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**A7-0352/2011**

14.10.2011

## **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))

Committee on Constitutional Affairs

Rapporteur: David Martin

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## MOTION FOR A EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

**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))**

*The European Parliament,*

- having regard to the third paragraph of Article 226 of the Treaty on the Functioning of the European Union,
  - having regard to Rules 41 and 48 of its Rules of Procedure,
  - having regard to the report of the Committee on Constitutional Affairs (A7-0352/2011),
1. Adopts the proposal for a Regulation annexed to this resolution;
  2. Invites the Council and the Commission to notify their consent to the proposal;
  3. Invites the Council and the Commission, if they are unable to give their consent to the proposal in its present form, to enter into negotiations, and charges its rapporteur and the chair of its competent committee to undertake, under the guidance of that committee, negotiations with the Council and the Commission with the aim of securing the consent of those two institutions;
  4. Instructs its President to forward this resolution and the proposal for a Regulation hereunto annexed to the Council, the Commission and the national parliaments.

**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,

Having regard to the consent of the Council<sup>1</sup>,

Having regard to the consent of the Commission<sup>2</sup>,

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

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<sup>1</sup> OJ ...

<sup>2</sup> OJ ...

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, ECSC<sup>1</sup>, 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.
- (4) In line with the principle of utility as recognised by the case-law of the Court of Justice<sup>1</sup>, 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 European 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

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<sup>1</sup> OJ L 78, 6.4.1995, p. 1.

order to avoid any conflict between inquiries of a political nature and those of a judicial nature, the European Parliament should be able – without being obliged to do so under the treaties – to suspend the investigation of a committee of inquiry if, after it has been set up, legal proceedings concerning the same subject 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 carry out, within the limits of its mandate, any investigation which it considers necessary in order to fulfil its task, in particular to conduct on-the-spot investigations, to request documents, to summon witnesses, to hear officials and other servants of the Union or of Member States and to request experts' reports.
- (8) For the sake of transparency and legal certainty, an order for the taking of evidence by a committee of inquiry should take the form of a decision, which when producing legal effects vis-à-vis third parties should be regarded as constituting an act of the European Parliament, in order to allow for appropriate legal review.
- (9) 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

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<sup>1</sup> Judgment of 9 July 1987 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.

to express their views on the facts concerning them.

- (10) ***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.***
- (11) 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.
- (12) In line with the principle of loyal 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 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 Commissioners 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.
- (13) 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 summon any person who is resident in the European Union, including officials and other servants of the Union's institutions or of Member States, as a witness who should be obliged to answer questions willingly, fully and truthfully; moreover, in order to ensure that officials and other servants of the Union are able to comply with this obligation, it should be made clear that they are deemed to be authorised pursuant to Articles 17 and 19 of the Staff Regulations of officials of the European Union, laid

down in Regulation (EEC, Euratom, ECSC) No 259/68<sup>1</sup>, 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 as a witness and to submit statements and give evidence in person.

- (14) Given the need to ensure the highest evidential value of testimonies, committees of inquiry should also have the right to request witnesses to testify under oath; however, having regard to the fact that testifying under oath is not a procedure employed in every national legal system in the Union, witnesses should not be obliged to take the oath. Formal note should be taken of every case where a witness declines to testify under oath, in order to allow for a fair comparative assessment of the evidential value of all testimonies.
- (15) 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 ensure 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, including in particular by expeditiously executing requests for judicial assistance issued by the committee.
- (16) 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.

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<sup>1</sup> OJ L 56, 4.3.1968, p. 1.



- (17) In order to ensure a wider range of effective remedies, a pre-litigation remedy within the European Parliament should be made available to natural or legal persons other than institutions and bodies of the Union and the Member States whereby such persons may contest decisions, taken in application of the provisions on investigation, which are addressed to them or of direct and individual concern to them. This remedy should be in addition to the judicial and extrajudicial remedies provided for by the treaties and the legal systems of the Member States.
- (18) 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.
- (19) This Regulation respects fundamental rights and observes the principles recognised by the Charter of Fundamental Rights of the European Union,

HAS ADOPTED THIS REGULATION:

## **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 alleged contraventions or maladministration in the implementation of Union law.
2. Provisions governing the internal organisation of the European Parliament shall be laid down in its 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 twelve

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 submission of the report on that inquiry or the end of the mandate of the earlier committee of inquiry and unless any new facts have emerged. A committee 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. No committee of inquiry may be set up where the alleged facts are being examined before a court and while the case is still subject to legal proceedings.
2. If after the setting-up of a committee of inquiry legal proceedings concerning an identical subject are initiated, the European Parliament shall decide whether to suspend the committee's investigation.

A request to this end may be submitted by a Member State, the Commission or a person directly and individually concerned by the inquiry.

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

#### *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. Witnesses and experts may, if they so request, be heard in camera.

Information regarded as confidential, as provided for in Article 7, shall be examined in camera.

3. 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 7*  
*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 the common minimum standards of security applied by the Union's institutions.
  
2. Paragraph 1 applies accordingly to information disclosure of which would undermine either the protection of privacy and the integrity of an individual, in particular with regard to Union legislation on the protection of personal data, or commercial interests of a natural or legal person, including intellectual property.

*Article 8*  
*Cooperation*

The institutions and bodies of the Union shall ensure that their members and staff afford the necessary assistance to enable the committee of inquiry to fulfil its task.

The Member States shall ensure that their national authorities, in conformity with the provisions of national law, give the necessary support to enable the committee of inquiry to fulfil its task.

*Article 9*  
*Communications*

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

Representations to the European Union.

*Article 10*

*Results of inquiries*

1. After the inquiry has been closed, the **final** report of the committee of inquiry shall be submitted to the European Parliament, which **shall adopt or reject it without amendment**.
2. **The committee's final report may include minority conclusions as an official part of the text, provided that such conclusions are supported by at least one quarter of the committee's members.**
3. On the basis of the report the European Parliament may, in particular, refer the matter to the institutions or bodies of the Union or to the national judicial or other authorities.

The European Parliament may forward to the institutions or bodies of the European Union or to the Member States any recommendations which it adopts on the basis of the report of the committee of inquiry.

**Section 3**  
**Investigation**

*Article 11*

*Conduct of investigation*

1. The committee of inquiry may carry out, within the limits of its mandate, any investigation which it considers necessary in order to fulfil its task. To this end, the committee is entitled in particular to:

- conduct on-the-spot investigations;
  - request documents;
  - summon witnesses;
  - hear officials and other servants of the Union or of Member States;
  - request experts' reports.
2. The committee of inquiry may ask national judicial and other authorities for assistance in the course of its investigations. Those authorities shall give the necessary support to the committee of inquiry.
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.***

4. Decisions of the committee taken in application of this Section 3 and addressed to a natural or legal person other than institutions and bodies of the Union and the Member States shall inform the addressees of the remedies open to them under Article 21 of this Regulation.

Decisions of the committee which produce legal effects vis-à-vis third parties shall be regarded as constituting acts of the European Parliament.

#### *Article 12*

##### *Order for the taking of evidence*

For the purposes of its investigation, the committee shall take a decision (order for the taking of evidence) which shall set out the means of investigation envisaged and the facts to be established.

*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. The committee of inquiry may summon any person who is resident in the European Union as a witness if it considers that the hearing of that person is necessary in order for it to be able to fulfil its task.

Every summons shall contain the name, forenames and address of the witness concerned and state precisely about what subject and for what reasons the witness is to be examined. It shall be forwarded by the committee to the competent national authority of the Member State where the witness is resident. The competent national authority shall ensure that the summons is served on the witness in conformity with the provisions of national law.

2. Witnesses who have been duly summoned shall obey the summons and attend for examination. They shall willingly, fully and truthfully answer questions put to them by members of the committee. They may claim the rights which they would enjoy if summoned and heard by a parliamentary committee of inquiry or similar body, or otherwise by a court with jurisdiction in civil proceedings, in their Member State of residence. To that end, they may avail themselves of legal counsel.

Witnesses shall be informed in advance of their rights and obligations and of the possible consequences of groundless refusal to obey the summons and attend for examination, of false testimony and of the bribing of witnesses.

3. If a witness who has been duly summoned fails to appear before the committee of inquiry, the committee may order that a further summons be served on that witness.

4. The committee may decide to hear witnesses under the following oath: ‘I swear that I have spoken the truth, the whole truth and nothing but the truth’. Witnesses, if they so wish, may add a complementary religious formula to the oath. However, no one shall be obliged to testify under oath.

Formal note shall be taken of every case where a witness declines to testify under oath.

#### *Article 16*

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

The committee may invite the institutions of the Union – with the exception of the Court of Justice – 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 Commissioners 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 or the Member States to designate one or more of their officials or servants to take part in its proceedings.

The Union's institutions or bodies or the Member States shall designate the officials or 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. The official or other servant concerned shall be deemed to be 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 as a witness and to submit statements and give evidence in person.

3. The committee of inquiry may summon a specific official or other servant of a Member State 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. The Member State concerned shall authorise its officials and other servants, in conformity with the provisions of its national law, to obey the summons by the committee, to attend for examination as witnesses and to submit statements and give evidence in person.

#### *Article 18*

##### *Requests for judicial assistance*

1. The committee of inquiry may request judicial assistance for the examination of duly summoned witnesses.
2. Such a request shall be issued, in accordance with Article 15(1), in the form of a decision of the committee and shall be forwarded by the committee to the competent judicial authority of the Member State where the witness is resident. Where necessary, the decision shall be accompanied by a translation into the official language or one of the official languages of the Member State to which it is addressed.
3. The competent judicial authority, after verification of its authenticity and lawfulness, shall give effect to the request in accordance with its national law. However, it may follow a request of the committee of inquiry that a special method or procedure be followed, unless this is incompatible with the national law of the Member State

concerned or is impracticable by reason of its internal practice and procedure or by reason of practical difficulties.

4. Requests for judicial assistance shall be executed expeditiously.
5. After execution, the competent judicial authority shall transmit to the committee of inquiry the decision embodying the request, any documents arising from the execution and a detailed statement of costs.

#### *Article 19*

##### *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 may order the examination of witnesses.
4. After having made a report, an expert may be heard by the committee of inquiry.

Article 18 shall apply *mutatis mutandis*.

#### *Article 20*

##### *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 to obey a summons and to attend for examination as a witness;
  - the giving of false testimony; and
  - the bribing of witnesses.

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 21*

##### *Legal remedies*

1. Any natural or legal person other than institutions and bodies of the Union and the Member States may submit a reasoned written complaint against a decision of the committee of inquiry, taken in application of Section 3, which is addressed to that

person or of direct and individual concern to him or her. The complaint shall specify the alleged violation of Union *law or of the national law applicable to the complainant*.

2. The complaint shall be submitted to the European Parliament within 10 working days from notification of the decision to the complainant, or, in the absence of such notification, from the day on which it came to the knowledge of the complainant, as the case may be.

Such a complaint shall have suspensory effect.

3. The European Parliament shall take a reasoned decision on the complaint at the first part-session following the expiry of a period of 10 working days from receipt of the complaint. *The decision may include a stipulation that the complaint shall not have suspensory effect.*

*The European Parliament* shall notify the complainant of that decision within 10 working days and shall inform the complainant of the remedies open to him or her, namely instituting court proceedings against the European Parliament and/or making a complaint to the European Ombudsman, under the conditions laid down in Articles 263 and 228 respectively of the Treaty on the Functioning of the European Union.

4. Failure by the European Parliament to notify a reasoned decision within the prescribed time-limits shall entitle the complainant to institute court proceedings against the European Parliament under the conditions laid down in Article 263 of the Treaty on the Functioning of the European Union.

## *Article 22*

### *Costs*

*The travel and accommodation expenses of members and officials 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 23*

##### *Repeal*

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

##### *Article 24*

##### *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 ... \*

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

Done at ,

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

*For the European Parliament*  
*The President*



## EXPLANATORY STATEMENT

*"Truth is an arrow and the gate is narrow...that it passes through."*

BOB DYLAN

### Introduction

The right of inquiry is an important feature of the Parliament's supervisory powers. Indeed, it ultimately provides the opportunity to supervise the past: in which way was the existing body of law implemented? Were there any breaches of the law, or elements of maladministration or corruption in the administration of the law? In other words: the right of inquiry is aimed at finding out the truth about the past.

This right is exercised in many different ways by democratic parliaments throughout the world. In the majority of the EU Member States the setting up of committees of inquiry is envisaged and regulated by the constitution, by law or by decree. A comparison of the different types of committee of inquiry existing within different Member States shows up fairly significant differences regarding their set up mechanisms, functioning and powers<sup>1</sup>. In addition, differences can also be noted in relation to the frequency with which committees of inquiry are set up.

The European Parliament's right to set up temporary committees of inquiry to investigate "alleged contraventions or maladministration in the implementation of Community law" was elevated to primary law by the Maastricht Treaty. The Treaty did not provide information on specific powers granted to EP committees of inquiry, leaving instead the definition of any detailed provision to a future inter-institutional agreement.

The Parliament immediately started to prepare such an agreement, and only after long negotiations and the production of two reports<sup>2</sup> an inter-institutional decision on the detailed provisions governing the exercise of the European Parliament's right of inquiry was adopted in 1995<sup>3</sup>.

The Parliament has used its right quite prudently. Since 1995 only three committees of inquiry have been set up:

- TRANSIT - of Inquiry into the Community Transit Regime,

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<sup>1</sup> Cf. the analysis by policy Department C: *Parliamentary committees of inquiry in national systems: a comparative survey of EU Member States*.

<sup>2</sup> A3-0302/92 and A4-0003/95.

<sup>3</sup> Decision 95/167/EC, Euratom, ECSC.

- ESB1 - of Inquiry into BSE (bovine spongiform encephalopathy),
- EQUI - of Inquiry into the crisis of the Equitable Life Assurance Society.

During its sessions, the EQUI committee soon discovered the limited powers granted to committees of inquiry, which ultimately appeared to be not in line with the political stature, needs and competences of the European Parliament. In this regard the EQUI committee noted in its report that:

Except with regard to the European Commission, the committee has very little power: it cannot summon witnesses, there are no consequences, cost or penalty if a possible witness refuses to cooperate with the inquiry, and there are no sanctions for giving false testimony or for refusing to attend or to give evidence before the committee. The committee has no investigative powers similar to the Courts in connection with national administrations or when an administrative or private body refuses to deliver documentation to the committee. Neither does it have the possibility to ask a national Court for assistance in the course of its investigation<sup>1</sup>.

These problems, highlighted by the EQUI committee, were in fact the same controversial points previously emerged during the inter-institutional negotiations in 1995. On this basis, the European Parliament produced in 19 June 2007<sup>2</sup> a recommendation calling the Conference of Presidents to enact those recommendations already contained within the EQUI Committee's report, mainly related to the future reform of inquiry committees.

### **Why start this reform now?**

The Treaty of Lisbon modified the institutional balance of the Union and strengthened the political stature of Parliament. Article 14 TEU expressly sets out that Parliament exercises political control. The Treaty also changed the procedure for determining the provisions governing the exercise of the right of inquiry. Article 226 says that: "*The detailed provisions.....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*".

Whereas in the past it was a shared decision between the three main European institutions, the treaty of Lisbon explicitly gives the right of initiative to the Parliament. Nevertheless, the Parliament still has to obtain formal consent from the Council and from the Commission.

Another reason to start this revision now is that the latest amendments to the Ombudsman's Statute<sup>3</sup> gave the Ombudsman broader powers compared to the Parliament's committees of inquiry.

Aiming at improving the functioning and effectiveness of future committees of inquiry, the European Parliament's recommendation of 19 June 2007, based on the report of the EQUI Committee, already envisaged a reform of the rules governing such committees. According to the study made by the committee on the situation in 12 Member States and Switzerland,

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<sup>1</sup> A6-0203/2007.

<sup>2</sup> P6\_TA(2007)0264.

<sup>3</sup> OJ L 189, 17.7.2008, p. 25.

national parliaments are much better equipped for undertaking inquiries than the EP. Subsequently, the Policy Department updated the survey and extended it to those Member States that were not included in the former survey. The results show that the majority of Member States have a constitutional system that provides for inquiry committees. In most of the Member States these committees have investigative powers similar to those of proper courts, even if to a lesser extent. In most Member States which have a legal basis for inquiry committees there is also the possibility for them to summon witnesses to give evidence. In case of non-compliance, sanctions vary from country to country.

Compared to these provisions, the present set of rules concerning inquiry committees in the European Parliament are much more restrictive, in particular concerning the summoning of witnesses and sanctions for those refusing to cooperate.

Because the Treaty gives the Parliament the right of initiative, the procedure used is the one set out by Rule 41 of the Rules of Procedure "Rights of initiative conferred on Parliament by the Treaties".

Since the procedure has changed, the Parliament does not simply make amendments to the old decision, but can propose instead a new regulation as reminded above<sup>1</sup>.

### **What are the proposed improvements?**

Committees of inquiry must have the necessary means to carry out their tasks of examining alleged contraventions of Union law or maladministration. This is in line with the jurisprudence of the Court of Justice: where an article of the Treaty confers a specific task on a Union institution or body it must be accepted, if that provision is not to be rendered wholly ineffective, that it confers on that body "necessarily and *per se* the powers which are indispensable in order to carry out that task"<sup>2</sup>.

In order to draft a proposal for a new regulation from scratch — for the first time in the history of this House — your rapporteur drew inspiration from various sources. The Statute and Rules of Procedure of the Court of Justice of the EU, especially Articles 24-30 and Articles 47-53, 75 respectively, was one of the most important sources of inspiration. Regulation (EC) No 1073/1999 concerning investigations conducted by OLAF and Decision 94/262/ECSC, EC, Euratom on the Ombudsman's duties gave valuable examples on how to establish powers of inquiry on a supranational level. The document by the Policy Department (*Parliamentary Committees of Inquiry: A Survey*) gave an overview on the powers and procedures of committees of inquiry in various countries. Naturally, previous texts produced in connection with EP's committees of inquiry were not ignored<sup>3</sup>. Excellent documents, notes

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<sup>1</sup> A technical detail, but worth mentioning: Article 107b of the Treaty establishing the European Atomic Energy Community was repealed by Protocol No 2 annexed to the Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community; however, by virtue of Article 106a of the EAEC Treaty, Article 226 of the Treaty on the Functioning of the EU is applicable to the European Atomic Energy Community.

<sup>2</sup> Cf. judgement 9 July 1987 in Case 281/85.

<sup>3</sup> Report on the Crisis of the Equitable life Assurance Society (A6-0203/2007); Report of 21 July 1995 on amendment of Rule 136 of the Rules of Procedure (A4-0187-95); Report of 12 January 1995 on the detailed

and contributions from our Legal Service also helped to move forward the reflection. Finally, some uncontested and useful provisions contained in the old decision will no doubt survive in the new legal instrument.

This proposal for a regulation offers a clearer and more logical structure compared to the one provided by the old decision. The most important improvements can be found in Section 3 (Investigation).

The starting point of our reflection was the belief that all conclusions of an inquiry should be based solely on elements which have evidential value. To this end, a committee of inquiry should be able to carry out, within the limits of its mandate, any investigation considered necessary in order to fulfil its task, namely to find out the truth about certain elements of the past with the help of factual evidence.

Therefore, according to the draft regulation proposed, the committee could carry out any type of investigation, with detailed provisions for the most important ones, i.e. to conduct on-the-spot investigations, to request documents, to hear officials and other servants of the Union and Member States, to summon witnesses and to request an expert's report.

Committees of inquiry should have access to all documents — administrative or otherwise — and to any information which may facilitate their work. They should be able to obtain such information both from Union and national bodies and from natural or legal persons. Nevertheless, this power should be used only in those cases where there is a link between the piece of information or document requested and the task of the committee of inquiry in question.

On the same basis, committees of inquiry should be able to summon before them any person (Union or national officials, technical experts, spokespersons for legal persons, etc.) whose evidence or expertise is deemed necessary to better investigate the case in question.

In order to achieve the above aims, the draft regulation establishes a direct obligation to make available the documents requested by the committee and to appear and to testify as a witness. However, a procedure contained in the original decision could be maintained: officials and other servants of the EU or Member States can be designated by their hierarchy to take part in the proceedings. In that case it is not unrealistic to imagine that they would practically act under instructions. However, if not satisfied with the documents or statements submitted according to this procedure, the committee could use its new, stronger powers — namely to summon those persons directly as witnesses. Thus the old modality (which is based on the good will and loyal cooperation of EU institutions and Member States) is not abolished, but the threat by the committee of using its new enhanced powers could mean the "beginning of wisdom" for those EU institutions or Member States under investigation.

A very important improvement of this new legal modality would be that duly summoned

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provisions governing the EP's right of inquiry (A4-0003/95); Working Document of 3 January 1995 on EP's right of inquiry (Rapporteur: Alexander Langer); Report of 14 October 1992 on parliamentary committees of inquiry (A3-0302/92); Working document of 2 June 1992 on parliamentary committees of inquiry (Rapporteur: François Musso).

witnesses will have the obligation to willingly, fully and truthfully answer the questions presented to them by members of the committee. This would also apply to officials and other servants of the Union. They are authorised, by virtue of the regulation, to obey the summons by a committee of inquiry and to testify.

This legal setting appears appropriate enough to ensure that the political control exercised by the European Parliament — the only directly elected Union institution — is ultimately serious, efficient and in line with the European citizens' expectations of democratic accountability and good governance.

On the same note, non compliance with these obligations should entail appropriate penalties. In order to respect the principles of *nullum crimen sine lege* and *nulla poena sine lege*, as set out in Article 49 of the Charter of Fundamental Rights, the regulation should oblige Member States to ensure that precisely defined infringements — groundless refusal to provide the requested documents; groundless refusal to obey the summons and to attend for examination as a witness; false testimony; and bribing of witnesses — will be subjected to appropriate sanctions according to their national laws.

The European Parliament is no court; indeed, it has no power in itself to impose penalties on individual citizens. Nevertheless, when all the Member States have adopted the Treaty of Lisbon, they have also agreed to give the European Parliament the right to investigate contraventions and maladministration in the implementation of Union law. This should bind them to oblige their own administrative system to give assistance to any eventual EP inquiry committees. On the other hand, the institutions of the Union should not allow that duly summoned officials who infringe the regulation hide behind their immunity provided by Protocol n° 7 in the sole interest of the Union; it is therefore made clear that the waiver of immunity in such cases shall not be considered contrary to the interest of the Union.

Finally, the aim of setting up a committee of inquiry is to provide a remedy for an illegal or unfair situation. Inquiries should thus have a wide range of possible outcomes, in order to provide the most appropriate solution. In this occasion it should be recalled that the final power of decision — regardless of the powers conferred to the committees of inquiry to perform their duties — ultimately belongs to Parliament. The conclusions of the committees of inquiry could thus be submitted in the form of a final report to Parliament. It would then be up to Parliament to take up one or more of the recommendations contained in the final report, such as deciding to publish the report, putting forward a legislative initiative, referring the matter to the competent Union or national authorities, referring the matter to the Ombudsman or taking any other appropriate action, according to the specific circumstances.

## RESULT OF FINAL VOTE IN COMMITTEE

<b>Date adopted</b>	11.10.2011
<b>Result of final vote</b>	+: 17 -: 1 0: 0
<b>Members present for the final vote</b>	Carlo Casini, Andrew Duff, Ashley Fox, Matthias Groote, Roberto Gualtieri, Enrique Guerrero Salom, Zita Gurmai, Gerald Häfner, Constance Le Grip, David Martin, Morten Messerschmidt, Paulo Rangel, Algirdas Saudargas, György Schöpflin, Rafał Trzaskowski, Luis Yáñez-Barnuevo García
<b>Substitute(s) present for the final vote</b>	Helmut Scholz, Rainer Wieland