

**The European Parliament's New Committees of Inquiry:**

**Tiger or Paper Tiger?**

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Michael Shackleton

Secretariat of the European Parliament

Brussels, Belgium

(The views expressed in this article are personal and do not necessarily reflect the position of the European Parliament)

## **Introduction**

What was important about the Treaty on European Union (TEU) from the point of view of the European Parliament (EP)? What were the most significant new powers that the Parliament acquired? Most observers have concentrated their attention on the new power of codecision under Article 189b or the expanded role in the appointment of the President and members of the European Commission; more esoteric commentaries may also mention the autonomous right of the EP to appoint a European Ombudsman, but very few have so far given much attention to Article 138c and the right to set up a temporary Committee of Inquiry to investigate "alleged contraventions or maladministration in the implementation of Community law".

It is not the intention of this paper to compare the new power of inquiry directly with the reinforced legislative role of the EP or its more salient position in the appointment of the Commission. Rather it will be argued that the first two committees of inquiry set up by the Parliament in 1996 showed how the EP can operate within a relatively constraining institutional framework to make an original contribution to the scrutiny of Community policies and to bring the work of the EP to the attention of a larger public than its traditional activity in relation to legislation or the appointment of the Commission normally does.

It will also suggest that any assessment of the overall importance of these committees cannot be divorced from a judgement about what a parliamentary committee of inquiry is supposed to be able to achieve. If you apply the standard of committees of inquiry in the majority of the Member States of the European Union, then the EP has a very long way to go and looks more like a paper tiger than the real thing; if you recognize the particularities of the EU and do not expect the EP necessarily to replicate national experience, then there is every reason to see in the experience of these two committees a tiger in its infancy.

## **Where did the committees of inquiry come from?**

Committees of Inquiry in the European Parliament were not an invention of the TEU. The EP had created nine such committees in the period after the introduction of direct elections in 1979, ranging widely from general issues including the situation of women in Europe or the rise of fascism and racism to more particular cases, such as the handling of nuclear materials following an incident in Mol in Belgium.<sup>1</sup> However, outside the EP's internal Rules of Procedure, such committees had no *locus standi* to enable them to obtain cooperation from outside bodies: they depended exclusively on the voluntary cooperation of the Community institutions and national authorities.

The introduction of an article in the TEU did therefore provide a legal base for the Parliament to act in this domain. Moreover, the Treaty went further as it specified that detailed provisions governing the exercise of the EP's new right should be determined by common accord of the Parliament, the Council and the Commission. In other words, the Treaty invited the three institutions to negotiate an interinstitutional agreement to expand on the limited text of the Treaty. The TEU made provision for such agreements in a number of areas but nowhere was it more difficult to overcome the differences between institutions than for committees of inquiry. Five agreements were signed in October 1993 but that relating to Article 138c took another 15 months to conclude.<sup>2</sup> As Monar indicates<sup>3</sup>, the disagreement was fundamentally one between the Council and the Parliament concerning the "teeth" that a committee of inquiry should enjoy but in the end, a compromise was found and the agreement was published in the Official Journal in April 1995 (see Annex 1).

Within the Parliament, the conclusion of the agreement paved the way for a revision of its internal rules and the adoption of a new Rule 136 (see Annex 2) which incorporated the interinstitutional agreement but also sought to lay down additional internal rules concerning the operation of such committees. These included the requirement that to establish a new committee it is necessary to have the signatures of a quarter of the Members of the Parliament. However, the whole Parliament is not obliged to set up a committee if the requisite number of signatures is obtained.<sup>4</sup> There was

considerable discussion during 1995 concerning a subject for the first committee. A minority suggested the case of French nuclear tests in the Pacific but it was a proposal that did not win majority support. Rather at the end of the year, at the December plenary session, the Conference of Presidents (the main decision making body of the EP, composed of the heads of the political groups and chaired by the President) proposed the creation of a committee of inquiry to examine the Community transit system. The plenary agreed and this first committee, made up of 17 full members and 17 substitutes, came together at the beginning of 1996, under the chairmanship of the British Labour MEP, John Tomlinson and with a British Conservative MEP, Edward Kellett-Bowman as rapporteur.

There followed an intense period of activity in the application of Article 138c. The transit committee was to meet 37 times over the following 13 months, finally adopting its report in February 1997 and presenting it to the plenary in the following month.<sup>5</sup> During this period, in July 1996, the Parliament decided to set up a second committee of inquiry on the BSE crisis. This committee was chaired by a German Christian Democrat, Reimer Böge, with a Spanish Socialist, Manuel Medina Ortega, as rapporteur. It was originally set up for three months though its life was extended by three months, with the result that it was able to adopt its report in advance of the first committee and to present it to plenary one month earlier in February 1997.<sup>6</sup>

In some respects, these two committees were very different. The BSE crisis was much more politically salient than the difficulties in the transit regime: it was a subject that was hotly debated throughout Europe during 1996. By contrast, few could identify the transit regime as the system whereby goods coming into the Union are exempted from tax until they reach their country of destination inside the Union or cease to be liable on leaving the Union. Still fewer were aware that this regime was under threat from large scale fraud, with several billion ECU estimated as lost each year to the Community and national budgets. Indeed it was part of the purpose of the committee of inquiry to increase the level of awareness, something that was hardly necessary in relation to BSE.

They were also different in the way that they ascribed responsibility. For the Transit Committee the crisis in the transit regime was principally due to the weakness of the system rather than of

specific individuals or institutions. The Commission and the Member States are criticized in the report but without any single institution or Member State being singled out for particular blame. The BSE Committee was much more inclined to pass judgement on those it considered responsible for maladministration. It pointed the finger directly at the United Kingdom for its perceived failings in the management of the outbreak of BSE and also laid a high level of blame on the Commission. It was even tempted to propose a motion of censure against the Commission, the ultimate weapon of control in the armoury of the Parliament.

Nevertheless, there were important similarities. The two committees had to conduct their inquiries within the same set of rules and those rules sharply circumscribed their scope for action. Both committees spent a considerable amount of time examining witnesses: in each case, by coincidence, 16 formal sessions of evidence were held, in the course of which the committees became aware of the limits which the interinstitutional agreement imposed upon them. This was particularly obvious in relation to their rights to call witnesses and the rights and obligations of those witnesses when they came before the committee. Aware of the constraints, they were obliged to seek innovative responses to overcome their relative weakness.

### **The right to call witnesses**

In most Member States of the EU a parliamentary committee of inquiry can summon anyone it wishes to appear before it. This was precisely one of the areas which proved most difficult in the negotiations on the 1995 interinstitutional agreement with the Council unwilling to grant the EP such a far-reaching power. The provisions of Article 3 (see Annex 1) lay down different arrangements for three categories of witness but limit the rights of the EP in each case.

First, there is the possibility of inviting a member of an institution of the European Communities or of the Government of a Member State, as provided for in paragraph 2 of Article 3.

As far as members of the Commission were concerned, this did not prove a difficulty for either committee. The Transit Committee restricted itself to one session of evidence with Commissioners, inviting Mr Monti and Mrs Gradin to its first session of this kind in March 1996. The BSE

Committee devoted much more time to cross-examining Commissioners, inviting five members of the present Commission (Santer, the Commission President, Bonino, Fischler (twice), Flynn and van Miert) and two former Agriculture Commissioners (MacSharry and Steichen). In all cases, the non-binding nature of the rules did not constitute a barrier to attendance: the close institutional ties between the Commission and the Parliament made non-attendance by a Commissioner virtually unthinkable.

However, the situation was much more difficult in relation to members of national governments. The Transit Committee did not invite any such minister but the BSE Committee did. It was successful in persuading the Irish Minister of Agriculture, Mr Yates, to attend in his capacity as President-in-Office of the Council but it did not succeed in obtaining the agreement of Mr Hogg, the then British Agriculture Minister, to come. He sent the Permanent Secretary from the Ministry of Agriculture to take his place. This served to create a major source of tension between the committee and the British government. Whereas the committee considered that the effect was to make it that much harder to trace the chain of responsibility from the officials responsible for implementation back to those at the top with political responsibility, the British government was not willing to agree that the EP could effectively summon a minister of the crown to appear before it. In legal terms, there is little question that the British government was under no formal obligation to accept the invitation issued by the EP. However, its refusal to cooperate was not without consequence, serving to increase suspicions in the committee concerning the British response to BSE.

This suspicion was reflected in the final resolution adopted by the plenary on 19 February 1997 on the basis of the committee's report (with 422 in favour, 49 against and 48 abstentions). In the same paragraph the Parliament both condemned "the behaviour of the UK government and its mismanagement of the BSE crisis" and deplored "the refusal of its Minister of Agriculture to attend and give evidence to the committee, despite the agreement of all Member States to cooperate fully with the work of the committee". In a separate paragraph, the Parliament expressed its frustration at this lack of cooperation by calling for "a reconsideration of the interinstitutional agreement of 19 April with a view to including in it a sanction mechanism for the Member States or institutions

refusing to cooperate in the work of an inquiry". Such a mechanism seems a very distant prospect for the time being.

The second category of invitation concerns officials from the Community institutions or from national administrations. Here paragraph 3 of Article 3 makes it clear that the committee of inquiry has a somewhat stronger position in formal terms: it has to make a "reasoned request" for such an official to appear but the institution or Member State is obliged to designate an official in response to that request. This imposes a degree of obligation to cooperate which is not present in paragraph 2. However, it still falls far short of a general right of summons. The institution or Member State is not obliged to send a specific individual to give evidence to the committee. Nor indeed is the obligation absolute in that the authorities can refuse if "grounds of secrecy or public or national security dictate otherwise by virtue of national or Community legislation".

The impact of these discretionary provisions were not as significant as one might have imagined or as they might prove on another occasion. Here too the position of the Commission is different from that of the Member States. It is practically inconceivable that it would try to prevent a committee of inquiry from inviting a specific official to testify: the result would be a major clash between it the Parliament which it would be most unlikely to win. In the case of the BSE Committee, the Commission authorized all the officials invited from the Director General of DG VI (Agriculture) down to the desk officer with specific responsibility for BSE to attend. Indeed the Commission went further in that it released the tapes of a whole series of meetings of the Standing Veterinary Committee going back to the 1980s, in which some of the officials that were invited had participated. In relation to transit, an equivalent range of officials from DG XXI (Customs and Taxation) came and gave evidence to the committee.<sup>7</sup> In the early stage of the transit inquiry in particular there was a sense that the Commission was not as cooperative as it might have been but there is no evidence that any attempt was made to prevent the two committees receiving evidence from the officials they wished to invite.

In relation to national officials, the committees were more successful in obtaining relevant evidence than might have been expected. As we have already seen, the British government did designate the top official in the Ministry of Agriculture, even if BSE Committee had wanted to see his political

master. In addition, it managed to arrange hearings with the head of the British veterinary services, the assistant director of the Danish national veterinary services and the Director General and Deputy Director of French Customs. In the case of the transit committee, generic invitations were issued to the customs services of eight member states, leaving them free to choose who to send.<sup>8</sup> None of these states showed any reluctance to nominate someone to attend: indeed there were other states that expressed some surprise that they had not been invited to express their point of view. Whether they would have been so enthusiastic if the committee had expressly asked for a particular individual to attend is perhaps open to doubt.

Paragraph 8 of Article 3 lays down that committees of inquiry can go beyond the realm of officialdom and request "any other person" to give evidence before it. Both committees made full use of this provision. The BSE Committee invited a wide range of academic experts to comment on the official pronouncements of the Commission and the Member States, particularly the United Kingdom. The Transit Committee ranged still further, inviting freight forwarders involved in the transit trade, technical experts interested in making that trade more secure and representatives of the insurance and tobacco industries.

No-one who was approached refused to accept an invitation. There was, however, one case which pointed to the limits of the formal powers of such committees. The Transit Committee invited Philip Morris, Europe, the tobacco manufacturers, to give evidence concerning the level of transit fraud in relation to cigarettes. The company was reluctant to attend, arguing that the view of the tobacco manufacturers was best represented by their confederation rather than by one company. The committee insisted that it was for it to decide which witnesses could best elucidate the fraudulent trade in cigarettes and ultimately, reminded the company that it could, under the interinstitutional agreement, give evidence in camera. Philip Morris took advantage of this offer, perhaps influenced also by the fact that another cigarette manufacturer, Rothmans UK, had already given evidence to the committee, albeit in public. In this way the EP avoided the precedent of a private witness failing to attend and could point out that it had succeeded in gaining the collaboration of American nationals based in a non-EU country, Switzerland.



However, the difficulty that an appearance behind closed doors posed for the committee was that of knowing how to make use of the information that it obtained. The Chairman did invite the representatives of Philip Morris to review their transcript and to consider which passages were truly confidential but this did not lead to the session being declared open after the event and the transcript is restricted to the opening statement of the company. This offered an interesting contrast with an earlier hearing where the witnesses (from Portugal) had asked to be heard behind closed doors but agreed after the event that their evidence be published without their names being revealed. Hence the committee was able to use the evidence in the final report.<sup>9</sup> However, in both cases, the initiative lay with the witness and the committee was obliged to accept their decision. Again this is in marked contrast with national parliamentary committees of inquiry and leaves unresolved what will happen when a witness expresses categorical opposition to attending, even behind closed doors.

### **The rights and obligations of witnesses**

Both committees found themselves confronted with a formal imbalance between the rights and the obligations of witnesses: their rights were stated with much greater clarity than their obligations. It was not simply that the interinstitutional agreement states that "witnesses and experts have the right to make a statement or provide testimony in camera" (Article 2(2)) but also that in as far as obligations are referred to in the texts, they are not ones that bind witnesses vis-a-vis the committee. Officials who appear speak on behalf of and as instructed by their Governments or institutions and "continue to be bound by the obligations arising from the rules to which they are subject" (Article 3(3)). Even in the Parliament's own Rules of Procedure persons called to give evidence "may claim the rights they may enjoy when acting as witnesses before a tribunal in their country of origin", without there being any corresponding obligation that might apply domestically.

The fundamental difficulty is that legal obligations can only assume significance if they are linked to some form of sanction in the event of the obligation not being met. It made little sense, for example, to devise an arrangement for witnesses to take an oath before giving evidence as no judicial mechanism exists for them to be penalized in the event of their failing to tell truth. Again

this contrasts very markedly with the situation in the parliaments of the Member States. In Italy, for example, witnesses are informed of the penal consequences of bearing false testimony (2 to 6 years' imprisonment).<sup>10</sup>

This weakness presented the two committees with a challenge. How could they convince witnesses that what they were doing was something different in status from simply answering questions in front of a normal committee? One obvious way was to ensure that the evidence would enter the public domain by being recorded and made available to the general public: both committees did this and even went further by arranging for some of the material to go onto the Internet. All witnesses thereby became aware that they would be held to account by a much wider audience than the one to which they gave evidence.

The Transit Committee went further in its search for informal mechanisms that could at least partially compensate for the lack of formal powers. It arranged to hold its meetings in a relatively small room where all members of the committee were looking at witnesses from a relatively short distance; it made all witnesses produce a written statement before coming before the committee; and perhaps most importantly, it insisted that all witnesses return their evidence signed, indicating that it was a true record of what they had said. Once this procedure was completed, the authenticity of the evidence could no longer be challenged when it entered the public domain. Such procedures were designed to strengthen the inquisitorial aspect of the inquiry and to ensure that all witnesses took the giving of evidence seriously. No witness sought to challenge these autonomously-devised rules and to that extent, at least, the committee was able to fill a gap in its formal powers by informal means.

### **The impact of the inquiries**

One of the more striking features of the two committees is the contrast between their lack of formal powers and the impact that they had outside the Parliament. The fact that they did not enjoy equivalent powers to their counterparts at national level did not prevent them from proving extraordinarily successful in getting people to sit up and listen to their views. Both committees

generated significant press and media coverage across the whole European Union and managed to bring the work of the Parliament to the attention of a much wider audience than normally is aware of its existence.

Much of this coverage was complimentary to the Parliament. The European Voice, a Brussels-based weekly devoted to EU affairs, wrote in its leader column that the two reports had:

"done much to enhance the Parliament's reputation as a responsible body which can play a useful role in highlighting deficiencies in the EU's internal procedures - and a constructive one in suggesting ways in which they can be remedied".<sup>11</sup>

Even in Britain there was favourable comment though it related to the fraud issues raised by the Transit Committee rather than the more sensitive question of the UK's role in the BSE crisis. The Financial Times, not a particularly favourable commentator on the EP, wrote in its leader column:

"This was the first EU parliamentary inquiry set up under the provisions of the Maastricht Treaty. The result is a welcome sign that the parliament can be more than a talking shop, can bend its energies to an important problem neglected by the Brussels bureaucracy, and is able to come up with some practical remedies".<sup>12</sup>

Hence the committees were certainly a considerable success from an institutional point of view but their impact also has to be considered in relation to the changes that they wrought in the Community policy process. They provoked a number of specific changes which would almost certainly not have taken place had the committees not existed but they also served as sounding boards for more general policy debates about the development of the Union. Thus although they were set up to examine relatively limited domains, their work took them into much broader territory, the future shape the Common Agricultural Policy in the case of BSE and the fight against fraud in the case of transit.

The direct impact of the work of the committees was seen most clearly in the case of the BSE Inquiry. At the February 1997 plenary, Commission President Santer admitted that mistakes had

been made and announced a major set of organizational changes in the way the Commission would deal in future with food hygiene. The Directorate General responsible for Consumer Affairs (DG XXIV) would see its responsibilities significantly expanded, with its staff of 140 to be almost doubled. It would take control from the DG for Agriculture (DG VI) of seven scientific, veterinary and food committees advising on public health as well as a special unit to evaluate public health risks. This was a major change in direction, particularly in view of the high prestige and influence that DG VI had always enjoyed.

The speed of this response was no doubt influenced by the debate in the Parliament on a possible censure motion against the Commission for its mishandling of the BSE affair. Although the Inquiry Committee eventually rejected the tabling of such a motion and the plenary voted against the motion that was tabled by individual members, the Parliament underlined the importance that it attached to the results of the committee by stating in its resolution of 19 February, that if the recommendations were not carried out "within a reasonable deadline and in any event by November 1997", a motion of censure would be tabled. This threat certainly concentrated minds in the Commission and showed how the right of inquiry can be exercised in conjunction with the other powers that the Parliament has to bring about changes which the Commission might well not have otherwise conceded.

In the case of transit, the shifts in policy were not as dramatic nor were they concentrated at the end of the committee's work. What it was very successful in doing was in forcing the Commission to come to terms with the fact that the transit regime posed a political as well as a technical problem and that it could not be left in the recesses of the bureaucratic machine. This was particularly important in the Parliament's view because all the Europe Agreements with states wishing to accede to the EU contain a provision that in advance of accession, they would within ten years be able to join the transit regime. The EP resisted but was unable to stop the extension of the system to the Visegrad states at the beginning of July 1996: However, it did obtain a commitment from the Commissioner responsible, Mr Monti, that any further extension would be delayed until the regime was reformed and computerized.<sup>13</sup>

Perhaps just as important as such specific changes in policy were the broader debates that both committees succeeded in influencing. For the Transit Committee one of the chief lessons of their work was that with the creation of a Single Market and the opening of frontiers to Central and Eastern Europe, the existing mechanisms for managing transit are hopelessly outdated and require a major revision. A paper based system circulating 18 million forms around Europe every year cannot work and has to be changed, however reluctant customs services may be to bring about such change. No-one can read the report without being astonished at the ease with which the transit regime can be defrauded. As the committee concluded: "Goods cross borders, criminals cross borders, profits from illegal activities cross borders, public authority stops at the borders".<sup>14</sup>

This prompted a major debate in the committee as to whether or not the conclusion to be drawn from this was that a single European customs service should be established. It drew back from this position and instead urged enigmatically in its first (of 38) recommendations that "the EU must establish a framework for customs services leading to national customs services functioning as if they were one".<sup>15</sup> However, the remainder of the recommendations made it clear that there had to be major changes in the nature of transnational cooperation if the loss of revenue to the Community and national budgets was to be stemmed. Such cooperation had to involve not just customs services but also the channels for legal cooperation which continue to work essentially through relatively slow diplomatic channels. In this way, the committee served as a focus for a much wider discussion about the way in which criminality can be combatted at a European level and provided a wide range of very specific evidence to foster that discussion.

The BSE Committee provided a focus for an equally broad debate about the way in which Europe is governed and the interests that prevail within it. It served to bring out into the open the issue of the consequences of a model of agricultural production that pushes for productivity at all costs. As President Santer put it in talking of the future of CAP reform, "this reform will take as its starting point the idea that our agriculture will have to be directed more towards quality, the environment, the welfare of animals, the return to more natural means of production and the simplification of legislation".<sup>16</sup> The statement represented a dramatic expression of a changing set of priorities in relation to the CAP. It was not a change wrought solely by the Committee of Inquiry but the committee's work concentrated the widespread unease felt concerning agricultural

policy and made policy change that much more likely. This is no insignificant achievement for a committee with limited powers, limited time and limited resources.

### **Future directions?**

Where does the Parliament go from here in the development of committees of inquiry? How will it be able to develop its role in view of the constraints imposed by the existing agreement? Formally speaking, the opportunity for a review of those constraints is laid down in the existing interinstitutional agreement. Article 6 specifies that "at the request of the European Parliament, the Council or the Commission, the above rules may be revised as from the end of the current term of the European Parliament in the light of experience". Already, as we have seen, the Parliament has voted for that revision to include "a sanction mechanism" for Member States or institutions that refuse to cooperate in an inquiry. No such specific request was included in the report of the Transit Committee but in an internal document submitted by the Chairman to the President of the Parliament, he recommended that negotiations should be opened during 1998 and should include consideration of provisions governing the conditions of access to any confidential documents made available to a committee of inquiry, a subject on which the present agreement is silent.<sup>17</sup>

However, the revision clause in the interinstitutional agreement and some suggested points for discussion during that revision do not yet add up to a complete agenda for change. The lack of such an agenda at the present time reflects divergent views about how the power of the Parliament in this area should be expanded. Two broad approaches remain to be reconciled: on the one hand, the suggestion that the Parliament needs to acquire the range of powers enjoyed by national parliamentary committees of inquiry, developing perhaps into European versions of US Senate hearings; on the other hand, the view that the experience of the first two committees shows that the Parliament can already exercise a distinctive inquiry role without requiring the kind of formal powers that such committees have developed nationally and indeed cannot realistically expect to obtain such powers. Certainly the resources available to such committees could be increased but without them necessarily acquiring, on this second view, the full panoply of powers available to national parliamentary committees of inquiry.

The two committees reflected these different approaches in the way that they worked. The Transit Committee spent relatively little time arguing about the nature of the interinstitutional agreement: it made a virtue of strict adherence to the agreement, accepting it could not be revised until the end of the present legislature.<sup>18</sup> By contrast, the BSE Committee was much more concerned to test the limits of the agreement and to see how broadly it could be interpreted.

These broad differences were reflected in specific cases. As we have already seen, the BSE Committee was not satisfied with the refusal of the British Agriculture Minister to attend and sought to argue that this failure reflected a failure on the part of the British government to implement the agreement loyally, even though there was no provision obliging witnesses to attend. The Transit Committee took a different line, inviting the Legal Service of the EP to clarify the status of witnesses and accepting its position that they are "voluntary cooperators", who cannot be compelled to appear or to answer questions that they do not wish to answer.<sup>19</sup>

The more pragmatic approach of the Transit Committee was heavily influenced by the British Chairman, Mr Tomlinson. Throughout the inquiry he kept clear of legal dispute and looked to use informal mechanisms of influence as a way of maximising the impact of the provisions of the interinstitutional agreement. A good example arose early in the life of the committee when the Member States were rather slow in responding to a number of requests for information. Mr Tomlinson decided to call a press conference at which he named the various countries that had failed to produce an answer. This served both to accelerate the return of information but also to cause a few eyebrows to be raised from those who saw it as a rather undiplomatic response to bureaucratic inertia. For the chairman it was the surest way of securing respect of the agreement, especially as the committee only had twelve months in which to complete its work and so speed was of the essence. From this perspective formal powers can only come to life if they are applied with imagination and are only as good as the use to which they are put.

However, even within the Transit Committee, such an incrementalist view did not go unchallenged. There were those who took a more idealist approach, regarding the present situation as inadequate and taking as a yardstick the kind of powers that the Parliament should have. Mrs Müller, the second Vice-President and a German Green, produced a lengthy paper at the end of the inquiry

which argued that even though the committee had achieved a great deal, committees of inquiry needed much stronger formal powers to be able to act effectively. Not surprisingly what she recommended corresponded to the range of judicial powers enjoyed by committees of inquiry in Germany, including the compulsory attendance of witnesses, the administering of oaths, sanctions for false testimony and an unrestricted right to demand documentation.<sup>20</sup>

The difficulty for the Parliament to balance these different approaches is enhanced by the present rules that govern the operation of committees of inquiry. Under the existing provisions of Rule 136 of the Rules of Procedure of the EP, it is the committee and not the plenary that adopts the report. This provision was played to the full by the Transit Committee which had its final report published in advance of the plenary and did not seek a direct vote of approval of its recommendations from the whole Parliament. By contrast, the BSE Committee did wish to link its work more tightly to approval by the plenary and hence its report was complemented by a resolution presented by the political groups, at the risk that its conclusions might be subject to modification in the process.

If the existing rules are maintained and committees of inquiry adopt their conclusions independently of the plenary, there is likely to be an growing tension between the principle of representativeness and any increase in their powers. One should note that the Transit Committee had 17 full members, the BSE Committee 19, both much smaller than the normal European Parliament committees which can have more than 50 full members. Within such a small committee, it made a significant difference that the two main protagonists (the Chairman and the rapporteur) in the former were British and that in the latter case, they were German and Spanish. All were necessarily influenced by the style of inquiry with which they were familiar domestically. This was not a fundamental difficulty in the case of these two committees. However, if in future the powers of such committees grow, the problem of ensuring that their decisions are acceptable by the remainder of a very diverse Parliament of 626 members will undoubtedly grow.

The Parliament is therefore faced with a choice between different ways of imagining what a parliamentary inquiry should look like. It can choose to follow the path of acquiring the kind of rights enjoyed by such committees nationally, a path which threatens to be a very long one and one which will inevitably make its present efforts look like those of a paper tiger. Or else it may



acknowledge that national committees of inquiry have grown out of the particular structures of governance that exist in Member States and that it already has the ability to have a significant effect on the shape of Community policy with the rights of inquiry it enjoys. To build on those powers offers the chance to make the tiger still more effective than he is already.

Or perhaps no explicit choice will be made between these two approaches: the institution may instead seek to combine the policy of small incremental steps with one of major institutional strides. Those familiar with the Parliament will recognise in such a combination a style that has so often characterised its behaviour in the past and that may serve again to bridge the gap between incrementalism and maximalism as part of its continuing search to consolidate its role in the EU.

### Endnotes

1. For a full list see Richard Corbett, Francis Jacobs and Michael Shackleton (1995) **The European Parliament**, London, Cartermill, pp.276-8.

2. See Jorg Monar, "Interinstitutional Agreements: the Phenomenon and its New Dynamics after Maastricht" in **Common Market Law Review**, Vol.31, pp.693-719.

3. *ibid.*p.716

4. This contrasts with the position in the German Bundestag where the request of a quarter of the Members to set up a committee of inquiry imposes an obligation that cannot be dispensed with. In this sense, the right of inquiry at European level is not designed to guarantee the rights of a minority.

5. The report of the committee was printed in four volumes under the reference number A4-0053/97:

Volume I	Final Report and Recommendations
Volume II	Oral evidence
Volume III	Written contributions
Volume IV	Contributions from the Institutions of the Union

6. The report of the inquiry was divided into two parts, the first (Part A) presenting the work of the committee and basic data, the second (Part B) presenting the results of the inquiry. Annexed are the documents on which its findings are based and a literal transcription of the hearings of evidence. The reference number is A4-20/97.

7. For an English transcript of their evidence, see Volume IV of the report of the committee.

8. The eight countries concerned were France, Spain, Austria, the Netherlands, Germany, Sweden, Portugal and the United Kingdom (see Volume II of the report of the committee)
9. Session of Evidence X of 30 September 1996 (see Volume I p.56 and Volume II p.240)
10. Working Paper prepared by the Directorate General for Research of the EP, "Parliamentary Committees of Inquiry in the Member States" (PE166.150), p29.
11. **European Voice**, 6-12 February 1997, p.13
12. **Financial Times**, Thursday, March 13 1997, in editorial entitled, "Fraud across EU frontiers"
13. Volume I of the Report of the Committee of Inquiry, p.166
14. Volume I, p.13
15. Volume I, p.171
16. Quoted in **Agence Europe** of Wednesday, 26 February 1997, No.6922, p.2
17. Internal Notice to Members, PE 220.696/rev; "Report on the working methods of the Committee of Inquiry into the Community Transit System"
18. Volume I, p.21
19. It can be noted that this principle of voluntary cooperation is precisely that which applies in the Swedish Parliament where no witnesses can be compelled to give evidence.
20. Edith Müller and Jörg Baumann, "Untersuchungsausschüsse im Europäischen Parlament", 53pp.

## II

*(Acts whose publication is not obligatory)*

EUROPEAN PARLIAMENT  
COUNCIL  
COMMISSION

DECISION OF THE EUROPEAN PARLIAMENT, THE COUNCIL AND THE  
COMMISSION

of 19 April 1995

on the detailed provisions governing the exercise of the European Parliament's right  
of inquiry

(95/167/EC, Euratom, ECSC)

THE EUROPEAN PARLIAMENT, THE COUNCIL AND  
THE COMMISSION,

HAVE BY COMMON ACCORD ADOPTED THIS  
DECISION:

Having regard to the Treaty establishing the European  
Coal and Steel Community, and in particular Article 20b  
thereof,

Having regard to the Treaty establishing the European  
Community, and in particular Article 138c thereof,

Having regard to the Treaty establishing the European  
Atomic Energy Community, and in particular  
Article 107b thereof,

Whereas the detailed provisions governing the exercise of  
the European Parliament's right of inquiry should be  
determined with due regard for the provisions laid down  
by the Treaties establishing the European Communities;

Whereas temporary committees of inquiry must have the  
means necessary to perform their duties; whereas, to that  
end, it is essential that the Member States and the  
institutions and bodies of the European Communities  
take all steps to facilitate the performance of those  
duties;

Whereas the secrecy and confidentiality of the  
proceedings of temporary committees of inquiry must be  
protected;

Whereas, at the request of one of the three institutions  
concerned, the detailed provisions governing the exercise  
of the right of inquiry may be revised as from the end of  
the current term of the European Parliament in the light  
of experience,

*Article 1*

The detailed provisions governing the exercise of the  
European Parliament's right of inquiry shall be as laid  
down by this Decision, in accordance with Article 20b of  
the ECSC Treaty, Article 138c of the EC Treaty and  
Article 107b of the EAEC Treaty.

*Article 2*

1. Subject to the conditions and limits laid down by  
the Treaties referred to in Article 1 and in the course of  
its duties, the European Parliament may, at the request of  
one-quarter of its Members, set up a temporary  
committee of inquiry to investigate alleged contraventions  
or maladministration in the implementation of  
Community law which would appear to be the act of an  
institution or a body of the European Communities, of a  
public administrative body of a Member State or of  
persons empowered by Community law to implement  
that law.

The European Parliament shall determine the  
composition and rules of procedure of temporary  
committees of inquiry.

The decision to set up a temporary committee of inquiry,  
specifying in particular its purpose and the time limit for  
submission of its report, shall be published in the *Official  
Journal of the European Communities*.

2. The temporary committee of inquiry shall carry out its duties in compliance with the powers conferred by the Treaties on the institutions and bodies of the European Communities.

The members of the temporary committee of inquiry and any other persons who, by reason of their duties, have become acquainted with facts, information, knowledge, documents or objects in respect of which secrecy must be observed pursuant to provisions adopted by a Member State or by a Community institution shall be required, even after their duties have ceased, to keep them secret from any unauthorized person and from the public.

Hearings and testimony shall take place in public. Proceedings shall take place in camera if requested by one-quarter of the members of the committee of inquiry, or by the Community or national authorities, or where the temporary committee of inquiry is considering secret information. Witnesses and experts shall have the right to make a statement or provide testimony in camera.

3. A temporary committee of inquiry may not investigate matters at issue before a national or Community court of law until such time as the legal proceedings have been completed.

Within a period of two months either of publication in accordance with paragraph 1 or of the Commission being informed of an allegation made before a temporary committee of inquiry of a contravention of Community law by a Member State, the Commission may notify the European Parliament that a matter to be examined by a temporary committee of inquiry is the subject of a Community prelitigation procedure; in such cases the temporary committee of inquiry shall take all necessary steps to enable the Commission fully to exercise the powers conferred on it by the Treaties.

4. The temporary committee of inquiry shall cease to exist on the submission of its report within the time limit laid down when it was set up, or at the latest upon expiry of a period not exceeding 12 months from the date when it was set up, and in any event at the close of the parliamentary term.

By means of a reasoned decision the European Parliament may twice extend the 12-month period by three months. Such a decision shall be published in the *Official Journal of the European Communities*.

5. A temporary committee of inquiry may not be set up or re-established with regard to matters into which an inquiry has already been held by a temporary committee of inquiry until at least 12 months have elapsed since the submission of the report on that inquiry or the end of its assignment and unless any new facts have emerged.

### Article 3

1. The temporary committee of inquiry shall carry out the inquiries necessary to verify alleged contraventions or maladministration in the implementation of Community law under the conditions laid down below.

2. The temporary committee of inquiry may invite an institution or a body of the European Communities or the Government of a Member State to designate one of its members to take part in its proceedings.

3. On a reasoned request from the temporary committee of inquiry, the Member States concerned and the institutions or bodies of the European Communities shall designate the official or servant whom they authorize to appear before the temporary committee of inquiry, unless grounds of secrecy or public or national security dictate otherwise by virtue of national or Community legislation.

The officials or servants in question shall speak on behalf of and as instructed by their Governments or institutions. They shall continue to be bound by the obligations arising from the rules to which they are subject.

4. The authorities of the Member States and the institutions or bodies of the European Communities shall provide a temporary committee of inquiry, where it so requests or on their own initiative, with the documents necessary for the performance of its duties, save where prevented from doing so by reasons of secrecy or public or national security arising out of national or Community legislation or rules.

5. Paragraphs 3 and 4 shall be without prejudice to any other provisions of the Member States which prohibit officials from appearing or documents from being forwarded.

An obstacle arising from reasons of secrecy, public or national security or the provisions referred to in the first subparagraph shall be notified to the European Parliament by a representative authorized to commit the Government of the Member State concerned or the institution.

6. Institutions or bodies of the European Communities shall not supply the temporary committee of inquiry with documents originating in a Member State without first informing the State concerned.

They shall not communicate to the temporary committee of inquiry any documents to which paragraph 5 applies without first obtaining the consent of the Member State concerned.

7. Paragraphs 3, 4 and 5 shall apply to natural or legal persons empowered by Community law to implement that law.

8. In so far as is necessary for the performance of its duties, the temporary committee of inquiry may request any other person to give evidence before it. The temporary committee of inquiry shall inform any person named in the course of an inquiry to whom this might prove prejudicial; it shall hear such a person if that person so requests.

#### *Article 4*

1. The information obtained by the temporary committee of inquiry shall be used solely for the performance of its duties. It may not be made public if it contains material of a secret or confidential nature or names persons.

The European Parliament shall adopt the administrative measures and procedural rules required to protect the secrecy and confidentiality of the proceedings of temporary committees of inquiry.

2. The temporary committee of inquiry's report shall be submitted to the European Parliament, which may decide to make it public subject to the provisions of paragraph 1.

3. The European Parliament may forward to the institutions or bodies of the European Communities or to the Member States any recommendations which it adopts on the basis of the temporary committee of inquiry's report. They shall draw therefrom the conclusions which they deem appropriate.

#### *Article 5*

Any communication addressed to the national authorities of the Member States for the purposes of applying this Decision shall be made through their Permanent Representations to the European Union.

#### *Article 6*

At the request of the European Parliament, the Council or the Commission, the above rules may be revised as from the end of the current term of the European Parliament in the light of experience.

#### *Article 7*

This Decision shall enter into force on the day of its publication in the *Official Journal of the European Communities*.

Done at Brussels, 19 April 1995.

*For the European Parliament*  
*The President*  
Klaus HÄNSCH

*For the Council*  
*The President*  
Alain JUPPÉ

*For the Commission*  
*The President*  
Jacques SANTER

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## Temporary committees of inquiry

1. Parliament may, at the request of one quarter of its Members, set up a temporary committee of inquiry to investigate alleged contraventions of Community law or alleged maladministration in the application of Community law which would appear to be the act of an institution or body of the European Communities, of a public administrative body of a Member State, or of persons empowered by Community law to implement that law.

The decision to set up a temporary committee of inquiry shall be published in the Official Journal of the European Communities within one month. In addition, Parliament shall take all the necessary steps to make this decision as widely known as possible.

2. The modus operandi of a temporary committee of inquiry shall be governed by the provisions of these Rules of Procedure relating to committees, save as otherwise specifically provided in this Rule and in the Decision of the European Parliament, the Council and the Commission of 19 April 1995 on the detailed provisions governing the exercise of the European Parliament's right of inquiry which is annexed to these Rules.<sup>1</sup>

3. The request to set up a temporary committee of inquiry must specify precisely the subject of the inquiry and include a detailed statement of the grounds for it. Parliament, on a proposal by the Conference of Presidents, shall decide whether to set up a committee and, if it decides to do so, on its composition, in accordance with the provisions of Rule 137.

4. A temporary committee of inquiry shall complete its work on the submission of a report within a maximum period of twelve months. Parliament may twice decide to extend this period by three months.

Only full members or, in their absence, permanent substitutes may vote in a temporary committee of inquiry.

5. A temporary committee of inquiry shall elect its chairman and two vice-chairmen and appoint one or more rapporteurs. The committee may also assign responsibilities, duties or specific tasks to its members who must subsequently report to the committee in detail thereon.

In the interval between one meeting and another, the bureau of the committee shall, in cases of urgency or need, exercise the committee's powers, subject to ratification at the next meeting.

6. When a temporary committee of inquiry considers that one of its rights has been infringed, it shall propose that the President take appropriate measures.

7. A temporary committee of inquiry may contact the institutions or persons referred to in Article 3 of the Decision referred to in paragraph 2 with a view to holding a hearing or obtaining documents.

Travel and accommodation expenses of members and officials of Community institutions and bodies shall be borne by the latter. Travel and accommodation expenses of other persons who appear before a temporary committee of inquiry shall be reimbursed by the European Parliament in accordance with the rules governing hearings of experts.

Any person called to give evidence before a temporary committee of inquiry may claim the rights they would enjoy if acting as a witness before a tribunal in their country of origin. They must be informed of these rights before they make a statement to the committee.

With regard to the languages used, a temporary committee of inquiry shall apply the provisions of Rule 102 of the Rules of Procedure. However, the bureau of the committee:

- may restrict interpretation to the official languages of those who are to take part in the deliberations, if it deems this necessary for reasons of confidentiality,
- shall decide about translation of the documents received in such a way as to ensure that the committee can carry out its deliberations efficiently and rapidly and that the necessary secrecy and confidentiality are respected.

8. The chairman of a temporary committee of inquiry shall, together with the bureau, ensure that the secrecy or confidentiality of the deliberations are respected and shall give members due notice to this effect.

He shall also explicitly refer to the provisions of Article 2(2) of the Decision referred to above. Annex VII to the Rules of Procedure shall apply.

9. Secret or confidential documents which have been forwarded shall be examined using technical measures to ensure that only the members responsible for the case have personal access to them. The members in question shall give a solemn undertaking not to allow any other person access to secret or confidential information, in accordance with this Rule, and to use such information exclusively for the purposes of drawing up their report for the temporary committee of inquiry. Meetings shall be held on premises equipped in such a way as to make it impossible for any non-authorized persons to listen to the proceedings.

10. After completion of its work a temporary committee of inquiry shall submit to Parliament a report on the results of its work, containing minority opinions if appropriate. The report shall be published.

At the request of the temporary committee of inquiry Parliament shall hold a debate on the report at the part-session following its submission.

The committee may also submit to Parliament a draft recommendation addressed to institutions or bodies of the European Communities or the Member States.

11. The President shall instruct the committee responsible pursuant to Annex VI to the Rules of Procedure to monitor the action taken on the results of the work of the temporary committee of inquiry and, if appropriate, to report thereon. He shall take any further steps which are deemed appropriate to ensure that the conclusions of the inquiry are acted upon in practice.