

The Procedure of Setting up Parliamentary Investigating Committees

I. Investigating Committees Based on a Minority's Request

A. Introduction and Referral of the Request

1. A **minority's request** which, as required by § 33 para 1 last sentence GOG (Geschäftsordnungsgesetz des Nationalrates, Rules of Procedure Act of the National Council) and § 1 para 2 VO-UA (Verfahrensordnung für parlamentarische Untersuchungsausschüsse, Rules of Procedure for Parliamentary Investigating Committees), is supported by **46 Members**, must under § 33 para 2 GOG be **submitted** to the President **in writing during the course of a sitting** and has to indicate the **subject to be investigated**. As provided by § 1 para 4 VO-UA, a Member who has supported such a request shall be barred from supporting any further such request as long as the activity of that Investigating Committee has not come to an end. The President shall under § 13 para 2 GOG ensure the respect of the Rules of Procedure Act and ascertain the request's compliance with the formal requirements.

2. **Article 53 para 2 B-VG** (Bundes-Verfassungsgesetz, Federal Constitutional Act) **requires that the subject matter of the investigation must be a certain completed process within the scope of the Federal Government's executive power, at the same time providing that the administration of justice is not amenable to an investigating committee's scrutiny**. While the subject of investigation may be broken down into several subjects on which evidence is to be heard, it is not permitted to gather subjects that are not

directly related (also see the Explanatory Notes to the Amendment of the Federal Constitutional Act BGBl. (Federal Law Gazette) I No. 101/2014 – 439 BlgNR 25. GP, i.e. Annex No. 439 to the Stenographic Reports of the National Council of the 25th legislative term).

3. When the business on the agenda of the plenary sitting has been completed, a **brief debate** may be held (if so required by five Members), which shall be governed by the provisions of §§ 57a and 57b GOG (§ 33 para 4 GOG). This means that the debate shall be opened by a Member who has signed the request for the brief debate, said Member being allowed a speaking time of 10 minutes. Following this speaker, each parliamentary group may name one speaker, who shall be allowed five minutes.

4. At the end of the sitting in which the request has been received it shall be **referred to the Rules of Procedure Committee for further consideration** (§ 33 para 6 GOG and § 2 para 2 VO-UA).

B. Deliberation in the Rules of Procedure Committee

The Rules of Procedure Committee shall proceed as follows:

1. As provided in § 34 para 4 GOG, the chairperson shall convene the meetings of the committee, open and close same, and shall implement the Rules of Procedure. He/she has to ensure the respect of the Rules of Procedure, which means that it is incumbent on him/her to ascertain the request's compliance with the formal requirements. He/she has the right to suspend the committee sitting at any time.

2. **The Rules of Procedure Committee shall commence deliberations on the request within four weeks of its referral. A report shall be submitted to the National Council within a further four weeks (§ 33 para 6 GOG). The Rules of Procedure Committee is therefore allowed for submitting its report to the National Council a period of eight**

weeks – starting with the request’s referral, and ending with the committee report’s consideration by the plenary and the Investigating Committee’s establishment.

3. § 33 para 3 GOG provides that, unless otherwise stipulated in the Rules of Procedure for Parliamentary Investigating Committees (VO-UA), the provisions of the Rules of Procedure Act (GOG) shall apply. Consequently, both the Rules of Procedure Committee and the Investigating Committee shall be deemed to have a quorum if more than half of their members are present (§ 41 para 1 GOG). As provided in § 41 para 9 GOG, decisions shall as a rule be taken with a majority of the committee members present.

4. Any alteration of the subject of investigation requires the consent of all Members entitled to vote in the sitting of the Rules of Procedure Committee who have supported the request (§ 3 para 4 VO-UA). If none of the supporting Members is present and entitled to vote in the committee meeting, the subject of investigation may be altered by majority vote (see the Explanatory Notes to the Amendment of the Rules of Procedure Act BGBl. I 99/2014 – 440 BlgNR 25. GP).

5. The Rules of Procedure Committee shall first determine the Investigating Committee’s size by following the d’Hondt procedure (§ 30 GOG) – which takes into account the relative strengths of the Parliamentary Groups -, with the proviso that each Parliamentary Group represented on the Main Committee shall also be represented on the Investigating Committee (§ 3 para 3 VO-UA). The Parliamentary Groups shall subsequently communicate to the President the names of the members and substitute members of the Investigating Committee to which they are entitled, which shall thereupon be considered elected under § 32 para 1 GOG (§ 4 para 4 VO-UA).

6. The Rules of Procedure Committee shall elect the Procedural Judge and his/her deputy, following a proposal made by the President after consultation with the President’s Conference on the basis of a permanent list, which is drawn up to be kept throughout the legislative term and is also published. In practice, “consultation with the President’s

Conference” means that agreement has to be reached among the members of this body. The Rules of Procedure Committee shall furthermore elect the Procedural Advocate and his/her deputy, following a proposal made by the President after consultation with the President’s Conference likewise on the basis of a permanent list, which is drawn up to be kept throughout the legislative term and is also published (§ 3 para 5 VO-UA in conjunction with § 7 para 2 VO-UA).

7. The Rules of Procedure Committee shall – if applicable – vote under § 3 para 5 VO-UA on a motion of the Qualified Minority, if such motion is contained in its request, to shorten the duration of the Investigating Committee pursuant to § 53 para 2 VO-UA, which duration shall, as provided in § 53 para 1 VO-UA, not exceed 14 months.

8. The Rules of Procedure Committee may by majority vote rule the minority’s request impermissible in total or in part; it must, however, indicate the reasons (§ 3 para 2 VO-UA).

9. In the presence of such a decision, the Qualified Minority may – following the presentation of the Rules of Procedure Committee’s report – petition the Constitutional Court under Article 138b para 1 subpara 1 B-VG to rule on the disagreement (§ 4 para 3 VO-UA). The period allowed for challenging a decision of the Rules of Procedure Committee ruling a request to set up an Investigating Committee impermissible in total or in part, is two weeks. It starts with the point in time enunciated by the President under § 4 para 2 VO-UA. If a request was declared impermissible in total, the period starts when the consideration of the report in the National Council begins (§ 56c para 1 VfGG, i.e. Constitutional Court Act).

10. Pursuant to § 56c para 6 VfGG, the Constitutional Court, when presented with appeals against decisions of the National Council’s Rules of Procedure Committee by which a request to set up an Investigating Committee is ruled impermissible in total or in part, shall decide without undue delay, but if possible within four weeks. As provided in § 7 para 2 subpara 2 VfGG, the Court shall be deemed to have a quorum if the Chairperson and four voting members are present.

11. If the majority has ruled the request impermissible on grounds of unconstitutionality (only) in part, those parts not ruled impermissible are valid, and the Investigating Committee is to that extent deemed to be established as from the commencement of the report's consideration in the plenary, and the decisions adopted under § 3 para 5 VO-UA enter into effect (§ 33 para 9 GOG). The subjects of these decisions are the election of the Procedural Judge and the Procedural Advocate as well as their deputies under § 7 para 2 VO-UA, the basic order to take evidence under § 24 VO-UA and, if applicable, a decision under § 53 para 2 VO-UA concerning the duration of the Investigating Committee.

12. If the majority does not consider any part of the request impermissible - i.e. in the absence of any challenge raised against the request's constitutionality -, the Investigating Committee is deemed to be fully established as from the commencement of the consideration of the report by the plenary (§ 4 para 2 VO-UA).

13. Pursuant to § 3 para 5 VO-UA, the Rules of Procedure Committee, when dealing with a request to establish an Investigating Committee, shall also adopt the basic order to take evidence (§ 24 VO-UA), which requires organs of the Federation, the Länder, the municipalities and municipal associations as well as of the other self-governing bodies to present their complete files and documents within the terms of reference of the investigation - with certain exceptions as provided in § 24 paras 1 and 2 VO-UA. This ensures that all organs under obligation to provide information and concerned by the subject under investigation present all files and documents referring to the subject under investigation. Furthermore, it is to ensure that the Investigating Committee is provided, from the beginning of its activity, with information as comprehensive as possible to work with (see the Explanatory Notes to the Amendment of the Federal Constitutional Act BGBl. I 101/2014 – 439 BlgNR 25. GP).

14. Article 53 para 3 B-VG provides that the obligation to surrender files and documents, and to comply with requests to take evidence, does not apply if the disclosure of same would compromise sources in terms of Article 52a para 2 B-VG (i.e. put at risk national security or

the security of individuals) (§ 24 para 1 VO-UA). Furthermore, pursuant to Article 53 para 4 B-VG an obligation to present files and documents does not obtain to the extent that it would adversely affect the lawful decision-making on the part of the Federal Government as well as its immediate preparation (§ 24 para 2 VO-UA).

15. The basic order to take evidence shall be organized into subjects on which evidence is to be heard and shall include a statement of reasons. The organs concerned by the subject under investigation shall be precisely identified. It is admissible – and is common practice – to set a reasonable time limit. The Rules of Procedure Committee may by majority vote adopt requirements concerning the mode of submission. If such decision pertains to the activities of the prosecuting authorities, it shall be subject to the provisions of § 58 VO-UA, which provide that the matter is to be referred to the Federal Minister of Justice (consultation procedure) (§ 24 para 3 VO-UA).

16. If the Qualified Minority considers the basic order to take evidence to be insufficient in scope, it may under Article 138b para 1 subpara 2 B-VG appeal to the Constitutional Court (§ 24 para 4 VO-UA).

17. If the Constitutional Court subsequently rules that the scope of the basic order to take evidence is insufficient, the Rules of Procedure Committee shall within two weeks adopt a supplement, taking into account the Constitutional Court's ruling (§ 24 para 5 VO-UA).

18. The supplement to the basic order to take evidence can likewise be challenged before the Constitutional Court as being insufficient in scope. In such a case, the ruling of the Constitutional Court will substitute the decision of the Rules of Procedure Committee (§ 24 para 6 VO-UA).

19. Unlike a motion to set up an Investigating Committee, a minority's request may be withdrawn by the Qualified Minority at any time up to the commencement of the consideration of the report in the plenary under § 33 para 9 GOG, irrespective of whether or

not the request has been altered in the Rules of Procedure Committee (§ 33 para 5 GOG in conjunction with § 1 para 7 VO-UA).

20. In accordance with the general provisions of the Rules of Procedure Act, a minority's request can only be withdrawn by all Members who have supported it. Any Members having meanwhile quit their seats shall be without prejudice (see the Explanatory Notes to the Amendment to the Rules of Procedure Act BGBl. I No. 99/2014 – 440 BlgNR 25. GP).

C. Procedure in the Plenary

1. The Rules of Procedure Committee's report shall be dealt with by the National Council in its plenary sitting following the report's submission to the President (§ 33 para 7 GOG).

2. The debate shall be governed by the provisions of § 60 para 3 GOG (§ 33 para 9 last sentence GOG as well as § 4 para 2 last sentence VO-UA). This means that, if several speakers "for" or several speakers "against" announce their intention to speak at the same time, the President shall determine the order in which they are given the floor in such a way as to give a fair hearing to the different points of view while at the same time considering the relative strengths of the individual Parliamentary Groups and respecting the principle of alternation between speakers belonging to different Parliamentary Groups.

3. The Investigating Committee shall be deemed established to the respective extent as from the commencement of the deliberations in the plenary, and the decisions concerning the composition of the Investigating Committee (§ 3 para 3 VO-UA), the election of the Procedural Judge, the Procedural Advocate and their deputies, as well as concerning the basic order to take evidence (§ 3 para 5 VO-UA) and, if applicable, a shortening of the Investigating Committee's duration (§ 3 para 5 VO-UA and § 53 para 2 VO-UA) shall likewise enter into effect (§ 4 para 2 VO-UA).

4. The point in time relevant for their entry into effect shall be enunciated by the President in the National Council sitting, noted in the Official Records and published without delay (§ 4 para 2 VO-UA).

5. When seized of an appeal against decisions of the Rules of Procedure Committee under Art. 138b para 1 B-VG ruling a request to set up an Investigating Committee of the National Council impermissible in total or in part (§ 3 para 2 VO-UA), the Constitutional Court shall under § 56c para 6 VfGG (Constitutional Court Act) decide on the basis of the documentation submitted without undue delay, but if possible within four weeks.

It shall rule the Rules of Procedure Committee's decision unlawful unless the appeal is to be rejected or is to be dismissed as unfounded. The Investigating Committee shall be deemed established to the extent the Constitutional Court has ruled the decision unlawful (§ 56c para 7 VfGG).

If the Constitutional Court considers such a decision unlawful under § 56c para 7 VfGG, the Rules of Procedure Committee shall in accordance with § 3 para 6 VO-UA without delay adopt the requisite decisions under § 3 para 5 VO-UA (election of the Procedural Judge, the Procedural Advocate and their deputies, basic order to take evidence and, if applicable, decision concerning the Investigating Committee's duration).

D. Constitutive Meeting of the Investigating Committee

1. Once the Parliamentary Groups have communicated to the President the names of the members and substitute members to which they are entitled – which shall thereupon be considered elected (§ 4 para 4 VO-UA in conjunction with § 32 para 1 GOG) – the President shall, in his/her capacity as chairperson of the Investigating Committee, in accordance with § 4 paras 4 and 5 VO-UA without delay convene a meeting of the

Investigating Committee for the purpose of constituting same, in which meeting the requisite decisions shall be adopted.

2. The President may ask the Second or Third President to act in his/her stead in chairing committee sittings. He/she may also entrust them with further duties in the context of the Investigating Committee, e.g. representing the Investigating Committee vis-à-vis third parties and determining the agenda of committee sittings (§ 5 para 2 VO-UA in conjunction with § 6 paras 1 and 2 VO-UA). This provision is based on Article 53 para 5 B-VG.

3. When an Investigating Committee is established, each of the Presidents shall designate a Member to act as his/her deputy who, like the respective President himself/herself, must not be a member of the Investigating Committee (§ 5 para 3 VO-UA). Consequently, unlike for other committees, there is no need for an Investigating Committee to elect its chairperson and his/her deputies in its constitutive meeting.

4. The Investigating Committee shall, however, elect other organs (e.g. secretaries) and adopt decisions required under the Rules of Procedure Act (§ 33 para 3 second sentence GOG).

II. Investigating Committees Established by Majority Vote

A. Establishment

1. A motion supported by five Members must be submitted in writing in the course of a National Council sitting (§ 33 para 1 GOG and § 1 para 1 VO-UA). Like a minority request, it shall be referred to the Rules of Procedure Committee at the end of the sitting in which it has been received (§ 33 para 6 GOG and § 2 para 2 VO-UA) – prior to which referral a brief debate governed by §§ 57a and 57b GOG may take place.

2. Such motion must contain the words “Der Nationalrat wolle beschließen” (“that the National Council resolve”). It shall clearly identify the sponsor(s), carry his/her/their signature(s) and shall be submitted to the President (§ 33 para 2 GOG and § 1 para 5 VO-UA).

3. As the Rules of Procedure for Parliamentary Investigating Committees (VO-UA) do not provide for special regulations, and § 33 para 3 GOG stipulates that in such a case the procedure shall be governed by the provisions of the GOG, it may be assumed in accordance with § 26 para 5 GOG that support of the motion may also be expressed by responding to the President’s call for seconds if the number of signatures on the motion is insufficient.

4. In the Rules of Procedure Committee the motion may be modified on the basis of an amendment adopted by majority vote, leaving the minority without any opportunity to object. This is in contrast to what obtains with regard to a minority request, which may also be modified in the Rules of Procedure Committee, but whose modification requires the agreement of all Members present and entitled to vote in the Rules of Procedure Committee sitting who have supported said minority request (§ 3 para 4 VO-UA).

5. Unlike a minority request, such motion may pursuant to § 1 para 7 VO-UA be withdrawn by its sponsors no later than up to the commencement of voting in the Rules of Procedure Committee (whereas a minority request may be withdrawn by the Qualified Minority at any time up to the commencement of the consideration of the report in the National Council plenary).

6. If the subject of the report is a motion, the debate and vote thereon in the plenary shall pursuant to § 33 para 8 GOG be governed by the General Provisions concerning the Consideration of Business in Sitzings of the National Council. Motions to amend or add and demands for separate votes shall, however, be out of order. This means, inter alia, that for the vote on the motion to be taken, the presence of one third of the Members is required, and for

the motion to be adopted, the majority of the valid votes cast. The tabling of draft resolutions in the course of the debate is not excluded.

Minority requests to establish an Investigating Committee, by contrast, are not put to the vote. An Investigating Committee based on a minority request is deemed to be established as from the commencement of the debate in the National Council plenary.

7. Pursuant to § 53 para 1 VO-UA, the activity of an Investigating Committee shall come to an end no later than 14 months from the Committee being established. The National Council may, however, at any time pending the committee's deliberations set a deadline by adopting a motion under § 43 para 1 GOG. This is not permissible if the Committee was established on the basis of a minority request (§ 43 para 1 GOG and § 53 para 4 VO-UA). The duration of such a committee can only be shortened in the course of the establishment procedure, by adoption in the Rules of Procedure Committee of a motion to that effect moved by the Qualified Minority.

8. If an Investigating Committee established by majority vote is unable to present a report in writing within the period set for presentation under § 43 GOG, the chairperson of the Investigating Committee or his/her deputy shall present an oral report about the activities of the Investigating Committee at the sitting following expiry of the period. If the National Council does not set a further deadline for presentation of a committee report in writing, the activity of the Investigating Committee shall come to an end.

A statutory provision – as it exists in § 53 paras 5 and 6 VO-UA for Investigating Committees established on the basis of a minority request – permitting to extend the activity of an Investigating Committee established by majority vote beyond the duration of 14 months, as stipulated in § 53 para 1 VO-UA, is not contained in the Rules of Procedure Act (GOG), nor in its Annex I (VO-UA).

B. Number of Investigating Committees Established

1. Unlike for Investigating Committees based on a minority request, there is no statutory limit to the number of Investigating Committees that may be established by majority vote.

2. Concerning the support of minority requests, a Member who has signed such a request is barred from supporting any further minority request as long as the Investigating Committee's activity has not come to an end (§ 1 para 4 VO-UA).