

Act regulating the law governing Committees of Inquiry of the German Bundestag

(Committees of Inquiry Act - *Untersuchungsausschussgesetz*)

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"Committees of Inquiry Act of 19 June 2001 (Federal Law Gazette I, p. 1142), as amended by Article 4(1) of the Act of 5 May 2004 (Federal Law Gazette I, p. 718)"

Version: As amended by Article 4(1) of the Act of 5 May 2004 (Federal Law Gazette I, p. 718)

Footnote

Text citable from 26 June 2001

The Act was adopted by the Bundestag as Article 1 of the Act of 19 June 2001 (Federal Law Gazette I, p. 1142) and entered into force on 26 June 2001 pursuant to Article 3 of the latter Act.

Section 1 Appointment

(1) The Bundestag has the right and, on the motion of one quarter of its Members, the duty to appoint a committee of inquiry.

(2) The appointment shall be made by virtue of a decision of the Bundestag.

(3) An inquiry procedure is permissible within the constitutional sphere of competence of the Bundestag.

Section 2 Rights of the qualified minority in connection with appointment

(1) If appointment is moved by one quarter of the Members of the Bundestag, the Bundestag shall adopt the appointment decision without delay.

(2) The appointment decision must not alter the subject of the inquiry as described in the appointment motion unless the Members tabling the motion consent to the alteration.

(3) If the Bundestag considers the appointment motion to be partly unconstitutional, the committee of inquiry shall be appointed with the proviso that its investigations must be limited to those parts of the subject of the inquiry that the Bundestag does not consider to be unconstitutional. The foregoing shall be without prejudice to the right of the Members tabling the motion to appeal to the Federal Constitutional Court against the partial rejection of the appointment motion.

Section 3 Subject of the inquiry

The committee of inquiry shall be bound by its inquiry mandate. A subsequent change to the inquiry mandate shall require a decision of the Bundestag; section 2(2) of this Act shall apply, *mutatis mutandis*.

Section 4 Composition

When appointing a committee of inquiry, the Bundestag shall determine the number of its members and shall appoint an equal number of substitute members. The calculation of the

number of members shall both reflect the political balance of Parliament and take account of the terms of reference and operational capacity of the committee of inquiry. Each parliamentary group (*Fraktion*) must be represented. The consideration to be given to groupings of Members (*Gruppen*) shall be determined on the basis of the general decisions of the Bundestag. The number of seats to which each of the parliamentary groups is entitled shall be calculated on the basis of the Sainte-Laguë/Schepers method of proportional distribution.

Section 5 Members

The members and substitute members are appointed and removed by the parliamentary groups.

Section 6 Chairperson

(1) In determining who is to chair the committee, consideration shall be given to the relative strengths of the parliamentary groups. The committee of inquiry shall determine, from among its members and on the basis of the agreements concluded in the Council of Elders, the person who is to chair the committee.

(2) The chairperson shall lead the inquiry proceedings and, in so doing, shall be bound by the appointment decision of the Bundestag and by the decisions of the committee of inquiry.

Section 7 Deputy chairperson

(1) The committee of inquiry, acting on the basis of the agreements concluded in the Council of Elders, shall appoint one of its members as deputy chairperson; this member must belong to a different parliamentary group from that of the chairperson.

(2) The deputy chairperson shall possess all the rights and obligations of the chairperson in the absence of the latter.

Section 8 Convening the committee

(1) The chairperson shall convene the committee of inquiry, communicating the agenda to its members.

(2) He or she is required to convene a meeting for the next possible date within the timetable on the motion of one quarter of the members of the committee of inquiry, whose motion shall include an indication of the agenda.

(3) The chairperson is not empowered to convene a meeting outside the timetable or at a venue other than the permanent set of the Bundestag unless he or she has received a motion to that effect, accompanied by an agenda, from one quarter of the members of the committee of inquiry and the President of the Bundestag has authorised the proposed meeting.

Section 9 Quorum

(1) The committee of inquiry shall have a quorum if the majority of its members are present. It shall be deemed to have a quorum until the absence of a quorum is established in response to a motion.

(2) If the absence of a quorum is established, the chairperson shall immediately adjourn the meeting for a given period. If the committee of inquiry still has no quorum after that period has elapsed, a new meeting shall be arranged without delay. At that new meeting the committee of inquiry shall be deemed to have a quorum even if the majority of its members are not present; this shall be intimated in the invitation.

(3) If it does not have a quorum, the committee shall not conduct any inquiry proceedings.

(4) Unless otherwise provided in this Act, the committee of inquiry shall take decisions by a majority of votes cast. In the event of a tied vote, a motion is deemed to have been rejected.

Section 10 Special investigator

(1) The committee of inquiry has the right at any time and, on the motion of one quarter of its Members, the duty to order an investigation, which shall be conducted by a special investigator. The investigation mandate shall be limited to a period not exceeding six months.

(2) The special investigator shall be chosen by a majority of two thirds of the members in attendance within three weeks following the order referred to in paragraph 1 above. If this choice is not made within the time limit, the chairperson, in agreement with his or her deputy and in collaboration with the spokespersons (*Obleute*) of the parliamentary groups in the committee of inquiry, shall determine within a further three-week period who is to be the special investigator.

(3) Special investigators shall, as a rule, prepare the committee's inquiry. They shall procure and examine the requisite material evidence. Under section 18 of this Act, they have the right to present evidence, and under section 19 the right of inspection. They may enforce claims for the release of evidence in accordance with section 30. If the rights described in the third and fourth sentences above are not freely granted, a decision to take evidence under section 17(1) of this Act shall be required. Special investigators may hear individuals for information purposes. They shall be responsible to the committee of inquiry in its entirety. Their findings shall be available to all members of the committee of inquiry. On completion of their investigations, special investigators shall report their findings orally and in writing to the committee of inquiry. In their report, they shall make a proposal to the committee of inquiry regarding the subsequent course of action. In dealings with external parties they shall exercise due discretion; they shall not make public statements.

(4) Special investigators shall be independent within the scope of their mandate. They may be dismissed at any time by the committee of inquiry, acting by a two-thirds majority of its members in attendance. They have the right to engage a reasonable number of persons to assist them in fulfilling their investigation mandate.

Section 11 Minutes of meetings

(1) Minutes shall be taken of meetings of the committee of inquiry.

(2) Oral evidence shall be recorded verbatim in the minutes. For the purposes of minute-taking, oral evidence may be recorded on audio equipment.

(3) The way in which deliberations are minuted shall be determined by the committee of inquiry.

Section 12 Meetings for deliberation purposes

(1) The deliberations and decision-making of the committee of inquiry shall not take place in public.

(2) The committee of inquiry may allow access to its meetings by designated staff of the parliamentary groups.

(3) The nature and extent of communications to the public resulting from meetings not held in public shall be determined by the committee of inquiry.

Section 13 Meetings for the purpose of taking evidence

(1) Evidence shall be taken at meetings held in public. Sound and film recordings and sound and image transmissions are not permissible. The committee of inquiry may permit a derogation from the first sentence above. Derogations from the second sentence above shall require a two-thirds majority of the members in attendance and the consent of the persons being questioned or heard.

(2) Sections 176 to 179 of the Judicature Act (*Gerichtsverfassungsgesetz*) regarding the maintenance of order at meetings shall apply, *mutatis mutandis*.

Section 14 Exclusion of the public

(1) The committee of inquiry shall exclude the public from its meetings if:

1. reference is to be made to facts concerning the personal lives of witnesses or third parties, the public discussion of which would prejudice overriding legitimate interests;
2. there is reason to fear a danger to the life or limb or liberty of individual witnesses or any other person;
3. reference is to be made to a business or trade secret or to confidential information regarding an invention or tax affairs, the public discussion of which would prejudice overriding legitimate interests;
4. there are particular obstacles relating to the welfare of the Federation or of a federal state, particularly if it is to be feared that a meeting held in public could be detrimental to the security of the Federal Republic of Germany or to its international relations.

(2) The committee of inquiry may allow access by individual persons to its meetings not held in public; section 12(2) of this Act shall apply, *mutatis mutandis*.

(3) The following persons are authorised to table a motion for the exclusion of the public or the restriction of public access:

1. members of the committee of inquiry who are present at the meeting in question,
2. members of the Bundesrat or of the Federal Government and their representatives,
3. witnesses, experts and other persons providing information.

(4) Any decisions on the exclusion of the public or the restriction of public access shall be taken by the committee of inquiry. The chairperson shall state the reasons for the decision at a meeting held in public if the committee of inquiry so decides.

Section 15 Confidentiality

(1) The committee of inquiry may assign a confidentiality classification to items of evidence, hearings of evidence and deliberations. Before a decision is taken under the first sentence above, the chairperson may undertake a provisional classification.

(2) The classification decision shall be based on the Bundestag Rules on Document Security. Section 14(3) of the present Act shall apply, *mutatis mutandis*.

(3) Unless otherwise provided in the present Act, the Bundestag Rules on Document Security shall apply to the treatment of classified material and to top-secret, secret and confidential meetings and the minuting of their proceedings.

Section 16 Access to classified material and official secrecy

(1) Classified material marked 'confidential' (*VS-VERTRAULICH*) and above which the committee of inquiry has classified or has received from another issuing body may be made accessible only to members of the committee of inquiry and to members of the Bundesrat and the Federal Government as well as their representatives. It may be made accessible to special investigators, to the assistants engaged by them and to staff of the committee of inquiry, of the secretariat and of the parliamentary groups in the committee of inquiry if these are authorised to handle classified material and have been formally placed under an obligation to observe secrecy.

(2) The members of the committee of inquiry, special investigators and the staff and assistants referred to in paragraph 1 above shall be subject to a duty of professional secrecy, even after the dissolution of the committee, with regard to information contained in any of the classified material described in paragraph 1 above which has come to their knowledge. Without the authorisation of the President of the Bundestag, they may not disclose any such information within or outside a court of law. Article 44c(2), second sentence, and Article 44c(3) of the Members of the Bundestag Act (*Abgeordnetengesetz*) shall apply, *mutatis mutandis*.

(3) If a secret of a third party, that is to say a secret belonging to the realm of personal privacy or a trade or business secret, comes to the knowledge of a member of the committee in the course of inquiry proceedings, he or she may not disclose that secret unless so authorised by the entitled person. This shall not apply if the disclosure of the secret is prescribed by law.

Section 17 Taking of evidence

(1) The committee of inquiry shall take the evidence required by its investigation mandate on the basis of decisions to take evidence.

(2) Evidence shall be taken on the motion of one quarter of the members of the committee of inquiry, unless the taking of evidence is inadmissible or the item of evidence would be unobtainable even after the use of the means of enforcement for which this Act provides.

(3) The sequence in which witnesses and experts are heard is to be established as unanimously as possible in the committee of inquiry. In the event of an objection being raised by one quarter of the members of the committee of inquiry, the provisions of the Rules of Procedure of the German Bundestag governing the order of speakers shall apply, *mutatis mutandis*.

(4) If the committee of inquiry rejects the taking of particular evidence or the use of requested means of enforcement pursuant to section 21(1), section 27(1), section 28(6) and the second sentence of section 29(2) of this Act, the investigating judge at the Federal Court of Justice shall decide, upon application by one quarter of the committee members, on the taking of evidence or on ordering the use of means of enforcement.

Section 18 Presentation of evidence

(1) The Federal Government, the federal authorities and the federal public corporations, institutions and foundations are bound, subject to the limits imposed by constitutional law, to present material evidence to the committee of inquiry on request, particularly the files relating to the subject of the inquiry.

(2) The decision on the request referred to in paragraph (1) shall be made by the competent federal minister unless the right to make such a decision is reserved by law to the Federal Government. If the request is refused or if the material evidence which is presented is given a security classification, the committee of inquiry shall be informed in writing of the reasons for the refusal or classification. The evidence presented shall be accompanied by a declaration testifying to its completeness.

(3) Upon application by the committee of inquiry or by one quarter of its members, the Federal Constitutional Court shall rule on the lawfulness of a refusal to accede to a request, and the investigating judge at the Federal Court of Justice shall rule on the lawfulness of a classification.

(4) Courts and administrative authorities are bound to provide judicial and administrative assistance, particularly for the purpose of presenting material evidence. Upon application by the committee of inquiry or by one quarter of its members, the investigating judge at the Federal Court of Justice shall settle any disputes.

Section 19 Visual inspections

Section 18(1) to the first half of section 18(3) as well as section 18(4) shall apply, *mutatis mutandis*, to visual inspections.

Section 20 Summoning witnesses

(1) Witnesses are bound to appear if summoned by the committee of inquiry. Section 50 of the Code of Criminal Procedure (*Strafprozessordnung*) shall not apply.

(2) In the summons, witnesses shall be informed of the matter on which they will be asked to testify, of their legal rights and of the legal consequences of failure to appear as well as of their right to call on the assistance of a legal counsel of their

choice for the hearing.

Section 21 Consequences of witnesses' failure to appear

(1) If witnesses who have been properly summoned fail to appear, the committee of inquiry may order them to pay the costs arising from their absence, impose on them an administrative penalty of up to EUR 10,000 and order the enforcement of their attendance. In the event of repeated failure to appear, the administrative penalty may be levied again. The second sentence of section 135 of the Code of Criminal Procedure shall apply.

(2) Measures under paragraph 1 above shall not be enacted if witnesses provide adequate apologies in good time for their inability to appear. If an adequate apology is received after witnesses have failed to appear, the orders enacted under paragraph 1 shall be rescinded, provided that the witnesses satisfy the committee that they were delayed through no fault of their own.

Section 22 Right of refusal to testify and right to withhold information

(1) The provisions of sections 53 and 53a of the Code of Criminal Procedure shall apply, *mutatis mutandis*.

(2) Witnesses may refuse to provide information in response to questions if answering those questions would expose them, or persons related to them within the meaning of section 52(1) of the Code of Criminal Procedure, to the risk of investigation under due process of law.

(3) At the start of the first examination on the facts, witnesses shall be informed of the rights enshrined in paragraphs 1 and 2 above.

(4) The facts on which individual witnesses base their refusal to testify shall be substantiated on request.

Section 23 Examination of office holders

(1) Section 54 of the Code of Criminal Procedure shall apply.

(2) The Federal Government is bound to grant the necessary authorisations to give evidence; section 18(1) to the first half of section 18(3) of this Act shall apply, *mutatis mutandis*.

Section 24 Examination of witnesses

(1) Witnesses shall be examined individually in the absence of any other witnesses who are to be heard later.

(2) Witnesses may be examined in the presence of other witnesses if it serves the purpose of the inquiry.

(3) Before the examination, the chairperson shall caution witnesses that they are bound to tell the truth, explain the subject of the examination to them and inform them of the legal consequences of false or incomplete statements.

(4) The chairperson shall verify the witnesses' personal details. At the beginning of the examination of the facts, witnesses shall be given the opportunity to provide a contextualised statement of what they know about the subject of their examination.

(5) In order to clarify and supplement the witnesses' statements and to establish the basis of their knowledge, the chairperson may initially ask additional questions. The other members of the committee shall then be given leave to ask questions. The provisions of the Rules of Procedure and the practice of the Bundestag relating to the sequence of speakers and the conduct of debates shall apply, *mutatis mutandis*, to the establishment of the sequence of questions and of the time allocated to each of the parliamentary groups to exercise their right to ask questions, unless the committee of inquiry unanimously decides otherwise.

(6) Section 136a of the Code of Criminal Procedure shall apply, *mutatis mutandis*.

Section 25 Admissibility of questions to witnesses

(1) The chairperson shall rule questions out of order if they are inappropriate or irrelevant. Witnesses may ask the chairperson to rule questions out of order. In case of doubt regarding the admissibility of questions or the legality of a decision to rule them out of order, the committee of inquiry shall take a decision if so requested by its members. A majority of two thirds of the members in attendance shall be required to rule a question out of order.

(2) If the committee of inquiry rules a question out of order that has already been answered, the report of the committee of inquiry must contain no reference to the question and the answer.

Section 26 Concluding the examination

(1) Each of the witnesses is to be served with a written record of his or her examination.

(2) The committee of inquiry shall determine, by means of a decision, that the examination of each of the witnesses is concluded. The decision may not be taken until two weeks have elapsed following the service of the examination record or until the requirement to observe the time limit has been waived.

(3) At the end of their examination, witnesses are to be informed by the chairperson of the committee under which of the conditions described in paragraph 2 above it has been determined that their examination is concluded.

Section 27 Unwarranted refusal to testify

(1) If witnesses refuse to testify without lawful reason, the committee of inquiry may order them to pay the costs arising from their refusal and impose on them an administrative penalty of up to EUR 10,000.

(2) In the situation referred to in paragraph 1 above, the investigating judge at the Federal Court of Justice may, upon application by the committee of inquiry or by one quarter of its members, order witnesses to be held in custody in order to compel them to testify, although such custody may not extend beyond the end of the inquiry proceedings, nor may it exceed six months.

(3) Section 70(4) of the Code of Criminal Procedure shall apply, *mutatis mutandis*.

Section 28 Experts

(1) The provisions of sections 20 and 22 to 26 of this Act shall apply, *mutatis mutandis*, to experts unless divergent provisions are subsequently adopted.

(2) The selection of the experts to be consulted shall be made by the committee of inquiry; section 74 of the Code of Criminal Procedure shall not apply.

(3) The committee of inquiry is to conclude an arrangement with experts on the date by which their opinion will be formulated.

(4) Experts shall deliver an impartial, complete and truthful opinion by the agreed date. At the request of the committee of inquiry, the opinion is to be formulated in writing and explained in detail orally.

(5) The provisions of section 76 of the Code of Criminal Procedure on the right to refuse to deliver an opinion shall apply, *mutatis mutandis*.

(6) If experts who are under an obligation to deliver an opinion refuse to discuss an appropriate time limit in accordance with paragraph 3 above or if they fail to deliver the opinion by the due date, the committee of inquiry may impose on them an administrative penalty of up to EUR 10,000. The same shall apply if experts who have been properly summoned fail to appear or refuse to deliver or explain their opinion; in these cases, the committee of inquiry may also order them to pay the costs arising from their default or refusal. Section 21(2) of this Act shall apply, *mutatis mutandis*.

Section 29 Obligation to surrender evidence

(1) Whoever has custody of an item that may be relevant to an inquiry is required to present and surrender it at the request of the committee of inquiry. This obligation does not obtain if it is unreasonable to expect the party concerned to surrender the item of evidence because of the strictly personal character of information which it contains.

(2) In the event of refusal to surrender an item, the committee of inquiry may impose an administrative penalty of up to EUR 10,000 on the person who has custody of the item. The investigating judge at the Federal Court of Justice may, upon application by the committee of inquiry or by one quarter of its members, order persons to be held in custody so as to compel them to surrender evidence. Section 27(2) and (3) of this Act shall apply, *mutatis mutandis*. The regulatory and coercive measures defined in the present paragraph may not be applied to persons who, under Articles 22(1) and (2) of this Act, are entitled to refuse to testify or disclose information.

(3) If items within the meaning of paragraph 1 above are not presented voluntarily, the investigating judge at the Federal Court of Justice may, upon application by the committee of inquiry or by one quarter of its members, order the seizure of the items and their surrender to the committee of inquiry; section 97 of the Code of Criminal Procedure shall apply, *mutatis mutandis*. For the seizure of the items described in paragraph 1 above, the investigating judge at the Federal Court of Justice may also order a search if facts are available from which it may be inferred that the desired item is located in the premises to be searched. Sections 104, 105(2) and (3), 106, 107 and 109 of the Code of Criminal Procedure shall apply, *mutatis mutandis*.

Section 30 Procedure for the presentation of evidence

(1) If the person who has custody of requested items of evidence objects that the items are not relevant to the inquiry or that they relate to a secret described in section 14(1)(1) to (4) of this Act, the regulatory and coercive measures defined in section 29(2) and the surrender described in the first sentence of section 29(3) may be ordered only if the item of evidence contains no information which, because of its strictly confidential character, the person concerned cannot reasonably be expected to pass on and if the committee of inquiry has decided to apply the security classification SECRET (*GEHEIM*) to the said item.

(2) The committee of inquiry is authorised to peruse the presented items of evidence and to assess their relevance as evidence. Items which turn out, in the unanimous view of the committee of inquiry, to be irrelevant to the inquiry shall be returned without delay to the person who had custody of them.

(3) After the perusal and assessment of the items of evidence described in paragraph 1 above, the committee of inquiry may decide to lift the SECRET classification, provided that the items of evidence are relevant to the inquiry. If the items relate to a secret described in section 14(1)(1) to (4) of this Act, the committee of inquiry may take the decision referred to in the first sentence above only if the public use of the items is essential to the fulfilment of the investigation mandate and is not disproportionate.

(4) Before the decision referred to in the first sentence of paragraph 3 above is taken, the person with the power of disposal over the items of evidence shall be heard. If he or she objects to the lifting of the SECRET classification, it shall not be lifted unless the investigating judge at the Federal Court of Justice, upon application by the committee of inquiry or by one quarter of its members, declares it admissible to lift the classification.

Section 31 Reading of minutes and documents

(1) The minutes of inquiry proceedings of other committees of inquiry, courts and public authorities as well as documents serving as evidence shall be read out to the committee of inquiry.

(2) The committee of inquiry may decide to dispense with the reading if the minutes or documents have been made accessible to all members of the committee of inquiry.

(3) At meetings held in public, the reading of minutes and documents or the communication of their essential substance shall not take place if conditions described in section 14(1) obtain.

Section 32 Right to be heard

(1) Persons whose rights may be significantly curtailed through the publication of the final report shall, before the conclusion of the inquiry proceedings, be given the opportunity to submit comments within two weeks on the statements which relate to them in the draft of the final report, unless these statements have been discussed with them at a meeting held for the purpose of taking evidence.

(2) The essential substance of the comments shall be reproduced in the report.

Section 33 Reporting

(1) Following the conclusion of the inquiry, the committee of inquiry shall submit a written report to the Bundestag. The report shall indicate the course of the proceedings, the established facts and the findings of the inquiry.

(2) If the report drawn up by the committee of inquiry is not adopted unanimously, dissenting opinions shall be included in the report.

(3) If it is foreseeable that the committee of inquiry will be unable to fulfil its investigation mandate by the end of the electoral term, the committee shall submit to the Bundestag in good time a progress report on the course of the proceedings and the findings of the investigations to date.

(4) In response to a decision adopted by the Bundestag, the committee of inquiry shall submit an interim report to the Bundestag.

Section 34 Rights of the Committee on Defence acting as a committee of inquiry

(1) If the Committee on Defence decides to make a specific matter the subject of investigation, it shall have the rights of a committee of inquiry in the conduct of its investigations. On the motion of one quarter of its members, the Committee on Defence is required to constitute itself as a committee of inquiry. Sections 1 to 3 of this Act shall apply, *mutatis mutandis*.

(2) The chairperson of the Committee on Defence shall chair the committee of inquiry.

(3) If the Committee on Defence makes a specific matter the subject of investigation, it may appoint a subcommittee to conduct the investigation, to which substitute members of the Committee on Defence may also be assigned.

(4) The provisions of this Act shall apply to the proceedings of the Committee on Defence when it acts as a committee of inquiry. The Committee on Defence shall submit to the Bundestag a report on the findings of its inquiry; any debate must relate only to the published report.

Section 35 Costs and expenses

(1) The cost of inquiry proceedings shall be met by the Federation.

(2) Witnesses, experts and special investigators shall receive compensation or remuneration under the Judicial Remuneration and Compensation Act (*Justizvergütungs- und -entschädigungsgesetz*). The committee of inquiry may decide, in response to a request, that the cost of witnesses' legal counsel is to be refunded. Special investigators shall receive remuneration corresponding to the highest fee category indicated in the first sentence of section 9(1) of the Judicial Remuneration and Compensation Act.

(3) The amounts of compensation, remuneration and reimbursement of expenses shall be set by the President of the Bundestag.

Section 36 Jurisdiction

(1) In the event of a dispute under this Act, jurisdiction shall lie with the Federal Court of Justice unless otherwise stipulated by Article 93 of the Basic Law, section 13 of the Federal Constitutional Court Act (*Bundesverfassungsgerichtsgesetz*) and the provisions of the present Act.

(2) If the Federal Court of Justice holds the appointment decision to be unconstitutional and if its judgment depends on the validity of the said decision, proceedings shall be suspended and a ruling sought from the Federal Constitutional Court. The first sentence above shall apply, *mutatis mutandis*, to the investigating judge at the Federal Court of Justice.

(3) A complaint against decisions of the investigating judge at the Federal Court of Justice is admissible, and the Federal Court of Justice shall rule on such complaint.