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From:	General Secretariat of the Council
To:	Delegations
Subject:	Proposal for a Regulation of the European Parliament on the detailed provisions governing the exercise of the European Parliament's right of inquiry replacing the Decision of the European Parliament, the Council and the Commission of 19 April 1995 (95/167/EC, Euratom, ECSC)

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Delegations will find attached a letter dated 30 November 2015 from Ms Danuta HÜBNER, Chair of the AFCO Committee in the European Parliament, addressed to Mr Nicolas SCHMIT, Minister of Labour Employment and the Social and Solidarity Economy, President in Office of the Council.

E-MAIL / FAX

SECRETARIAT GÉNÉRAL DU  
CONSEIL DE L'UNION EUROPÉENNE  
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Committee on Constitutional Affairs  
The Chair

D-320269 30.11.2015

Ref.: D(2015)57035

Mr Nicolas Schmit  
Minister of Labour, Employment  
and the Social and Solidarity Economy  
President in Office of the Council  
Council of the European Union  
175, rue de la Loi  
B-1048 BRUXELLES

**Subject: Proposal for a regulation of the European Parliament on the EP's right of inquiry**

Dear Minister,

I have the pleasure to inform you that on 19 November the Committee on Constitutional Affairs unanimously endorsed the working document that you will find in annex, therewith confirming its willingness to enter into negotiations with the Council in view of reaching an agreement on the 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 the Decision 95/167/EC, Euratom, ECSC of the European Parliament, the Council and the Commission.

The Committee on Constitutional Affairs is conscious of the concerns of the Council expressed in the letter of the Luxembourgish Presidency of the 3<sup>rd</sup> September 2015 and is fully committed to search for a satisfactory solution that meets the interests of all the institutions involved in this dossier. To that end, our committee mandated the rapporteur, Mr. Ramón Jáuregui, to agree on the practical modalities of the negotiations with the Luxembourgish Presidency and the Commission. Furthermore, at its next meeting on 3 December, the Committee will take a decision on the composition of its negotiation team.

In this way, the Committee on Constitutional Affairs reaffirms its position as set out in my letter of 28 September 2015, in accordance with paragraph 3 of the legislative resolution adopted by the Parliament on 16 April 2014 on this matter.

Committee Secretariat: B-1047 Brussels - Tel. +32 2 28 43454 - Fax +32 2 28 49015  
F-67070 Strasbourg - Tel. +33 3 88 1 72655 - Fax +33 3 88 1 79035  
AFCO-Secretariat@europarl.europa.eu - www.europarl.europa.eu

I would also like to express the readiness of the Committee on Constitutional Affairs, once an agreement is reached on content, to submit to the European Parliament a revised legislative proposal to which the Council and the Commission may be able to give their consent.

I hope, dear Minister, that we may soon successfully conclude this important dossier in order to allow Parliament to exercise its right of inquiry in the most effective way.

Kind regards



Danuta Hübner

Annex: Second Working Document

CC: Mr Christian Braun, President of the Committee of Permanent Representatives  
of the Council  
Mr Frans Timmermans, First Vice President of the European Commission



17.11.2015

## **SECOND WORKING DOCUMENT**

on Proposal for a Regulation of the European Parliament on the detailed provisions governing the exercise of the European Parliament's right of inquiry replacing the Decision of the European Parliament, the Council and the Commission of 19 April 1995 (95/167/EC, Euratom, ECSC)

Committee on Constitutional Affairs

Rapporteur: Ramón Jáuregui Atondo

DTA1078968EN.doc

PE571.670v02-00

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## State of Play of the dossier

The first Working Document<sup>1</sup> discussed and approved by the AFCO Committee on 20 January 2015 has achieved the objective to resume contacts on this specific file with the Council and Commission, as a newly elected Parliament. In fact, once more, it's important to clarify that the European Parliament's legislative resolution of 16 April 2014 on European Parliament's right of inquiry<sup>2</sup> had the sole objective to avoid that the legislative proposal contained in the Martin report<sup>3</sup> voted by the Plenary on 23 May 2012<sup>4</sup> "lapse as unfinished business, pursuant to Rule 214 of the EP Rules of Procedure". It is unquestionable that the special legislative procedure of application for the adoption of the legislative act concerning the EP's right of inquiry, as established in Article 226 (3) of TFEU<sup>5</sup>, provides the legislative initiative to the European Parliament, on which the Council and Commission must give their consent. Therefore to avoid any institutional misunderstanding, it is important to reaffirm that the vote on the above mentioned legislative resolution had the will, on the eve of the renewal of the European Parliament, to preserve and not to squander the added value of both the adopted text of the Martin report, and of the subsequent negotiations, at technical and political level (see paragraph 3 of the legislative resolution of 16 April 2014<sup>6</sup>). The initiative was thus adopted with the view of possible modifications later following additional negotiations with the Council and the Commission.

In particular, the mentioned AFCO Working Document of 9 January 2015, with a view of consensus and in a spirit of dialogue, suggested that all the three Institutions should show flexibility in their positions.

To this step given by AFCO, both the Commission on 28th April and the Council, on 7th May, replied positively to the letter of the AFCO Chair Ms Hübner, of 27th February, expressing to the Commission and Council the newly elected Parliament's wish to re-start the negotiations.

## A new starting point

By letter of 3 September from the Chairman of the COREPER, the Luxembourg Council Presidency emphasised especially the Council's willingness to engage with the European Parliament on this file, and has listed in an Annex the Council's main legal and institutional concerns with the European Parliament's proposal. It has been finally highlighted that future negotiations have to address these problematic and fundamental issues of legal and Institutional nature.

In her reply letter of last 28 September, the AFCO Chair Ms Hübner has reaffirmed once

<sup>1</sup> PE544.488v03-00 of 9 January 2015

<sup>2</sup> P7\_TA-PROV(2014)0429

<sup>3</sup> A7-0352/2011

<sup>4</sup> P7\_TA(2012)0219

<sup>5</sup> Art 226 (3): "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.

<sup>6</sup> "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;"

more the availability of the AFCO committee and of the Rapporteur on this file, to explore with the other Institutions possible solutions in view of overcoming differences and reaching an agreement on the proposal of the European Parliament 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 stipulates a special legislative procedure for the adoption of a Regulation on the right of inquiry has the peculiarity that not only the EP enjoys a right of legislative initiative, but also that Parliament alone is author of the Regulation, after obtaining the consent of the Council and the Commission.

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

More specifically concerning a new mandate to enter into interinstitutional negotiations, the Rule 73 of the RoP applies. Therefore, the AFCO committee should have a new vote on the start of interinstitutional negotiations when the time is appropriate. However, given the circumstances, due to the fact that the Parliament's position is already contained in Parliament's proposal, it has to be accepted that the mandate could be modified setting objectives, priorities or orientations.

### **Substantive Issues**

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

The main outstanding issues on the EP proposal raised by the Council in its letter of 3 September refer to:

- *Incompatibilities (Sub judice clause), (article 5),*
- *Public nature of the proceedings (article 6),*
- *Confidentiality (article 8),*
- *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), Sanctions (article 19).*

For all these issues and concerns, the previous technical negotiations in the past term identified many solutions and alternative wordings. In fact, the above mentioned letter of 4 April 2014 of the two Secretaries general, indicated in annex different solutions to the most complicated points, proposed by the Legal experts, on Incompatibilities, Confidentiality, conduct of Investigations and the request for documents.

#### **Conclusion and Mandate for negotiations**

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

This mandate, which aims to reach an agreement and the consent of the Council and the Commission, should have as a basis for the negotiations:

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

The negotiations should lead to the adoption of a new text, taking the uncontested parts of the Martin report, and should address the legal and institutional concerns raised in particular by the Council, formulating solutions, however, reaffirming the new political role of the European Parliament as co-legislator, which entails the power of democratic control over any issue linked to the incorrect application of the Treaties and, consequently, a range of investigatory powers worthy of any legislative Chamber.