



Council of the  
European Union

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## "I" ITEM NOTE

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From: General Secretariat of the Council  
To: Permanent Representatives Committee (Part 2)

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Subject: 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  
- Approval of a reply (\*)

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On 27 February 2015, Ms Danuta HÜBNER, Chair of the Committee on Constitutional Affairs in the European Parliament, addressed a letter to the Council on the draft Proposal for a Regulation of the European Parliament on the detailed provisions governing the exercise of the European Parliament's right of inquiry. This letter was published as doc. 6928/15.

Following a silence procedure which ended on 22 July 2015, the General Affairs Working Party agreed on the text of a reply as set out in doc. 10493/2/15 REV2.

It is suggested that the Permanent Representatives Committee approve the letter as set out in the Annex to this note, in accordance with the Council's Rules of Procedure (Article 19(7)(k)).

Dear Ms HÜBNER,

I am writing to you with regard to the Proposal for a Regulation of the European Parliament on the detailed provisions governing the exercise of the European Parliament's right of inquiry.

Pursuant to Article 226 TFEU, the detailed provisions governing the exercise of the European Parliament's right of inquiry are to be determined by the European Parliament, after obtaining the consent of the Council and the Commission.

The Council welcomes the suggestion by Mr JÁUREGUI ATONDO to engage in further exploratory talks. It also commends his willingness to listen and address the Council's concerns, as well as the flexibility he has signalled in his approach on this delicate file.

The right of inquiry is an essential power of the European Parliament, allowing it to investigate alleged contraventions or maladministration in the implementation of Union law. In accordance with Article 226 TFEU, however, the work of committees of inquiry is without prejudice to the powers conferred by the Treaties on other institutions or bodies.

The European Parliament's proposal raises serious legal and institutional concerns for the Council. Many of these concerns are shared by the Commission. By means of a joint letter dated 4 April 2014, co-signed by Mr Uwe Corsepius and Ms Catherine Day, and addressed to the European Parliament's Secretary General, Mr Klaus Welle, legal and technical concerns with regard to some of the most contentious articles of the proposal were conveyed to the European Parliament. The letter also urged the European Parliament to "*consider more balanced solutions [...] in the course of future negotiations*".

The Council regrets that its concerns were not taken into account in the European Parliament's proposal, as adopted on 16 April 2014 by legislative resolution. The Council looks forward to hearing from the Parliament how, in its view, these fundamental concerns can be addressed, in particular, as you will know, since these concerns are shared by all Member States and many national parliaments.

I would like to emphasise the Council's willingness and commitment to engaging with the European Parliament. You will find in the Annex for your consideration a list of the Council's main legal and institutional concerns with the European Parliament's proposal. Future negotiations are unlikely to be fruitful unless the European Parliament is willing to address those problematic issues. The gravity of our concerns results from the fundamental legal and institutional nature of those issues.

The Presidency stands ready to further explain the concerns set out in the Annex.

I look forward to establishing a fruitful cooperation with you and Mr JÁUREGUI ATONDO on this file.

Yours sincerely,

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**Main outstanding issues on the EP proposal on the detailed provisions governing the exercise of the European Parliament's right of inquiry**

***Article 5 (Incompatibilities)***

- Paragraph 1 should clearly set out that, in accordance with Article 226 TFEU, a Committee of inquiry (COI) cannot be set up while the alleged facts are being examined before a court.
- In paragraph 2, the European Parliament should have no discretion to decide whether a COI which is already set up has the right to continue its investigation. A COI should automatically and immediately suspend its investigation in the event of proceedings on the same facts being initiated.
- The EP text should make clear that the activity of Union and Member States' courts in their judicial capacity is not subject to the EP's power of inquiry, in line with the principle of the separation of powers.

***Article 6 (Public nature of proceedings)***

- This provision should include the possibility for an *in camera* hearing upon request, without leaving this decision to the discretion of a COI.
- COI proceedings should take place *in camera* when they deal with classified information.

***Article 8 (Confidentiality)***

- The Council's primary concern is that the EP text does not include reference to appropriate standards for handling and protecting Member States' confidential information, which should not be subject to rules that can be changed unilaterally.

### *Article 12 (Conduct of investigations)*

- For reasons of legal certainty and proportionality, a COI's investigative means should be explicitly and exhaustively listed.
- The criterion of necessity for all investigative means, which is included in the currently applicable Decision and in the Martin's report, should be reintroduced.
- Many of the investigative means listed are contrary to the principle of conferral of powers and/or the overall distribution of powers in the Union.
- With reference to paragraph 3, it is inappropriate for the EP to establish, in a Regulation adopted on the basis of Article 226 TFEU, its relations with Member States' national parliaments.

### *Article 13 (On-the-spot investigations)*

- On-the-spot investigations should be defined so as to ensure that they are not interpreted too widely.

### *Article 14 (Requests for documents)*

- The provision should include a reference to the relevant exceptions under national and Union law to justify refusals to provide documents to a COI.
- The obligation on citizens and undertakings to provide documents to a COI is disproportionate. The current text also makes this obligation enforceable with sanctions, without safeguarding procedural or other legal rights.
- The provision should also set out how documents from third parties are to be dealt with, in order to safeguard the right of the author of a document to be consulted before disclosure.

### ***Article 15 (Witnesses)***

- The most problematic aspect of this provision is that it attributes to the European Parliament a quasi-judicial role which is not envisaged under Article 226 TFEU, and does not provide for the legal and procedural safeguards guaranteed in legal proceedings before a Court.
- Furthermore, the reference to national law to determine the right of an individual to refuse to give evidence in a COI hearing is unclear and misplaced.

### ***Article 17 (Officials and other servants of the Union and of the Member States)***

- With regard to the “comply or explain”-rule, it should be possible to provide a written explanation for any refusal to grant authorisation to appear before a COI. It should also be possible for the official or authority responsible for denying the authorisation to delegate the obligation to appear.
- The currently applicable grounds for refusal to appear before a COI (“grounds of secrecy or public or national security dictate otherwise by virtue of national or Community legislation”) should be reintroduced.
- No distinction should be made between the rights and obligations of officials and servants from one of the Member States, and from one of the Union's institutions or bodies. The provision should thus specify that the latter speak before a COI “*on behalf of, and as instructed by*” their institution or body and that “*shall continue to be bound by the obligations arising from the law to which they are subject*”.

### ***Article 19 (Sanctions)***

- The obligation on Member States to provide for sanctions - and in particular criminal sanctions - for non-compliance with a COI request falls outside the scope of Article 226 TFEU.