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SECOND WORKING DOCUMENT

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 replacing Decision 95/167/EC, Euratom, ECSC of the European Parliament, the Council and the Commission of 19 April 1995

Committee on Constitutional Affairs

Rapporteur: Ramón Jáuregui Atondo

State of play of the file

The first working document¹ discussed and approved by the Committee on Constitutional Affairs (AFCO) on 20 January 2015 achieved the objective of resuming contact in relation to this specific file between Parliament, in its newly elected configuration, and the Council and the Commission. Once again, it should be made clear that Parliament's legislative resolution of 16 April 2014 concerning its right of inquiry² had the sole objective of ensuring that the legislative proposal contained in the Martin report³, adopted by the plenary on 23 May 2012⁴, did not lapse as unfinished business pursuant to Rule 229 of the Rules of Procedure. The special legislative procedure for the adoption of the legislative act concerning Parliament's right of inquiry, as established in Article 226(3) of the Treaty on the Functioning of the European Union (TFEU)⁵, unquestionably gives Parliament the legislative initiative, with the Council and the Commission having to give their consent. In order to avoid any institutional misunderstanding, it should consequently be reaffirmed that the objective of the vote on the abovementioned legislative resolution, held on the eve of the election of the 8th legislature, was to preserve – and not squander – the added value of both the text of the Martin report, as adopted, and the subsequent negotiations at the technical and political levels (see paragraph 3 of the legislative resolution of 16 April 2014⁶). The initiative was thus adopted on the basis that it could be modified at a later stage following additional negotiations with the Council and the Commission.

In particular, with a view to arriving at a consensus and in a spirit of dialogue, the abovementioned AFCO working document of 9 January 2015 suggested that all three institutions show flexibility in their positions.

Following this step on the part of the AFCO Committee, both the Commission (on 28 April 2015) and the Council (on 7 May) replied positively to the letter sent to them on 27 February by AFCO Chair Danuta Hübner expressing the newly elected Parliament's wish to restart the negotiations.

A new starting point

In a letter of 3 September 2015 from the Chair of Coreper, the Luxembourg Presidency of the Council placed special emphasis on the Council's willingness to engage with Parliament on this file, and listed in an annex the Council's main legal and institutional concerns about Parliament's proposal. It was also stressed that future negotiations must address these problematic and fundamental issues of a legal and institutional nature.

In her reply of 28 September 2015, Ms Hübner reaffirmed once again the willingness of the

¹ PE544.488v03-00 of 9 January 2015.

² Texts adopted, P7_TA(2014)0429.

³ A7-0352/2011.

⁴ OJ C 264 E, 13.9.2013, p. 41.

⁵ Article 226(3) TFEU: 'The 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.'

⁶ 'Invites the Council and the Commission, if they are unable to give their consent to the proposal in its present form, to resume negotiations with the newly elected Parliament, acknowledging the progress made in past negotiations at political level and during the informal contacts at technical level, notably concerning the issue of confidentiality and the handling of classified and other information;'.

AFCO Committee and of the rapporteur for this file to explore possible solutions with the other institutions with a view to overcoming differences and reaching an agreement on Parliament's proposal concerning its right of inquiry, 'which is of a paramount importance for the fulfilment of democratic control inherent to every Parliament'.

Procedural issues

Article 226(3) TFEU, which provides for a special legislative procedure for the adoption of a regulation on the right of inquiry has the peculiarity not only that Parliament enjoys the right of legislative initiative, but also that it alone is the author of the regulation, after obtaining the consent of the Council and the Commission.

Furthermore, by analogy with the Commission's right to alter its proposals as long as the other institutions have not acted, in accordance with Article 293(2) TFEU, Parliament should be entitled to alter or withdraw its legislative proposal.

With more specific reference to a new mandate to enter into interinstitutional negotiations, Rule 73 of the Rules of Procedure applies. Accordingly, the AFCO Committee should hold a new vote, at the appropriate time, on the start of interinstitutional negotiations. However, given the circumstances and the fact that Parliament's position is already set out in its proposal, it must be accepted that the existing mandate may instead be modified as regards the setting of objectives, priorities or orientations.

Substantive issues

Regarding the substantive issues, both the Council and the Commission have raised concerns about numerous provisions in the proposed regulation. The rapporteur has already called for the three institutions to be open to flexibility in their positions, and has stated that in his opinion there are alternative solutions and more flexible wordings which would enable the deadlock on the regulation to be resolved, thereby equipping Parliament with a regulation suitable for this crucial aspect of its duties. The 'legal and institutional concerns' raised by the Secretaries-General of the Council and the Commission in their letter of April 2014 should not in themselves constitute an insurmountable objection.

The main outstanding issues raised by the Council in its letter of 3 September 2015 with regard to Parliament's proposal concern:

- *incompatibilities (sub judice clause) (Article 5);*
- *the public nature of proceedings (Article 6);*
- *confidentiality (Article 8);*
- *the conduct of investigations (Article 12);*
- *on-the-spot investigations (Article 13);*
- *requests for documents (Article 14);*
- *witnesses (Article 15);*

- *officials and other servants of the Union and of the Member States (Article 17); and*
- *sanctions (Article 19).*

In respect of all of these issues and concerns, the technical negotiations held in the previous legislative term identified numerous solutions and alternative wordings. Indeed, an annex to the abovementioned letter of 4 April 2014 from the two Secretaries-General set out various solutions, as proposed by legal experts, to the most complicated points (incompatibilities, confidentiality, the conduct of investigations, and requests for documents).

Conclusion and mandate for negotiations

In light of the above, and given the spirit of openness shown by the Council Presidencies (including both the current Luxembourg Presidency and the previous Latvian Presidency), the rapporteur wishes to submit to the AFCO Committee a request for the adoption of a formal negotiating mandate pursuant to Article 73 of the Rules of Procedure.

This mandate, aimed at reaching an agreement and obtaining the consent of the Council and the Commission, should stipulate the following basis for the negotiations:

- *the text of the legislative resolution adopted by Parliament on 16 April 2014;*
- *the letters of 4 April 2014 from the Secretaries-General of the Commission and the Council and of 3 September from the President of Coreper.*

The negotiations should lead to the adoption of a new text that incorporates the uncontested parts of the Martin report, and should address the legal and institutional concerns raised by the Council in particular; it should formulate solutions while reaffirming Parliament's new political role as co-legislator, which entails the power of democratic scrutiny of any issue linked to the incorrect application of the Treaties, and thus a range of investigatory powers worthy of any legislative chamber.