

# Inquiries by Parliaments. The political use of a democratic right

Olivier Rozenberg

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STUDY

Requested by the AFCO committee

European Parliament

# Inquiries by Parliaments

## The political use of a democratic right




Policy Department for Citizens' Rights and Constitutional Affairs
Directorate-General for Internal Policies
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EN

# Inquiries by Parliaments

## The political use of a democratic right

**Abstract**

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

This document was requested by the European Parliament's Committee on Citizens' Rights and Constitutional Affairs.

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# LIST OF ABBREVIATIONS

| | |
|---|---|
| **AFCO** | Committee on Constitutional Affairs |
| **BSE** | Bovine spongiform encephalopathy |
| **EC** | European communities |
| **EP** | European Parliament (all termed 'Parliament') |
| **EPPO** | European Public Prosecutor Office |
| **EU** | European Union |
| **EMIS** | Temporary Committee of Inquiry on Emission Measurements in the Automotive Sector |
| **EQUI** | Temporary Committee of Inquiry on the Crisis of the Equitable Life Assurance Society |
| **MEP** | Member of the European Parliament |
| **MP** | Member of Parliament |
| **OLAF** | European Anti-Fraud Office |
| **PANA** | Temporary Committee of inquiry on Money Laundering, Tax Avoidance and Tax Evasion |
| **TAXE I** | Special Committee on Tax Rulings and other measures similar in nature or effect |
| **TAXE II** | Special Committee on Tax Rulings and other measures similar in nature or effect |
| **TFEU** | Treaty on the Functionning of the European Union |

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# EXECUTIVE SUMMARY

## Background

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

## Aim

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

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

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

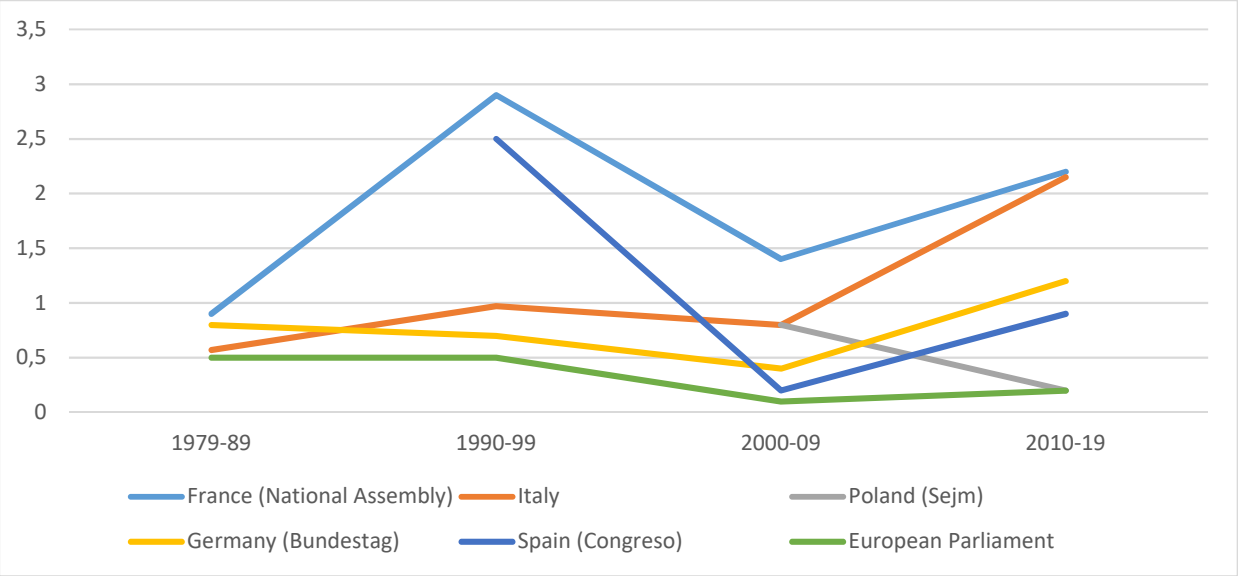
| Justifications | Relevant for Parliament | Irrelevant for Parliament |
|---|---|---|
| Overseeing government | Accountability of the Commission | Lack of accountability of the Council towards Parliament |
| Fighting against information loss | Especially since EU law is implemented at the national level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

Note: Parliament refers here to the European Parliament.

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

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

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




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

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

## Three sets of ten recommendations

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

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

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

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

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

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

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

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

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

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

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

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

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

# INTRODUCTION

**In Europe, Parliaments have carried out inquiries for centuries. This right is one of several methods of oversight that belong, just as law-making activities do, to the democratic script**.[1] It counts among the essential procedures of a genuine representative democracy, because it enables representatives both to know what happened (in the past) and to decide on what should happen (in the future).

Inquiries are carried out within legislatures **through procedures and tools that are fairly similar across assemblies**. A temporary and pluralist committee, called a committee of inquiry, may be specially appointed to investigate a given issue. This committee, along with other kinds of potential structures, hears witnesses and analyses documents. The most powerful committees can compel witnesses to give evidence and speak truthfully. They may also have access to all types of documents. The power to investigate varies, depending on both the extent of the chamber's prerogatives and on whether the opposition has the right to table minority motions initiating inquiries.

In theory, inquiries in Parliament **differ from judicial trials**: they are tasked with assessing political responsibility and misconduct; they cannot impose penal sanctions and they are concerned with public policies (not only individual responsibilities) and future action (not only past cases). In practice, the distinction between both types of inquiry is sometimes blurred and may be the subject of political controversy.

The European Parliament (hereafter Parliament) appointed its first committees of inquiry after the first direct elections of 1979. Since then, there have been only a few committees of this type, while other types of structures have carried out inquiries within Parliament or outside it at the European Union (EU) level. An interinstitutional agreement related to investigations conducted by Parliament was reached in 1995.[2] **In 2008, the Lisbon Treaty attempted to strengthen this agreement.** Article 226 TFEU provides the following:

> *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.*

In the more than 10 years since, the relevant services of the Commission, Parliament and the Council have discussed the future regulation without finding an agreement. The special prerogatives usually granted to the committees of inquiry are a particular cause for controversy between institutions.

This report **provides an analysis of the political dimension of parliamentary investigations**.[3] It analyses whether, why and how parliaments' inquiries accord with the democratic norm in Europe. It supports the view that Parliament should significantly develop inquiry committees in order to

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1 *Inter Parliamentary Union*, Global Parliamentary Report 2017. Available at: https://www.undp.org/content/undp/en/home/librarypage/democratic-governance/parliamentary_development/global-parliamentary-report-2017.html

2 Decision of the European Parliament, the Council and the Commission of 6 March 1995 on the detailed provisions governing the exercise of the European Parliament's right of inquiry, OJ L 78, 6.4.1995, p. 1.

3 In parallel, a report by Diane Fromage investigates all legal aspects. See: Diane Fromage, *The European Parliament's right of inquiry in context – A comparison of the national and European legal frameworks*, Policy Department for Citizens' Rights and Constitutional Affairs, European Parliament, 2020. Available at: http://www.europarl.europa.eu/RegData/etudes/STUD/2020/648708/IPOL_STU(2020)648708_EN.pdf

create a link between the EU and the people. It assesses investigations carried out over the last decade both in the lower assemblies of the largest Member States and in Parliament. Finally, it provides recommendations for future action.

The report is composed of four chapters:

- **Chapter 1** analyses the theory of investigative power. It considers justifications both classical (government oversight) and more recent (information loss, for example).
- **Chapter 2** assesses the committees of inquiry recently appointed in Parliament and in Italy, France, Germany, Spain and Poland. It shows that Parliament tends to consider similar issues to those investigated by these national chambers but does so less frequently.
- **Chapter 3** is focussed on investigative powers in Parliament and at the EU level. It offers an overview of past activities, particularly the two most recent committees of inquiry, as well as of the variety of inquiries conducted within and outside Parliament. It suggests some explanations for the contemporary deadlock over the negotiations concerning a new regulation.
- **Chapter 4** provides a list of recommendations related to the regulation under discussion. Furthermore, it discusses how an ambitious inquiry agenda could benefit Parliament.

# 1. THE THEORY OF THE INVESTIGATIVE POWER OF PARLIAMENTS

KEY FINDINGS

For a long time, parliaments have been granted investigative powers as a consequence of the **political responsibility** of the government. Indeed, parliaments' basic purpose is to collect information in order to judge the government's effectiveness. Consequently, parliamentary inquiries look backward ('what has been done and by whom?') but also forward ('what should be done and by whom?').

Supplementary justifications for these powers can be suggested: fighting against information loss; compensating for a lack of legislative influence; granting rights to the opposition; feeding public debate; and restoring civil peace. From the perspective of the opposition, inquiries often require a real commitment but may prove efficient tools for identifying governmental failures.

Investigative activities cover all facets of parliamentary functions: working and talking aspects; policy-making, elite recruitment and representation; oral interaction and written analysis, etc. They employ a variety of tools (mainly hearings, access to documents and visits) and procedures. Committees of inquiry appear to be key structures in the operation of in-depth and visible investigations. These pluralist structures are granted specific prerogatives and often benefit from a specific 'atmosphere' as seen by representatives. They offer a sample of the variety of tasks fulfilled by parliaments in society.

This chapter first considers the classical justifications for granting legislatures inquiry powers, as well as the procedures and instruments developed for these purposes. In a second section, the chapter argues that inquiries in parliament reflect the variety of the functions fulfilled by legislatures, from oral debates to detailed scrutiny. In the last section, the chapter considers supplementary justifications for granting inquiry prerogatives to legislature. Some concern the development of the State, others opposition rights and still others the state of public debate, especially in the case of collective trauma.

## 1.1. Parliaments' power of inquiry: definitions and tools

### 1.1.1. Accountability and oversight

Parliaments' power of inquiry is **a long-established prerogative** granted to legislative assemblies. In France, for instance, the first committees of inquiry were created around 1830. This power consists in investigating a given topic using a variety of means and procedures to achieve three goals: a. holding the government accountable; b. understanding a given public issue; c. correcting this issue in the future. As stressed by Pierre Rosanvallon, there is **a dual relationship to time** in parliaments' inquiry activity.[4] On the one hand, MPs investigate past events to assign responsibility. On the other hand, however, the whole exercise is also oriented toward the future. Investigations are conducted with a view to improving a given issue and assessing the current government's effectiveness in

[4] Pierre Rosanvallon, *Le Bon Gouvernement,* Paris, Seuil, 2015, p. 254.

managing it. Judicial inquiries are first and foremost focussed on the 'who did what?' question; parliamentary inquiries consider 'what's next?' as well.

A key justification for the parliamentary power of inquiry – though, as we will consider, not the only one – is the **exercise of governmental oversight**.[5] In the parliamentary constitutional model found everywhere in the EU (except in Cyprus), governments are politically accountable to the parliament (in most bicameral systems, to the lower chamber only).[6] This means that a majority in parliament can obtain a resignation from the government for political reasons, not only on the basis of illegal or fraudulent misconduct. This parliamentary prerogative logically necessitates giving parliamentarians the ability to investigate. MPs should be able to collect information on past activities or on the state of a given policy field in order to formulate their views, as well as to decide whether the government should be sanctioned and whether it will be able to perform satisfactorily in the future.

A **limited set of tools and procedures** enables parliaments to conduct investigations. Individual procedures mainly consist of oral and written questions addressed by MPs to the government and, in the case of the written ones, answered in practice by senior civil servants. Both instruments are used daily in all the parliaments of the world but face limits in terms of information-gathering.[7] They allow MPs to obtain an official statement from the government on a problem (a far from negligible achievement) but do not permit them to probe the complex details of a case. Collective investigations are best performed at the committee level. The **small number of those present** in comparison with the plenary, the **likely expertise** of the members on a given issue and, often, the **working atmosphere** are favourable to effective investigation. Any type of committee may conduct investigations, whether they are ordinary standing committees focussed on a given issue or special structures created for the occasion.

### 1.1.2. Committees of inquiry: a central locus for investigation

Among this last group, the **committees of inquiry** have a special status often based on legal resources (the Constitution, ordinary law and/or Standing Orders).[8] Committees of inquiry may be granted special investigative resources regarding access to documents or summoning witnesses. Depending on the organisation of an assembly and its financial means, committees may also be given specific support, particularly in the form of parliamentary civil servants tasked with assisting them. Beyond this legal basis and these special powers, it should be added that the mere term 'committee of inquiry' often has a '**special flavour**' in the political culture of many countries. For political imaginations fed by American films and programs where investigations are conducted as flamboyant performances in the US Congress, committees of inquiry rightly or wrongly symbolise parliamentary sovereignty in action.

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5 Philip Norton, *La nature du contrôle parlementaire,* Pouvoirs, *2010, no 134, pp. 5-22.*

6 Olivier Rozenberg, *The Council of the EU from the Congress of Ambassadors to a genuine Parliamentary Chamber?,* Policy Department for Citizens' Rights and Constitutional Affairs, European Parliament, 2019. Available at: http://www.europarl.europa.eu/RegData/etudes/STUD/2019/608855/IPOL_STU(2019)608855_EN.pdf

7 Shane Martin and Olivier Rozenberg (eds), *Roles & Functions of Parliamentary Questions*, London, Routledge, 2012.

8 Diane Fromage, *The European Parliament's right of inquiry in context – A comparison of the national and European legal frameworks*, Policy Department for Citizens' Rights and Constitutional Affairs, European Parliament, 2020. Available at: http://www.europarl.europa.eu/RegData/etudes/STUD/2020/648708/IPOL_STU(2020)648708_EN.pdf. See also: Pavy, Eeva, *Right of Inquiry in National Parliaments – Comparative survey*, Policy Department for Citizens' Rights and Constitutional Affairs, European Parliament, 2020. Available at: http://www.europarl.europa.eu/RegData/etudes/IDAN/2020/649524/IPOL_IDA(2020)649524_EN.pdf.

A common characteristic of committees of inquiry is their **temporary** feature. The implicit justification for this limited duration is that, after a few months, any committee should be able to understand the main points and responsibilities of the case that motivated its creation. It also constitutes a protection for the executive power, as a permanent committee of inquiry could make use of its prerogatives to do continuous harm to the government.

Inquiries are conducted in committees through two main procedures: **hearings and document analyses**. Usually, hearings place a given official (a minister, for example) in opposition to the whole investigating committee. The proceeding of the hearings is less formalised than legislative procedure. Often, after a preliminary statement by the persons being heard, a series of questions and answers takes place, with opportunities for follow-up questions. These hearings are often conspicuous exercises for two reasons. First, they are usually public, often web-streamed and sometimes televised. They therefore offer a sort of political spectacle that is livelier than, for instance, legislative procedure. Second, they constitute, by definition, an oral activity and, for that reason, tend to motivate politicians. Political anthropologists have shown that modern politics primarily concerns oral exchange.[9] For MPs in particular, oral performances are expected during an electoral campaign. Once the legislator is elected, speeches can also limit the delegation of activities to third parties: unlike in the case of written statements, oral statements must be given personally by the MP.

By contrast, the access and analysis of **documents** is a more anonymous activity that can be largely delegated to committee clerks, group collaborators, MPs' personal collaborators and *ad hoc* experts. The procedure nevertheless constitutes an important aspect of inquiries in parliaments, as it bases the final report on firm grounds. Written documents may also enrich the hearings by helping members to prepare their questions and by occasionally allowing witnesses to be directly confronted with documents. Documents help (but do not always succeed) in transforming a general political exercise into a more focussed inquiry.

Both hearings and documents examination may necessitate **local visits** in the country and abroad. In a context of growing distrust vis-à-vis political representation, there is also, on behalf of the parliament, the hope that those travels could reduce the gap between citizens and political elites, both by making parliamentary work visible locally and by enabling MPs to directly observe local realities.

The two key investigators in parliaments are **the president of the committee of inquiry and the rapporteur**. Usually these roles are separated in order to introduce a degree of political pluralism and to divide labour between institutional relations – the president's purview – and actual investigations on the part of the rapporteur. Some committees have two rapporteurs from different party groups. As for legislative procedure, the rapporteur is at the core of the inquiry activities. The rapporteur proposes a selection of witnesses and sites to visit, asks the first questions during hearings and, of course, prepares a final report and its recommendations. Despite this key role, other members of the committees of inquiry may also be active and influential given the (usually) small size of the structure. Converging testimonies indicate that **many MPs enjoy being a member of such committees**.[10] They seem to feel that they are effecting an in-depth rather than a superficial task since, for once, they take the time to address the details and complexity of an issue. Other MPs also appreciate the frequent cross-party atmosphere of many committees which offers a respite from dense political disputes on the floor or within standing committees. Some members also express the

[9] See: Marc Abélès, *Un ethnologue à l'Assembleé*, Paris: Odile Jacob, 2000; Emma Crewe, *House of Commons, an anthropology of MPs at work,* London and New York: Bloomsbury Academic, 2005.

[10] For instance, Nathalie Nieson, *La députée du coin,* Paris, Seuil, 2016. See also M. Abélès, *op. cit.*

view that it is a useful exercise, as the rapporteur may help improve the administration's organisation or public policy.

This 'atmosphere' of committees of inquiry probably explains at least partly why, in many parliaments, they continue to constitute **a key tool of investigation despite having lost their institutional monopoly of conducting inquiries in many cases**. Indeed, we observe that in several cases, such as in France,[11] other types of structures have been granted the right to access documents and even to summon witnesses. This is especially the case regarding **budgetary procedure**. The modernisation of national public accounts and the transformation of budgetary procedures, beginning in the OECD in the 1980s, have often been accompanied by a strengthening of parliaments' oversight role in the field.[12]

## 1.2. Investigative powers as multi-functional activities

### 1.2.1. Working and talking parliaments

One reason for the attractiveness of inquiry activities probably lies in their **comprehensive aspect**. Investigations in parliaments indeed encompass numerous, diverse functions filled by legislatures. In terms of the classical divide established by Max Weber between talking and working parliaments,[13] investigation activities, and especially committees of inquiry, seemingly belong to both categories. Talking parliaments are focussed on plenary debates, oral performances and an adversarial tone between the majority and the government. Working parliaments are more concerned with amending and improving legislation through closed-door committee meetings. Each parliament obviously contains both dimensions, but its particular organisation may denote a preferred style, such as talking, in the case of Westminster, or working, in the Bundestag of Weber's era as well as nowadays. Strikingly, **investigation in parliaments incorporates both working and talking aspects,** as indicated in Table 1.

Table 1: Committees of inquiry characterised by both working and talking styles

| Working | Talking |
|---|---|
| Committee, not plenary<br>Evidence-based inquiry, potentially technical<br>A certain consensus among members<br>The final product: a detailed report | Opportunity for the opposition (agenda, position, question, minority report)<br>Topical issues, flexibility in their selection<br>Public hearings at the heart of the procedure, potentially salient |

[11] Pauline Türk, *Le contrôle parlementaire en France,* Paris, LGDJ, 2011, p. 157.

[12] J. Wehner, *Legislatures and the Budget Process: The Myth of Fiscal Control*, Basingstoke, Palgrave Macmillan, 2010 and M. Hallerberg, R. Strauch Rolf, J. von Hagen, *Fiscal Governance in Europe*, Cambridge: Cambridge University Press, 2009.

[13] Max Weber, Parliament and Government in Germany under a New Political Order, in P. Lassman, R. Speirs (eds.) *Weber: Political Writings*, Cambridge: Cambridge University Press, 1994 [1917], pp. 130-271. See also Kari Palonen, Was Weber wrong about Westminster?, *History of Political Thought,* 35(3), 2014, p. 519-537.

### 1.2.2. The multi-functional nature of parliamentary inquiries

Investigating parliaments are fully parliamentarian in the sense that they operate in working and talking dimensions: in-depth scrutiny and political spectacle, long written reports and colourful hearings, consensus and conflict. Beyond these two styles of legislatures, it appears that **inquiries participate in a variety of parliamentary functions**. In his classic study, Michael Mezey proposed a functionalist-inspired analysis through the idea that organisations fulfil systemic roles that surpass their constitutional mission.[14] He categorised these roles into three groups: a. policy-making functions through law-making and government-monitoring; b. system-maintenance activities via the recruitment and socialisation of governing elites on the one hand and the management of political and social conflicts on the other; c. representation activity functions of the constituency, as with interest groups. Inquiries belong first and foremost to the first group of roles, as they usually focus on a given public policy issue, especially suspected maladministration. Yet they also fulfil the two other groups of roles. They test the merits and values of decision-makers, from the responsible minister to the senior civil servants who may appear before the committee. In this sense, they participate in the system-maintenance function with a focus on circumscribed issues.

They also contribute to the **representative link:** their issues often reflect public concerns, and part of their activity may be comparatively easy to follow for ordinary citizens. But the connection between legislatures and society in the course of investigative activities goes further. In many cases, the choice for the committee of investigation's subject results from the mobilisation of third parties: NGOs, interested citizens, journalists, etc. As we will consider (see Section 2.1.1.), this has been the case for many financial scandals revealed by journalists (sometimes by international consortiums of media organisations), which were then addressed by MPs through dedicated committees of inquiry.

The literature has conceptualised the connection between social groups and legislatures in terms of a 'fire alarm'. **Fire-alarm oversight** is a system of decentralised control in which 'Congress establishes a system of rules, procedures, and informal practices that enable individual citizens and organized interest groups to examine administrative decisions (sometimes in prospect), to charge executive agencies with violating congressional goals, and to seek remedies from agencies, courts, and Congress itself'.[15] It contrasts with the more costly 'police-patrol oversight' model in which Congress directly examines a sample of executive agency activities. In this sense, committees of inquiry are closer to the police-patrol than to the fire-alarm system, since MPs do not delegate oversight activities within them. Yet they also belong to the fire-alarm model in two respects. First, as stated, their creation is often the result of mobilisation in society. Second, the hearings and reports usually produce a body of evidence that may later be used by mobilised citizens and organisations. The parliamentary source of this evidence confers a sort of authority on them that may prove useful for interested parties, for instance in case of legal action.

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[14] Michael Mezey, *Comparative Legislatures*, Durham, NC: Duke University Press, 1979.

[15] M.D. McCubbins, T. Schwartz, 'Congressional Oversight Overlooked. Police Patrol versus Fire Alarms', *American Journal of Political Science,* 28/1, 1984, p. 165-97, here p. 166. See also: Arthur Lupia and Mathew D. McCubbins, **'**Learning From Oversight: Fire Alarms and Police Patrols Reconstructed', *Journal of Law Economics and Organization*, 1994, 10(1), pp. 96-125.

## 1.3. Alternative modern justifications for investigative powers

Apart from the oversight of the government, new and alternative justifications for investigative powers can be found among politicians or political theorists, as well as within legal doctrine. Legislatures should be given means to investigate in-depth collective political problems, not only as a way to control the government, but also in pursuit of other aims. Five justifications are identified in this perspective.

### 1.3.1. Fighting against information loss within large bureaucracies

The relationship between parliaments and governments is often portrayed in terms of delegation.[16] Parliaments have actually delegated some of their prerogatives to the government which, in turn, tends to delegate its powers to the administration. Agency loss constitutes a threat within such a chain: the delegate may be tempted to serve his own interests before the principal's. The deficit of information that afflicts the principal constitutes a strong incentive for the agent to betray it; as the agent is, by definition, active, he enjoys an inherent informational advantage.

In the case of parliaments, the deficit of information is exacerbated by three factors. First, **the imbalance between the administrative capacity of the government (through the State apparatus) and the parliament has deepened** during the 20th century. The biggest parliaments in Europe employ between 1,000 and 2,000 senior civil servants in total, far fewer than any national bureaucracy. As a result, legislatures can neither access nor analyse all information available on every topic. They are therefore justified in focusing their attention on a limited number of issues through committees of investigation. Second, in modern democracies, the first chain of the delegation between the people and legislators is competitive.[17] The government may be reluctant to deliver all available information for fear that it could be **exploited by the opposition for electoral purposes**. The deficit of information could therefore result not only from agent betrayal but also from fear of electoral sanctions. Third, throughout the 20th century, modern bureaucracies have not simply developed; they have also tended to separate from society and create their own order, law and rationale. From this perspective, it should be noted that, as Max Weber observes, parliaments also constitute essential **counterweights to the phenomenon of bureaucratisation**. As he wrote in 1917, 'Parliaments are assemblies representing the people who are *ruled* by the means of bureaucracy'.[18] Indeed, parliaments contradict the structural tendency of the bureaucracy to follow its own rationale and to specialise. Only their constant and meticulous control of bureaucracy can protect basic freedoms and avoid the rigidity of a society ruled by experts and bureaucrats.

In this sense, although the government and not State administration is formally accountable to the parliament, **in practice parliaments investigate both governmental/political and administrative decisions,** as indicated, for instance, by the fact that committees of inquiry often hear senior civil servants. It could even be argued that MPs' investigation of the administration can fight against the government's loss of agency to bureaucracy. However, ministers are hardly ever

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[16] Kaare Strøm et al. developed a notable use of agency theory drawn from information economics, according to which the *principal* entrusts to the *agent* the task of managing his interests. In this approach, the institutional framework governing the methods of delegation and control is crucial. Parliamentary democracies organise four successive delegations: from the elector to the parliamentarian, from the parliamentarian to the prime minister, from the prime minister to the minister, and from the minister to the administration. From this point of view, the parliament is both the *agent* of the citizens and the *principal* of the prime minister. Kaare Strøm, Wolfgang Müller, Tobjorn Bergman (eds.) (2003), *Delegation and Accountability in Parliamentary Democracies*, Oxford, UK: Oxford University Press.

[17] Joseph Schumpeter, *Capitalism, Socialism, and Democracy,* New York: Harper & Brothers, 1942.

[18] M. Weber, *op. cit.,* p. 165.

pleased with revelations of maladministration in parliamentary reports, as they are held politically responsible, and because, above all, they may pay electoral consequences, possibly to the point of losing their jobs.

### 1.3.2. Compensating for the lack of legislative influence

Many modern democracies have seen **a decline in legislatures' direct influence on law-making**.[19] The analysis of this phenomenon, which does not affect European democracies to the same extent, is outside the scope of this report. It involves the changes of rules of the legislative procedure, the game of electoral politics (with the domination of parties) and trends related to public policies (such as their growing complexity or their transnationalisation). In the face of this vast phenomenon, legislatures may be tempted to compensate for their limited influence over law-making by developing oversight activities.

**France** provides a relevant example for such a trade-off, which parliamentarians themselves have demanded.[20] The new Constitution of 1958 drastically limited the prerogatives of the French parliament from several standpoints. However, from the late 1970s to the present day, both assemblies regained some important powers of investigation. In 1977, a law made it compulsory to testify before investigation committees.[21] Previous to this, some ministers did not appear and asked their civil servants to follow suit. In the 1990s, the number of established committees increased significantly (see below), with some of them addressing such highly controversial issues as a blood contamination in 1992, a bank bankruptcy in 1994 and cults the following year. In the late 1990s, National Assembly MPs asked the police force to compel witnesses to testify in front of a committee of investigation. In 2008, the existence of parliamentary committees of inquiry was constitutionalised, and the Assembly decided to give each opposition group the right to propose one per year.[22] Within 30 years, the French Parliament thus made enormous progress in strengthening its power of inquiry. At each stage, the common feeling that room for improving law-making ability was limited bolstered the view that modern legislatures should expand their investigative capacities.

Despite the fact that oversight activities, including parliamentary investigations, may compensate for the lack of legislative influence to some extent, it should nonetheless be noted that both types of activities are not incompatible and may indeed **benefit one other**. As noted above, the purpose of inquiries in parliament is not only retrospective but also prospective. Committees of inquiry's final reports propose sometimes detailed recommendations that can feed future legislation. This has occurred in France in the prison sector, for example. In 2000, the National Assembly and the Senate separately settled committees of inquiry on prisons with a focus on conditions of detention. The two reports found a significant audience and framed prison policy for the whole decade.[23]

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[19] S.S. Andersen and T.R. Burns, Erosion of Parliamentary Democracy: A Study of Post-parliamentary Governance, In K. A. Eliassen and S. S. Andersen (eds.), *The European Union: How Democratic Is It?* London: Sage Publications, 1996 pp. 227-251; Colin Crouch, *Post-democracy*, Cambridge, Polity Press, 2004.

[20] M. Abélès, *op. cit.,* p. 166.

[21] Élisabeth Vallet, Les commissions d'enquête parlementaires sous la Cinquième République, *Revue française de droit constitutionnel* 2003/2 (No 54), p. 249-278.

[22] Olivier Rozenberg, *Un petit pas pour le Parlement, un grand pour la Vème République*, LIEPP working paper, 61, 2016 ; *Éric Thiers,* Le contrôle parlementaire et ses limites juridiques: un pouvoir presque *sans entrave,* Pouvoirs, *2010, No 134, pp. 71-81*.

[23] Jeanne Chabbal, *Changer la prison. Rôles et enjeux parlementaires,* Rennes, Presses universitaires de Rennes, 2016.

### 1.3.3. Granting rights to the opposition

Enhancing the investigative powers of legislatures is sometimes less an end in itself than a way of granting new prerogatives to the opposition. **Institutional reforms sometimes seek to strengthen the opposition** in order to implement a liberal agenda, to send a signal of openness or to anticipate a future electoral defeat (as today's majority will become tomorrow's opposition). It is difficult to achieve this end through legislative procedure, as the opposition could use any new rights to block law-making through filibustering. Therefore, these efforts typically concentrate on oversight activities. Regarding committees of inquiry, opposition groups can be given the right to propose (and even impose) their topic, act as president and/or rapporteur within them, and distinguish themselves at the rapport stage through the inclusion of minority opinions.

Through those different means, the opposition may be in a position to **inform public opinion** – a role expected from it within representative democracies.[24] Committees of inquiry actually constitute a significant tool among those at the opposition's disposal. It may be an efficient weapon against the government, and it requires a rather substantial amount of work and expertise from the members involved. The following table offers a contextualisation of this aspect of committees of inquiry vis-à-vis other tools.[25]

Table 2: Committees of inquiry classified among other parliamentary tools available for the opposition

| | Painless tool | Routinised and soft tools | *Ad hoc* and potentially damaging tools | 'Nuclear' tool |
|---|---|---|---|---|
| Limited opposition MPs' involvement | Written questions | Statements to the press | Boycott of the parliament | Motions of no-confidence |
| Moderate opposition MPs' involvement | | Oral questions<br>Topical debates | | |
| Strong opposition MPs' involvement | | Legislative filibustering | **Committees of inquiry** | |

In case of **incongruent bicameral parliamentarianism** (i.e. when majorities differ in lower and upper chambers), the investigative power of the upper chambers may be used to attack the government. The majoritarian situation of the opposition in the upper house may indeed clear all internal political obstructions to settle an investigation on a given topic and to decide, for instance, to call for the public hearing of key testimonies. The opposition can play this card in the upper house all the more easily because, in many countries, the authority of external judges is limited regarding internal parliamentary procedures and potential conflicts with the executive. In 2018 in France, for instance, the minister of justice formulated oppositions on legal grounds to the hearing of a former

[24] Olivier Rozenberg, L'opposition parlementaire, espèce à protéger, in Olivier Rozenberg, Eric Thiers (eds.), *L'opposition parlementaire,* Paris, La Documentation française, 2013, pp. 191-210.

[25] It should be added, from a more cynical perspective, that in some cases, the proposal for creating a committee of inquiry also allows the opposition to hide (or to try to) its lack of actual influence.

bodyguard of President Macron by the Senate but recognised that this assembly alone had the right to decide (see Section 2.1.3. below).[26]

Setting aside the question of opposition rights, investigations in parliament can also be conducted by **partners of the majority coalition in order to monitor each other**. The literature uses the expression 'policing the bargains' to describe the fact that partner A in a coalition made of A and B may use oversight tools to check whether a minister from party B respects her initial commitments.[27] When the next election approaches, A may also be tempted to put B in a difficult situation to gain electoral profits. Although this kind of political use of oversight tools is frequent within European democracies, especially those accustomed to coalitions, it should still be noted that committees of investigation are not the best-adapted tool for this purpose, given their inquisitorial aspect. Questions, interpellations and topical debates may be more suitable for allied parties to monitor one another.

### 1.3.4. Feeding public debate in a post-truth area

From Bagehot in England and Guizot in France in the 19th century to Habermas one century later, observers of the parliaments have highlighted the **educative and deliberative function** of these institutions' debates.[28] MPs often act in the view of the public. Transparency does not only allow the tribunal of public opinion to formulate judgements on politicians and parties, as Bentham suspected[29]; it may also feed public debate on the problems of the day. Parliamentary debates may supply information and claims about a given public issue and thus help citizens form their views.

All types of parliamentary public debates potentially perform this function, but **inquiry activities seem particularly suited for it.** The subjects of the investigation are often (but not always) selected on the basis of their prominence in public opinion, as will be addressed below (see Section 2.1.1). Public hearings constitute a lively setting, rather easily accessible to the audience. More interested parties may also find detailed elements in the final report that they may use to strengthen their points. In a way, inquiry activities place parliament in a large and virtual network of representatives, civil servants, interested parties in society and citizens who will hopefully help to give legislatures a new role in an age of distrust towards politics.

In the contemporary sphere, which some characterise by the **post-truth syndrome,**[30] official investigations based on the patient collection of written and oral evidence are all the more necessary. Beyond the exercise itself, its publicity, ethics and even aesthetics may help solidify the view that seeking truth is a demanding exercise and that nuanced explanations may be more relevant than simple ones. In a way, legislatures may provide a kind of pluralist and institutionalised fact-checking function in a period where rumours and plots are fed by social media and populist forces. Publicity can sometimes constitute a sensitive issue for investigations, and most legal provisions provide for witnesses to be heard behind **closed doors**.

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[26] Nicole Belloubet, Le Parlement ne peut pas empiéter sur le domaine judiciaire, *Le Monde,* 16 and 17 September 2018.

[27] Martin L.W., Vanberg G. (2004), Policing the Bargain. Coalition Government and Parliamentary Scrutiny, *American Journal of Political Science,* 48/1, p. 13-27; Martin L.W., Vanberg G. (2011) *Parliaments and Coalitions,* Oxford, Oxford University Press.

[28] W. Bagehot, *The English Constitution,* Oxford, UK: Oxford University Press, (1963) [1867]; F. Guizot, *The History of the Origins of Representative Government in Europe,* Carmel In.: Liberty Funds, (2002) [1851]; J. Habermas, *Theory of Communicative Action*, Boston, MA: Beacon Press, 1984.

[29] Jeremy Bentham, *Political Tactics.* Oxford: Oxford University Press, 1st ed. 1791, 2002.

[30] Ralph Keyes, *The Post-Truth Era: Dishonesty and Deception in Contemporary Life*. New York: St. Martin's, 2004.

Yet the extreme mediatisation of some scandals addressed by committees of investigation can make their hearings resemble '**circus games**'. Key public figures can be mistreated by MPs willing to promote their own image. The expression 'circus games' also alludes to the idea that, like in Ancient Rome, citizens possess a kind of appetite for witnessing the mistreatment of public figures (especially elites). Therefore, the strategy of some politicians, as well as the expectations of some citizens, obviously calls for a strong legal framing of the whole exercise in order to protect the rule of law.

### 1.3.5. Restoring civil peace

Beyond nourishing public debate, committees of inquiry may also contribute to restoring civil peace. Public opinion and opinion leaders may express the feeling that great injustice has occurred in society. This event may provoke anger and resentment, which constitutes a threat for societal harmony, especially regarding citizens' belief in political institutions' fairness. Usually, these scandals – for example, terrorist attacks or paedophilia cases – call for legal action. However, justice takes time and obeys strong procedural rules imposed by the rule of law. In this context, the settlement of a committee of investigation appears as a way of providing some appeasement for the victims and for society at large. It sends signals that politicians are concerned with the scandal and trying, at least, to do something. Hearings may offer direct victims an opportunity to have a say and express their suffering. In the end, the committee may operate as **a sort of catharsis** in which the disclosing of stories and the collection of facts help a society to face a collective trauma.

The investigation conducted in the Belgium parliament in 1997 around a major paedophilia scandal (the Dutroux-Nihoul affair) provides a relevant example. During no fewer than five months of hearings, some of which were extensively followed on TV (reaching up to 700,000 viewers), Belgian MPs pointed out the factors which had caused this scandal, for instance the incompetence of the homeland security forces.[31] But the committee also demonstrated that there had been no general plot by national elites to protect paedophile criminals, as some of the public suspected. In that sense, the catharsis aspect and the anti-conspiracy-theory role appear compatible. In 2006 in France, a similar example was provided by the appointment in the National Assembly of a committee of inquiry focussed on a fake paedophilia affair in which innocent citizens were suspected of being involved. The public and televised hearings of these persons strongly testified to their suffering. They also alerted French citizens to the necessity of protecting the defence portion of trials – an outcome rather far from a 'circus game'.

[31] Une commission parlementaire sous haute tension, *RTBF,* 5 August 2011.

# 2. THE POLITICAL USE OF INVESTIGATIVE POWERS WITHIN NATIONAL PARLIAMENTS IN THE EU AND IN PARLIAMENT

KEY FINDINGS

Comparing parliamentary investigations within the most populous Member States, we find that:

- Committees of inquiry are appointed in Europe on **topical, conspicuous and controversial issues**, especially assorted scandals. Some are very general, others circumscribed. **Only a minority of committees deal with purely political issues**. When they do so, the genuine possibility of minority motions constitutes a consequential rule. Examples from Spain, France, Poland and Germany indicate that the political credit of current or incumbent senior ministers, prime ministers or presidents can be tarnished by a committee.
- We **observe an increase** in the number of committees appointed during the last decade. However, the number of committees **varies greatly across assemblies.** Some typically appoint two committees per year; others, only one every five years. Member States' contingent political situations, as well as their institutional rules and styles, explain these differences. There are more committees in countries that organise numerous oral questions, which suggests that legislatures oriented towards **oral oversight and lively debates** favour inquiries.
- Recent years have shown that parliamentary inquiries, though part of the exercise of representative democracy, entail some drawbacks such as the **exacerbation of scandals, legal uncertainties, threat to the rule of law and lack of follow-up**. We offer some suggestions for ameliorating this last point.

If we compare the inquiries carried out thus far within Parliament to those observed in several Member States' parliamentary assemblies, we find that:

- The **standard justifications for granting legislatures inquiry prerogatives generally apply** in the case of Parliament:
  - As information loss is structurally likely in the EU, an inquiry conducted directly by Parliament itself constitutes an efficient way to gather detailed and strategic information on the topic.
  - A committee of inquiry could feed public debate and even contribute to civil peace. It could be especially welcome, because Parliament often has difficulties raising interest in its activities outside of the small Brussels sphere.
  - Parliament does not really need to compensate for a lack of legislative clout since Lisbon through investigation. Yet, the institution seemed less important during the past legislative term in issues that were the most pressing in public opinion, especially the migration crisis and the financial viability of the euro zone. Within these fields, many of the decisions were left to the two other main institutions of the EU. Occasionally, Parliament had to legislate urgently. Parliament may therefore de facto play a secondary role in some policies but could investigate their consequences.
  - The idea that inquiries could serve as a mechanism of oversight between coalition partners seems especially relevant in the case of Parliament.

  **Therefore, from a theoretical perspectives, Parliament appears as fully legitimate to be granted with full investigative prerogatives.**

- The **issues addressed by the committees of inquiry in Parliament are close, even very similar, to those found in national parliaments** despite the Treaty provision that Parliament should focus on '*alleged contraventions or maladministration in the implementation of Union law*'.
- There are **far fewer committees appointed in Parliament** than in lower assemblies of large Member States. This deficit may result from: **a. the institutional weakness of inquiries carried out by Parliament; b. competition with powerful standing committees; or c. an institutional style favouring consensual law making.**

The chapter concludes with a recommendation to **balance the working style of Parliament** with more colourful oversight enabled by investigation activities.

This chapter considers the current political practices of investigative powers within parliaments. Its first section describes recent developments related to committees of inquiry within some European democracies. For an overview of the practices within the EU, we have selected examples from the most populous Member States (Italy, France, Germany, Poland and Spain). The second section questions whether Parliament fits the European model of investigative powers.

## 2.1. European democracies: a European model of investigative powers

### 2.1.1. A diversity of issues addressed

- Italy

The following table presents the subjects and translated names of the Italian *Camera dei Deputati* and *Senato della Repubblica*'s most recent joint committees of inquiry, which are the most frequently appointed structures.

Table 3: List of the Italian Parliament's joint committees of inquiry since 2018

| Topic | Name |
|---|---|
| Crime, child protection | Events affecting the 'Il Forteto' community |
| Economy | Banking and financing system |
| Crime | Mafia phenomena and other criminal associations, including foreign ones |
| Environment, crime | Illegal activities related to the waste cycle and related environmental offenses |

Source: *Camera dei deputati* website.

Issues related to the Mafia have long been deliberated by many special committees in the Italian parliament. 'Il Forteto' related to an affair of paedophilia; a scandal often addressed by committees

of inquiry in Europe. The Mafia-related topics under scrutiny alternate between very broad issues, such the banking and financial system, with more focussed subjects such as the Forteto affair.

To these joint committees should be added the lower house's committee of inquiry focussing on the death of Giulio Regeni, an Italian student murdered in Egypt. In the Senate, two committees of inquiry specific to this chamber have been very active during the current period: one concentrates on feminicide and gender violence and the other on working conditions, exploitation and safety in public and private workplaces in Italy.

### France

The following three tables list the topics of the numerous committees separately appointed by each chamber of the French Parliament.

Table 4: Lists of the committees of inquiry from October 2017 to September 2018 in *Assemblée Nationale*

| Topic | Name |
|---|---|
| Economy | Scrutiny of State industrial policy decisions concerning recent company mergers, especially the cases of Alstom, Alcatel and STX, as well as means of protecting industrial national flagships in a context of globalised trade |
| Health, economy | Occupational disease within industries (chemical, psychosocial and physical risks) and the means for their elimination |
| Environment, energy | Safety and security of nuclear facilities |
| Health | Conclusions drawn from the case of Lactalis, the malfunctioning of control and information systems, from production to sale, and the effectiveness of public decisions |
| Health | French citizens' equal access to medical care throughout the territory and the effectiveness of public policies addressing the lack of medical care in rural and urban zones |
| Health, economy | Industrial food: nutritional quality, role in the emergence of chronic disease, social and environmental impact |

Source: Yearly statistical report, 2017-2018, National Assembly.

Table 5: Lists of the National Assembly (France)'s committees of inquiry from October 2018 to September 2019

| Topics | Name |
|---|---|
| Institutions, politics | The fight against radical right-wing splinter groups in France |
| Homeland security | The status, responsibilities and resources of security forces: national,, rural or municipal police |
| Environment, energy, economy | The economic, industrial and environmental impact of renewable energies, transparent financing, and the social acceptability of energy transition |

| | |
|---|---|
| Health, school | On the inclusion of disabled pupils in schools and universities, 14 years after the law of 11 February 2005 |
| Economy | On the status and practices of large retail outlets and their commercial relationships with suppliers |
| Environment, heath | On the economic, medical and environmental impact of Chlordécone and Paraquat as agriculture insecticides in Guadeloupe and Martinique, on the public and private responsibilities for the extension of their authorisation and assessing the necessity and terms of compensation for their damages to their victims and the territories |

Source: Yearly statistical report, 2018-2019, National Assembly.

Table 6: Lists of the committees of inquiry since 2018 in *Sénat*

| Topic | Name |
|---|---|
| Finance, maladministration | Control, regulation and development of motorway concessions |
| Health, maladministration | The intervention of State services in the management of environmental, medical and economic consequences of the fire at the Lubrizol factory in Rouen |
| Home security | The responses of public authorities to the rise of Islamist radicalisation and the means of combatting it |
| Finance, sovereignty | Digital sovereignty |
| Institutions, administration | Changes in the High Civil Service and their consequences for the functioning of the institutions of the Republic |
| Homeland security | The organisation and resources of State services for confronting the evolution of the terrorist threat after the fall of the Islamic State |
| Homeland security | The state of the internal security forces |

Source: Senate website.

A comparison of the issues addressed by each assembly reveals a high degree of similarity. This can be explained by the fact that some issues – for instance, terrorist attacks or the explosion of a factory in Normandy – appear so important that they cannot be ignored by either chamber. In a context of incongruent bicameralism, the duplication of investigations may also be justified by the fact that political sensibility varies from one assembly to another. The right-wing majority in the Senate may adopt a more aggressive style of oversight vis-à-vis the government.

Issues related to health draw much parliamentary attention in France. This can be explained by the interest they hold for the public. During the 1990s, French assemblies considered the issue of cults and radical religious movements on several occasions, which paved the way for creating a specific governmental agency on this issue in 2002. A few committees are focussed on specific areas of the territory, such as overseas or rural regions. The members of the related committees logically originate from the territories considered. One committee aims to evaluate the effect of a law on disabled persons, which indicates that inquiry may also be used for *ad hoc* evaluation of public policies, although there exist other specific procedures to that end. Article 51-2, which was added to

the Constitution in 2008, indeed indicates that committees of inquiry may be established 'in order to implement the monitoring and assessment missions' which means that the evaluation of laws and public policies comprises part of their mission.

### Germany

The following two tables present the most recent committees in the German Bundestag (the Bundesrat does not provide for such a structure).

Table 7: Lists of the Bundestag's committees of inquiry (2014-2017)

| Topic | Name |
|---|---|
| Sovereignty | Surveillance by the National Security Agency |
| Crime | Child pornography scandal (Spade) |
| Financial scandal | Cum/Ex scandal involving fraudulent dividend payments |
| Crime, politics | NSU extreme right-wing terrorist group |
| Environment, economy | Car emissions scandal |

Source: Bundestag website.

Table 8: Lists of the Bundestag's committees of inquiry since 2018

| Topic | Name |
|---|---|
| Security | Breitscheidplatz Islamic terrorist attack |
| Defence, maladministration | External consultants in the Ministry of Defence |
| Maladministration | Preparation of a highway toll forbidden by the Court of Justice of the EU |

Source: Bundestag website.

Although the Bundestag authorities envisage that the committees examine 'possible misgovernment, maladministration and possible misconduct on the part of politicians',[32] in practice, their scope is much larger. Most of the eight committees formed since 2004 have concentrated on matters of public interest that made the front pages of the German press, like NSA surveillance and car emissions fraud. A focus on scandals is also evident in, once again, the investigation of a paedophilia case. In the context of the radical right's advancement in elections, the previous parliament, which did not possess members from those ranks, investigated an extreme right-wing cell.

[32] Source: Bundestag official website (https://www.bundestag.de/en/committees/bodies/inquiry/inquiry-197686). However, Article 44 of the basic law, which deals with committees of inquiry, does not mention their purpose, so the assembly is free to decide the issues under investigation.

The committee on the external consultants for the Ministry of Defence was specially created by the **Defence Committee,** which is granted special inquiry rights concerning the armed forces in basic law. In fact, 11 of the 43 committees of inquiry created since 1960 belong to this specific category. The exorbitant salaries of the consultants prompted the appointment of the committee, proposed by the opposition, which put the Minister of Defence, Ursula von der Leyen, in a difficult position before she left the German government for the presidency of the Commission in 2019. On February 13, 2020, the president of the Commission was heard in Berlin during nearly five hours by the Bundestag committee and was put in difficulty regarding data deletion for her mobile phones.[33]

A decision made in June 2019 by the EU Court of Justice against the governmental plan to introduce a highway toll prompted the Bundestag to create a committee a few months later. This confirms, as indicated in the literature,[34] that national parliaments are not only focused on the oversight of their government but are components of larger **pan-European networks** and should, for instance, consider the domestic consequences of legal or judicial decisions taken at the EU level.

### Poland

The two following tables mention the committees created in the Polish lower chamber from 2007 to 2011, then from 2015 to 2019, as no committee was appointed between 2011 and 2015 and, thus far, none have been formed since 2019.

Table 9: List of the Sejm's committees of inquiry from 2007 to 2011

| Topic | Name |
|---|---|
| Institutions | The legislative process of acts amending the Act of 29 July 1992 on gambling and parimutual betting |
| Political scandal | The circumstances of the kidnapping and assassination of Krzysztof Olewnik |
| Political scandal | Pressure on special services[35] |
| Political scandal | The circumstances of the tragic death of former MP Barbara Blida |

Source: Sejm website.

[33] Ursula von der Leyen tries to contain fallout over consultant', *Financial Times,* 14 February 2020.

[34] Fasone, C. and Lupo, C., 2016. Conclusion. Interparliamentary Cooperation in the Framework of a Euro-national Parliamentary System. In *Interparliamentary Cooperation in the Composite European Constitution*. Hart Publishing, pp. 345-360. See also: Olivier Rozenberg, *The Role of National Parliaments in the EU after Lisbon: Potentialities and Challenges*, Policy Department for Citizens' Rights and Constitutional Affairs, European Parliament, 2017.

[35] The full translated appellation was : The Commission of Inquiry to investigate the allegation of illegal influence by members of the Council of Ministers, the Commander-in-Chief of the Police, the Head of the Central Anti-Corruption Bureau and the Head of the Internal Security Agency on police officers, the Central Anti-Corruption Bureau and the Internal Security Agency, prosecutors and persons performing functions in the administration of justice forcing the exceeding of rights or failure to comply with obligations in connection with criminal proceedings and operational and exploratory actions in matters involving or against members of the Council of Ministers, deputies to the Sejm of the Republic of Poland and journalists, in the period from 31 October 2005 to 16 November 2007.

Table 10: List of the Sejm's committees of inquiry from 2015 to 2019

| Topic | Name |
|---|---|
| Politics, maladministration | The correctness and legality of actions and the occurrence of negligence and omissions of public bodies and institutions in the provision of State Treasury revenue from goods, services and excise taxes in the period from December 2007 to November 2015 |
| Finance scandal | The regularity and legality of public bodies and institutions' actions towards entities of the Amber Gold Group |

Source: Sejm website.

The Sejm appears as an outlier in comparison with the other European legislatures under consideration. First, the settlement of committees is more irregular, with long periods during which no procedure is launched. Second, the issues covered indicate a specialisation in political scandals since at least 2007, whether the alleged lack of judicial investigation after a Mafia-related crime (Olewnik) and the suicide of an MP suspected of corruption (Blida). More recently, the right-wing majority, which returned to power in 2015, appointed a committee assessing the policies of the incumbent liberal government. The report of this committee recommended prosecuting the former prime ministers, Donald Tusk and Ewa Kopacz, as well as finance ministers Jacek Rostowski and Mateusz Szczurek, before the State Tribunal. This is an example of how a majority may, in a time of great tension between majority and opposition, use the investigative power of the parliament for political and electoral ends.

### Spain

The following table presents the committees appointed in the Spanish lower house since 2016.

Table 11: Lists of the committees in the *Congreso de los Diputados* (2016-2019)

| Topic | Name |
|---|---|
| Transport accident | JK Spanair 5022 flight crash |
| Misadministration | The alleged irregularities committed by the Public Law Institute since its creation in 2001 |
| Energy scandal, misadministration | The possible political responsibilities arising from the irregularities of the adjudication, financing, construction and compensation process of the Castor gas warehouse |
| Transport accident | The railway accident in Santiago on 24 July 2013 |
| Corruption, politics | The alleged illegal financing of the Popular Party |
| Economy, finance | The financial crisis in Spain and the financial assistance program |
| Manipulation, politics | The Ministry of the Interior's partisan use of the cash and resources of the Department and of the State Security Forces and Bodies under the mandate of Minister Fernández Díaz |

Source: Congreso de los Diputados website.

The subjects of the Congreso reveal an interest in issues of corruption, maladministration and transport accidents. The left-wing opposition took extensive advantage of their right to propose topics for investigation under the Rajoy II government (2016-2018). In 2016, a committee was launched to investigate the former internal affairs minister, Fernández Díaz, who was suspected of manipulating corruption investigations against partisans of Catalonian independence. One year later, an investigation related to the 'alleged illegal financing' of the main majority right-wing party was created. Its investigation contributed to the fall of Prime Minister Rajoy in June 2018 with a vote of no-confidence (although the committee investigation was not the only procedure that brought his party's illegal practices to light).[36]

Committees of inquiry in the **United Kingdom** have not been considered here, not only because this country has just left the EU, but also because there are no specific structures of the kind in the House of Commons. Investigations are indeed carried out by thematic permanent committees that do not have legislative authority. The literature indicates the great influence of the cross-party reports of these structures. In a political system characterised by a high level of opposition between parties, political groups' willingness to jointly support an oversight report lends authority to the committee view and may influence future legislation.[37] Yet the activities within such select committees only partially correspond to those in inquiry committees considered here. The House of Lords, by contrast, has established special inquiry committees. It typically appoints four each year, one of which is always dedicated to the legislative post-scrutiny of a law. The committees created for 2018/19 dealt with intergenerational fairness, seaside towns, rural economy and the post-legislative scrutiny of the Bribery Act 2010, which dealt with corruption.[38]

In conclusion of this first section, several observations can be made:

- Most of the topics selected **hold great interest for the public.** Usually, they have the capacity for resonating nationally. Committees dealing with purely local or regional issues are less common but do exist.
- In most of the assemblies, the choice of topics denotes **a mix between large issues** (for instance the financial crisis or the Mafia) **and circumscribed ones** (like a single transport accident). This shows the instrument's remarkable flexibility.
- Despite the variety of topics covered and national distinctions, some issues are frequently a matter of investigation, especially **financial scandals, corruption allegations and child protection**.
- Many of the committees of investigation are **not focussed on issues of maladministration,** and some do not address this issue at all.
- Purely **political investigations, which are focussed on a given public figure or party, do not make up the majority, but investigations of this kind do exist.** When they occur, there is a marked difference between cases where the procedure is controlled by the majority and may be turned against the opposition (as in Poland) and parliaments where the reverse is true (as in Spain). On occasion, the political consequences of an investigation can

[36] And although the events in Catalonia also played a major role in Rajoy's fall.

[37] Meg Russell and Philip Cowley, The Policy Power of the Westminster Parliament: The 'Parliamentary State" and the Empirical Evidence, *Governance,* Vol 29, No 1, 2016, pp. 121–137 and Meg Russell and Daniel Gover, *Legislation at Westminster: Parliamentary Actors and Influence in the Making of British Law*, Oxford: Oxford University Press, 2017.

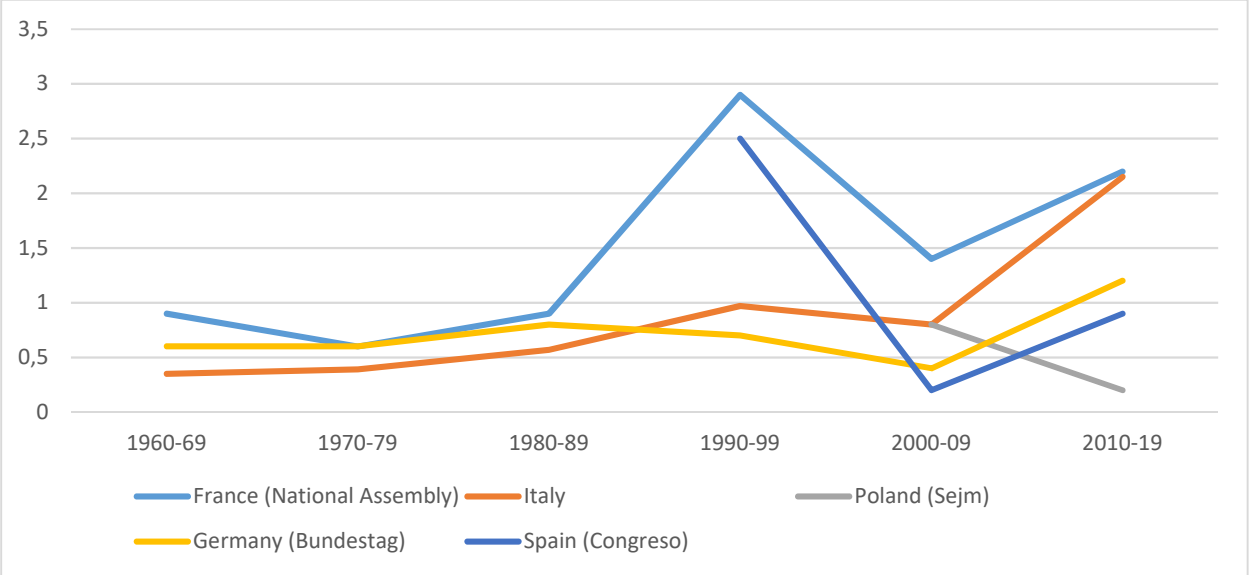
[38] House of Lords Paper 398, Review of House of Lords Investigative and Scrutiny Committees: towards a new thematic committee structure, 6th Report of Session 2017-19 - published 17 July 2019.

be significant, for example the fall of the Spanish prime minister or the reputation of the former German defence minister.

### 2.1.2. More committees during the 2010s

Figure 1 presents the number of committees of inquiry appointed in the lower houses of some European countries. Yearly averages by decades are presented.

Figure 1: Change in the number of committees of inquiry in different parliaments, yearly averages by decades (1960-2019)




Note: Italy: bicameral committees of inquiry and committees of inquiry of the Camera dei deputati only. Germany: committees of inquiry of the defence committee included.

Source: yearly statistical reports and websites of the assemblies.

Figure 1 shows an increase in the number of committees of inquiry appointed in Italy, France, Germany and Spain during the 2010s. Poland yields the only case of a decline in our sample. Other Member States need to be taken into account, but the figure seems to indicate that committees of investigation have become **more common in Europe** and constitute a routinised exercise by which top governmental decisions are monitored. The greater frequency in the appointment of committees may contribute to **a general increase in oversight tools.** Comparative surveys have indicated that the number of written and oral questions over the past two decades has indeed exploded.[39] **European governments are, to a large extent, more concentrated and vertical than before** (a phenomenon termed 'presidentialisation'[40]) **but they are also increasingly under the control of networks of MPs, NGOs, the media and citizens** (in part through social media).

[39] Olivier Rozenberg and Shane Martin, Questioning Parliamentary Questions, in Shane Martin and Olivier Rozenberg (eds), *Roles & Functions of Parliamentary Questions*, London, Routledge, 2012, pp. 135-145.

[40] Thomas Poguntke and Paul Webb, *The Presidentialization of Politics: A Comparative Study of Modern Democracies*, Oxford: Oxford University Press, 2005.

However, the comparison across countries over the decades somewhat relativises this trend. First, there is a noticeable peak in France during the 1990s (when the minority initiative was tested) and Spain (when the procedure was introduced). This peak is followed by a drop the following decade. Second, currently, the number of committees appointed in the lower houses varies greatly, from two per decade in Poland to more than 20 in Italy (including bicameral committees) and France.

Section 2.2.2. will provide some general explanations for these differences. Some specific remarks can be formulated at this stage. In **Germany**, basic law stipulates that the creation of a committee can be decided by one quarter of the MPs. This provision was meant to grant a prerogative to the opposition. It proved to be rather difficult to implement in the 2010s, given the substantial size of the governing coalitions and the atomisation of the opposition. In 2009, the socialists had to ally with another opposition group, green or radical left, to reach the threshold. In 2013, the opposition was short of reaching it by 30 seats. Since 2017, the co-sponsorship of three of the four opposition groups (radical right, radical left, green and liberals) is needed to appoint a committee without majority support.

In **France**, observers have noticed that the weakness and division of the parliamentary majority were determining factors in the adoption of institutional reforms strengthening government oversight.[41] Under the pressure of coalition partners (as well as of the presidents of the assemblies challenging the president of the Republic or the Prime minister), majority leaders accepted liberal reforms that would, in turn, be used by the opposition. As a result, each parliamentary party group of the National Assembly has been given the right to propose (since 2009) and even impose (since 2014) the topic of a committee of inquiry, with the guarantee of occupying the position of president or rapporteur within it.[42] This right is open to each group – opposition groups as well as small majority partners who benefit from this opportunity to subtly differentiate from the main party, without betraying it within legislative procedure. This liberal provision has been conducive to a rapid increase in the number of committees appointed, given the unprecedented rise in the number of groups at the assembly. They were four groups in 2007, and five in 2012; today, there are eight.

In **Spain**, the first committee mentioned in the archives dates from 1989. In **Poland**, the institution of the inquiry committee was established in a regulation of 1999, and the first one was appointed in 2003.

### 2.1.3. The drawbacks of parliamentary investigations

The development of the inquiries carried out by European parliaments in recent years has shed light on various scandals and issues of maladministration. In this sense, it constitutes democratic progress. Yet the functioning of the committees of inquiry also reveals some recurrent issues. These are grouped around two main points.

#### ) Political and legal controversies

It is certainly no surprise that committees of inquiry raise controversies, as they focus, by definition, on issues of suspected scandal that are often relevant to the public interest. We have discussed how, in some countries, the very topic of a committee can be focussed on key politicians and their parties, whether a minority motion against the government, like in Spain, or a majority-led procedure against the previous government, like in Poland.

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41 Sébastien G. Lazardeux, The French National Assembly's Oversight of the Executive: Changing Role, Partisanship and Intra-Majority Conflict, *West European Politics*, Vol 32, No 2, 2009, p. 287-309.

42 Since 2019, the group that proposed the committee may even choose between one of the two positions.

However, we observe many cases of controversies related not only to the content of the information divulged by committees but also to the parliamentary procedure itself. The **topics of the committee** can be a matter of conflict between parties. In some cases, minority groups are given the right to propose a topic that may be modified by the majority when deciding to appoint the committee. This was the case in the French National Assembly from 2009 to 2014 before a revision of the Standing Orders. [43]

A recent political controversy in **Austria** offers an example of the political sensitivity of this issue. On 22 January 2020, a committee of inquiry was created on the Ibiza Affairs concerning allegations of fraudulent financing of the far right.[44] This was only the fourth committee of inquiry that began work on the basis of a minority motion, an instrument that was created in 2015. The main majority party, ÖVP, together with their new allies the Greens, is suspected of trying to block certain issues from the mandate of the committee. This attitude can be explained by the fact that ÖVP was allied with the radical right until recently. In reaction to this, SPÖ (the left) and Neos (the liberals) are currently considering raising the issue to the Austrian Constitutional Court. SPÖ accuses the Greens of a 'truncation' of the committee of inquiry.

The controversies on the issue may also have a **legal dimension**. Most of the regulations prevent committees from addressing topics that are already under consideration by courts in order not to interfere with the judicial order.[45] In practice, there are easy means to circumvent the rule. The main strategy consists in considering a more general problem addressed by the issue. The 'Benalla affair' in France provides a good such example. In July 2018, the newspaper *Le Monde* revealed that an official in President Macron's security detail, not a member of the police, had joined the forces of order during a demonstration on 1 May 2018, and had allegedly brutalised some persons. A judicial instruction was immediately opened. The opposition within each assembly also decided to conduct investigations, given the magnitude of the scandal. In order to avoid being accused of playing a judicial role, the Senate decided to designate the law committee's fact-finding mission as investigating 'the conditions under which persons not belonging to the internal security forces could or may be associated with the exercise of their tasks of maintaining order and protecting high-ranking public figures and the regime of sanctions applicable in the event of breaches'. The National Assembly equivalent decided that its aim was to 'shed light on the events of the Parisian demonstration on 1 May 2018,' a more neutral designation that nonetheless denoted a willingness to skirt the prohibition on addressing open legal cases.

However, the arrangements reached during the establishment of committees do not solve all these problems, as **hearings of key actors may interact with lawsuits**. In the course of a tense and televised hearing, it may prove difficult to differentiate between the assessment of a general political problem and an individual's judgment. This raises a legal issue as some parliaments stipulate that witnesses must speak the truth. This provision, which resulted in a court conviction in France in 2018,[46] can prove incompatible with the right to a fair trial as protected, for one, by the European Convention on Human Rights.

The choice of witnesses may furthermore constitute a matter of controversy. In France in the 1980s, there was doubt about whether to hear the testimony of the president of the Republic because of

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[43] Olivier Rozenberg, Un petit pas pour le Parlement, un grand pour la Vème République, *LIEPP Working Paper,* 61, 2016.

[44] *Der Standard*, 22 January 2020.

[45] "The European Parliament's right of inquiry in context – A comparison of the national and European legal frameworks", Author: Diane Fromage, European Parliament, Policy Department for Citizens' Rights and Constitutional Affairs, 2020.

[46] ' Condamnation en appel pour 'faux-témoignage» devant le Sénat', *Le Figaro,* 9 November 2018.

his political independence. While it was agreed at that time that the president could not be heard, the question has remained for his advisors and collaborators. During the above-mentioned 'Benalla case', the Senate, controlled by the opposition, compelled Alexandre Benalla to testify, while the National Assembly decided not to. The minister of justice publicly condemned the Senate's attitude (though without legally being able to forbid it), while some observers believed that the upper assembly was acting usefully as a check.[47]

The manifold controversies around the creation and activities of the committees of inquiry may be considered as part of the normal game of politics. Yet, as the examples developed make clear, they raise issues concerning **respect for the rule of law**. There is also a possibility that while investigating, the parliament **amplifies public scandals** rather than genuinely trying to solve public problems.

### The lack of follow-up

Committees of inquiry have a fixed period of existence during a given legislative term. It is therefore, by definition, impossible for them to consider the follow-up to their conclusions and recommendations once the structure has ceased to exist. New elections may also completely change the political context in which the inquiries took place. However, different strategies aim to maintain parliamentary attention:

- A sort of **permanent committee** can be created if the topic is considered sufficiently important. This was proposed by the PANA Committee of the Parliament in December 2017, with no success until now (see Section 3.3.2).
- The committee may decide that legal action is needed given the information gathered. A complaint or a proceeding of any kind can subsequently be launched.
- A new committee of inquiry can be created on the same or, if this is statutorily impossible, a similar topic. The Italian Parliament has long pursued this strategy, for instance by appointing no fewer than six bicameral committees of inquiry regarding the Mafia since 1958.[48]
- A limited number of members of the former committee of investigation may join a sort of general committee of the assembly with the task of assessing the consequences of their report. This was recently proposed by a report of the House of Lords in order to address the 'limited ability for follow-up once an inquiry has concluded'.[49]
- A standing committee adjacent to the topic considered by the committee of inquiry may decide to evaluate whether the report recommendations have been implemented. Since 2004, the Standing Orders of the French National Assembly have established that a rapporteur should be nominated to one of the standing committees and deliver a follow-

[47] For the minister's view, see Nicole Belloubet, Le Parlement ne peut pas empiéter sur le domaine judiciaire, *Le Monde,* 16 and 17 September 2018. For an opposing view: see Olivier Beaud, 'Le Sénat apparaît comme le principal contre-pouvoir de notre système présidentialiste', *Le Monde,* 18 September 2018.

[48] See: https://inchieste.camera.it/

[49] House of Lords Paper 398, Review of House of Lords Investigative and Scrutiny Committees: towards a new thematic committee structure, 6th Report of Session 2017-19 - published 17 July 2019, point 61. Point 68 indicates: 'If the Liaison Committee accepts the case for follow up, then it will co-opt the Chair and three members of the former committee (ensuring one member from each group, including the Chair) onto the Liaison Committee with a view to holding two or three evidence sessions, as necessary, ideally in one meeting. This would be followed by a very short Liaison Committee report, to which the Government must respond in the usual fashion.'

up report six months after the end of the committee of inquiry.[50] Unfortunately, this procedure does not attract much attention.

## 2.2. Parliament in comparative perspective

### 2.2.1. Concerning theories

Parliament has appointed committees of inquiry since its first direct elections in 1979. Table 12 re-examines the theoretical claims developed in Chapter 1 and discusses whether they apply to Parliament.

Table 12: Justifications for inquiry prerogatives in the case of Parliament

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

Note: Parliament refers here to the European Parliament.

At the EU level, the **political responsibility of the Commission** vis-à-vis Parliament, foreseen in the Treaties since the very inception of the European Communities, plainly justifies granting powers of inquiry to the assembly. The same cannot be said of the Council, which acts independently of Parliament and which may even be considered as a sort of upper legislative chamber in the EU.[51] Yet the Member States sitting at the Council table also have to implement EU legislation and respect the Treaties. As a representative of the European peoples, Parliament possesses the legitimacy to probe possible maladministration and misconduct in these matters. The multi-level feature of the EU as well as the disproportion between 705 MEPs and 27 Member States renders **information loss likely**. For example, Parliament cannot easily know how the resources provided for structural policies are spent. MEPs and their voters may suspect that massive fraud is being perpetrated in that area. **An**

[50] Pauline Türk, *op. cit*, p. 161.

[51] Olivier Rozenberg, *The Council of the EU: from the Congress of Ambassadors to a genuine Parliamentary Chamber?*, Policy Department for Citizens' Rights and Constitutional Affairs, European Parliament, 2019.

**inquiry conducted directly by Parliament itself constitutes an efficient way to gather detailed and strategic information on the topic**.

The idea that **a committee of inquiry could feed public debate and even contribute to civil peace** is also relevant for Parliament. Parliament's choice to conduct inquiries on topics of public interest could be especially welcome, because Parliament **often has difficulties raising interest** in its activities outside of the small Brussels sphere. It is also conceivable that many Europeans might, one day, suffer from a collective transnational trauma (for instance, an environmental catastrophe) that Parliament could help to alleviate through televised multilingual hearings.

Two final justifications seem *a priori* less relevant in the case of Parliament. Parliament does not really need to compensate for a lack of legislative clout, since its influence has rested on firm legal grounds since Maastricht and was even expanded at Lisbon. Still, it has been argued that Parliament suffers from '**power without influence'** syndrome.[52] This expression refers to the fact that key members of the Council enjoy much more genuine political influence on policy-making. Parliament, furthermore, seemed less important during the past legislative term in issues that were the most pressing in public opinion, especially the migration crisis and the financial viability of the euro zone. Within these fields, many of the decisions were left to the two other main institutions of the EU. Moreover, in these fields, Parliament occasionally had to legislate urgently, with only a few weeks for passing draft legislation and a limited capacity to amend it.[53] From that perspective, the development of inquiry powers seems fully relevant. For example, Parliament may **play a secondary role in migration policies, given the Statist dimension of that field, but can investigate its consequences, including for the respect for the rule of law**.

Regarding opposition rights as a justification for giving more inquiry prerogatives to Parliament, the very notion of opposition versus majority does not seem adequate for a transnational setting such as Parliament.[54] A *de facto* implicit coalition between the two main groups existed up to 2019, but a. other groups also participated in it on occasion (and sometimes more frequently), b. this coalition was neither permanent nor formalised, c. the addition of the liberals, and possibly the greens, has appeared numerically necessary since 2019. A closer analogue to **the notion of opposition within Parliament is provided by the groups opposed to the EU treaties that currently claim about one quarter of the seats. It would nonetheless be a mistake yet to grant them any sort of monopoly regarding inquiry powers,** as they could transform them into a spectacular pro/anti-EU investigation instead of addressing the content of public policies issues.

We are not arguing against granting these groups inquiry rights, but against giving them a monopoly over their use. 'Pro-European' groups could also make use of the rights to '**policing the bargains'**. As explained above (Section 1.3.3), parliamentary oversight may be used by coalition partners to monitor one other and make sure each respects initial commitments. To give an example, it may be argued that the social democrats voted in favour of the von der Leyen commission and against a commitment to reopen the negotiations regarding the rules related to budgetary deficit. It would make sense that they propose a relevant committee of investigation that could hear the EPP Commissioner in charge of those files, Valdis Dombrovskis. Such a procedure would allow

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52 Edoardo Bressanelli and Nicola Chelotti, Power Without Influence? Explaining the Impact of the European Parliament Post-Lisbon, special issue of the *Journal of European Integration,* 41(3), 2019.

53 J. White, Politicizing Europe: The Challenge of Executive Discretion, LEQS Paper, 72, 2014.

54 A. Kreppel, S. Hix, From grand coalition to left-right confrontation explaining the shifting structure of party competition in the European Parliament, *Comparative Political Studies*, 36(1-2), 2003, pp. 75-96; A. Kreppel, Tsebelis, G., Coalition formation in the European Parliament. *Comparative Political Studies*, *32*(8), 1999, pp. 933-966.

Parliament and its groups to put continuous pressure on the Commission, rather than limiting its influence to the investiture of the college of commissioners.

To summarise, **the assessment of different general justifications for parliamentary inquiries in the case of Parliament shows that Parliament is fully appropriate for their practice. The questions raised seem therefore more legal and political than theoretical**. It is undoubtedly difficult for Parliament to compel witnesses to testify, as this assembly cannot rely on a police force of a theoretical European executive. It is similarly difficult, though to a lesser extent, to access all needed documents in the EU because of domestic regulations relative to their access and the protection of secrecy. However, these issues are practical – not theoretical. In that sense, **Parliament's situation is not very different from those of national parliaments in the past regarding the development of their inquiry rights**. Indeed, national parliaments cannot directly command national security forces (except, generally, for the security of their building). Therefore, they had to reach agreements and accommodations with the executive power to obtain the participation of police forces in compelling witnesses to give testimony before their committees of inquiry. The same can be said for access to public documents. Parliament is now in the same situation with the (to be sure substantial) difference that as a transnational assembly, it bargains with more actors, situated both at national and European levels.

### 2.2.2. In practice

Table 13 presents the issues treated by the five most recent committees of inquiry appointed in Europe since 1996.

Table 13: List of the committees of inquiry of the European Parliament since 1996

| Topic | Name |
|---|---|
| Financial scandal | Community Transit System |
| Health | Bovine spongiform encephalopathy |
| Financial scandal | Crisis of the Equitable Life Assurance Society |
| Environment, economy | Emission Measurements in the Automotive Sector |
| Financial scandal, crime | Money Laundering, Tax Avoidance and Tax Evasion |

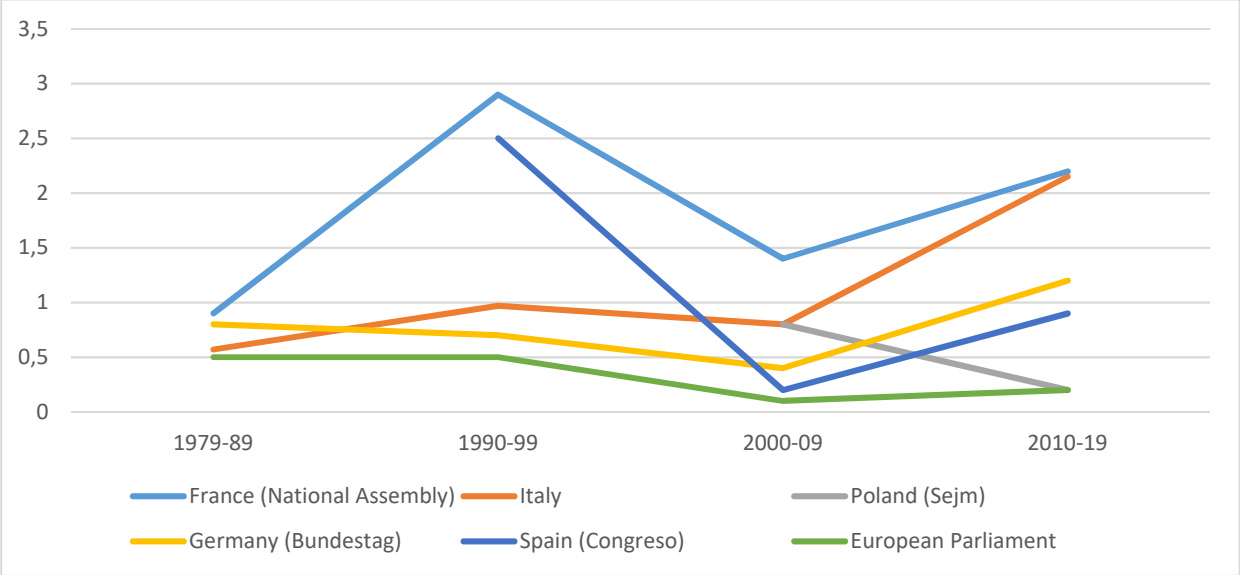
Source: Author

The **issues dealt with by past investigations within Parliament appear to be extremely close to those addressed within national parliaments,** as discussed above (Section 2.1). Health, financial scandals and environmental issues indeed appear to constitute key concerns both in Parliament and in the assemblies of the Member States. The difference, however, lies in the focus of some committees at the domestic level on issues that are localised (for instance, overseas territories in Europe) or purely political (the actions of radical groups).

The proximity of the issues addressed is all the more remarkable considering that the legal framing of inquiries in Parliament appears **more specific** than in most national parliaments.[55] Article 226 TFEU stipulates that investigations should focus on '*alleged contraventions or maladministration in the implementation of Union law*' (see Section 3.1.1 and Box 1 below). This provision is more precise than most domestic stipulations. Yet, seemingly, it has not kept Parliament from addressing the issues that interest citizens and MEPs.

Figure 2 compares the number of committees of inquiry appointed by Parliament since 1979 with other European cases.

Figure 2: Change in the number of committees of inquiry in different parliaments including the European Parliament, yearly averages by decades (1979-2019)




Sources: See Figure 1.

Contrary to the comparison of the issues addressed by the committees, **Parliament appears an outlier in terms of number of committees appointed. It was close to other national parliaments in Europe in the 1980s, when the first committees were created, with an average of 0.5 committee per year. It is currently far lower, with only two structures appointed during the 2010s.** Parliament is at the level of the least active legislature in our sample, the Polish Sejm, within which committees have only been allowed since 1999.

The limited number of committees of inquiry appointed in Parliament partly results from the **limitations of their prerogatives**. The fact that it is not possible to access needed documents and to force witnesses to testify obviously does not constitute an incentive for creating new committees of inquiry. But two other explanations can be cited.

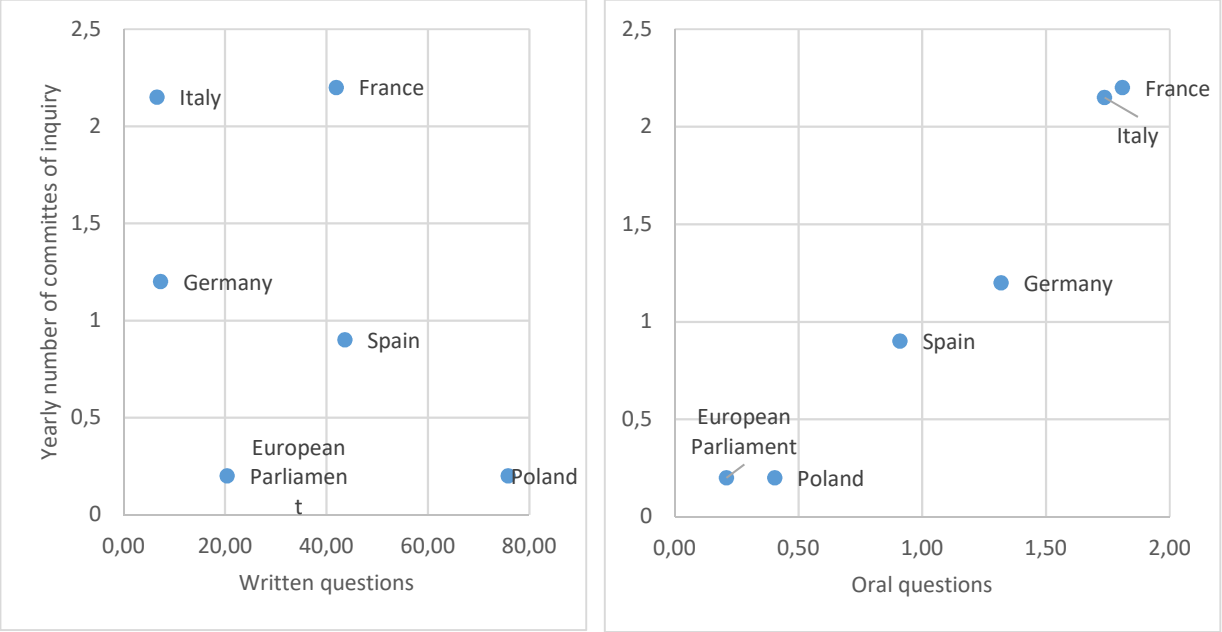
First, Parliament is characterised by the strength of its committee system. Standing committees possess a strong institutional identity. They play a key role in shaping compromises between party

[55] "The European Parliament's right of inquiry in context – A comparison of the national and European legal frameworks", Author: Diane Fromage, European Parliament, Policy Department for Citizens' Rights and Constitutional Affairs, 2020.

groups.[56] As a result, there **may be an institutional reluctance on the part of committee presidents and staff** towards the development of *ad hoc* structures such as committees of inquiry. Investigators could be perceived as taking some of the resources and prerogatives that can be directly employed by standing committees, who would therefore prefer the creation of special committees. As we will consider in Section 3.2.1, special committees have indeed been numerous.

Second, the investigative style may possess an aspect that differs widely from the institutional culture of Parliament. To expand this hypothesis, the following figures compare the frequency in the use of various oversight tools over the last decade, namely committees of inquiry, oral and written questions.

Figure 3: Yearly number of committees of inquiry in different parliaments and the average number of written (left) and oral (right) questions asked by MP (average for 2010-2019)




Sources: See Figure 1 and, for the questions, Olivier Rozenberg, Eleni Tsaireli, *Vital Statistics on European Legislatures,* 2016 (http://statisticslegislat.wixsite.com/mysite).

Figure 3 shows no relation between the number of committees of inquiry appointed and of written questions asked. By contrast, there is a high and positive correlation between committees and oral questions. This relation should be considered cautiously, as it has been established on the base of six chambers only and may be misleading. Nonetheless, it lends credence to the hypothesis that legislatures involved in oral activities, in visible and potentially controversial oversight, may be also more willing to develop inquiries. As stated above (Section 1.2.1), inquiries in parliament simultaneously obey the logic of working and talking legislatures from a theoretical and institutional standpoint**. In practice, they may actually be closer to the talking and oppositional style.** No doubt this type of parliamentarianism is rather remote from the institutional culture of Parliament.

[56] Olivier Costa, *Le Parlement européen, assemblée délibérante.* Brussels: Presses de l'Université libre de Bruxelles, 2001; P. Settembri, C. Neuhold, Achieving consensus through committees: Does the European Parliament manage?. *JCMS: Journal of Common Market Studies*, *47*(1), 2009, pp. 127-151.

Yet one can recall that, in fact, **most efforts for empowering Parliament to date have focussed on consensual and technical participation in policy-making, to the detriment of stimulating public debates.** In a nutshell, it may be time to put on more of a show in Strasbourg and Brussels.[57]

[57] A point supported by many European specialists, for instance: Paul Magnette, *What is the European Union: Nature and Prospects,* London, MacMillan, 2005.

# 3. THE DIFFICULTY OF EXPANDING PARLIAMENT'S INVESTIGATIVE POWERS

KEY FINDINGS

- The Maastricht Treaty was the first text to offer a substantial empowerment of the Parliament's investigative authority. Article 226 of the Treaty on the functioning of the European Union granted Parliament the **right to set up temporary committees of inquiry and provided a legal basis for investing these committees with significant powers** regarding their possibilities for action and the political impact of their work.

- Since 1995, the Parliament has set up five committees of inquiry, gradually increasing their duration as well as their number of members, but it has faced procedural and political limitations. First, all committees have been faced with **a lack of sincere cooperation from a number of other EU institutions, both relating to access to documents and the organisation of hearings**. Second, in addition to committees of inquiry's procedural limitations, a major issue lies in **the lack of follow-up to the recommendations** listed in the final reports.

- The last two parliamentary committees of inquiry in 2016-17 (**PANA; EMIS**) enabled an in-depth investigation of pan-European issues with high political stakes. They focused the public spotlight on the issues under scrutiny and, in that sense, were useful not only for placing sensitive topics on the political agenda but also for enhancing the Parliament's powers of scrutiny and control. Politically, both committees were deemed successful, even though the investigation took time and effort due to a lack of clarity on procedural rules. **Although the committees fail to hear all the witnesses they wished, they heard most of them** through a pro-active strategy based on the mobilisation of the Parliament's presidency, a use of the medias, a mobilisation of the interested parts and a 'blame and shame' strategy.

- Generally speaking, **Parliament has made strategic use of its prerogatives to scrutinise and control EU policies**. The committees of inquiry have offered an opportunity for Parliament to influence the agenda of the European Commission and shape democratic debate by raising citizens' awareness.

    - Regarding the relation with the Commission, Parliament has gradually become more political, especially since the 2014 elections. MEPs have a much greater desire for political control over the executive. However, **a stronger political link between Parliament and the European Commission could allow for more beneficial and constructive cooperation during inquiries**. This trend can be observed in the final reports of inquiry committees, which focus not on allocating blame but rather on identifying policy and legislative recommendations to address the shortcomings in question.
    - Although the Commission has made efforts to improve its cooperation with committees of inquiry, **Member States' cooperation with Parliament's committees remains generally unsatisfactory**. Member States are fundamentally concerned with Parliament obtaining a more formal means of investigation associated with the potential provision of sanctions.

- **Article 226 TFEU conferred on the Parliament the power to propose and adopt a binding regulation** with detailed provisions governing the right of inquiry. A proposal was adopted in Plenary in 2012; with a view of reaching an agreement with the Council and Commission before adopting a legislative resolution. The proposal advanced by the Parliament met with **opposition from both Council and Commission** which perceived it as an excessive expansion of the Parliament investigative role, not in keeping with the spirit of the Treaties. Due to the deadlock in the negotiations, the Parliament adopted a resolution in April 2014 calling on the Council and the Commission to resume negotiations during the next parliamentary term. No political agreement has been reached.

- Over the past years, negotiations between the Council, Parliament and the Commission to find an inter-institutional agreement have proven difficult. Therefore, **Parliament should focus on improving the conduct of inquiry committees and increasing its own prerogatives**, mainly by developing an expertise on the procedural side and mandating inquiry committees on a more frequent basis.

This chapter first traces the different steps that led to the construction of Parliament's investigative powers. It specifies the conditions under which Parliament gradually obtained its supervisory powers. The specific use of these prerogatives, materialised by the establishment of inquiry committees, stresses the political value of such powers. As well as the dynamics of European integration on a wider scale, the rapid institutional and political empowerment of Parliament can help explain the current deadlock between the three institutions regarding the negotiation of the proposal for a regulation on the detailed provisions governing the exercise of the European Parliament's right of inquiry. The legislative resolution on this proposal, adopted by Parliament in 2014, and its political significance are discussed in detail.

## 3.1. The state of Parliament's investigative powers

### 3.1.1. A gradual empowerment of Parliament's investigative powers

Lack of transparency in EU decision and policy-making processes, as well as a perceived lack of accountability of EU policy makers and institutions, have since early days been deemed responsible for the democratic deficit and internal deadlocks of the European Union.

Parliament's role as representative of EU citizens, as the only directly elected EU institution, must be seen as the foundation – and one of the main explanations – for the inclusion of its supervisory powers in the Treaties. The reason behind the original inclusion in the Treaties of Parliament's prerogatives of control over the European Commission and the Council of the European Union is to provide for the democratic scrutiny of the 'alleged contraventions or maladministration in the implementation of Union law' (Article 226 TFEU).

In granting the right to set up inquiry committees, the Treaties bestowed Parliament with one of its most visible instruments for holding the other institutions accountable. This power contributes to

Parliament's assumption of the role of active legislator, as it is considered today. The active role of Parliament in the EU's political system, and its use of supervisory power, are, however, relatively recent.

Committees of inquiry have been instrumental for Parliament in acquiring far-reaching powers similar to those of the parliaments of Member States. They also are an indirect consequence of the Commission's responsibility, enshrined in the founding treaties. The heart of representative democracy, Parliament has been entrusted with the role of controlling and sanctioning the Commission. Expanding Parliament's investigative powers to accomplish its role is therefore a necessary continuation.

Within the framework of committees of inquiry, Parliament developed informal instruments to expand its influence within a relatively constraining formal institutional structure.[58]

Steps

- The idea of inquiry committees originates from the Rules of Procedure (RoP) developed after the introduction of direct popular elections in 1979, during which nine committees set up by Parliament itself investigated a large range of questions, from racism to the handling of nuclear materials.[59] Until then, the use of temporary committees of inquiry was limited to cases in which serious reflection on a general problem affecting all Member States was needed. The work of the committees concluded with the submission of a report to Parliament within a period of nine months. The temporary committee of inquiry can be seen as one case wherein an internal rule was used to set an informal precedent for treaty reform. The exceptional use of supervisory powers for 'the sake of common good' helped legitimise Parliament's empowerment on normative grounds.[60] Even though the innovation of direct elections was not properly accompanied by any formal increase in power and functions, new democratic legitimacy significantly strengthened the authority of Parliament and its political ambitions.[61]

- The Draft Treaty on European Union, proposed by Parliament in 1983, made provision for the adoption of an organic law on the powers of parliamentary committees. Parliament's proposals were not incorporated into the Single European Act, adopted in July 1986.[62]

- The Maastricht Treaty substantially empowered Parliament. With the introduction of co-decision and Parliament's vote on the Commission's investiture, it also 'constitutionalised' the domain of its investigative powers under Article 138c TEU. As such, it granted Parliament new constitutional powers, including the right to establish temporary committees of inquiry. The constitutional nature of the inquiry committees required that they be invested with significant powers with regard both to their ability to act and the political impact of their work.[63] For the first time, the Treaty expressly provided the possibility of an interinstitutional agreement, for which the three institutions would have to jointly adopt rules governing both the functioning, powers, and legal ramifications of Parliament's investigative powers.

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58 Shackleton, M., The European Parliament's New Committees of Inquiry: Tiger or Paper Tiger?, JCMSt 1998, 115.

59 Ripoll Servent, A., The European Parliament, Macmillan, 2017.

60 Ibid.

61 Rocco Polin, Life of EP: History of the empowerment of the European Parliament, 2014.

62 Hancher, L., 1992 and Accountability Gaps: the Transnuklear Scandal: A Case Study in European Regulation, 1990, The Modern Law Review.

63 Musso, F., Working document on Parliamentary committees of inquiry, June 1992.

- A first interinstitutional agreement was reached in 1995[64] and annexed to Parliament's Rules of Procedure (RoP). Parliament has extended some provisions of this agreement, notably establishing the practice of fact-finding visits in Member States or third countries.[65] Moreover, during the BSE inquiry in 1996, Parliament's committee's threat of a motion of censure created a direct and visible impact on the investigated institutions, especially the European Commission.

- In 1999, the collective resignation of the Santer Commission represented a fundamental shift in the balance of power of the European Union's institutions. Following a rejected motion of censure on 14 January 1999, Parliament, in its role as the representative of the EU citizens, voted in favour of a compromise that included a resolution calling for the establishment of a Committee of Independent Experts with a mandate to investigate the administrative irregularities already noted by the internal control bodies. This committee included members appointed by political leaders in Parliament. The Commission took part in the nomination of the experts. The President of the Commission agreed to 'respond' to its findings.[66] Acting on its mandate to ensure the democratic accountability of the Commission, the committee reported a 'case of favouritism' and 'unacceptable behaviour' by French Commissioner Edith Cresson. The final report on 15 March criticised the Commission's management methods, taking the view that collectively, the Commissioners did not exercise adequate control over their administrations. It implicated the two Commissioners who were already the subject of an internal inquiry, as well as other Commission members. The report's conclusions made it likely that Parliament would adopt a motion of censure. With the resignation of the Santer Commission, Parliament asserted its political power of scrutiny over the Commission, a power it did not have over the Council.[67] Nicole Fontaine, the Vice-President of Parliament, declared that 'by demanding more transparency and rigorous management from the Commission Parliament has exercised its democratic role'.[68] This particular political sequence was then reported in the press as 'the dawning of a genuine European democracy'.[69]

- By introducing new rules governing the relationship between Parliament and the Commission, the Lisbon Treaty aimed to deliver interinstitutional balance and democratic legitimacy in the hopes of improving the institutions' credibility in the eyes of European citizens.[70] To this end, the treaty thus conferred on Parliament the power to propose and adopt a binding regulation on the inquiry rules (Article 226 TFEU) with the consent of the Council and Commission,[71] in order to fulfil another essential function of democratic parliaments: control over the executive. The current framework is based on the specific implementation of this right as presently included in Rule 198 of the RoP. Until such a regulation is adopted, the right of inquiry is exercised according to the 1995 interinstitutional agreement annexed to Parliament's Rules of Procedure (Annex VIII), and Parliament's Rules of Procedure. As EU law is primarily implemented by national authorities,

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64 Decision of the European Parliament, the Council and the Commission of 6 March 1995 on the detailed provisions governing the exercise of the European Parliament's right of inquiry, OJ L 78, 6.4.1995, p. 1.

65 Ripoll Servent, A., The European Parliament, Macmillan, 2017.

66 Hoskyns,C., Newman, M., *Democratizing the European Union: Issues for the Twenty-first Century*, 2000, Manchester University Press.

67 Gerbet, CVCE, The crisis of the Santer Commission, 2016.

68 Deschamps, E., Interview with Nicole Fontaine, Bruxelles, CVCE, 5 February 2008.

69 See for instance *The Guardian*: https://www.theguardian.com/world/1999/mar/16/eu.politics1

70 Judge & Earnshaw, *The European Parliament*, 2nd edn, Palgrave Macmillan, 2008.

71 Poptcheva, E., *Parliament's committees of inquiry and special committees*, European Parliamentary Research Service, European Parliament, 2016.

Parliament also has the right to investigate alleged maladministration by national authorities, as well as by natural and legal persons involved in EU law implementation. The domain of Common Foreign and Security Policy is no longer excluded from the right of inquiry.

Box 1: Article 226 of the Treaty on the Functioning of the European Union

***Article 226 TFEU***

*In the course of its duties, the European Parliament may, at the request of a quarter of its component Members, set up a temporary Committee of Inquiry 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, except where the alleged facts are being examined before a court and while the case is still subject to legal proceedings.*

*The temporary Committee of Inquiry shall cease to exist on the submission of its report.*

*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.*

Under the Rules of Procedure,[72] once established, a Committee of Inquiry is entitled to deploy appropriate means of investigation, including accessing sensitive documents and clearing officials in charge, provided that 'sufficient degree of confidentiality in treatment of this information will be duly observed'. The decision of Parliament to set up a Committee of Inquiry must be made public as much as possible; in addition to the publication in the Official Journal of the European Union, Parliament is required to take all other necessary steps to make this decision widely known outside its walls. This obligation is another example of the efforts to bring the Union closer to its citizens: the rationale behind the formation of the Committee in question is to examine behaviour of the bodies responsible for the application of the law of the Union, which can thus directly affect the positions of EU citizens. After the Committee considers its task complete, it shall submit a report on the results of its investigation to Parliament, whereas this report shall be published subsequently. The final outcome of the Committee's mission might take the form of recommendations addressed to the EU institutions or to other bodies applying EU law.

- In 2009, the Constitutional Affairs Committee proposed substituting the interinstitutional agreement with a new regulation, binding on Member States, which would have increased the investigative powers of Parliament. A resolution was adopted in April 2014 by Parliament, but no agreement has been reached with the Council and the Commission thus far.

Investigative powers are an important set of prerogatives for parliamentary assemblies. The exercise of Parliament's right to scrutinise and to some extent control and criticise maladministration by the Commission or the Council has been instrumental in rebalancing the initial interinstitutional imbalance of the three.

[72] Rules of Procedure of the European Parliament, seventh parliamentary term.

### 3.1.2. Inquiry committees in Parliament history

Parliament created nine committees of inquiry in the period between the introduction of direct elections in 1979 and the inclusion of a legal basis for inquiry committees in the Maastricht Treaty in 1995.[73] The first committees highlighted both Parliament's limited power of scrutiny and its strategic political use of such powers:

- In 1983, a special committee of inquiry was established following the disappearance of 41 drums of dioxin from Seveso in Italy. The Seveso Committee concluded that the Commission had failed as guardian of the Treaties to fulfil its function of monitoring national laws, which in turn had failed to incorporate European directives. The narrow mandate of the committee allowed for only limited investigations at the national level. As it was the first of such committees, no clearly established precedents on the scope of its powers or the nature of its procedures existed. The committee conducted most of its inquiries on the basis of questionnaires, oral hearings to which Commissioners, senior officials, national ministers, civil servants and experts were invited to attend. The final report makes specific reference to the willing cooperation it received from national authorities, although only the President of Parliament's written invitations to national ministers secured their participation in the committee's hearings.[74] However, the report also mentions the institutional problems that could arise if the 'voluntary' cooperation of the national authorities with such committees was not forthcoming.
- In 1988, the European Parliament established a committee of inquiry into the so-called Transnuklear scandal, which involved alleged illegalities in the transport of radioactive waste. It was the first such committee to consider allegations of maladministration on the part of the Commission. Without a legislative basis, the scope of Parliament's investigative powers remained minimal and vague. Moreover, the political sensitivity of the matter at both national and European levels was likely to impose severe limitations on the scope of the Committee's inquiries.[75]
- In 1991, the Committee of Inquiry into Racism and Xenophobia published its findings in a report that, in 1995, would serve as a basis for a resolution on racism, xenophobia and anti-semitism. This committee was presented as one of the tasks the 'Parliament has taken upon itself' to 'enhance and regularly update' the citizens' 'knowledge of the facts, symptoms and structures'[76] of social and political problems such as racism and xenophobia.

Between 1995 and 2019, Parliament set up five inquiry committees.

In the 1990s Parliament set up two committees that later served as 'test cases' for negotiations between the institutions. The first investigated the Community transit system; the second, the bovine spongiform encephalopathy (BSE) crisis.

The committee on the EC's transit system met 37 times over 13 months and adopted its report in February 1997. It published its report before debating it in the plenary in March 1997. Over the same period, the Committee on the BSE crisis met 31 times in six months and presented its report in February 1997 as well.

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73 Ripoll Servent, A., *The European Parliament*, Macmillan, 2017.

74 Hancher, L., 1992 and Accountability Gaps: the Transnuklear Scandal: A Case Study in European Regulation, 1990, *The Modern Law Review*.

75 Hancher, L., 1992 and Accountability Gaps: the Transnuklear Scandal: A Case Study in European Regulation, 1990, *The Modern Law Review*.

76 Ford, G., Report drawn up on behalf of the Committee of Inquiry into Racism and Xenophobia on the findings of the Committee of Inquiry, 1991.

The differences and similarities between the two committees were:

- **Mandate**: While the committee on the transit regime followed previous methods of inquiry due to the technicity of the issue at case, the BSE committee considered more individual failings and searched for directly attributable responsibilities for maladministration.[77] By doing so, it unequivocally identified the United Kingdom's accountability for its perceived failings and laid a high level of blame on the Commission.[78] The Transit Regime Committee still managed to transform a purely technical and administrative issue into a political one.[79]
- **Investigative powers**: Neither committee could rely on a judicial sanction mechanism to compel witnesses to testify. To ensure a high level of scrutiny and accountability to citizens, the two committees recorded the evidence and rendered it available to the public. In addition, the BSE committee showed how the right of inquiry could be combined with other powers at Parliament's disposal: in a resolution of 19 February 1997, Parliament warned the Commission that if the recommendations of the BSE committee were not carried out, a motion of censure would be tabled.[80]
- **Press and media coverage**: In contrast with the Community transit regime, the BSE crisis was extensively discussed in the media in 1996. Therefore, the committee had a more considerable impact on decisions made by the Commission, notably the revival of consumer protection policy with the widespread adoption of the precautionary principle.[81]
- **Limits**: The two committees of inquiry demonstrated the interinstitutional agreement's weaknesses with regard to calling witnesses. The main limitation was the lack of an efficient sanction mechanism for Member States or institutions that refused to cooperate. Indeed, though convening members of the European institutions did not prove difficult, the invitations to members of national governments gave rise to a series of problems, especially in the BSE committee.[82] Under Article 3(2) of the interinstitutional agreement, the term 'member of government' does not specify whom national governments can authorise to appear before the committee. The British Agriculture Minister thus refused to testify before the committee and sent the Permanent Secretary from his Ministry.[83] However, both committees proved to be effective instruments for wielding Parliament's supervisory powers and demonstrated Parliament's assertiveness in using its rights of inquiry and its ability to exploit the Treaties' provisions for effective control of the European Commission.
- **Aftermath**: Firstly, the inquiry of the BSE committee had an important influence on the change of the legal basis for Community secondary legislation in the field of veterinary medicine: namely, the EU undertook a process of reforming the administrative landscape in this area.[84] This included the establishment of a regulatory agency, the European Food Safety Agency, and the commitment to the precautionary principle and a more effective use of scientific information.

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77 Maurer, A., (Co-)Governing after Maastricht: the European Parliament's institutions' performance 1994-1999, European Parliament Working paper,1998.

78 Schackleton, 1997.

79 Maurer, A., (Co-)Governing after Maastricht: the European Parliament's institutions performance 1994-1999, European Parliament Working paper,1998.

80 Kohler-Koch, B., Rittberger, B., Debating the Democratic Legitimacy of the European Union, Rowman & Littlefield Publishers, 2007.

81 Vincent, K., 'Mad Cows' and Eurocrats – Community responses to the BSE crisis, European Law Journal, Vol 10, n°5, September 2004, pp 499-517.

82 Maurer, A., (Co-)Governing after Maastricht: the European Parliament's institutions performance 1994-1999, European Parliament working paper,1998.

83 Ibid.

84 Kohler-Koch, B., Rittberger, B., Debating the Democratic Legitimacy of the European Union, Rowman & Littlefield Publishers, 2007.

In 2006, Parliament created the Temporary Committee of Inquiry into the Crisis of the Equitable Life Assurance Society (EQUI), which concerned the loss of four billion euros in savings and pension funds that had been invested, on behalf of 1.5 million European citizens, in Equitable Life, a mutual assurance company founded in the UK. Parliament's inquiry mandate was justified by the fact that Equitable Life Assurance Society was operating under UK law, based on the EU Third Life Directive. Parliament's report asserted the British government's 'failure to comply' and required it to assume responsibility for compensating policyholders throughout the EU.[85]

- **Mandate**: The Committee held a mandate to examine how EU directives were applied by the UK regulators responsible for deciding if policyholders were eligible for compensation for their losses. The committee also investigated whether the European Commission properly fulfilled its duty to monitor the UK's transposition of EU law. In fact, the inquiry went beyond the specifics of the case and took a broader approach to investigate how transposition and implementation checks were done more generally.[86]
- **Investigative powers**: The Committee made use of its powers to invite representatives from the Commission and governments and asked national and European authorities to provide oral as well as documentary evidence. The Committee heard the testimonies of several witnesses, including Equitable Life policyholders who had previously petitioned the European Parliament, other policyholders from the UK, Ireland and Germany, representatives of the UK, Irish, German and Swiss governments, the European Commission and the current chief executive of Equitable Life. The Committee also organised two fact-finding visits to Dublin and London and two workshops on transposition issues, and it requested three studies from external experts.[87].
- **Press and media coverage**: Following a petition to the European Commission filed by the Equitable Members Action Group (Emag), the Equitable Life Parliament's investigation received significant coverage from the Brussels-based press. On 16 February 2006, a website for the EQUI committee was set up for citizens, members and the press to find all relevant information. The purpose of the website was to render the work of the committee as transparent as possible to the public, without prejudice to confidentiality when required.[88] The EQUI secretariat kept the website updated to ensure that all relevant documents (oral and written evidence, background documents and agendas) and working documents, draft reports, etc. were available. Ninety-two pieces of evidence were posted on the website before the closing date of 20 March 2007.[89]
- **Limits:** With only two previously created committees of inquiry, and with no in-depth study conducted on the exercise of Parliament's right of inquiry, the experience available for the present committee to consult was limited. Therefore, in the conduct of its investigation, the Committee faced some difficulties in grasping the scope of its mandate, its capacity to investigate a matter before a court of a non-member state, the meaning of maladministration and certain procedural limitations. The final report named as its main limitations the restrictions regarding Parliament's ability to summon witnesses and the lack of investigative authority in connection with national administrations. It concluded that Parliament's powers were 'very limited and not in line with the political stature, needs and competences of the European Parliament'.[90]

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85 Report of 4 June 2007 on the crisis of the Equitable Life Assurance Society (2006/2199(INI)).

86 Internal Market Commissioner McCreevy called the inquiry's work 'a job well done', adding 'I am personally pleased that the committee of inquiry went beyond the specifics of the Equitable Life case and took a broader look at how transposition and implementation checks are done more generally'.

87 Report of 4 June 2007 on the crisis of the Equitable Life Assurance Society (2006/2199(INI)).

88 Interim report on the crisis of the Equitable Life Assurance Society (2006/2026(INI)).

89 Report of 4 June 2007 on the crisis of the Equitable Life Assurance Society (2006/2199(INI)).

90 Ibid.

- **Aftermath:** No immediate legal consequences followed the report of the committee at the European level. However, the near-full endorsement of the final report by Parliament in plenary on 19 June 2007 (602 votes to 13 with 64 abstentions) added to the impression of efficiency of Parliament's investigative powers in holding Member States accountable. In 2010, the British government announced that compensation would be paid to policyholders.

The most recent inquiries were on Emission Measurements in the Automotive Sector (EMIS) and on Money Laundering, Tax Avoidance and Tax Evasion (PANA). Both inquiry committees reacted to crises, namely 'Dieselgate' and the 'Panama papers' leaks. In both cases, due to the degree of public outrage, inquiry committees were rapidly established. These two committees will be discussed in detail later.

Table 14 provides additional information on Parliament's committees of inquiry between 1995 and 2019. The table includes the length of mandate, the number of members, the length of the reports' conclusion and findings sections, the total number of persons heard by the committees and their roles, the number of fact-finding missions in Member States and the rates of approval in committee and plenary.

Table 14: Inquiry Committees since 1995

| Inquiry Committee | Date of mandate | Members | Length of the conclusion | Length of the findings section | Total number of persons heard | Roles of the high-ranking persons heard | Number of countries visited | Rate of approval in committee | Rate of approval in plenary |
|---|---|---|---|---|---|---|---|---|---|
| Temporary Committee of Inquiry into the Community Transit System (TRANSIT) | January 1996-March 1997 (13 months) | 17 | 2969 words | 53911 words | 62 persons questioned 16 hearings | Commissioners, representatives of MS customs | 5 | 12 in favour, 1 against, 0 abstentions | |
| Temporary Committee of Inquiry into BSE (Bovine spongiform encephalopathy) (ESB 1) | September 1996-February 1997 (7 months) | 19 | | | 37 persons questioned | President of the Commission, Commissioners, Heads of the Directorate General, National Ministers, Head of WHO | 1 | All in favour | |

| | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| Temporary Committee of Inquiry into the Crisis of the Equitable Life Assurance Society (EQUI) | January 2006-June 2007 (18 months) | 22 | 1009 words | | 38 persons questioned 11 hearings | Directors of the Commission's DG | 2 | 13 in favour, 0 against, 4 abstentions | 602 in favour, 13 against, 64 abstentions |
| Inquiry Committee on Emission Measurement in the Automotive Sector (EMIS) | March 2016-April 2017 (14 months) | 45 | 6590 | 37438 | 64 persons questioned 47 hearings | Commissioners, Representatives of Renault, Volkswagen, Mitsubishi | 3 | 40 in favour, 2 against, ,2 abstentions | 585 in favour, 77 against, 19 abstentions |
| Inquiry Committee on Money Laundering, Tax Avoidance and Tax Evasion (PANA) | June 2016-December 2017 (19 months) | 65 | 19075 | 34319 | More than 100 persons questioned | President of the Commission, Commissioners, Journalists, Representatives of OECD, Director EBA, DG OLAF, Head of Europol, Ministers & MPs | 7 | 47 in favour, 2 against, 6 abstentions | 492 in favour, 50 against, 126 abstentions |

Table 14 provides an overview of Parliament's evolving use of its investigative powers. Since 1995, the duration of inquiry committees has considerably lengthened, especially in the case of the PANA committee, which benefited from two three-month extensions of its mandate. One direct consequence was the increase in the length of the reports. The findings sections and conclusions of the two last committees in particular are longer, with more detailed descriptions and explanations of the inquiry, hearings and fact-finding visits carried out during the committee's mandate. The number of members involved in the committees has steadily grown, rising from fewer than 20 in 1996 to 65 in 2016. The growth in committee size has coincided with an increase in hearings, mostly comprising testimonies of high-level representatives of other EU institutions and national authorities. Rates of approval in committee and plenary have remained strong, continuously reinforcing the legitimacy of Parliament's inquiry prerogatives.

### 3.1.3. A strategic political power

Based on the previous section's analysis, one can say that **Parliament has made strategic use of its prerogatives to scrutinise and control the executive**. Since its creation, Parliament's power and influence have significantly grown, in terms not only of legislation but also of influence over the administrative management of decision-making and implementation.

The committees of inquiry have offered an opportunity for Parliament to **influence the agenda of the European Commission and shape democratic debate by raising citizens' awareness.**[91]

- **Themes**: Parliament's decisions to mandate committees of inquiry have concerned only pan-European issues with considerable impact on European citizens. Past inquiries have mainly focused on health, environmental and financial crises. In this sense, Parliament's right of inquiry is an important channel for citizens' concerns.
- **Frequency**: With only five inquiries since 1995, Parliament has made selective use of its prerogative to scrutinise. Although this infrequency might seem like a disadvantage, it has allowed for inquiries that are more impactful to the public, driven by strong political considerations.
- **Cooperation with the Commission**: Parliament has gradually become more political, especially since the 2014 elections. MEPs have a much greater desire for political control over the executive, a fact that has not gone unnoticed by the Commission, notably during commissioners-designate hearings.[92] However, **a stronger political link between Parliament and the European Commission could allow for more beneficial and constructive cooperation during inquiries**. This trend can be observed in the final reports of inquiry committees, which focus not on allocating blame but rather on identifying policy and legislative recommendations to address the shortcomings in question.[93]
- **Cooperation with the Council**: Member States' cooperation with Parliament's committees of inquiry and special committees remains generally unsatisfactory. Therefore, Parliament has

[91] Shackleton, M., Transforming representative democracy in the EU? The role of the European Parliament, *Journal of European Integration*, 2017, 39:2, 191-205.

[92] Costa, O., *The European Parliament in Times of EU crisis: Dynamics and Transformations,* Springer, 2018, 460p.

[93] Poptcheva, E., *Parliament's investigative powers, Committees of inquiry and special committees*, European Parliamentary Research Service, European Parliament, 2015.

gradually come to rely on the Brussels-based press and on public opinion to pressure representatives of national government to testify and cooperate with the committees.[94]

## 3.2. The most recent Inquiry Committees of Parliament: a critical assessment

### 3.2.1. EMIS Committee

#### Mandate

In September 2015, the car manufacturer Volkswagen's test cycle manipulations, whereby emissions from diesel vehicles tested lower than under real driving conditions, were revealed, causing widespread scandal in the press and among European citizens. On 17 December 2015, at the request of 283 members, Parliament established a Committee of Inquiry into emission measurements in the automotive sector (EMIS). The Committee was composed of 45 members. The EMIS Committee investigated the alleged failings of the European Commission regarding the review of emissions-measuring test cycles, the enforcement of the ban on defeat devices existing under EU law, and Member States' failure to oversee the enforcements of this ban and to establish effective penalties for manufacturers in case of infringements (such as the falsification of test results). The Committee also investigated whether the Commission and Member States had evidence of the use of 'defeat' devices prior to the Notice of Violation issued by the US Environmental Protection Agency in September 2015.[95]

#### Investigation

The Committee organised hearings to collect evidence from experts and witnesses, notably with the participation of the Joint Research Centre (JRC). During the first hearings, EMIS learned that the JRC had produced a report pointing to some problematic test results and communicated it to the Commission. Both Commissioner Elżbieta Bieńkowska and former Commissioner, Gunther Verheugen, appeared before EMIS.

#### Limitations

In its final report, the EMIS Committee underlined the main limitation to its power as identified during the inquiry. Extracts from the report in Box 2 show that the committee was mainly critical of the level of cooperation it received from several other EU institutions

[94] See, for instance, the case of Malta's Minister of Finance, Edward Scicluna, who refused to appear in front of the PANA Committee. Several MEPs made public declaration condemning the attitude of the Maltese government.

[95] Report on the inquiry into emission measurements in the automotive sector (2016/2215(INI)).

Box 2: Powers and limitations of the EMIS Committee of Inquiry

'However, the committee also encountered difficulties in inviting guests to attend hearings, because it lacked subpoena power. Only as a result of political and media pressure, did guests who had initially refused, eventually agree to participate. This was a very time-consuming process and delayed the gathering of key information, which was obtained only towards the end of the mandate'.

'The participation of other former Commissioners proved more problematic. Under the current Code of Conduct for Commissioners, they have no legal obligation to cooperate with an ongoing inquiry, despite having been party to important and pertinent information relating to events that happened and decisions taken under their responsibility during their term in office

'However, French Minister Ségolène Royal, Italian Minister Graziano Delrio and Slovak Minister Árpád Érsek (in the end represented by State Secretary Viktor Stromček) took a very long time to confirm their attendance, which was eventually obtained only after insistent political pressure was applied'.

'The Commission deliberately obstructed and delayed the delivery of documents and information to the Committee to impede the use of such information for hearings of previous Commissioners and officials. This breaches the principle of sincere cooperation between the institutions'.

Source: Report on the inquiry into emission measurements in the automotive sector (2016/2215(INI))

- HEARINGS: In practice, the Committee managed to hear every person on its list. However, to do so, it had to resort to political and media pressure. Notably, President of Parliament Schultz intervened to pressure German former EU commissioner Gunther Verheugen to appear in front of the inquiry committee, after he had previously refused to do so.[96]

- COOPERATION WITH THE COMMISSION: By cooperating with Parliament's committees of inquiry, while also conducting its own investigations, the Commission was careful not to create any kind of precedent giving more power and leverage to Parliament. In this sense, the Commission did not abide by the principle of sincere cooperation.[97] More specifically, the hearings of former commissioners proved difficult. Under the current Code of Conduct for Commissioners, commissioners have 'no legal obligation to cooperate with an ongoing inquiry, despite having been party to important and pertinent information relating to events that happened and decisions taken under their responsibility during their term in office'.[98]

- ACCESS TO DOCUMENTS AND INFORMATION: As part of the first inquiry committee in 10 years, EMIS members faced some procedural obstacles due to a lack of experience. MEPs suffered more frustration in the collection of documents than in the hearings.[99] The committee required the Commission to provide documents to support the collection of evidence before the hearings. In many cases, the documents were sent too late and the hearings were nearly

[96] The President M. Schultz wrote a letter to Mr Verheugen on 26 May 2016. See for instance, the Parliament's press release: https://www.europarl.europa.eu/news/de/press-room/20160601IPR29904/emis-chair-verheugen-s-refusal-to-give-evidence-is-totally-unacceptable

[97] Interview with a former staff member of the EMIS Committee secretariat, 8 January 2020.

[98] OJ C 65, 21.2.2018.

[99] Interview with a former staff member of the EMIS Committee secretariat, 8 January 2020.

finished before their receipt. Moreover, some documents were delivered by the Commission on condition that they be consulted in secured reading rooms. A limited number of members went to work on these documents. In addition, by delaying the delivery of documents and information to the Committee, the Commission was impeding the use of such information during hearings of former Commissioners. [100]

- AFTERMATH: In 2019, MEPs adopted a non-binding text that expressed Parliament's regret 'that the Commission has not dealt with several of the issues raised by the Committee's final report'.[101]

### 3.2.2. PANA Committee

#### Mandate

After a network of investigative journalists leaked documents from a law firm located in Panama at the beginning of April 2016, revealing information about offshore companies allegedly hiding funds and income ('Panama papers'), Parliament's Conference of Presidents approved the establishment of an inquiry committee of 65 members, with its mandate determined on 2 June 2016. From June to December 2017, the committee was tasked to investigate alleged contraventions and maladministration in the application of EU law in relation to money laundering, tax avoidance and tax evasion. Because previous work done on this topic by special committees (TAXE 1 and TAXE 2 for the Luxleaks) had faced a lack of investigative power, the inquiry committee's work was highly political.

#### Investigation

The committee questioned more than 100 persons, including the President of the Commission, Jean-Claude Juncker, and Commissioners. The committee chose to start its investigation by hearing the journalists who had first published the leaks. This decision allowed members to familiarise themselves with citizens' concerns and the subject matter[102]; it was also seen as a political move to exert pressure on institutions and countries.[103] The committee further relied on the testimony of economic experts (representatives of OECD, Director EBA) to develop a deep understanding of the evidence. Fact-finding visits in Member States prompted active coverage of the inquiry by national media and drew the interest of citizens.

#### Limitations

Most members of Parliament consider the PANA investigation a success:

- DEMOCRATIC EXPERIENCE: The committee was seen as a positive and successful development. As it dealt with a broad and highly political issue, the investigation attracted a good deal of attention from both citizens and the press. Measures were adopted by the Commission following the recommendations made by the Committee. The Commission promised a strong response to the Panama papers. Since April 2016, it has presented several legislative proposals aimed at improving taxation and anti-money laundering policies in the European Union. In

[100] Interview with a former staff member of the EMIS Committee secretariat 8 January 2020.

[101] European Parliament resolution on recent developments in the 'Dieselgate' scandal (2019/2670(RSP)).

[102] Interview with a former staff member of the PANA Committee secretariat, 8 January 2020.

[103] See for instance comments made by the committee's chairman, Werner Langer (EPP), when he announced that it would be exerting 'public pressure' on governments, parliaments and citizens. https://www.euractiv.com/section/euro-finance/news/panama-papers-committee-courts-public-opinion-to-exert-pressure/

particular, the Commission brought forth a proposal in July 2016 for administrative cooperation on taxation between Member States in taxation to address money-laundering. [104]

- PERSONAL COMMITMENT OF MEPs: One of the key reasons for the success of the Committee was a high level of engagement from all political groups. Throughout the inquiry, members of the committee worked together to deliver strong recommendations, regardless of political lines. Some of the members had been involved in the topic for some time and made frequent public statements during the inquiry.[105]

- POLITICAL SIGNIFICANCE: This particular investigation was seen as exerting greater political influence than previous ones, due to the topic of the case as well as to the involvement of some of the highest-ranking figures in European politics . Most notably, the Commission's cooperation in regard to the hearings of President Juncker and Commissioners Jourová and Moscovici stimulated the already significant media coverage.

- MEDIA COVERAGE & PUBLIC OPINION: Already actively followed by media due to the case's wide-reaching subject, the Committee was successful in using a strategic communication plan with numerous internet streaming sites, press conferences and newsletters. It benefitted from the fact that citizens had an interest in the Panama papers and a basic understanding of the situation. To some extent, this level of public coverage is considered to have compensated for Committee's lack of legal tools. The Committee enjoyed a vast political influence, with the press able to pressure witnesses and compel them to testify during hearings.

However, during the investigation, the Committee still faced procedural challenges, which it emphasised in its final report's conclusions, as shown in Box 3.

Box 3: Powers and limitations of the PANA Committee

207. Regrets the lack of cooperation of certain EU institutions with the PANA Committee; states that this constitutes a breach of the principle of sincere cooperation

210. Deeply regrets that a large number of stakeholders refused to meet with PANA delegations or to appear before the PANA Committee, or did not answer questions in a satisfactory manner;

212. Concludes, therefore, that a number of questions remain unanswered regarding the goal of fully ascertaining the scale of this issue and the methods employed in these schemes, and suggests the continuation of the inquiry tasks within a permanent committee or high-level working group within the European Parliament.

Source: Report on the inquiry into money laundering, tax avoidance and tax evasion (2017/2013(INI))

[104] Directive Directive 2018/0105 of the European Parliament and of the Council laying down rules facilitating the use of financial and other information for the prevention, detection, investigation or prosecution of certain criminal offences and repealing Council Decision 2000/642/JHA.

[105] This was, for instance, the case for the Committee Chair, Werner Langen (EPP), Eva Joly (Greens) and Sven Giegold (Greens).

- TECHNICITY: The Committee's members mandate to examine maladministration was quite extensive when related to the application of EU law regarding taxation. The wide scope made the necessary task of obtaining a clear picture of the lack of enforcement quite demanding for some of the members.[106]

- ACCESS TO DOCUMENTS: One major obstacle for the inquiry was the six-month delay necessary to negotiate and reach an agreement with the Commission on access to non-classified confidential documents. Moreover, most of the documents received by the committee from the Commission were often heavily redacted or blacked out, creating further serious challenges to the Committee's understanding of the case. Due to the high degree of confidentiality, the committee was not allowed to cite the documents, and MEPs could only consult them in secure reading rooms. More specifically, only the group's political advisors, not their parliamentary assistants, were allowed to accompany MEPs. Considering MEP's degree of reliance on their assistants, this was a significant problem in carrying out the investigation. Still, the use of secure reading rooms was a positive experience for some members, who used them several times and found them useful for delivering their opinion and recommendations.[107]

- COOPERATION WITH THE COUNCIL: The relationship with the Council was one of the main obstacles in accessing proofs and testimonies. Despite early requests, taxation being considered a national competence, no adequate documents were made available by the Council to the Committee. Unlike with the Commission, no agreement was found on the exchange of unclassified documents.

- COOPERATION WITH MEMBER STATES: Some Member States proved reluctant to cooperate. The inquiry faced major obstacles in Malta especially, with a potential case of breach of the rule of law by the government. It should be stressed that the context was especially tense because of the car-bombing assassination of the Maltese journalist Daphne Caruana Galizia, who was among those on the frontline in the battle against corruption and money-laundering, and who had reported extensively on the Panama papers on 16 October 2017. Other representatives from national governments made their participation conditional on the arrangement of hearings with limited attendance.

- AFTERMATH: Parliament voted in plenary for the creation of a permanent special committee on taxation. However, no special committee has been mandated to resume investigation on PANA matters since.

### 3.2.3. Critical assessment

The two most recent parliamentary committees of inquiry enabled in-depth investigations of pan-European issues with high political stakes. They focused the public spotlight on the issues under scrutiny and, in that sense, were useful not only for placing sensitive topics on the political agenda but also for enhancing Parliament's powers of scrutiny and control. Politically, both committees were deemed successful, although their investigations took time and effort due to a lack of clarity on procedural rules.

The overall finding is that Parliament is much better prepared today than in 1995 – its committees, the members and the staff more experienced – for undertaking inquiries.

[106] Interview with a former staff member of the PANA Committee secretariat, 8 January 2020.

[107] Interview with a former staff member of the PANA Committee secretariat 8 January 2020.

According to the former staff members of the EMIS and PANA committee secretariats, the current limitations of Parliament's powers did not prevent them from conducting their investigations. Despite the probes' consuming and cumbersome nature, due to the technicity of the cases and the reluctance of EU institutions to provide information, the committees still managed to obtain most of the documents and testimonies they deemed necessary for the inquiry.

A key source of success consisted in the committees' compensation of their institutional weaknesses by networking with civil society, NGOs and the media, as well as taking advantage of public opinion. For instance, the PANA committee used a 'blame and shame' strategy by naming in its final reports the witnesses who refused to give evidence before it.[108]

However, both final reports stress that, beyond the issues of a the few witnesses who refused to give evidence and the difficulty in accessing certain documents, the need remains for loyal cooperation between the institutions in the day-to-day conduct of the committees of inquiry – a development that a firmer legal basis could facilitate.

In addition to the procedural limit of both committees of inquiry, a major issue lies in the lack of follow-up to the recommendations listed in the final reports. Although the PANA committee encouraged the Commission and national authorities' willingness to act, the lack of concrete implementation measures afterwards was a marked contrast with the previous committees implemented in the late 1990s and should be addressed by Parliament authorities in the future.

## 3.3. The dense network of investigative powers at the EU level

This section distinguishes between investigative procedures that are internal to Parliament and external actors, institutions, and agencies that scrutinise the work of the European administration, decision-makers and institutions. After identifying the individual actors of the current network of investigative powers at the EU level, it is worth examining the extent to which they help hold EU executive actors accountable. The most recent developments of this network (EPPO, election of the ombudsman and increased power of OLAF) could offer new momentum in negotiating Parliament's regulation on the exercise of its right of inquiry.

### 3.3.1. Internal bodies of control and investigation

Like temporary committees of inquiry, temporary special committees and standing committees have prerogatives to scrutinise and control. While Article 226 TFEU provides a legal basis for formal committees of inquiry, Parliament has more often chosen to exercise its investigative powers through special committees.

**Special committees** were included in RoP in 1981. There have been 16 such committees since this date. Rather than investigating suspicions of maladministration on the part of other institutions, special committees focus on general policy issues, such as human genetics (2001), budgetary means of an enlarged Union (2004 and 2010), climate change (2007), the extent and impact of the economic and financial crisis (2009), the post-2013 Multiannual Financial Framework (2010) and the special committee on organised crime, corruption and money laundering (CRIM, 2012). However, some temporary committees have taken a more investigative approach, similar to the work of committees of

[108] See the annexed "Extract from the PANA report, an example of 'blame and shame strategy'".

inquiry, while also addressing more general policy concerns and future developments.[109] This was the case of the temporary committee on the follow-up of the BSE scandal (1997),[110] the communications interception system Echelon (2001), the management of the foot and mouth epidemic (2002), safety at sea (Prestige oil tanker) investigation (2003) and the CIA rendition of terrorist suspects (2006). Special committees, however, remain purely political and less likely to become a quasi-judicial tool.

Special committees lack the formal powers of investigation conferred upon committees of inquiry by the Treaties. In practice, Parliament can invite witnesses and gain access to documents, but it has to depend even more than the committees of inquiry on the goodwill of Member States' governments and their representatives.[111] Within the framework of special committees, Parliament has also conducted fact-finding visits in Member States that have proven helpful when national authorities refuse to cooperate with Parliament. Although they have limited formal powers, special committees may have a practically unlimited remit. Any issue, including those unrelated to any alleged contravention or maladministration in the implementation of EU law, can be addressed by a special committee. However, such committees rarely investigate maladministration but rather focus on general policy issues.[112]

In a follow-up to the committees of inquiry's final recommendations, Parliament can instruct one or several of the **standing committees** to monitor the actions taken as a result of the committee of inquiry's work and to ensure that the conclusions of the inquiry are acted upon. In addition, the **Committee on Petitions** (PETI) has special prerogatives to address political institutions, particularly in reaction to the application of EU law and policy.

In this respect, the Civil Liberties, Foreign Affairs and Human Rights committees have been instructed to reopen investigations into the CIA's alleged transport and illegal detention of prisoners in EU Member States,[113] in the light of the US Senate's new 2015 revelations of the CIA's use of torture. On the basis of the European Parliament resolution of 11 February 2015 on anti-terrorism measures (2015/2530(RSP)), which reiterated its calls on Member States to investigate fully the allegations that illegal rendition, detention and torture took place in their territory and to prosecute those responsible, the Civil Liberties committee organised hearings in October 2015 to take stock of past and ongoing parliamentary and judicial inquiries relating to Member States' involvement in the CIA programme.[114] To this end, standing committees can mandate a delegation of MEPs to conduct fact-finding visits, organise hearings and demand documents.

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[109] Poptcheva, E., Parliament's investigative powers, Committees of inquiry and special committees, European Parliamentary Research Service, European Parliament, 2015. Availabla at: https://www.europarl.europa.eu/RegData/etudes/BRIE/2015/549007/EPRS_BRI(2015)549007_EN.pdf

[110] A mandate was given on 23 April 1997 to the temporary committee which was instructed to follow up on the recommendations on BSE previously made by the committee of inquiry.

[111] Poptcheva, E., Parliament's committees of inquiry and special committees, European Parliamentary Research Service, European Parliament, 2016. Available at: https://www.europarl.europa.eu/RegData/etudes/IDAN/2016/582007/EPRS_IDA(2016)582007_EN.pdf

[112] Remac, M., Parliamentary scrutiny of the European commission: implementation of the treaty provisions, EPRS, 2018.

[113] Report on the alleged use of European countries by the CIA for the transportation and illegal detention of prisoners (A6-0020/2007, 30.1.2007), pp. 70-76.

[114] See for instance LIBE Committee, public hearing on 'Investigation of alleged transportation and illegal detention of prisoners in European countries by the CIA' on 13 October 2015.

The **PETI committee** directly deals with complaints made by citizens against public authorities of the Member States, including complaints that relate to activities within the scope of EU law. The right to petition offers opportunities for citizens to participate. The committee organises hearings to which it can invite MEPs, government members and senior public administration officials to debate. Cases can be discussed during plenary sessions.

### 3.3.2. Independent bodies

**The European Ombudsman** (Article 228 TFEU) investigates complaints from individuals, businesses and organisations concerning maladministration by the institutions, bodies and agencies of the European Union. The European Ombudsman cannot investigate complaints against national, regional or local administrations in the Member States, even when the complaints concern EU matters. The office of the European Ombudsman has seen a strong increase in complaints from citizens, civil society, businesses and media, mostly due to a higher public awareness of its activity. The European Ombudsman shares investigative powers similar to Parliament's committee of inquiry. It can request information from institutions and bodies, officials from said institutions and Member States' authorities. The Ombudsman can also call on the European Network of Ombudsmen, facilitating better cooperation with Member States.

**Powers**

Under the mandate of Emily O'Reilly (2013-2019), the office of the Ombudsman has tried to update its investigative powers. In 2018, the office of the European Ombudsman launched the 'Fast-Track' procedure for access to document requests. This procedure aims to reach a finding on a complaint within 40 days. The office also monitored how rules on ethics and accountability were being implemented through a mapping exercise on 15 European institutions. The Ombudsman additionally submitted a Special Report to the European Parliament concerning the accountability of the Council of the European Union in 2018. MEPs largely backed the proposals in a plenary vote. The re-election of Ms. O'Reilly in December 2019 after a vote by Parliament in plenary shows a clear political will to pressure the Council to improve its accountability in EU decision-making.[115]

**Compliance with the Ombudsman's recommendations**

According to its own annual report,[116] EU institutions complied with the Ombudsman' proposals in 81% of instances in 2017. The institutions reacted positively to 80 out of the 99 proposals for improvement. There were 148 other cases in which the Ombudsman considered that the institutions had taken steps to improve their functioning. Eight out of the 14 institutions had a 100% compliance rate, while the European Commission – which accounted for most cases – had a 76% compliance rate.

**OLAF** was established in 1999 after the events that led to the resignation of the Santer Commission as a new anti-fraud body to safeguard the financial interests of the Union. Structurally, it belongs to the Commission, but functionally it enjoys complete autonomy for certain missions, notably internal investigations, and possesses stronger investigative powers. These powers have increased gradually to include the ability to launch investigations on its own initiative and the obligation for all Commission

[115] European Parliament, Press release, Emily O'Reilly re-elected European Ombudsman,18 December 2019.

[116] European Ombudsman (2017), Putting it Right? — How the EU institutions responded to the Ombudsman in 2017, Strasbourg.

Departments to inform it of any suspected instance of fraud.[117] Part of its mandate is to strengthen citizens' trust in EU institutions by investigating serious misconduct by members thereof and by EU staff.

**Powers**

Regulation No 883/20131 governing the work of the European Anti-Fraud Office (OLAF) entered into force on 1 October 2013. This regulation provides a clear statutory basis that codifies past practice and reinforces the effectiveness of OLAF's investigative activities. In this latter function, OLAF conducts external investigations into areas of EU expenditure and revenues, as well as internal probes into suspicions of serious misconduct by EU staff and members of EU institutions. In addition, it coordinates Member States' authorities in their fight against fraud.

OLAF investigators:

- have the right to immediate and unannounced access to documents, accounts and other information held by EU bodies in whatever format;
- can – in accordance with the procedures laid down in Regulation No 2185/1996 – carry out spot checks on other organisations or businesses that may hold information relevant to the investigation of EU staff;
- can question witnesses and potential suspects.

In accordance with recital 13 of Regulation No 883/2013, internal investigations can be conducted only if OLAF is guaranteed access to all premises of the institutions, bodies, offices and agencies and to all information and documents held by them. In practice, prior to the opening of an investigation, OLAF must have access to any relevant information in databases held by the institutions, bodies, offices or agencies, when this access is indispensable for assessing allegations' basis in fact.[118]

**The European Public Prosecutor's Office (EPPO), launched in 2017,** is a newly established independent and decentralised body of the European Union that provides a framework of cooperation in which 22 Member States participate. It has the competence to investigate, prosecute and bring to judgment crimes against the EU budget such as corruption and fraud, including serious cross-border VAT fraud.

In July 2017, Parliament and the Council adopted the directive on the fight against fraud to the Union's financial interests by means of criminal law (the 'PIF Directive'). In October 2017, the Council adopted the regulation establishing the European Public Prosecutor's Office. The formation of the EPPO is an important development in the creation of a common criminal justice area in the European Union, as currently only national authorities can investigate and prosecute fraud against the EU budget.

[117] Regulation (EU, Euratom) 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF). OJ L 248, 18.9.2013, p. 1–22. Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32013R0883.

[118] Regulation (EU, Euratom) 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF). OJ L 248, 18.9.2013, p. 1–22. Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32013R0883.

While EPPO will be responsible for criminal probes, OLAF will continue its administrative investigations.[119] In the framework of their cooperation, OLAF and EPPO will develop hybrid methods of inquiry.

### 3.3.3. National institutions' control functions

National parliaments carry out political dialogue with the Commission through:

- visits and meetings at both political and administrative levels.
- commission participation in interparliamentary meetings and conferences
- commission officials' participation in meetings with national parliamentary committees and representatives, on request

Besides their influence through their representatives at the Council, national parliaments can exercise a certain degree of political scrutiny by issuing opinions on Commission documents or policy areas where the Commission has power to act.[120] The Commission aims to reply to such opinions within three months.

It should be stressed that, apart from this dialogue between national parliaments and the European Commission, the oversight activities of the national parliaments focus on their national governments – not on the institutions of the European Union. Parliaments may investigate and issue complaints concerning their governments' European policy but not, in theory, the administration and policies at the EU level. Nonetheless, with the growing politicisation of European issues at the national level and the use of these issues as scapegoats by some prime ministers,[121] we can expect that, in the future, national parliaments' committees of inquiry may seek to fault European Union actors and activities directly.

## 3.4. A long interinstitutional controversy (2014-2020)

This section intends to contextualise the current deadlock in the negotiations for the adoption of a regulation on inquiry rules. By doing so, it allows for a critical assessment of Parliament, the Council and the Commission's individual lines of reasoning.

The Lisbon Treaty not only increased the legislative prerogatives of Parliament; it also allowed Parliament to effectively exercise its control function. Under the Lisbon Treaty, Article 226 TFEU conferred on Parliament the power to propose and adopt a binding regulation with detailed provisions governing the right of inquiry. In its final report of 2007, the committee of inquiry on Equitable Life Assurance concluded that its own powers were 'very limited and not in line with the political stature, needs and competences of the European Parliament'.[122] In 2009, the Constitutional Affairs Committee therefore called for the substitution of the interinstitutional agreement by a new regulation that would

[119] Weyembergh, A., Briere, C., *The future cooperation between OLAF and the European Public Prosecutor's Office (EPPO),* EPRS, 2017.

[120] Rozenberg, O., The role of national parliaments in the EU after Lisbon: Potentialities and Challenges, Policy Department for Citizens' Rights and Constitutional Affairs, European Parliament, 2017.

[121] Hooghe, L., & Marks, G. (2009). A Postfunctionalist Theory of European Integration: From Permissive Consensus to Constraining Dissensus. *British Journal of Political Science, 39*(1), 1-23.

[122] Report on the crisis of the Equitable Life Assurance Society (2006/2199(INI)), Committee of Inquiry into the crisis of the Equitable Life Assurance Society (A6-0203/2007).

be binding on Member States. The proposal[123] advanced by Parliament met with opposition from both Council and Commission, which perceived it as an excessive expansion of Parliament's investigative role, not in keeping with the spirit of the Treaties.

The proposal was adopted in plenary in 2012, with a view of reaching an agreement with the Council and Commission before adopting a legislative resolution. Due to a deadlock in negotiations, Parliament adopted a resolution in April 2014 calling on the Council and the Commission to resume talks during the next parliamentary term. Since then, the three institutions have not reached an agreement. Member States are fundamentally concerned with obtaining a more formal means of investigation associated with the potential provision of sanctions.[124]

On 6 November 2014, the Committee on Constitutional Affairs appointed a rapporteur to continue the trilogue negotiations in a bid to obtain the consent of the Council and the Commission.

Since April 2014, the three institutions have repeatedly advanced clearly opposing positions.

### 3.4.1. Parliament

In its initial proposal,[125] Parliament proposed the following changes to the provisions of its right of inquiry:

- the power to summon documents or witnesses through the national authorities of the witnesses' Member States of residence
- specific rules governing refusals to testify, including justifications by representatives of the EU institution or body or Member State governments
- effective, proportionate and dissuasive sanctions, to be determined by Member States and enshrined in national law, in case of infringements of the regulation (refusal to provide any documents requested, refusal of the request to be heard, giving false evidence, bribing of individuals)
- close cooperation with Member States' authorities, including cooperation with national parliaments in the investigation.

These proposed changes and their ripple effects on the interinstitutional balance of power remain recurring points of contention.

In an attempt to overcome the deadlock, Parliament agreed on a non-paper, endorsed by the AFCO Committee on 25 April 2018, which settled on redesigned changes.[126] This non-paper constitutes a new articulated text of 25 Articles, based on both the different agreements and options developed during the meetings carried out by the Legal Services of the three institutions on 2017 and on the David Martin

[123] 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)).

[124] Ripoll Servent, A., *The European Parliament*, Macmillan, 2017.

[125] OJ C 264E , 13.09.2013.

[126] See the Parliament press release on the non-paper published on the 25 April 2015: https://www.europarl.europa.eu/news/en/press-room/20180425IPR02532/right-of-inquiry-meps-seek-to-restart-talks-on-sturdier-investigatory-powers

Report approved in 2014.[127] It included several modifications suggested by the Legal Services to resolve the concerns addressed by the Council and the Commission. However, the compromises agreed upon by Parliament are not seen as sufficient by the other two institutions. The Council has underlined that, in their view, several provisions still give rise to serious legal and political concerns.[128]

The ongoing points of contention between the Council and Parliament remain:

- the 'sub judice' exception for inquiries in progress;
- the mandatory nature of summons of witnesses and requests for documents from natural persons;
- the consequent sanctions;
- adding on the list of exceptions regarding the institutions' obligation to provide documents;
- reducing the list of means of investigation;
- the mandatory nature of the hearing of members of EU institutions.

Table 15 illustrates the changes made by Parliament in the non-working document from April 2018 from the initial proposal tabled for plenary in 2011, adopted on May 2012 and definitively approved on April 2014.

Table 15: Evolution of Parliament's proposal

| | 2011 Proposal | Non-working document (2018) |
|---|---|---|
| General rules | Parliament's right to investigate alleged contraventions or maladministrations 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. | For the purpose of this Regulation, the term 'body of the Union' means an agency, an office or any other body of the Union. The Court of Justice of the European Union may be subject to investigations only when exercising its administrative tasks. |
| Mandate | The decision to set up a committee of inquiry shall specify its mandate, comprising in particular: the subject matter and the purpose of the inquiry, its composition the time limit for submission of its report. | The facts alleged to constitute a contravention of these provisions 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 shall be specified in the decision. |

[127] 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)).

[128] Committee on Constitutional Affairs, Third 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, December 2018.

| | | |
|---|---|---|
| Renewed inquiries | Not allowed until at least 12 months have elapsed since the earlier committee of inquiry ceased to exist. | A committee of inquiry may be set up on the same subject matter where new facts have emerged that may substantially change the conclusions of the preceding committee of inquiry. |
| Confidentiality | | Inclusion of an entire article on confidentiality (Art 8) |
| Public nature of hearings | Proceedings of the committee of inquiry, and in particular hearings, shall take place in public unless requested by one-fifth of the members of the committee to take place in camera. | Upon reasoned request by a person legally obliged to appear before the committee, the committee of inquiry shall consider whether the proceedings take place in camera. |
| Cooperation with national authorities | The committee of inquiry may ask national authorities for assistance in the course of its investigations. | 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 invite the parliament of the Member State concerned to cooperate in the investigation. |
| On-the-spot investigation and fact-finding visits | | Inclusion of an entire article on on-the-spot investigation in Union institutions or bodies and fact-finding visits in the territory of a Member state (Art 13). The aim of the article is to specify, regulate and limit the use of such prerogatives, mainly conditioning it to the cooperation of national authorities. |
| Hearings of members of Union institutions | The committee of inquiry may invite the institutions of the Union, with the exception of the Court of Justice of the European Union, to designate one or more of their members to represent that institution or government in its proceedings. | The committee of inquiry may also invite the Commission to authorise one or more of its former members to provide specific factual evidence. |
| Hearings of natural person | | Inclusion of an entire article on hearings of natural persons (Art 18) |
| Request for documents | | Inclusion of an entire article on requests for documents (Art 19). The article details the conditions under which the committee can request documents and provides for exceptions allowing Member States to refuse to cooperate. |

| | | |
|---|---|---|
| Sanctions | | Member States shall ensure that the infringements of this Regulation are subject to the same sanctions provided for in national law for analogous conducts as regards the work of committees of inquiry in the national parliaments |
| Legal remedies | | Acts and omissions by a committee of inquiry, its members and officials and other servants of the European Parliament working under their responsibility which violate the provisions of this Regulation and/or the rights of natural or legal persons concerned by an investigation shall be subject to effective legal remedies. |

**Parliament's arguments**

Parliament's main line of reasoning is based on Article 226 and the overall spirit of the Lisbon Treaty. By specifying a regulation rather than allowing for another legislative means such as a decision, Article 226 lets Parliament use its investigative powers more ambitiously. Once agreed upon by the three institutions, the regulation will be binding in its entirety and directly applicable in all Member States. Moreover, the Lisbon Treaty gives Parliament a more salient role.[129] Many provisions throughout the Treaty are meant to provide formal basis for a more active and high-profile role of Parliament. For instance, the Treaty enlarges the scope of the co-decision procedure, expands the right of Parliament to give its consent over international agreements and grants budgetary powers for compulsory and non-compulsory expenditures.

A second course of justification is based on the democratic role of the institution and its democratic requirements for transparency and accountability. This argument has been mostly used to pressure the Council and the Commission to resume negotiations. Box 4 presents the justification brought by members of Parliament, notably showing the political and democratic significance of inquiries.

[129] Corbett, R., Jacobs, F. and Shackleton, M., *The European Parliament*, 8th edition, 2011, London: John Harper Publishing.

Box 4: Parliament's course of political argumentation

Danuta Maria Hübner, on behalf of the EPP Group (Rapporteur AFCO)

'Parliament voted today with a sweeping majority on establishing a permanent Committee of Inquiry. **Public opinion requires those inquiries. This means that it is indeed politically important, not only politically difficult. To have clear rules is also in the interest of other institutions and also people who are called to testify in general in this Parliament. It will bring transparency and legal certainty to the procedures of inquiry**, and yet we have been waiting now for more than three years, not to conclude the procedure but just to sit at the table and discuss whether an agreement is at all possible.'

Source: Procedure 2017/2993(RSP) Debate in plenary, 13 December 2017

**Merits and failings of the EP negotiating stance**

- The use of a non-paper as a diplomatic approach was a strategic success in the pursuit interinstitutional talks. However, it may have diminished the ability of Parliament to negotiate and push for ambitious changes. A more institutional and formal instrument could have allowed for greater pressure and created an obligation for the Council and the Commission to respond.
- The lack of individual MEPs' political will and of cohesion among political groups on the matter weakens Parliament's negotiating power. During the last European election, the issue of Parliament's right to inquiry was not identified as a campaign topic. Consequently, the lack of support from citizens and wider public opinion sapped the democratic argument.
- Some political groups' suggestion that Parliament call on the European Court of Justice may have misdirected the negotiations. The Council and the Commission now have the advantage of replying that there are probably no grounds for a judicial case.

### 3.4.2. The European Commission

The Commission has proven supportive of Parliament's inquiry work but reluctant in the negotiations to expand its prerogatives. This hesitancy can be explained by the perceived effectiveness of the power of inquiry in its current form. In the Commission's view, committees of inquiry are already powerful instruments of parliamentary scrutiny. Due to the increasing publicity of the most recent committees, the Commission has been more constrained to comply with investigative requests and with the adopted final recommendations. However, regarding the actual proposal for a regulation that Parliament wishes to negotiate, the Commission has expressed concerns that parliamentary inquiry might transform from a political to a quasi-judicial tool.[130] Therefore, it can be argued that the Commission has adopted an essentially disruptive strategy, relying on its legal team to find statutory justifications that will establish the future parameters of Parliament's right of inquiry. Box 5 illustrates the position of the Commission and its concerns, especially regarding investigative means at Parliament's disposal and potential coercive measures.

[130] Poptcheva, E., Parliament's committees of inquiry and special committees, European Parliamentary Research Service, European Parliament, 2016.

Box 5: The Commission's stance on Parliament's proposal

- Dimitris Avramopoulos, Member of the Commission.

'Moreover, the Commission believes that there are other issues that merit serious further discussions, including: the investigative means at Parliament's disposal, the coercive measures which the Parliament asked to be put in place for failure to cooperate or for unsatisfactory testimony by natural and legal persons and political sanctions and legal remedies. The Commission also believes that the future legal framework for Parliament's right of inquiry must be discussed in the light of the practical experience of the recent EMIS and PANA Committees of Inquiry.

Article 226 of the Treaty on the Functioning of the European Union sets forth Parliament's right to investigate alleged contraventions or maladministration in the implementation of Union law, **without prejudice to the powers conferred by the Treaties to the other institutions and bodies**.'

Source: Procedure 2017/2993(RSP) Debate in plenary, 13 December 2017

Moreover, the Commission is careful to preserve the interinstitutional power balance. As the institution responsible for overseeing legislative initiatives, the Commission strives to remain in charge of proposing change or improvement in EU law. If it formally supports Parliament's right to inquiry, the potential for coercive measures and legal remedies as investigative tools for Parliament could represent a threat to its own authority over control and implementation of EU law.

### 3.4.3. The Council

The Council's representative Matti Maasikas explained the Council's position during a debate in plenary in December 2017. His answers to members of the parliament highlighted the main rhetoric used by the Council in the negotiations.

Box 6: The Council's stance on Parliament's proposal

- Matti Maasikas, President-in-Office of the Council.

'… the Council shares the view that committees of inquiry are important instruments for this Parliament to exercise its political control.

In this spirit, and in respect of its duty of sincere cooperation, the Council is therefore prepared to examine constructively proposals for a revision of the current rules on the exercise of Parliament's right of inquiry.

As you know the first proposal for a regulation on the exercise of the Parliament's right of inquiry, the so-called Martin Report from 2011, **raised serious legal and institutional concerns in the Council and in the Commission. Indeed it foresaw a far-reaching extension of the rights of committees of inquiry, which was considered contrary to Article 226 of the Treaty on the Functioning of the European Union. Also a more moderate revised proposal from 2014 did not resolve the fundamental legal and institutional issues with regard to the limits imposed by the above-mentioned Article.'**

Source: Procedure 2017/2993(RSP) Debate in plenary, 13 December 2017

The Council bases its position on a political stance rather than legislative arguments, and it brandishes Article 12 of the non-paper concerning cooperation with national parliaments as one of the main issues. Parliament's proposal is not considered in the spirit of the initial article of the Treaty. The Council fears that, under the new provision, Parliament could indirectly shape the political agenda of national parliaments. The Council has repeatedly brought up national parliaments' inquiry prerogatives over national administrations to justify its refusal, but has disregarded the claim that cross-border issues can only be addressed effectively at the EU level.

The use of a regulation as legal basis constitutes another element of tension. A regulation would imply the potential for legal proceedings against Member States and a higher pressure to accept the enshrinement of investigation in internal law. With that in mind, Member States could be reluctant to grant Parliament the ability to rely on national authorities to conduct on-the-spot investigations in their territory.

Member States are particularly concerned with the mention of sanctions and investigative means traditionally within the remit of national authorities.[131] In almost all Member States, committees of inquiry's powers are equivalent to those of examining judges in criminal procedures.[132] Committees of inquiry can summon and question witnesses. In some Member States, they may examine witnesses under oath.[133] Members of governments and civil servants are obligated to appear before committees and give evidence. False testimony before a committee of inquiry is generally subject to prosecution by the courts. In most of the Member States, it is the responsibility of the courts to enforce the powers conferred on the committees. As a result of the mandate of committees of inquiry, there may be political consequences and sometimes judicial acts or procedures. However, a wide range of rules governs sanctions for persons or institutions refusing to cooperate. This discrepancy between different national systems could potentially create problems of discrimination in Parliament's use of similar powers.[134]

### 3.4.4. Recent developments and current state of play

Following informal contacts, it was agreed in October 2016 to mandate the Legal Services of the three institutions to further elucidate legal and institutional issues, with a view to helping Parliament clarify the content of its proposal. On the basis of this mandate, the three Legal Services had nine meetings at a technical level. They submitted the result of their work in May 2017.[135]

The three institutions are still waiting for a meeting at the directors-general level in order to finalise the joint paper before submitting it to their respective political authorities.

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131 Ripoll Servent, A., *The European Parliament*, Macmillan, 2017.

132 Lehmann, W., Parliamentary committees of inquiry in national systems: a comparative survey of EU member states, EPRS, 2010.

133 France, Belgium and Luxembourg for instance.

134 Lehmann, W., Parliamentary committees of inquiry in national systems: a comparative survey of EU member states, EPRS, 2010.

135 Third 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.

Representatives from the Council and the Commission affirm that they stand ready to continue the work once the outcome of the three Legal Services is known. However, it is unlikely that the Legal Services will come up with a ready-made solution for a common way forward. It is probable that Parliament will have to formulate a new text to try to obtain the consent of the Council and the Commission.

# 4. CONCLUSION & RECOMMENDATIONS

KEY FINDINGS

The conclusion develops three series of recommendations that are fully compatible.

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

- 1: Quickly appointing **new committees** of inquiry without waiting for a final agreement.
- 2: **Limiting** the size, duration and cost of the Parliament committees of inquiry.
- 3: **Strengthening** the inquiry powers of the Parliament through a professional and cross-party approach and through a transitional agreement on cooperation with the Commission.
- 4: Developing the **networking** role of the Parliament with parliamentary and non-parliamentary organs that carry out non-judicial investigations at the EU as well as national and sub-national levels.

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

- 5: Developing a **democratic narrative** and using it in the course of committees of inquiry's investigations.
- 6: Unifying internal forces of the Parliament by passing a political agreement, according to which every (or nearly every) group could propose **the subject of one committee** per five-year term and act as rapporteur or president.
- 7: **Systematically publicising** ongoing negotiations at every occasion and obtaining commitments from the Commission and the Council.
- 8: Formulating a **win-win deal with national parliaments** by accepting some of their longstanding demands in exchange for solid support on this issue.

Although the Parliament should do everything necessary to strengthen its bargaining position, some may question whether it should lower its ambitions, given the lasting deadlock in interinstitutional discussions. Theoretical, strategic and political considerations suggest distinguishing between types of actors and documents in order **to reach a deal with the Council and impose it on the Commission**. Powers of inquiry should be maximal at the EU level. At the national level, they would depend, as they do today, on the willingness of national authorities regarding official persons and documents. As proposed by the Parliament in 2018, the investigation of third parties would rely on Member States' cooperation and follow the domestic provisions related to their national parliaments. This major but targeted concession, proposed in a pragmatic and incremental spirit, would apply both to:

- 9: **Hearings** of natural persons and possible sanctions for groundless refusal.
- 10: **Requests for documents** and possible sanctions for groundless refusal.

To conclude, this report develops a series of recommendations on Parliament's powers of inquiry, especially on the ongoing negotiations between the three institutions in view of implementing Article 226 TFEU. It differentiates among three simultaneous and non-mutually-exclusive strategies. The first deals with actual inquiry practices; the two others with negotiation strategy regarding Parliament's political mobilisation and the substance of its position.

## 4.1. Maintaining Parliament's power of inquiry without waiting for an interinstitutional deal

### 4.1.1. Number of committees of inquiry

Our study has established that, in comparison with other national parliaments in Europe, the EP has progressively lost ground regarding the number of committees appointed. In addition, Parliament has suffered from this discontinuous activity, as indicated by its difficulties in creating two committees during the previous legislative term. These two facts call for maintaining Parliament's capacity of inquiry by very quickly appointing new committees of inquiry without waiting for an interinstitutional deal . Moreover, the negotiations have already lasted for a decade and may take a few additional years to conclude; waiting for an agreement over a regulation based on Article 226 TFEU thus poses the risk of a long delay. Parliament has limited legal means to conduct serious inquiries but: a. it does possess some, and b. it also can exert political pressure. It would be a pity to adopt a strategy of 'wait and see' without fulfilling this democratic expectation and duty.

**Recommendation 1**

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

### 4.1.2. Types of committees of inquiry

As seen in Table 14, committees of inquiry have gradually grown in length and number of members. All signs seem to indicate that Parliament has put all its energies and resources into a very limited number of issues at the risk of ignoring possible contraventions or cases of maladministration in the implementation of Union law. From a more political standpoint, it also risks weakening the possible networks between Parliament and NGOs or organised citizens. Therefore, it would make sense to keep committees' exercise small (in terms of numbers of MEPs involved, of local trips, of persons heard and of duration of the scrutiny) unless the topic necessitates otherwise.

**Recommendation 2**

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

### 4.1.3. Quality of inquiries

While an agreement among the three institutions involved is difficult to achieve, the Parliament still has room to improve on an informal basis the conduct of inquiry committees and increase its prerogatives with regard to specific investigative powers, such as access to documents. Parliament should especially develop its procedural know-how. This would involve:

- the implementation of regular training and workshops for MEPs;

- an established procedure for classified documents (reading rooms) in the form of general agreements with the Commission for non-classified documents, including a procedural timeframe;
- coordination among political groups on investigative plans during hearings;
- developing know-how, especially regarding the 'blame and shame' strategy used to press witnesses to testify.

**Recommendation 3**

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

### 4.1.4. Parliament's networking role

Parliament could become a setting for coordinating investigations in the EU and the Member States through a network of investigating bodies (see Part 3.3.3). The case for the creation of synergies between different actors, with Parliament monitoring the dialogue at the centre, is supported by three factors. First, the meshing of national and European agencies and associated responsibilities makes separating national and European levels increasingly difficult. Second, as the BSE crisis showed, national administrative actions can have far-reaching negative consequences outside their own jurisdiction. In such cases, the transfer of some national prerogatives to Parliament to conduct appropriate investigations could be deemed necessary.[136] Third, greater networking and cooperation could amplify inquiries' impact on public opinion and avoid dispersion of information.

There are many ways to implement Parliament's networking role, following the examples of its rich collaboration with national parliament: ad hoc conferences, exchange of information, online platforms, biannual or annual conferences, etc.[137]

**Recommendation 4**

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

[136] See C. Syrier: The investigative function of the European Parliament: holding the EU executive to account by conducting investigations, 2013. Syrier proposes to apply a kind of principle of subsidiarity to parliamentary inquiries. When the case under investigation is not purely national, it would make sense to empower the EP's inquiry capacity. However, such shared responsibility could be difficult to implement in practice.

[137] Olivier Rozenberg, The Role of National Parliaments in the EU after Lisbon: Potentialities and Challenges, Policy Department for Citizens' Rights and Constitutional Affairs, European Parliament, 2017.

## 4.2. Maximising pressure on the Commission and the Council to obtain a deal

Parliament has extensive experience in interinstitutional negotiations. Officials and MEPs know that the outcome always depends on a balance of power between the three actors. The basic question is therefore: what would strengthen the positions and views of Parliament in the negotiations? Four elements appear crucial to this end.[138]

### 4.2.1. Developing a democratic narrative

Parliament's main asset lies in its democratic nature. Its ability to highlight this fact actually explains, to a great extent, how Parliament has obtained important legislative prerogatives year after year, despite its inability to veto treaty amendments.[139] To a lesser extent, Parliament has also been able to gain supervisory powers. As explained in Chapter 1, there is no doubt that the powers of inquiry granted to parliament indeed belong to the democratic heritage of representative democracy in Europe.

Parliament should systematically stress its democratic nature in negotiations with other institutions; it should also mobilise public opinion and citizens' support. As citizens may be uninterested in institutional abstract debate, the concrete exercise of committees of inquiry constitutes an ideal opportunity to motivate them. The issue would shift from 'Should the EP act as a genuine investigator?' to 'Why are MEPs being prevented from hearing this key person who is under suspicion?' As the two most recent inquiries have shown, significant press and media coverage helped a wide audience outside Parliament hold the Commission and the Council to account. Public communication strategies highlighting the deadlock in negotiations and the lack of cooperation from Member States could be useful in this regard. This should be integrated into a wider effort on the part of Parliament to explain its role and powers to citizens.

**Recommendation 5**

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

### 4.2.2. Unifying internal forces of Parliament

It is well known that the internal unity of Parliament constitutes a key asset in negotiations with third parties.[140] If the Commission and Council feel that they are facing a united and mobilised bloc, they may be more willing to accept compromises. The question is therefore: what would constitute an incentive for all political groups to support an ambitious agenda, beyond most MEPs' general willingness to strengthen the institution? Our proposal, based on the French experience, is the following: all the groups could agree that each group could propose, during one parliamentary term, the topic of a committee of investigation and occupy a key position within it (rapporteur or chair). The political agreement of all groups would nullify the threshold of one-quarter of the MEPs needed to

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[138] A fifth element is not mentioned here. It would consist in 'blackmailing' the Council by refusing to agree on unrelated files, for instance ordinary legislation or financial perspectives, as long as the negotiations continue. This option, as efficient as it may be, supposes a solid internal agreement between groups and obviously contradicts the commitment to sincere and loyal cooperation taken by the Parliament.

[139] Olivier Costa, Magnette Paul, Idéologies et changement institutionnel dans l'Union européenne. Pourquoi les gouvernements ont-ils constamment renforcé le Parlement européen?, *Politique européenne*, 2003/1 (No 9), p. 49-75.

[140] K. Krehbiel, *Pivotal Politics*, Chicago: University of Chicago Press, 1998.

propose a committee: MEPs from all groups would commit to supporting any group's single proposal for one term. The agreement could include safeguards and procedures to avoid particularly demagogic or dangerous issues, but the basic principle would stand.[141] This strategy constitutes a particularly strong incentive for all political groups to strongly support an ambitious agenda. Groups would not only have something to win from this deal; while sitting on committees of inquiry, they could also discover the great political and intellectual interest of this exercise.

**Recommendation 6**

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

### 4.2.3. Raising the issue at every opportunity and obtaining commitments

The adoption of a regulation on the basis of Article 226 TFEU should not only be a concern for the negotiator for Parliament. Instead, it should be mentioned every time representatives of Parliament meet members of the Commission and the Council. Plenary sessions, commissioners' hearings, and hearings of the rotating presidency of the Council constitute key opportunities for the presidency to habitually and publicly remind the audience of this pending issue – even if the meeting of the day was not supposed to address it.

Ideally, the commissioner-designate hearings organised after the elections could offer opportunities for MEPs to reinforce the institution's investigative powers. During these hearings, members could condition their approval on candidates' willingness to fully cooperate in case of an inquiry, just as they can refuse to vote in favour of candidates due to perceived conflict of interest or lack of integrity. Before the commissioners-designate could take office, Parliament would exercise its power of democratic scrutiny by assessing their suitability for the job, along with their compliance with Parliament's right to inquiry. However, experience shows that more salient issues dominate at the time of the Commission's investiture.

**Recommendation 7**

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

### 4.2.4. Formulating a win-win deal with national parliaments

The support of national parliaments in the negotiations could be decisive for two reasons. First, national governments originate from parliaments (or their lower chambers) across Europe (except in Cyprus). Their backing could therefore affect national governments' and eventually the whole Council's positions. Second, as stated above, cooperation between national parliaments and the EP could be needed to conduct some investigations. Again, the basic question is therefore: what would lead national parliaments to support the EP's powers of inquiry? The answer is probably unrelated to inquiry powers, instead concerning other files on which national parliaments and the EP are cooperating.

[141] Political groups would have to decide if they want to include the radical right in the political deal or maintain a 'sanitary cordon', as in Belgium.

These files are numerous: the role of the COSAC, the political control of the euro zone and, more generally, of economic and budgetary issues, the statutes and prerogatives of the various interparliamentary bodies, the political recognition of a green card procedure (i.e. a collective right of initiative for national parliaments), etc.[142] Parliament is usually open to broad and open cooperation on these issues with national parliaments, but avoids any formalisation of their collective role at the EU level.[143] For one issue or another, the EP could break with this usual position in exchange for official public support from a large number of presidents of the parliamentary assemblies in the EU (as seeking unanimity would be fruitless).

**Recommendation 8**

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

## 4.3. Lowering the level of ambition concerning the Council

Parliament could decide to maintain an ambitious agenda regarding the European Commission, European agencies and European civil servants, but to compromise as regards Member States. The duration of the negotiations (a decade) suggests that one major concession is needed. The future deal should also not be taken as the last word regarding the EP's powers of inquiry. Past advancements in Parliament's empowerment have been enforced step by step: the next stage in terms of inquiry is probably not the end of the journey. Specifically, the justification for changing Parliament's mandate is theoretical, strategic and political.

From a theoretical point of view, the Commission is the only institution responsible to Parliament. Although there is a diversity of justifications for granting legislatures with powers of inquiry, one can argue that the EP's oversight of the Commission should be stronger than for other institutions. It should also be stronger for institutions acting at the EU level and employing EU agents, as the EP is fully and exclusively an institution active at the EU level.

The second justification is strategic: should an agreement be found with the Council representatives on the basis of Parliament's lowered ambitions concerning Member States, the deal would be easier to impose on the Commission. It would be difficult for the Commission to maintain a veto vis-à-vis a deal passed by the two other institutions for very long. The Council representatives would also be unlikely to agree to a highly ambitious regulation according to which acting prime ministers could be summoned by an EP committee of inquiry. Parliament's extensive use of its investiture power vis-à-vis the Commission, especially in October 2019 for the von der Leyen College, also makes it likely that the Council will maintain a highly cautious attitude toward any further empowerment of Parliament. A major but targeted concession could set negotiations on track.

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[142] Olivier Rozenberg, The Role of National Parliaments in the EU after Lisbon: Potentialities and Challenges, Policy Department for Citizens' Rights and Constitutional Affairs, European Parliament, 2017.

[143] For instance on the European semester: Valentin Kreilinger, Scrutinising the European Semester in national parliaments: what are the drivers of parliamentary involvement?, *Journal of European Integration*, 40 (3), 2018, pp. 325-340; on interparliamentary cooperation: Valentin Kreilinger, From procedural disagreements to joint scrutiny? The Interparliamentary Conference on Stability, Economic Coordination and Governance, *Perspectives on Federalism*, 10 (3), 2018, pp. 155-183.

Third: the two last committees of inquiry have shown that Parliament can be an active and efficient inquisitor even without enjoying all legal instruments to that end. In particular, the joint mobilisation of all of Parliament's forces, including the presidency, and the strategic use of public opinion and interested parties in society may compel Member States representatives to testify or to allow access to their documents. Political pressure may, in a way, take over and compensate for legal limitations.

### 4.3.1. Regarding the hearings of natural persons

The regulation could make a distinction between three groups of persons[144]:

- Regarding commissioners, EU agency officials, European civil servants and contractors with EU institutions (natural persons), a Parliamentary committee of inquiry may require any person from this group to provide oral evidence. Refusal or failure to comply with the obligations should be sanctioned by Parliament directly or by the related EU institutions according to a plan to be defined by legal experts. For the commissioner, the sanction could be the organisation of a censure vote (but not the censure automatically). For agents, sanctions would be related to their work contracts, including termination of employment. For former commissioners and agents, it could concern their pension rights.
- Ministers, national diplomats and national civil servants could be heard by Parliament but could not be forced in case of official refusal. The situation would, for them, be similar to the one existing today
- Regarding third parties, i.e. persons who are neither EU agents nor national political officials, the duties and procedures envisaged in the 2018 AFCO non-paper would apply: any resident in the Union may be heard by a EP committee of inquiry, and Member States should ensure that an infringement be subject to the same sanction defined in national law for analogous conduct as regards the work of committees of inquiry in national parliaments.

These provisions would apply not only to only to the groundless refusal to testify, but also to false testimony and the bribing of individuals.

**Recommendation 9**

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

[144] An alternative concession would consist in accepting systematic secret hearings of Member States representatives to lower their political cost. This is not suggested here, as it largely goes against the mission of parliamentary inquiries to feed public debate in general, and to limit the EU democratic deficit in particular.

### 4.3.2. Regarding access to documents

The suggestion made above similarly regards access to documents and refusal to provide the documents requested.

**Recommendation 10**

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

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# ANNEX

*Extract from the PANA report, an example of 'blame and shame strategy'*

Source: Report on the inquiry into money laundering, tax avoidance and tax evasion (2017/2013(INI)), 16.11.2017, p. 116

**4. State of play on 'Who refused to participate in hearing/delegation and why?'**

**As of 16 October 2017**

**PANA Missions**

**Mossack Fonseca**

| Person/Institution | Status | Answer | Reason |
|---|---|---|---|
| Mossack Fonseca | Several invitations sent by email and post to various (branch-) offices | No answer | |

**Mission to UK 9/10 February**

| Person/Institution | Status | Answer | Reason |
|---|---|---|---|
| UK Treasury | Invitation sent by letter | declined | (meetings instead with HM Revenue & Customs, UK FIU, Financial Conduct Authority) |

**Mission to Malta 20/21 February**

| Person/Institution | Status | Answer | Reason |
|---|---|---|---|
| Mr Keith Schembri, Chief of Staff, Office of the Prime Minister | Invitation sent by letter | declined | |
| Mr Ninu Zammit, former Minister for Resources and Infrastructure | Invitation sent by letter | No reply | |
| Nexia BT (Mr Brian Tonna, Managing Partner) | Invitation sent by letter | Accepted replies in writing only | '.. we need to give careful consideration to our legal obligations before responding to questions..' |

**Mission to Luxembourg 2/3 March**

| Person/Institution | Status | Answer | Reason |
|---|---|---|---|
| Experta Luxembourg | Invitation sent by e-mail and telephone | declined | The company is a Luxembourg regulated entity supervised by the CSSF -> PANA should contact the CSSF |

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

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