

Factsheet Parliamentary Inquiry

The Dutch Senate, the Dutch House of Representatives and the joint session of the two houses of parliament can decide to initiate a parliamentary inquiry. This is an inquiry for which the law grants them various far-reaching powers. In practice, only the Dutch House of Representatives exercises this right. A parliamentary inquiry can have major consequences for the organisations and persons involved.

Phases

A parliamentary inquiry breaks down into several phases:

1. **Preparation:** on the proposal of a preparatory committee, the Dutch House of Representatives resolves to conduct a parliamentary inquiry. The inquiry's questions, budget and schedule are determined in this phase. In addition, the members of the parliamentary committee of inquiry are appointed. They will always be members of the Dutch House of Representatives.
2. **Information gathering:** the committee conducts a literature and file search. To that end, it can request documents and information and access premises. Documents include not only written material but also digital data and data carriers, such as computer files, email inboxes and cloud environments. Apart from a few exceptions, everyone is obliged to lend the committee of inquiry their cooperation.
3. **Private preliminary interview:** the committee of inquiry can decide to hold a private preliminary interview with persons it might want to hear as witnesses or experts. Accepting the invitation is not mandatory. Nor is the interview a hearing under oath. The preliminary interview and the record made of it are confidential. The record cannot be used during a public hearing or for the ultimate report, unless the person in question has given their express consent. Furthermore, the committee of inquiry cannot confront witnesses at a subsequent public hearing with information obtained during a preliminary interview.
4. **Public hearings:** the committee of inquiry hears witnesses and experts. This is generally done in public and under oath, entailing that anyone not telling the truth will be committing a criminal offence. Public hearings are broadcast live on television and online. They usually attract a lot of media attention. Anyone called up by the committee of inquiry is required to appear and to answer the committee's questions.
5. **Report:** the committee writes the report and may request additional documents and information for that purpose. The committee's report is presented to the president of the Dutch House of Representatives for debate on the report and recommendations made. The information and documents provided to the committee in the preparatory phase will usually be added to the committee's public archive.

The 'mini inquiry'

A mini inquiry is an inquiry for which the committee of inquiry will not conduct an extensive file search, but will hear witnesses and experts in public and under oath. The committee responsible does have the formal status of a parliamentary committee of inquiry, which means that the obligation to cooperate also applies.

Obligation to cooperate and exceptions

As a main rule, all Dutch citizens, all residents of the Netherlands, all natural persons having their residence in the Netherlands, all legal entities based in the Netherlands and all legal entities conducting all or part of their business in the Netherlands are obliged to cooperate with parliamentary inquiries. If any party involved refuses to cooperate, the committee of inquiry can try to enforce cooperation via the preliminary relief judge. The preliminary relief judge can then (i) impose a coercive penalty, (ii) call in police assistance to ensure that the committee's requests are met or

(iii) order the committal of witnesses who refuse to make a statement. In addition, a deliberate refusal to provide documents or information constitutes a criminal offence.

There are two categories of exceptions to the general duty to cooperate in a parliamentary inquiry:

1. **Exceptions for specific persons:** persons entitled to professional privilege, such as lawyers and civil-law notaries, do not need to make a statement or provide documents if this would result in the sharing of information entrusted to them while they were bound by their duty of confidentiality. This may include legal opinions or reports drafted on a client's instructions.
2. **Exceptions for specific confidential information:** (i) 'secret corporate and manufacturing information' or 'a company's other business confidential or competitively sensitive information' and (ii) private information need not be provided, but only if the interest served by withholding the information outweighs the committee's interest in obtaining it.

Preparation by the persons or entities involved

The impact of a parliamentary inquiry can be immense. This applies not only to the persons or legal entities subject to the inquiry but also to those who are to provide documents or information. In practice, the requests by a parliamentary committee of inquiry often have a very broad purport. As a result, enormous numbers of documents must be searched and provided. Hundreds of thousands of documents, emails, etc. may be involved. In addition, the information provided will usually be public after completion of the inquiry.

A public hearing under oath often puts great pressure on the persons involved. The threat of sanctions for not telling the truth is one concern, as is the fact that the hearing is broadcast live. On top of that, hearings will not always be limited to questions of fact, but will also extend to opinions, assumptions and self-evaluation. Members of the press will usually also attend in great numbers.

Thorough preparations right from the start of a parliamentary inquiry are therefore of the essence. Houthoff has a wealth of experience assisting and advising organisations in parliamentary inquiries.

Contact

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