bribing of individuals.

Article 16

Testimony by members of Union institutions and members of governments of Member States

The committee of inquiry may invite the institutions of the Union, with the exception of the Court of Justice of the European Union, or governments of Member States to designate one or more of their members to take part in its proceedings if their testimony is considered to be of material importance and necessary for a thorough appraisal of the matter under investigation.

Upon a request under the first paragraph, the Commission shall designate one or more Member of the Commission responsible for the matter under investigation to appear before the committee of inquiry.

Article 17

Officials and other servants of the Union and of the Member States

1. The committee of inquiry may invite the Union's institutions or bodies to designate one or more of their officials or other servants to take part in its proceedings.

The Union's institutions or bodies shall designate the officials or other servants whom they authorise to appear before the committee of inquiry.

2. The committee of inquiry may summon a specific official or other servant of the Union to testify in a matter associated with his or her professional duties if it considers that the hearing of that person is necessary in order to enable it to fulfil its task. If the official or

other servant concerned is not authorised pursuant to Articles 17 and 19 of the Staff Regulations of officials of the European Union and Article 11 of the Conditions of employment of other servants of the European Union to obey the summons by the committee, to attend for examination and to submit statements and give evidence in person, the official or authority responsible for denying the authorisation shall appear before the committee of inquiry and shall explain the reasons therefor.

3. The committee of inquiry may request Member States to designate one or more of their officials to take part in its proceedings.
4. The Member State concerned shall designate the officials whom it authorises to appear before the committee of inquiry, subject to the law of that Member State .

The officials in question shall speak on behalf of, and as instructed by, their government. They shall continue to be bound by the obligations arising from the law to which they are subject.

If any such official concerned is not authorised to give evidence to the committee of inquiry, a representative authorised to commit the government of the Member State concerned shall appear before the committee and shall explain the reasons therefor.

Article 18

Experts

1. The committee of inquiry may decide that reports be obtained from one or more experts. Its decision in that regard shall define the experts' task and set the time-limit within which the report is to be made.
2. Experts may give an opinion only on points which have been expressly referred to them.
3. At the proposal of an expert, the committee of inquiry may request the hearing of any person residing in the Union in accordance with Articles 15 to 17.

4. After having made a report, an expert may be heard by the committee of inquiry.

Article 19

Sanctions

1. Formal note shall be taken of any refusal or failure to comply with the obligations laid down by this Regulation.

The President of the European Parliament may announce, in full or in part, the points of which formal note has been taken and arrange for the announcement to be published in the *Official Journal of the European Union*.

2. Member States shall ensure that the following infringements of this Regulation are subject to appropriate sanctions under their national law:

- groundless refusal to provide any documents requested;
- groundless refusal by individuals of the request to be heard;
- the giving of false evidence; and
- the bribing of individuals.

Those sanctions shall be effective, proportionate and dissuasive and shall reflect the sanctions for corresponding infringements in relation to the work of committees of inquiry in the national parliaments.

3. Where a person is reasonably suspected of having committed any of the infringements specified in paragraph 2, the Member State in which that person is resident shall bring appropriate proceedings against him or her under its national law.

Article 20

Costs

The travel and accommodation expenses of members and officials or other servants of the Union institutions and bodies shall be borne by those institutions and bodies. Travel and accommodation expenses of other persons who appear before a committee of inquiry shall be reimbursed by the European Parliament in accordance with the ceilings fixed for hearings of experts.

Section 4

Final provisions

Article 21

Repeal

Decision 95/167/EC, Euratom, ECSC is hereby repealed.

Article 22

Entry into force

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

It shall apply from...* .

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at ,

For the European Parliament
The President

* OJ: Please insert the date: twelve months after the entry into force of this Regulation.