# CONTROL DEFICIT IN THE EU

## A COMPARATIVE ANALYSIS ON THE PARLIAMENTARY RIGHT OF INQUIRY IN FEDERAL SYSTEMS

by Mag. Franziska Pupeter



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SUPERVISOR: Prof. Marie-Pierre Granger
Central European University - Private University


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**TABLE OF CONTENTS**

## ABSTRACT

This thesis contains a comparative analysis on the parliamentary right of inquiry in Austria, Germany and on EU level with a special focus on the implications of the vertical division of powers. Whereas Austria and Germany are federal states, the EU is seen as a federal system in this thesis. Thus, the three comparators share a vertical division of powers between the two levels: the federal / supranational level on the one hand and the sub-national / national level on the other hand. The purpose of this thesis is to evaluate how the distribution of competences between the two levels affects the scope and the instruments of the parliamentary committees of inquiry. This entails a comparison of the allocation of competences in the Austrian and German constitutional texts with that in the Treaty on the Functioning of the European Union. Furthermore, this thesis includes a comparison of the statutory provision that lay out the functioning of the parliamentary committees of inquiry in Austria and Germany and of the inter-institutional agreement that contains the details on the European Parliament's right of inquiry. This thesis finds that whereas the Austrian and German federal Parliaments dispose of stringent investigative tools, the European Parliament does not. It takes into account how the institutional set-up and the vertical division of powers on EU level differs from those in Austria and Germany. Thereby, it shall advance the reader's understanding as to what extent the right of inquiry on EU level and national level can be compared.

# INTRODUCTION

Parliamentary committees of inquiry are an important instrument to gather information on the government's actions. They allow the directly elected members of Parliament to oversee administration and to exercise control power, thereby directing the public eye to the possible misconduct, corruption or laziness of power holders in the executive branch. Most national constitutions within the European Union foresee the possibility for the legislative body to establish investigative committees. And so does Art. 226 of the Treaty of the Functioning of the European Union for the European Parliament (hereinafter: EP).

However, the concrete design of the European Parliament's right of inquiry has been a point of contestation for many years. The legal basis stipulates that the European Parliament may propose detailed rules on establishing and running investigative committees. The EP delivered its first proposal in 2012[1] but it failed to attract the required consent of the European Commission and the Council of the EU (hereinafter: the Council). In 2018, after several years of informal exchange between the three institutions, the European Parliament's committee on constitutional affairs drafted an altered proposal, in an attempt to incorporate the outcome of the negotiations and to reanimate the debate.[2] The Council, however, asserted that the most problematic provisions of the proposal remained unchanged.[3] No tangible progress has been made.



[1] Proposal for a regulation of the European Parliament 2009/2212(INL) on the detailed provisions governing the exercise of the European Parliament's right of inquiry (23 May 2012) <https://oeil.secure.europarl.europa.eu/oeil/popups/ficheprocedure.do?lang=en&reference=2009/2212(INI)>accessed 23 March 2022.

[2] Third Working Document PE630.750v01-00 on a proposal for a regulation of the European Parliament on the detailed provisions governing the exercise of the European Parliament's right of inquiry and replacing Decision 95/167/EC, Euratom, ECSC of the European Parliament, the Council and the Commission of 19 April 1995 (17 December 2018) < https://www.europarl.europa.eu/doceo/document/AFCO-DT-630750_EN.pdf>accessed 23 March 2022.

[3] Plenary Debate on the Right of Inquiry in the European Parliament, Statement by Council representative Ana Paula Zacarias (8 June 2021) <https://www.europarl.europa.eu/doceo/document/CRE-9-2021-06-08-ITM-024_EN.html>accessed 23 March 2022.

In the course of negotiations, the European Parliament commissioned a study that compared the legal frameworks for parliamentary committees of inquiry in twenty EU member states: their setting up-requirements, the potential scope of their inquiries, their investigative powers, their capability to cooperate with other (supra)national institutions, their liability and the enforceability of their findings. Similarly, this thesis is based on a comparative analysis of the relevant constitutional and statutory provisions rather than evaluating the practical effects of any specific parliamentary investigation. However, I adopt a more focused approach: I compare the right of inquiry in Austria and Germany with that on the EU level and I concentrate on the potential scope of the parliamentary committees of inquiry and their capacity to hear informants and to obtain documents. Unlike the EP study, I focus on the interrelation between the right of inquiry and the vertical division of power in these federal systems. I have chosen this approach with a view to the controversial aspects of the right of parliamentary inquiry at EU level.

Having evaluated the European Parliament's proposal as well as the Council's contestations to it, I found that the most contentious points of negotiation concern the power balance between the EP (a supra-national institution) and the member states governments. This is well illustrated by the setting-up decision of the EP's most recent investigative committee on the use of the Pegasus and equivalent surveillance spyware. The purpose of the committee is defined as to investigate "the extent to which Member States, including but not limited to Hungary and Poland, [...] use intrusive surveillance in a way that violates the rights and freedoms enshrined in the Charter".[4] Rather than targeting the EU's executive body, the Commission, this investigative committee targets the member states' executives. It is to



[4] European Parliament decision of 10 March 2022 on setting up a committee of inquiry to investigate the use of the Pegasus and equivalent surveillance spyware, and defining the subject of the inquiry, as well as the responsibilities, numerical strength and term of office of the committee (2022/2586(RSO)) <https://www.europarl.europa.eu/doceo/document/TA-9-2022-0071_EN.pdf>accessed 23 March 2022.

become an instrument of *vertical* control power rather than a *horizontal* checks and balances tool as the right on inquiry typically is in a national setting.

My choice of comparators is based on the assumption that the EU, despite not being a federal *state*, can well be described as a federal *system*. It can be compared to federal systems that happen to be federal states. Following this approach, the relation between the EP and the national governments can be compared to the relations of the German or Austrian Parliament with the governments of the federal sub-units, the *Bundesländer*. Ultimately, the purpose of this thesis is to evaluate how the vertical division of powers / the distribution of competences between the two levels affect the scope and the instruments of the parliamentary committees of inquiry.

The first chapter of this thesis contains a brief introduction on the embedment of the parliamentary right of inquiry in different governmental systems and a review of the findings of the above-mentioned EP study. In the second chapter, I focus on Austria and Germany and start by comparing the federal distribution of competences as set out in the respective Constitutions before diving into the concrete provisions that shape the investigative competences of the Austrian *Nationalrat* and the German *Bundestag* (the national Parliaments). Apart from comparing the legal frameworks, I also take into account how legal scholars have interpreted them in legal commentaries. This approach proves useful to find many parallels in how the federal distribution of competences affect the national Parliament's investigative powers. In both countries, the national Parliaments' investigative scope is linked to the areas of executive competences of the federal level.

The third chapter is dedicated to the right of inquiry on EU level. Can we draw conclusions from the features found in federal states for the EU level? I will compare the investigative scope and tools of the EP as set out in an inter-institutional agreement (Decision 95/167/EC) to those of the Austrian and German Parliaments. This comparison will be embedded in a

contextual analysis of the EU's institutional set-up (the horizontal division of powers) and of the categories of EU competences (the vertical division of powers). Thereby, I hope to advance the reader's understanding as to what extent the right of inquiry on EU level and national level can be compared. I advocate for a certain extend of comparability by referring to literature on the federal nature of the EU's system and state my own – perhaps controversial – opinion: Stronger vertical control mechanism are needed in the EU in order to avoid a control deficit.

# I. THE PARLIAMENTARY RIGHT OF INQUIRY

Parliaments adopt laws. That much is clear for constitutional scholars and any other citizen alike. Many modern constitutions contain an allocation of legislative power to the Parliament, executive power to the government/president and judicial power to the courts[5] which reflects the separation of powers doctrine.[6] Though, the distribution of governmental powers is not clear-cut. An overly literal understanding of the separation of power doctrine is impaired by the necessity to establish safeguards on the exercise of power, so-called checks and balances. Subject to the concrete design of (horizontal) separation of power in a given country, Parliaments may exercise several powers alongside their legislative power: budgetary power, appointment power (regarding the government and/or highest courts) and control power. Typically, Parliaments can scrutinize the behavior of government and administrative bodies. Thereby, they ensure political accountability of the executive body which is to be distinguished from legal accountability: Misconduct may be found by the Parliament irrespective of whether it is unlawful (corruption) or not (inefficiency of administration). Reviewing legality and imposing criminal sanctions are reserved for the judiciary.

The "ultimate" tool of political control is a vote of no-confidence, whereby the Parliament can dismiss the government. This instrument is, however, a feature of parliamentary systems and (usually) does not exist in presidential systems.[7] Other tools of political control are designed for the parliamentarians to acquire information: The right of interpellation foresees the possibility to pose questions to the members of the government.[8] The right of inquiry further



[5] See for example: Article I, II and III of the U.S. Constitution, Article 20, Paragraph 2, Sentence 2 of the German Basic Law or Title II, III, IV and VIII of the French Constitution.
[6] Norman Dorsen and others, *Comparative Constitutionalism: Cases and Materials* (3rd edn., West Academic Publishing 2016) 256.
[7] An exemption to this general rule can be found in Turkey: The latest constitutional amendment in 2017 established a presidential system but the Grand National Assembly of Turkey can decide to renew elections and thereby to remove the President from office (Art. 116 of the Turkish Constitution).
[8] See Art. 52 of the Austrian Federal Constitutional Act.

advances the same logic: Parliamentary committees of inquiry (hereinafter: PCIs) can be established by many Parliaments[9] to conduct more detailed investigations into a specific topic. This tool of parliamentary control power is the subject of this thesis. PCIs come in different shapes and sizes and thus offer substance for comparative analysis. In this thesis, I will focus on the distinct implications of federalism for the right of inquiry. As a first step, brief consideration shall be given to the institutional settings in which PCIs may operate as well as their scope and competences which vary considerably in different countries.

### 1.1.Parliamentary Scrutiny in Different Settings

One cannot write about parliamentary powers without referring to the systemic differences between the parliamentary and the presidential system, the two counter-models of power balance between the legislative and the executive branch. In a typical parliamentary system, the head of state and the head of government are two distinct persons: The former has merely ceremonial powers whereas the latter directs (most) governmental actions. The head of government is provided by the political party that holds the majority of seats in the Parliament and the government may be reshuffled after each parliamentary election.[10] Therefore, the main political cleavage in a parliamentary system is between the majority (coalition) and the opposition in Parliament, rather than between the two institutions Parliament and government. Consequently, a parliamentary system entails that the right of inquiry is most effective if PCIs can be established by the minority in Parliament. The opposition is likely to have a greater interest in holding the government accountable than the political party that designated the head of government. However, setting-up requirements for PCIs may differ: Whereas in Germany



[9] See Art 44 of the German Basic Law, Art. 51-2 of the French Constitution, Art. 111 paragraph 1 of the Polish Constitution. See further examples: Eeva Pavy, 'Committees of Inquiry in National Parliaments - Comparative Survey' (European Parliament 2020) 19–33.
[10] Ann Gamper, *Staat und Verfassung. Einführung in die Allgemeine Staatslehre* (Facultas 2014) 194.

and Austria a PCI can be set up by one fourth of MPs, a simple majority is required in Italy and even an absolute majority in Belgium or Poland.[11]

The presidential system is inclined towards a stricter sense of separated powers. In the U.S. (the prime example for a presidential system), the executive and the legislative branch operate "on a staggered electoral schedule."[12] In other words, the president, who is also the head of government, is elected separately from the Parliament. Both governmental institutions have their own democratic legitimization. The government is independent in the sense that the Parliament lacks its strongest instrument of political control: the possibility to dismiss the government by a vote of no-confidence. Nevertheless, checks and balances may be foreseen to provide the parliamentarians with the necessary information: The U.S. Congress has the authority to oversee executive branch activities by conducting investigations and inquiries. "The investigatory method helps to ensure a more responsible bureaucracy while supplying Congress with information needed to formulate new legislation." [13]

Following these systemic considerations, it shall be noted that PCIs in parliamentary systems have a higher standing in terms of democratic legitimacy: The Parliament is the only directly elected governmental institution and holds the executive accountable. Parliamentary investigations can potentially lead to a vote of no-confidence because the government generally depends on the Parliament's support. In presidential systems, however, the President cannot be dismissed by the Parliament and parliamentary oversight primarily serves the purpose of informing the members of Parliament. In both systems, PCIs may function along the lines of political party cleavages: In presidential systems, if the majority in Parliament is from a



[11] María Díaz Crego, 'The European Parliament's Investigative Powers: Committees of Inquiry in Context.' (European Parliament 2021) 29 <https://data.europa.eu/doi/10.2861/53430> accessed 23 March 2022.
[12] Dorsen and others (n. 6) 254.
[13] Christopher M Davis and others, 'Congressional Oversight Manual' (Congressional Research Service 2022) 8.

different political party than the president, and in parliamentary systems, if an investigative committee is established at the initiative of the political opposition. Irrespective of the given governmental system, parliamentary investigations may bring critical issues to the attention of the media and thereby allow for public scrutiny on the executive performance.[14]

### 1.2. Literature Review: The Features of PCIs in Comparison

Like any other parliamentary committees, investigative committees comprise a number of MPs. Instead of deliberating on a bill, these members investigate into a defined matter and (most likely) draft a report to summarize their findings and to make recommendations. PCIs have been subject to comparative analyses already. Since the start of the negotiations on the legal framework for the EP's investigative committees, the European Parliament's research service has published several studies on the right of inquiry, including one comparative analysis on PCIs in the EU Member States.[15] The study contains ten questions and the collected responses for twenty Member States, among which are questions on the legal basis and the scope of Member States' PCIs,[16] their investigative tools,[17] their capability to cooperate with other



[14] Ibid. 3.
[15] Eeva Pavy (n. 9) 121.
[16] Question 1: Does your parliamentary system provide for PCIs? If so, please specify the relevant legal basis/bases. Question 6: In which cases can your parliament start a procedure of inquiry? Question 9: Does your system allow for the continuation of an ongoing inquiry investigation when legal proceedings on the same facts are initiated after the setting up of the committee? If so, under which conditions?
[17] Question 2: Does your parliamentary system have the following investigative powers in the framework of parliamentary committees of inquiry? Question 3: From which bodies can PCIs request the information and documentation deemed necessary for the conduct of their proceedings? Question 4: In the framework of investigative hearings, who can be summoned by the Committee? Question 7: Do your parliamentary committees of inquiry have the possibility to adopt sanctions or to launch legal proceedings with regard to the following?

(supra)national institutions,[18] their liability[19] and the enforceability of their findings.[20] In all these questions, the study compares the legal frameworks of the Member States.

The study finds that almost all (except one)[21] of the examined national Parliaments can conduct inquiries and that most PCIs have their legal basis in the national constitution. With regard to the scope, the study found that most national frameworks allow for PCIs to be established on any matter of public interest. The two most frequent exceptions to this relative openness on the scope are the so-called *sub judice* rule (according to which PCIs cannot be established on a matter that is subject to judicial proceedings) and the restrictions in some federal states according to which a PCI can only investigate in areas of federal administration.[22] In the majority of the examined countries, PCIs are established *ad hoc* and cease to exist after a maximal time period/the completion of their investigation. Though, investigations can also be conducted by standing committees, for example in Sweden by the committee on the constitution.[23]

With regard to investigative tools, the study examined *inter alia* the PCI's capability to request documents and to summon witnesses as well as its capability to adopt sanctions or to launch proceedings for cases of false evidence or groundless refusal to give evidence. It found that most investigative committees can hear state officials and government members as well as other person residing in the EU.[24] Similarly, all of the examined countries foresee the abstract



[18] Question 5: Does your parliamentary system envisage the possibility to set up a committee of inquiry jointly with any other parliamentary assembly, national institution, supranational entity, any other entity?
[19] Question 8 on legal remedies for acts and omissions by PCIs which violate the rules of procedure or the rights of natural or legal person.
[20] Question 10: Which consequences/outcomes can PCIs have? Do they have a legally binding/enforceable nature?
[21] In Slovakia, the possibility the establish a committee of inquiry was abolished in 1996 as the Constitutional Court found that there was no legal basis for it. See: Eeva Pavy (n. 9) 27.
[22] Ibid.
[23] Ibid. 29.
[24] In some countries, like in Austria and Poland, only residents of the respective country can be requested to appear before the committee. Ibid. 32, 45.

possibility for PCI's to request documents - though the bodies, from which documents can be requested, may vary.[25] These broad investigative powers that are foreseen by the national frameworks are, however, often unsupported by sanctioning mechanisms: Whereas in some countries (like Belgium, Germany, France and Spain) groundless refusal to be heard or to provide documents as well as giving false evidence can be sanctioned, other countries (like Italy, Finland and Bulgaria) do not foresee any sanctioning power for PCIs.[26]

The study furthermore examined the Member States' PCI's capability to cooperate with other Parliaments/ institutions. This question is particularly relevant with a view to the EP's proposal to establish the possibility of cooperation between the EP's and national PCIs. However, the study found that the Member States examined do not foresee the possibility to establish a joint PCI with another parliamentary assembly or a (supra)national institution (like the EP). In some countries with bicameral Parliaments, though, the two chambers can form joint investigative committees (Italy, Romania and Spain).[27]

Finally, the study looks into the outcome of parliamentary investigations and attests that they generally do not have legally binding consequences, in the sense that the executive bodies would be obliged to implement their recommendations.[28] In the majority of Member States, PCIs draw up a final report which is discussed (and voted on) in plenary. The conclusions are usually published and/or forwarded to the competent authorities, only a few countries foresee



[25] The power to request documents from the Government is common to all PCIs. Most PCIs can furthermore request documents from public/ administrative authorities and agencies. Variations amongst the examined countries occur with regard to requesting documents from private persons and private entities. Ibid. 52–55.
[26] In Austria, PCIs can launch sanctions with regard to groundless refusal to appear or to provide documents but only the judicial authorities can launch the criminal proceedings against false evidence. Ibid. 72.
[27] Ibid. 60–63.
[28] In some countries (like Estonia, France and Czech Republic), the PCIs may forward their findings to the law enforcement authorities (public prosecutor's office). Ibid. 16.

the obligation for the executive authorities to report back on the implementation of the recommendations (France and Finland).[29]

Rather than by comparing the legal frameworks, as the above-mentioned study did, the practical effects of parliamentary investigations can be assessed by reviewing the changes that past investigative committees have provoked. Accordingly, Mathias Keppel drew up a qualitative case-study examining the effects of five different PCIs, three PCIs in Austria (the Hypo Alpe Adria committee, the Eurofighter committee and the BVT-committee of inquiry) and two PCIs in Germany (the NSA-committee and the NSU-committee of inquiry). He found that these committees were effective as they led to legislative changes and/or reforms of government institutions. They furthermore enhanced transparency and knowledge production as they provided food for public discussion. *Keppel* developed several hypotheses as regards to the factors that could enhance the likelihood of the government implementing the recommendations of the investigative committees, such as the formulation of more precise recommendation and the involvement of media and civil society. [30]



[29] Ibid. 16.
[30] Matthias Keppel, 'Political Control and Parliamentary Committees of Inquiry: Strengthening the Quality of Democracy' (2022) JOURNAL OF THE KNOWLEDGE ECONOMY 20.

## II. THE RIGHT OF INQUIRY IN FEDERAL SYSTEMS

As set out in the first chapter, the right of inquiry impacts the power balance between the legislative and the executive organs in the governance structure. Therefore, it concerns the *horizontal* separation of power. In federal countries, state power is not only divided horizontally but also *vertically*, between the national and the sub-national levels. This leads to a multiplication of carriers of governance power: In addition to the federal Parliament and government, each sub-unit has its own legislative assembly and executive body. The culmination of *horizontal* and *vertical* power division raises a few questions that are distinctive to the right of inquiry in federal countries:

Given that the national Parliament in a federal country is equipped with the right to form investigative committees, the question arises whether sub-national legislative assemblies can do so too. Due to the two layers of legislative and executive power, we may furthermore ask: Which government does one Parliament hold accountable? Can national PCIs scrutinize the performance of the sub-national executive? The answers to these questions may have implications for the fact-finding tools of investigative committees: Can the federal Parliament subpoena members of the sub-national government? Can it request documents from sub-national administrative authorities?

A related question arises through the federal distribution of competences: Most federal states' Constitutions foresee a distribution of competences by which specific policy matters are assigned for legislation / implementation to either the federal or the sub-national Parliament / government. In what way does the federal distribution of competences restrict the possible scope of a PCI? Can the federal Parliament investigate into matters that fall outside of its legislative scope? In the following, I will briefly outline how legislative and executive powers are divided between the national and sub-national levels in Austria and Germany.

Subsequently, I will elaborate how the Constitutions and the relevant statutory law in both countries frame the right of inquiry and its federal implications.

### 2.1. The Distribution of Competences in Austria and Germany

The Austrian distribution of competences is regulated in Article 10 to 15 of the Federal Constitutional Act (German: *Bundes-Verfassungsgesetz*, abbreviated B-VG).[31] It distinguishes four categories of policy matters: The first category, Art. 10, comprises more than 100 areas (including civil law, criminal law, trade, monetary and banking system, security and public order, industry and traffic etc.) that are entirely dealt with by the Federation: The federal Parliament adopts the laws in these areas and the federal government is responsible for their execution. Though, with regard to the federal execution it shall be noted that, according to Art. 102 (1) B-VG, the *Länder* governments and their subordinated authorities generally provide for the implementation of Art. 10 matters (where no dedicated federal offices exist).[32] Thereby, the *Länder* authorities are deemed to act as federal authorities. This so-called "indirect federal administration" (German: *mittelbare Bundesverwaltung*) does not change the categorization as federal execution because the *Länder's* governments are bound by instructions from the federal level and the federal executive remains legally and politically accountable.[33]

The second category (Art. 11) enumerates matters that are for the federal Parliament to legislate on but the implementation is up to the federal sub-units, the *Länder*. This includes policy areas such as citizenship, traffic police, inland shipping and animal protection. The third category



[31] The Austrian distribution of competences is known to be extremely complicated and fragmented. Constitutional provisions relevant for the distribution of competences can be found in several sections of the Austrian Constitutional Act but also in special statutory acts. For the sake of clarity, this chapter focuses on the basic structure of the Austrian distribution of competences. See: Anna Gamper, 'Die Bundesstaatliche Kompetenzverteilung in Österreich' in Anna Gamper and other (eds.) *Föderale Kompetenzverteilung in Europa* (Nomos Verlag 2016) 524.
[32] Art. 102 (2) B-VG lists matters in which dedicated federal authorities have to administer direct implementation.
[33] Walter Berka, *Verfasssungsrecht* (vol 6 Springer Verlag 2016) 127.

(Art. 12) foresees principal legislation on a federal level that is specified by implementing laws (and also implemented) by the *Länder*. Finally, Art. 15 B-VG contains a residual clause to the benefit of the *Länder*: All policy areas not explicitly listed in one of the other categories are within the *Länder's* competence to legislate on and to execute (such as tourism, sport, hunting and local zoning planning).[34]

The German Basic Law (German: Grundgesetz, abbreviated GG) contains a distribution of competences that is less fragmented than the Austrian. It is structured along the distinction of legislative (Art. 70 – 74 GG), executive (Art. 83 – 91 GG) and judicial competences and based on a residual clause to the benefit of the *Länder*: Art. 30 GG serves a similar purpose as Art. 15 B-VG as it stipulates that the exercise of state powers is a matter for the *Länder* unless otherwise provided or permitted by the Basic Law. It is a general residual clause for the benefit of the *Länder*.

Article 70 GG reiterates the logic of the residual clause with regard to the legislative power. The *Länder* may legislate insofar as the Basic Law does not confer legislative power on the federation. Though, the subsequent Articles equip the federal Parliament with broad legislative competences: Article 73 lists matters that are under the exclusive legislative power of the federation (such as foreign affairs, citizenship, freedom of movement etc.), the *Länder* may only legislate if expressly authorised by federal law. Article 74 is even broader, encompassing a wide range of matters (including civil law, criminal law, law of association, law relating to economic matters, labour law etc.) on which the *Länder* shall only legislate to the extent that the Federation has not exercised its legislative power.



[34] Ibid. 126–130.

With regard to the executive power, it is derived from Art. 30 GG that the *Länder* are solely responsible for the execution of *Länder* law.[35] Moreover, Art. 83 GG specifies that the authorities of the *Länder* shall also execute federal laws unless expressly provided otherwise (as in Art. 87 – 91 GG listing matters that are to be executed by federal administrative authorities). In effect, the widest range of policy matters is subject to federal legislation and *Länder* implementation.

For the execution of federal law by the *Länder*, Art. 84 GG foresees that the federal government shall exercise oversight "to ensure that the *Länder* execute federal laws in accordance with the law." In addition, Art. 85 GG foresees the possibility of the *Länder* executing federal laws on federal commission (for subject areas that are explicitly mentioned in the Basic Law). Thereby, the *Länder* authorities shall be subject to instructions from the competent federal authorities. Despite the similarities, the German models of "*Länder* administration – Federal oversight" and "execution by the *Länder* on federal commission" shall be distinguished from the Austrian "indirect federal administration": In the latter case, the Austrian federal government remains fully accountable[36] whilst in the German models, the federal executive is accountable only for the oversight that it conducted / the instructions it gave.[37]

### 2.2. The Right of Inquiry in Austria and Germany

In Austria and Germany, the right of inquiry is a minority right: Article 44 (1) of the German Basic Law as well as Article 53 (1) of the Austrian B-VG foresee the duty of the German *Bundestag* (Federal Diet) / the Austrian *Nationalrat* (National Council) to set up a committee of inquiry if a quarter of the members so demands. The Austrian and the German Parliament

[35] Ulrich Battis and Christoph Gusy, *Einführung in Das Staatsrecht* (6.edn. De Gruyter 2018) 156.
[36] Anna Gamper (n. 31) 568.
[37] Hermann Mangoldt, Friedrich Klein and Christian Starck, *Grundgesetz : Kommentar. Band 2, Artikel 20-82*, (vol. 7 C. H. Beck 2018) 1203.

are both bi-cameral: The German *Bundestag* and the Austrian *Nationalrat* consist of directly elected members. The second chamber, called *Bundesrat* (Federal Council) in both countries, comprises representatives of the *Länder*. Whereas the German *Bundesrat* is composed of members from the *Land* governments, the members of the Austrian *Bundesrat* are elected by the legislative assemblies of the *Länder.* In both countries, only the directly elected chamber (the *Bundestag* in Germany and the *Nationalrat* in Austria) can operate PCIs. The details on the creation, the procedures and the investigative tools are specified by statutory law: In Austria, they are contained in an annex to the National Council's Rules of Procedure (German: *Verfahrensordnung für parlamentarische Untersuchungsausschüsse*, abbreviated VO-UA), in Germany, they are regulated by the Committees of Inquiry Act (German: *Untersuchungsausschussgesetz*, abbreviated PUAG).

The Investigative Scope of the Austrian *Nationalrat* and the German *Bundestag*

Due to the federal structure in Austria and Germany, the scope of PCIs established by the federal Parliament is limited: According to Art. 53 (2) B-VG, the Austrian National Council may investigate "a certain completed process regarding matters in which the Federation is responsible for the implementation of laws."[38] Thus, it refers to the policy fields outlined in Art. 10 of the federal distribution of competences, containing a large set of matters that (are legislated on and) implemented by federal authorities.[39] The policy fields outlined in Art. 11, 12 and 15, however, are executed on *Länder* level and therefore excluded from the potential investigation area of the National Council as described by Art 53 (2) B-VG. The concrete subject of investigation for each PCI is to be specified in the resolution of the National Council

[38] Art 44 B-VG includes also administrative activities of federal offices that are performed by private law instruments such as contracts (the so-called *Privatwirtschaftsverwalung*). An examination of the judiciary is explicitly excluded. Walter Berka (n. 33) 185.

[39] A PCI of the National Council can also investigate into matters of indirect federal administration. See: Peter Bußjäger and Robert Kriechbaumer, *Das Februarpatent 1861: Zur Geschichte und Zukunft der österreichischen Landtage* (Bohlau Verlag Gmbh & Cie 2011) 202–204.

establishing the PCI (subsequent to a motion of at least five parliamentary members) or by the demand as formulated by one quarter of the members (see § 1 – 3 VO-UA).

In contrast, the wording of Art. 44 BL does not address the scope of *Bundestag* PCIs. Long-standing parliamentary practice has nevertheless developed a requirement of definiteness. The investigation subject of each PCI has to be clearly prescribed by the resolution establishing the PCI.[40] The German Committees of Inquiry Act serves as a basis for limiting the potential scope in line with the federal division of competences:[41] § 1 (3) PUAG stipulates that the investigative procedures are to be confined to "the area of competences of the Bundestag as provided for by the Constitution." It is thus derived that bodies of the *Länder*, notably the *Länder's* governments and their performance cannot be subject of a PCI established by the *Bundestag*.[42] Considering that the execution of all *Länder* laws (Art. 30 GG) as well as of the largest part of federal laws (Art. 83 GG) is provided by *Länder* authorities, this interpretation leaves the *Bundestag* to investigate on the execution of a relatively narrow set of policy fields (those outlined in Art. 86 – 91 GG). However, it shall be noted that where the federal authorities exercise oversight on *Länder* execution (as foreseen in Art. 84 GG) or give instructions to the *Länder* authorities (Art. 85 GG), the oversight conducted and the instructions given by the federal authorities can be subject to the investigation of the *Bundestag.* Thereby, the *Bundestag* can investigate indirectly into areas where federal laws are executed by *Länder* authorities.[43]



[40] Max-Emanuel Geis, 'Untersuchungsaussschuss' in Josef Isensee and others (eds.) *Handbuch des Staatsrechts der Bundesrepublik Deutschland Band III* (3rd edn. C. F. Müller 2005) 894.
[41] The potential investigation scope is limited in several ways: Acts of the judiciary cannot be reviewed and the so-called core area of executive self-responsibility is also shielded from parliamentary oversight. This thesis shall focus on the limitations on the PCIs scope that are related to the vertical division of powers. Ulrich Battis and Christoph Gusy (n. 35) 121.
[42] Max-Emanuel Geis (n. 40) 895. Hermann Mangoldt, Friedrich Klein and Christian Starck (n. 37) 1202.
[43] Max-Emanuel Geis (n. 40) 896. Hermann Mangoldt, Friedrich Klein and Christian Starck (n. 37) 1203.

Investigative Instruments of the Austrian *Nationalrat*

In order to gather evidence and information, it is essential that PCIs can request documents and summon persons to testify before it.[44] The Austrian Constitution, in Art. 53 (3) B-VG, points to the federal dimension of the power to request documents: "All executive bodies of the Federation, the *Länder*, the municipalities […] shall submit to a PCI, on demand, their files and documents to the extent to which these relate to the subject matter of the investigation and shall comply with the request of a PCI to take evidence in connection with the subject matter of the investigation." Apart from being confined to the defined investigation area of the respective PCI, the obligation to submit documents is limited in only two ways by the Constitution: It does not apply to documents whose disclosure would endanger national security (Art. 52a (2) B-VG) and where it would prejudice ongoing policy- and decision-making of the government (Art. 53 (4) B-VG).[45] In case an authority refuses to provide to requested documents, one quarter of the members of the PCI can ask the Constitutional Court to determine whether the refusal was lawful or not (Art. 138b (1) no. 4 B-VG).

The power to subpoena persons is regulated in detail by §§ 28 - 45 VO-UA which do not specify any limitations on summoning members or officials of the *Länder* governments or administrative bodies. Any person residing in Austria can be questioned by a PCI.[46] In cases of unexcused refusal to appear, the PCI can ask the Federal Administrative Court to impose a fine or may order that the informant will be brought before the Committee (§ 36 VO-UA). The Rules of Procedure for PCIs specify which types of questions are inadmissible (questions outside of the scope of the defined investigation area, questions that are vague, ambiguous,



[44] Other investigative instruments such as expert's hearings and fact-finding visits shall not be subject of this comparative analysis as they have fewer federal implications.
[45] The pertinent provision in the Rules of Procedure for PCIs, § 27 VO-UA, specifies one additional limitation: Files and documents of law enforcement authorities can only be submitted to the PCI by the federal minister of justice.
[46] § 34 VO-UA foresees only two exceptions: mentally disabled persons and clerics (regarding matters covered by their confidentiality obligations) cannot be questioned by a PCI.

captious etc.)[47] and the chair(wo)man of the PCI may decide on the admissibility of a question.[48] None of these limitations refer to the federal distribution of competences, in the sense that members of the *Länder* governments would be exempted from the obligation to answer questions regarding their area of executive competence.

A formal analysis of the pertinent legal provisions in Austria thus finds: Even though the investigative area of the federal Parliament is confined to matters that are executed on a federal level (Art. 53 B-VG), this restriction is not explicitly translated into a limitation of the investigative tools in the more detailed Rules of Procedure for PCIs. It is to be noted, of course, that PCIs, when requesting documents and posing questions, must stick to their defined purpose; and no PCI can be established on a subject matter that departs from the area of federal executive competences. Though, in the absence of more detailed provisions in the Rules of Procedure, the translation of the overall limitation of the scope into a restriction of investigative tools leaves room for interpretation.

The question has been raised most recently by the (at the time of this writing ongoing) parliamentary investigations on the corruption allegations against the Austrian People's Party (ÖVP).[49] The investigative committee decided to subpoena the governor of the *Land* Vorarlberg in order to clarify if the *Wirtschaftsbund* in Vorarlberg (a lobby association for entrepreneurs) has served to conceal party funding for the ÖVP.[50] Prior to the questioning of the governor, the ÖVP chairman in the investigative committee expressed doubts as to whether



[47] § 41 VO-UA.
[48] His/her decision can be challenged at the parliamentary arbitration board (§ 41 (4-5) VO-UA) which consists of the members of the Ombudsman (§ 57 VO-UA).
[49] Parlament Republik Österreich, ÖVP-Korruptions-Untersuchungsausschuss, <www.parlament.gv.at/PAKT/VHG/XXVII/A-USA/A-USA_00003_00906/index.shtml>accessed 6 June 2022.
[50] The *Vorarlberg Wirtschaftsbund* had its own print magazine which attracted large sums by selling advertisement space to a number of companies, most notably in the election year 2019. See: Lara Hagen, 'Welche Firmen warum für zehntausende Euro im Wirtschaftsbund-Magazin inserierten' (Der Standard 20 May 2022) <https://www.derstandard.at/story/2000135809256/welche-firmen-warum-fuer-zehntausende-euro-im-wirtschaftsbund-magazin-inserierten> accessed 6 June 2022.

the allegations against the *Wirtschaftsbund* in Vorarlberg were covered by the investigation subject.[51] According to news coverage, the ministry of Justice refused to deliver files on the matter arguing that the corruption allegations related solely to the *Land* level whereas the PCI was to investigate the actions of federal organs only. The retention of files was furthermore justified by claiming that there was no case of "indirect federal administration".[52] The latter statement aligns with the general view of the literature that the federal authorities remain accountable for areas of "indirect federal administration." The ministry had to justify that there was no case of "indirect federal administration" in order to claim that the requested files did not correspond to the investigation subject that is to be confined to areas of federal execution. Though, whether the retention of files was indeed justified would be for the Constitutional Court to decide (Art. 138b (1) no. 4 B-VG).

Investigative Instruments of the German *Bundestag*

The power of the German *Bundestag* to request documents is anchored in § 18 (1) PUAG according to which the federal government, the federal authorities and other federal administrative bodies are obliged to hand over files and documents requested by a PCI, subject to constitutional boundaries. Upon the request of one quarter of the committee, the Constitutional Court may rule on cases of non-compliance (§ 18 (3) PUAG). It is thus a similar regime as in Austria with the noteworthy exception that (unlike Art. 53 (3) B-VG) § 18 (1) PUAG does not explicitly bind the executive bodies of the *Länder*. Nevertheless,



[51] Christian Boehmer, 'Wallner wies im U-Ausschuss Vorwürfe einmal mehr zurück' (Kurier 6 January 2022) <https://kurier.at/politik/inland/u-ausschuss-spoe-chats-erst-im-jahr-2044/402027155> accessed 6 June 2022.
[52] Christian Boehmer, 'U-Ausschuss: Vorarlberg ist für die Justiz nicht Thema' (Kurier 31 May 2022) <https://kurier.at/politik/inland/u-ausschuss-vorarlberg-ist-fuer-die-justiz-nicht-thema/402026852> accessed 6 June 2022.

Art. 44 (3) GG which prescribes that administrative authorities (including those of the *Länder*) have to provide administrative assistance (so-called *Amtshilfe*) may serve as a substitute.[53]

Investigative committees set up by the *Bundestag* can summon any person residing in Germany and order coercive presentation or impose a fine in cases of groundless refusal of appearance (§ 20 PUAG). Similar to the Austrian VO-UA, the German PUAG stipulates that questions, which do not suit the respective investigation subject, are inadmissible (§ 20 PUAG).[54] In effect, the legal situation in Austria and Germany is very much comparable: The law does not explicitly specify limitations on the PCI's investigative tools that would refer to the vertical division of power. Such limitations can nevertheless be derived from the fact that the investigation subject is confined to federal execution.

According to handbooks on German constitutional law, the question whether *Bundestag* PCIs can subpoena *Länder* officials and request files from *Länder* governments was (initially) controversial, most notably with regard to the federal oversight on the *Länder* execution of federal laws (Art. 84 GG) and the execution by the *Länder* on federal commission (Art. 85 GG). According to the prevailing opinion in literature, the *Bundestag's* investigations can only review the way the federal authorities exercised oversight (in the case of Art. 84 GG matters) or the instructions they gave (in matters of Art. 85 GG).[55]

The German Federal Constitutional Court (FCC) addressed questions regarding the reach of *Bundestag* investigations in a case called *Neue Heimat*:[56] It concerned a *Bundestag* PCI set up in 1986 to investigate on the bankruptcy (caused by mismanagement) of the real estate



[53] The investigating judge of the Federal Supreme Court (not the Consitutional Court) decides on disputes regarding *Amtshilfe* (§ 18 (4) VO-UA). See: Hermann Mangoldt, Friedrich Klein and Christian Starck (n. 37) 1235.
[54] The chair(wo)man may be asked to refuse inadmissible questions. Ultimately the PCI (with two thirds of its members) may rule on the admissibility of a controversial question. (§ 25 VO-UA).
[55] Max-Emanuel Geis (n. 40) 896. Hermann Mangoldt, Friedrich Klein and Christian Starck (n. 37) 1203.
[56] BVerfG, 2 BvR 1178, 1179, 1191/86, 1 Oktober 1987.

company *Neue Heimat* which was owned by the German Trade Union Confederation.[57] The PCI had requested the records of the supervisory board of *Neue Heimat*. Thus, the real estate company claimed that the request infringed on its right to property (Art. 2 (1) in conjunction with Art. 14 and Art. 19 (3) GG). The Constitutional Court ruled that the administrative court could order the seizure of the documents as far as they concerned the investigation subject.[58] Thereby, the FCC affirmed that the investigation subject was legitimate as it did not fall within the sole responsibility of the *Länder*: "The investigation subject did not entail any review of *Länder* execution of federal laws but it concerned the conduct of the enterprise. The investigative authority of the *Bundestag* in relation to the *Länder* was due to several connecting factors: Firstly, it concerned the violation of federal law. Secondly, it concerned the federal budget. In addition, the activities of *Neue Heimat* concerned a number of tenants and employees in the whole federal territory."[59]

This case shows that complaints against the usage of investigative instruments (such as the power to request documents) are likely to entail a review on the legitimacy of the investigation subject in terms of its limitation to areas of federal administration. The investigation subject has to be justified as not falling within the sole responsibility of the *Länder*.

The Right of Inquiry on *Länder* level

In Austria as well as in Germany, each sub-national unit (*Bundesland)* has a legislative assembly called *Landtag*, which can form investigative committees too. In both countries, the right of inquiry is foreseen on a *Länder* level in each *Land* Constitution.[60] In accordance with



[57] Der Spiegel, 'Gut getarnt im Dickicht der Firmen' (Der Spiegel 7 February 1982) <https://www.spiegel.de/politik/gut-getarnt-im-dickicht-der-firmen-a-f707755d-0002-0001-0000-000014342289> accessed 7 June 2022.
[58] BVerfG, 2 BvR 1178, 1179, 1191/86, 1 Oktober 1987, para. 1.
[59] Ibid. para. 206.
[60] Though a detailed analysis of the *Länder's* provisions on the right of inquiry is not subject of this thesis, it shall be noted that the *Länder's* right of inquiry is designed to mirror the right of inquiry on national level. See: Barbara Leitl-Staudinger, 'Die Parlamentarischen Kontrollrechte Der Landtage - Bedeutung Und Perspektiven' in Peter

the federal distribution of competences, the *Länder's* PCIs can only investigate into the independent sphere of action of the *Land* administration. (For Austria, this means that areas of indirect federal administration cannot be subject to a PCI set up by one of the Austrian *Landtage.*)[61] Thus, the right of inquiry on federal and sub-national level is complementary in both countries: The federal Parliaments may investigate on the conduct of federal authorities and the *Landtage* may investigate on the conduct of *Länder* authorities.

### 2.3. Conclusions on the Right of Inquiry in Austria and Germany

Austria and Germany are comparable in many ways. They are both federal states and foresee in their Constitutions a distribution of legislative and executive powers among the federal and sub-national levels. The Austrian Constitution, in Art. 15 B-VG, as well as the German Basic Law, in Art. 30 GG, establishes that the *Länder* hold state powers and exercise legislative and executive competences by default. These provisions entail that *Länder* laws are generally executed by *Länder* authorities.[62]

In variance with the residual clause, the legislative competence regarding the most important policy matters is explicitly transferred to the federal legislator. In effect, both models imply that the federal Parliament has the broader legislative powers whereas the *Länder's* authorities deal with the bulk of administrative work.[63] In Germany, this is due to Art. 83 GG which stipulates that the *Länder* authorities shall execute (not only *Länder* laws but) also federal laws - unless explicitly provided otherwise. In Austria, this is because Art. 102 B-VG foresees that even areas of federal execution (Art. 10 B-VG) shall be executed through "indirect federal



Bußjäger, Robert Kriechbaumer and others (eds.) *Das Februarpatent 1861: Zur Geschichte und Zukunft der österreichischen Landtage* (Bohlau Verlag 2011) 196. For Germany see: Max-Emanuel Geis (n. 40) 896.

[61] Ludwig K Adamovich and others, *Österreichisches Staatsrecht Band 2: Staatliche Organisation* (vol. 4 Springer Verlag 2022) 68.

[62] The Austrian Constitution contains a few exceptions of *Länder* laws being executed by federal authorities: Art. 82 B-VG and Art. 21 B-VG. See: Anna Gamper (n. 31) 572.

[63] For Germany see: Ulrich Battis and Christoph Gusy (n. 35) 151. For Austria see: Walter Berka (n. 33) 126, 127.

execution" (unless explicitly provided otherwise), meaning that the *Länder* authorities act as if they were federal authorities.

Austria and Germany operate as parliamentary systems whereby the government is backed by a majority in the Parliament. The right of inquiry is designed to serve the political opposition, a PCI must be set up if one quarter of the members of the Austrian *Nationalrat* or the German *Bundestag* so demands. In addition, the *Landtage* in Austria and Germany may also operate investigative committees. They are complementary to the right of inquiry on federal level as they can investigate into areas that lie outside of the possible scope of federal PCIs (namely areas of independent administration by the *Länder*).

From the comparative analysis of the right of inquiry on federal level, it can be ascertained that the federal distribution of competences restricts the possible scope of investigations by the national Parliaments in Austria as well as in Germany. The scope of the federal Parliament's control function is not confined to its legislative competences. Rather, it is restricted to the executive competences of the federal government. This fact corresponds to the nature of the parliamentary right of inquiry being a tool to hold the executive accountable. Regarding Austria, it shall be noted that a large part of federal laws is executed through "indirect federal administration" which can be subject to investigation of a PCI established by the *Nationalrat*. In Germany, the execution of federal laws is mostly up to *Länder* authorities and therefore exempted from the possible investigative scope of the *Bundestag*. However, the German Constitution foresees the possibility of federal oversight (Art. 84 GG) and the "execution by the Länder on federal commission" (Art. 85 GG) whereby the oversight conducted by the federal authorities and the instructions given by federal authorities can be subject to an investigation by the *Bundestag*. This is how the *Bundestag* may investigate indirectly on *Länder* execution.

It can be observed that the reach of investigative tools is intrinsically linked to the admissible scope of parliamentary investigations. In Austria and Germany, the federal PCIs can request documents and question witnesses only as far as it relates to the investigation subject. The investigation subject (as specified in the resolution setting up the PCI) can only lie within the legitimate scope of investigation of the federal Parliament. The PCI's competence to request certain documents has thus raised the question whether the investigation thereby conducted was still within the realm of federal execution. A question that has to be evaluated on a case-by-case basis by the courts and often leaves room for interpretation.

## III. THE RIGHT OF INQUIRY IN THE EUROPEAN PARLIAMENT

In the final chapter of this thesis, the European Union comes into play as a third comparator. Considering that the right of inquiry is anchored in the Austrian and German constitutional texts, how does it play out in the EU's treaty based institutional set-up? In a first step, I will be looking for parallels between the EU institutions and the three branches of government (legislative, executive and judicial) of a nation state. In a second step, I will outline the division of competences in the EU and the EP's right of inquiry as it stands today. How does the legal framework differ from those in Germany and Austria? Finally, I will advocate for the comparability of the EU's system (by referring to literature on EU federalism) and the need for effective political control instruments in the EU.

### 3.1. Institutional Balance versus Separation of Powers

On EU level, the separation of powers doctrine is substituted by the principle of institutional balance. It was developed by the European Court of Justice in the so-called *Meroni* case[64] and is now anchored in Art. 15 (2) of the Treaty on the European Union (TEU) according to which "each institution shall act within the limits of the powers conferred on it in the Treaties." It is described as prohibiting "any encroachment by one institution on the powers of another."[65]

As the Austrian *Nationalrat* and the German *Bundestag,* the European Parliament is the only directly elected institution within the horizontal power division. According to Article 14 TEU, the European Parliament (EP) shall exercise functions of political control – in addition to the legislative and the budgetary functions that it exercises jointly with the Council of the EU (the

[64] Case 9/56, *Meroni,* [1958] ECR 11.
[65] Jean-Paul Jacqué, 'The Principle of Institutional Balance' (2004) 41 COMMON MARKET LAW REVIEW 384. See also 'Institutional Balance' as defined by EUR-Lex<https://eur-lex.europa.eu/EN/legal-content/glossary/institutional-balance.html#:~:text=The%20principle%20of%20institutional%20balance,with%20the%20division%20of%20powers.> accessed 12 June 2022.

Council). With the purpose of guaranteeing political accountability, the treaties have attributed several instruments to the European Parliament, including the right of interpellation (Art. 230 TFEU and Art. 36 TEU) and the right of inquiry (Art. 226 TFEU). Similarly to Parliaments in parliamentary systems such as Austria and Germany, the EP has appointment and dismissal power with regard to the executive branch: It elects the Commission President (Art. 14 TEU) on a proposal from the European Council (EUCO)[66] and may dismiss the Commission through a vote of no confidence (Art. 234 TFEU).[67] Whereas the European Parliament can thus be compared to the lower chamber of national Parliaments, the Council as a co-legislator could be seen as an upper chamber. As the Austrian and the German *Bundesrat* consist of the representatives of the *Länder*, the Council of the EU hosts the government members of the Member States. (It is most similar indeed to the German *Bundesrat* which consists of members from the *Länder* governments.)

However, the allocation of executive power in the EU renders political accountability a rather complex topic. Executive power is split between several institutions: The European Commission could be best compared with a government in a national setting. According to Art. 17 TEU it is tasked *inter alia* to promote the general interest of the Union, to oversee the application of the Treaties and of Union law, to exercise coordinating, executive and management functions. Also, the European Council is a carrier of executive power, defining the general political directions and priorities of the Union (Art. 15 TEU). It is composed of the heads of state and government of the Member States and thus cannot be compared to any institution foreseen by the Austrian or German Constitution. In addition, the Council takes part



[66] Note that the successful implementation of the *Spitzenkandidatensystem*, according to which the EUCO would automatically propose the candidate of the leading EP party as a Commission President, would move the EU system closer to a parliamentary system. Paul Craig and Grainne De Burca, *EU Law. Text, Cases and Materials* (Oxford University Press 2020) 84.

[67] Even though the Treaties do not foresee the power to dismiss individual Commissioners, the EP may ask the Commission President to ask a particular Commissioner to resign. Adriana Ripoll Servent, *The European Parliament* (Palgrave Macmillan 2018) 106.

in executive decision making in a way that can hardly be compared to the Austrian or German *Bundesrat*. According to Art. 16 TEU it shall carry out policy-making and coordinating functions alongside its legislative and budgetary functions. It uses opinions and resolutions as well as its power according to Art. 241 TFEU (to request the Commission to undertake studies an submit proposals to the Council) to influence the Commission when shaping legislative proposals. Generally, it shall be noted that the complexity of the EU's decision making necessitates various forms of inter-institutional collaboration, "from informal discussions concerning the shape of the legislative agenda to the use of inter-institutional agreements."[68]

Philipp Dann addressed this issue in his article "European Parliament and Executive Federalism: Approaching a Parliament in a Semi-Parliamentary Democracy" analysing the functions of the European Parliament along the ideal types of working Parliament (such as the U.S. Congress) and debating Parliament (such as the UK House of Commons). He argues that the EP is more closely related to the U.S. Congress than to the Parliaments in European parliamentary systems as it is separated from the executive branch[69] and centred around strong committees. Though, he continues to point to the differences between the U.S. Congress and the EP: With regard to the law-making function, he points out that the EP does not have the power to initiate legislation. With regard to the representative function, he claims that neither the parties nor the single parliamentarians in the EP manage to create an effective link with the citizens. The special role of the European Council and the Council, he goes on, also impairs the elective function of the EP because the Councils are "out of reach" for the EP. But the EP nevertheless has the power to dismiss the Commission, which is unlikely for a working



[68] Paul Craig and Grainne De Burca (n. 66) 74.
[69] This point might change if the *Spitzenkandidatinnen* system was implemented more stringently. Philipp Dann wrote this article in 2003.

Parliament. This so-called "negative appointment power" leads the author to the conclusion that the EP is to be categorised as a third type of Parliament: it is a "controlling Parliament".[70]

In effect, he classifies the EU as a "semi-parliamentarian system" characterised by a lack of executive accountability that is, in a way, necessary to maintain the functioning of the EU as a system of executive federalism: The principle of cooperation is imminent in the law-making as well as in implementation, it is rather a system of "separated institutions sharing powers" than a system of separated powers. "The lack of accountability is the life insurance for a consensual federal structure."[71]

### 3.2. The Division of Competences in the EU

The EU's competences are based on the principle of conferral: According to Art. 5 (2) TEU, the EU "shall act only within the limits of the competences conferred upon it by the Member States."[72] As Art. 4 TEU prescribes that any competences not transferred to the EU shall remain with the Member States, it can be compared to the residual clause for the benefit of the *Länder* in Art. 15 B-VG and Art. 30 GG.

The TFEU specifies three main categories of EU competences:[73] Within the area of EU exclusive competences, the Union may legislate and adopt legally binding acts whereas the Member States can only do so if empowered by the Union (Art. 2 TFEU). This category comprises only five policy areas (customs union; the establishing of the competition rules necessary for the functioning of the internal market; monetary policy for the Member States whose currency is the euro; the conservation of marine biological resources under the common



[70] Philipp Dann, 'European Parliament and Executive Federalism: Approaching a Parliament in a Semi-Parliamentary Democracy' (2003) 9 EUROPEAN LAW JOURNAL 572.
[71] Philipp Dann (n. 70) 561.
[72] Art. 5 para. 2 TEU.
[73] For the sake of simplicity, a mentioning of the specific competence allocation for economic, employment and social policy (Art. 2 para. 3 TFEU) and common foreign and security policy and defense (Art. 2 para. 3 TFEU) shall be omitted.

fisheries policy; common commercial policy) and it is the only category to which the principle of subsidiarity does not apply.[74] In the second category, the so-called shared competences, both the Union and the Member States may legislate but latter may do so only insofar the Union has not exercised its competence. It is described to be a default category as it applies to areas which do not fall under one of the other two categories (Art. 4 (1) TFEU).[75] Art. 4 ( 2) TFEU enumerates shared competences such as internal market, consumer protection, environment; a list that is deemed to be non-exhaustive.[76] Finally, the category of supporting, coordinating and supplementary action comprises policy fields (such as industry, culture, tourism, eduction etc.) in which the EU cannot harmonize the law but it can pass legally binding acts if empowered by specific Treaty provisions.[77]

Simona Piattoni, who generally advocates for the EU to be seen as a "federal entity" or "federal union", considers that the division of competences between the national level and the supranational level in the EU is "a major roadblock towards federalization." In "conventional federations, the federal centre is in charge of defence, justice, welfare, culture, fiscal and monetary policy while the federated units are in charge of most regulatory and distributive policies." In the EU, she points out, it is reversed.[78]

It shall be furthermore emphasised that, in contrast to the distribution of competences in Austria and Germany (as described in Chapter 2), Art. 2 - 6 TFEU concern only the allocation of legislative competences, they do not allocate any executive competences. This is a noteworthy point considering that the scope of the parliamentary right of inquiry in Austria and Germany



[74] According to the principle of subsidiarity, Union competences shall be exercised "only if and insofar as the objectives of the proposed action cannot be sufficiently achieved by the Member States" See Art. 5 (3) TEU.
[75] Paul Craig and Grainne De Burca (n. 66) 113.
[76] Note that the concrete division of competence in areas such as internal market, consumer protection, energy etc. is specified in other Treaty provisions. Paul Craig and Grainne De Burca (n. 66) 115.
[77] Ibid. 116.
[78] Simona Piattoni, 'Federalism and the EU'in John Loughlin and others (eds.) *Routledge Handbook of Regionalism and Federalism* (Routledge 2013) 548.

is linked to the areas of executive competences. The implementation of EU law is primarily the responsibility of the Member States[79] and the Commission is tasked to ensure the application of EU law (Art. 17 TFEU). As the Member States authorities implement EU law on behalf of / under the supervision of the Commission, this system can be compared to the implementation of federal law through *Länder* authorities in Austria and Germany (or the "indirect federal administration in Austria").

### 3.3. The European Parliaments Right of Inquiry

The European Parliament's right of inquiry is anchored in Art. 226 TFEU according to which the "the European Parliament may, at the request of a quarter of its component Members, set up a temporary Committee of Inquiry to investigate, without prejudice to the powers conferred by the Treaties on other institutions or bodies, alleged contraventions or maladministration in the implementation of Union law […]." Despite the fact that the setting up of the committee can be requested by a quarter of its members, it shall be noted that (unlike in Austria and Germany) the EP's right of inquiry is not a minority right. The decision to set up a PCI is still to be taken by the majority in Parliament and there is no obligation to do so if a quarter of its members demands.[80]

<u>The Investigative Scope of the EP's Committees of Inquiry</u>

Article 226 TFEU outlines the scope of the EP's right of inquiry in two significant ways: It provides that the EP may investigate "alleged contraventions or maladministration in the implementation of Union law." This limitation is, in itself, less restrictive than that imposed on the scope of PCIs of the Austrian *Nationalrat* and the German *Bundestag*. The federal

[79] Direct implementation through an EU agency is the rare exception. See: Stine Andersen, *The Commission's General Powers of Enforcement* (Oxford University Press 2012) 13.
[80] María Díaz Crego (n. 11) 5.

Parliaments in Austria and Germany are confined to investigate only executive actions of the federal authorities. The EP, on the other hand, is equipped with a right of inquiry that corresponds to its legislative scope: It can investigate into the implementation of Union law no matter whether Union law is implemented by the Member States' authorities or EU agencies. This corresponds to the fact that almost all Union law is implemented by the Member States and the EP's right of inquiry would otherwise be without application.

At the same time, the EP's right of inquiry is restricted as it is to be exercised "without prejudice to the powers conferred by the Treaties on other institutions or bodies." There is no comparable clause in Austria and Germany but it may be assumed that it refers to the power balance on a *horizontal* level (e.g. between the EP and the Commission) as well as to the power balance on a *vertical* level (between the supranational institutions and the Member States).

The Investigative Tools of the EP's Committees of Inquiry

The details on the EP's right of inquiry are fleshed out in an inter-institutional agreement: Decision 95/167/EC, Euratom, ECSC of the European Parliament, the Council and the Commission on the detailed provisions governing the exercise of the European Parliament's right of inquiry (hereinafter: Decision 95/167/EC).[81] It is a relic of the past because it was based on Art. 138c of the Treaty establishing the European Community (the predecessor of Art. 226 TFEU) which prescribed that "the detailed provisions governing the exercise of the right of inquiry shall be determined by common accord of the European Parliament, the Council and the Commission."



[81] Corrigendum to the Decision of the European Parliament, the Council and the Commission of 6 March 1995 on the detailed provisions governing the exercise of the European Parliament's right of inquiry OJ L 113 19/05/1995 P. 0001 – 0004 <https://eur-lex.europa.eu/eli/dec/1995/167/oj> accessed 17 June 2022.

The power to request documents is set out in paragraph 4 of Article 3 of Decision 95/167/EC: "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." Paragraph 6 furthermore specifies that EU institutions or bodies shall not forward any documents originating from the Member States without informing the MS beforehand / obtaining the consent of the MS concerned.

Decision 95/167/EC distinguishes three categories of informants: Members of EU institutions or MS governments, officials and servants of EU institutions or MS and any other persons. Regarding the first category, Art. 3 para. 2 foresees that the PCI *may invite* EU institutions and MS governments to designate a member to take part in the proceedings. Regarding the second category, paragraph 3 sets out that "upon a reasoned request" by the committee, the MS / the EU institution concerned shall designate an official or servant to appear before the committee. It is to be noted that 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".

On the one hand, it can be derived from the above-mentioned rules that the EP may gather evidence not only from the EU institutions but also from the Member States. However, the investigative tools of the EP are much restricted for the benefit of the other EU institutions and for the benefit of the Member States in particular: Requested documents can easily be withheld by referring to grounds of secrecy and there is no obligation to justify the retention of documents.[82] Whereas the Austrian and German rules foresee the competence of the

[82] María Díaz Crego (n. 11) 9.

Constitutional Court to decide whether withholding documents was justified, there is no equivalent mechanism foreseen by Decision 95/167/EC.

Unlike the Austrian *Nationalrat* and the German *Bundestag*, the EP has no real right to subpoena witnesses. It cannot impose a fine or arrange for the coercive presentation of a witness. Though in principle, MS are be obliged to cooperate with an EP committee of inquiry (for example by designating an official to appear before the committee), the lack of sanctioning mechanisms renders the EP's power to summon witnesses toothless. At this point, it shall be emphasized that Decision 95/167/EC does not pose an appropriate legal basis for establishing a sanctioning mechanism *vis a vis* individuals. As it is an inter-institutional agreement, it binds only its signatories: the EP, the Council and the Commission.[83]

The EP's Struggle for a New Regulation

Decision 95/167/EC is still in force despite the fact that the new legal basis in Art. 226 TFEU provides for the creation of a Regulation that would be directly applicable also in the Member States. According to the special legislative procedure foreseen in Art. 226 TFEU, the EP may propose a text for the Regulation on the detailed provisions on the exercise of the right of inquiry. It requires the consent of the Council and the Commission to be put in force.

The EP adopted a first proposal in May 2012, it contained *inter alia* more stringent rules on the EP's investigative tools but failed to attract the consent of Council and Commission.[84] Subsequently, the EP committee on constitutional affairs (AFCO) was given the mandate to continue informal negotiations with the Council and the Commission. During the 2014 – 2019 parliamentary term, it produced three working documents, the third of which contained a new

[83] María Díaz Crego (n. 11) 3. See in this sense the judgment of 26 February 2002, Rothley e.a. v Parliament, T-17/00, EU:T:2002:39, paragraphs 53 et 54 and the case-law cited therein.
[84] Proposal for a regulation of the European Parliament 2009/2212(INL) (n. 1).

wording for the proposal on the Regulation on the EP's right of inquiry, the so-called non-paper. It was endorsed by the AFCO committee in April 2018 and poses the latest stance of the EP.[85]

Article 19 of the non-paper of the AFCO committee would empower the EP to request documents not only from MS authorities, EU institutions and bodies but also from any other legal or natural person (who is not tasked with the implementation of EU law). In addition to inviting members of EU institutions and MS governments and requesting the appearance of EU and MS officials and servants, the non-paper would foresee that any other person could be summoned to appear before the committee (Art. 18). Most importantly, the non-paper envisions the obligation of the Member States to ensure that groundless refusal to provide the requested documents and groundless refusal of natural persons to be heard will be "subject to the same sanctions provided for in national law for analogous conducts as regards the work of committees of inquiry in the national parliaments" (Art. 21 (2)).[86]

Though, also the new wording laid down in the non-paper is unlikely attracting the required consent. In October 2018, the Council Presidency, in a letter to the chair of the AFCO committee, expressed its opposition to the text of the non-paper. Amongst other points, it stated that Art. 226 TFEU did not pose an adequate legal basis for the mandatory summoning of private persons or for the power to request documents from any natural persons. These tools, so the Council argues, would be "quasi-judicial." It furthermore claims that the provisions on the hearing of members of MS governments and MS officials are highly problematic in light of the sanctioning mechanisms laid down in Art. 21 of the non-paper: These would "interfere in the sovereignty of the Member States and affect the national constitutional balance between

[85] María Díaz Crego (n. 11) 22.
[86] Third Working Document PE630.750v01-00 (n. 2).

the government and the national parliament."[87] In general, Art. 21 is most problematic as it "seems to alter the institutional balance in favour of the Parliament". Furthermore, it would require that Member States to lay down criminal sanctions for non-compliance in their respective national law and Art. 226 TFEU, so the Council argues, is not an appropriate legal basis for such an obligation: Criminal law is a matter of Member States competence.[88] Also the Commission stated its objections during the plenary discussion on the right of inquiry on 8 June 2021: Commissioner Schmitt regretted that the non-paper is still the latest stance of the European Parliament. By referring to the limitation laid down in Art. 226 TFEU, he pointed out that the EP's right of inquiry shall be "without prejudice to the powers conferred by the Treaties to the other institutions."[89]

### 3.4. Political Control within a Federal Entity / Federation of States

The above-mentioned statements of the Council and the Commission on the AFCO non-paper suggest that equipping the EP with similar investigative powers as the Austrian *Nationalrat* or the German *Bundestag* would be inherently incompatible with the system of institutional balance of the EU. However, this argument seems flawed considering that the institutional balance doctrine serves the same purpose as the separation of powers in Austria and Germany: to prevent the encroachment of one governance institution onto the power of another and to thereby protect the individual from arbitrary/ uncontrolled exercise of power. It does not prevent the Austrian *Nationalrat* or the German *Bundestag* to impose sanctions for the unexcused refusal of a witness to appear before the committee of inquiry.



[87] Letter from N. Marschik, Chairman of the Permanent Representatives Committee to Danuta Maria Hübner, Chair of the Committee on Constitutional Affairs (25 October 2018).
[88] Ibid.
[89] Plenary Debate on the Right of Inquiry (n. 3).

Most evidently, the European Union differs from Austria and Germany as it is not a federal state. Unlike the *Bundesländer* in Austria and Germany, the Member States of the European Union remain sovereign. Comparing the European Union to federal states is a contested endeavor. Nevertheless, several authors have engaged in analyzing the linkage between federalism and the EU: Simona Piattoni, advocates for disconnecting the adjective "federal" from the noun "state". She acknowledges that the increased federalization of the European Union was rejected through the failed ratification of the Constitutional Treaty in 2007. Nevertheless, she argues that the EU could be considered a "federal entity" or "federal union" and underlines this by arguing that federalism is even older than the concept of nation states. She furthermore engages with the noun multi-level governance and finds that "while federalism focuses on the institutional structure that sustains inter-jurisdictional relationships" studies on multi-level governance may focus on "how inter-jurisdictional relationships may incrementally form or transform the institutional structure." [90]

Robert Schütze, in his book "From Dual to Cooperative Federalism" describes the European Union as a "Federation of States". He elaborates about how the meaning of "federalism" has changed over time and space and points out that, at the time of the emergence of the United States of America, federalism was conceived to be a "mixed structure between international and national organisation."[91] He argues that the same concept applies to the European Union: its structure is "neither a national nor an international Constitution, but a composition of both."[92] Moving on to the question, what type of federation the EU is, he focuses on the exercise of the legislative power by the EU and finds that it is a system of "cooperative federalism" in which sovereignty is shared. The idea of cooperative federalism, so Schütze, is

[90] Simona Piattoni (n. 78) 552.
[91] Robert Schütze, *From Dual to Cooperative Federalism : The Changing Structure of European Law* (Oxford University Press) 69.
[92] Ibid. 58.

embodied by the principle of subsidiarity and the presence of complementary competences: According to the principle of subsidiarity "social problems cannot be boxed into neat competence categories, but should be allocated according to the problem-solving capacity."[93] Complementary competences "permit the co-existence of stricter national laws or limit the Community's legislative action to supplement or complement the national legislator."[94] Though such a fluid understanding of competences may raise concerns regarding political accountability. The question of "who is responsible for what" cannot be answered by simply looking at policy fields.[95]



[93] Ibid. 347.
[94] Ibid.
[95] Ibid. 349.

## CONCLUSION

This thesis demonstrates that the interrelation between the *vertical* and the *horizontal* division of powers offers food for thought. I based this comparative analysis on the assumption that political control mechanism, as a form of safeguards against arbitrary exercise of power, are vital not only within a nation state setting but also within a federal system such as the EU. Thus, I engaged in a comparative analysis that might be controversial: to compare the EU to federal states. However, the focus on specific legal provisions governing the parliamentary right of inquiry in Austria, Germany and the EU has brought about a couple of interesting findings.

The second chapter starts by comparing the federal distribution of competences in Austria and Germany before diving into the concrete constitutional and statutory provisions on the right of inquiry. This approach has proven successful to track the restrictions that the federal distribution of competences imposes on the scope of the national Parliaments' investigations. The investigative competences of the Austrian *Nationalrat* and the German *Bundestag* are, in their scope, restricted to areas of (direct) federal execution. Though, this restriction does not translate into a limitation of their investigative tools at hand. They may nevertheless subpoena members of *Länder* governments and request documents from *Länder* authorities. Most importantly, they can enforce their investigative tools through coercive measures. The question, whether the exercise of these tools bursts into the sphere of the *Länder*, can then be raised in court.

In contrast, the European Parliament is equipped with a right of inquiry that corresponds to its legislative scope. This is only logical, considering that the implementation of EU law is almost exclusively up to the Member States. Art. 226 TFEU foresees a different kind of limitation according to which the EP's right of inquiry shall be "without prejudice to the powers conferred

by the Treaties on other institutions or bodies." It is, in my opinion, an ominous clause that can refer to the horizontal as well as to the vertical distribution of power. It is, in fact, used to deny the European Parliament the same investigative tools as the Austrian and the German Parliament dispose. As Art. 226 TFEU stipulates that the wording of the new Regulation on the EP's right of inquiry needs to be accepted by the Council and the Commission, an enforcement of the EP's investigative tools is practically out of sight.

The comparative analysis in this thesis faces its limitations where it attempts to comprehend the whole context in which the EP's investigative committees operate. Seeing the EU as a federal entity / federation of states does not automatically entail that the EP shall be equipped with exactly the same investigative powers as the Austrian *Nationalrat* or the German *Bundestag*. Nevertheless, we can find that questions of accountability and political control arise not only within federal states but also in the EU. This opens up a wide field of research on the allocation of political control powers in federal (or supranational) systems. We can observe that not only the EP but the EU as a whole has been struggling for effective tools of political control when dealing with so-called rule-of-law-backsliding countries: Art. 7 (TEU) procedures have been launched against Hungary and Poland but the unanimity requirement in the Council precludes the application of Article 7 sanctions. Meanwhile, infringement proceedings (Art. 258 TFEU), a legal instrument, have partly served as a substitute. In my opinion, the complexity of EU decision-making entails a deficit of political control mechanisms. Enforcing the EP's control power may be one way to fill the gap.

## BIBLIOGRAPHY (INCLUDING SECONDARY LITERATURE)


Andersen S, *The Commission's General Powers of Enforcement* (Oxford University Press 2012).

Adamovich L and others, *Österreichisches Staatsrecht Band 2: Staatliche Organisation* (4. Auflage, Springer Verlag 2022).

Becker P and Lippert B, *Handbuch Europäische Union* (Springer Fachmedien Wiesbaden 2020) <http://link.springer.com/10.1007/978-3-658-17409-5>.

Battis U and Gusy C, *Einführung in das Staatsrecht* (De Gruyter 2018).

Berka W, *Verfasssungsrecht - Grundzüge des österreichischen Verfassungsrechts für das juristische Studium*, (Springer Verlag 2016, volume 6).

Böckenförde E-W, 'Parlamentarische Untersuchungsausschüsse und Kommunale Selbstverwaltung' (1978) 103 ARCHIV DES ÖFFENTLICHEN RECHTS 1.

Bräcklein S, *Investigativer Parlamentarismus: parlamentarische Untersuchungen in der Bundesrepublik Deutschland und den Vereinigten Staaten von Amerika* (Duncker & Humblot 2006).

Bußjäger P and Kriechbaumer R, *Das Februarpatent 1861: Zur Geschichte und Zukunft der österreichischen Landtage* (Bohlau Verlag 2011).

Benoît C and Rozenberg O, *Handbook of Parliamentary Studies. Interdisciplinary Approaches to Legislatures* (Edward Elgar Publishing 2020).

Bischof G and Karlhofer F, *Austrian Federalism in Comparative Perspective* (Innsbruck University Press 2015).

Christian Böhmer, 'Wallner wies im U-Ausschuss Vorwürfe einmal mehr zurück' (Kurier, 6 January 2022) <https://kurier.at/politik/inland/u-ausschuss-spoe-chats-erst-im-jahr-2044/402027155> accessed 6 June 2022

Christian Böhmer, 'U-Ausschuss: Vorarlberg ist für die Justiz nicht Thema' (Kurier, 31 May 2022) <https://kurier.at/politik/inland/u-ausschuss-vorarlberg-ist-fuer-die-justiz-nicht-thema/402026852> accessed 6 June 2022

Closa C and Kochenov D, *Reinforcing Rule of Law Oversight in the European Union* (Cambridge University Press 2016).

Díaz Crego Maria, 'The European Parliament's Investigative Powers: Committees of Inquiry in Context' (2021) EUROPEAN PARLIAMENT, DIRECTORATE-GENERAL FOR PARLIAMENTARY RESEARCH SERVICES <https://data.europa.eu/doi/10.2861/53430>.

De Búrca G and Craig P, *EU Law. Text, Cases and Materials* (Oxford University Press 2020).

Der Spiegel, 'Gut getarnt im Dickicht der Firmen' (Der Spiegel, 7 February 1982) <https://www.spiegel.de/politik/gut-getarnt-im-dickicht-der-firmen-a-f707755d-0002-0001-0000-000014342289> accessed 7 June 2022.

Davis C and others, *Congressional Oversight Manual* (Congressional Research Service 2022) <https://sgp.fas.org/crs/misc/RL30240.pdf>.

Dorsen N and others, *Comparative Constitutionalism: Cases and Materials* (West Academic 2010, 2nd edition).

Fromage Diane, 'The European Parliament's Right of Inquiry in Context - A Comparison of the National and European Legal Frameworks' (2020) EUROPEAN PARLIAMENT, POLICY DEPARTMENT FOR CITIZENS' RIGHTS AND CONSTITUTIONAL AFFAIRS, DIRECTORATE-GENERAL FOR INTERNAL POLICIES <https://www.europarl.europa.eu/thinktank/en/document/IPOL_STU(2020)648708>.

Folz H-P, 'Die Kompetenzverteilung zwischen Der EU und ihren Mitgliedsstaaten nach föderalen Maßstäben' in Anna Gamper and others, *Föderale Kompetenzverteilung in Europa* (Nomos Verlag 2016).

Francesco Palermo, 'What Does the EU Tell Us about Federalism?' <http://50shadesoffederalism.com/theory/what-does-the-eu-tell-us-about-federalism/> accessed 10 June 2022.

Gamper A, *Die Bundesstaatliche Kompetenzverteilung in Österreich*, Föderale Kompetenzverteilung in Europa (Nomos Verlag 2016).

Geis M-E, 'Untersuchungsaussschuss' in Josef Isensee and others (eds.) Handbuch des Staatsrechts der Bundesrepublik Deutschland Band III (3rd edn. C. F. Müller 2005).

Gröpl C, *Staatsrecht I*, (vol 9 CH Beck 2017).

Helene Helboe Pedersen, Darren Halpin and Anne Rasmussen, 'Who Gives Evidence to Parliamentary Committees? A Comparative Investigation of Parliamentary Committees and Their Constituencies' (2015) 21 JOURNAL OF LEGISLATIVE STUDIES 408.

Jean-Paul Jacqué, 'The Principle of Institutional Balance' (2004) 41 COMMON MARKET LAW REVIEW 383.

Lara Hagen, 'Welche Firmen warum für zehntausende Euro im Wirtschaftsbund-Magazin inserierten' (Der Standard 22 May 2022) <https://www.derstandard.at/story/2000135809256/welche-firmen-warum-fuer-zehntausende-euro-im-wirtschaftsbund-magazin-inserierten > accessed 6 June 2022.

Michael Shackleton, 'The European Parliament's New Committees of Inquiry: Tiger or Paper Tiger' (1998) 36 JOURNAL OF COMMON MARKET STUDIES 115.

Mager U, 'Das Neue Untersuchungsausschussgesetz des Bundes - Parlamentarische Organisation von Kontrolle durch Publizität' (2002) 41 DER STAAT 597.

Mangoldt H, Klein F and Starck C, *Grundgesetz : Kommentar. Band 2, Artikel 20-82* (vol. 7 C. H. Beck 2018) 1203.

Matthias Keppel, 'Political Control and Parliamentary Committees of Inquiry: Strengthening the Quality of Democracy' (2022) JOURNAL OF THE KNOWLEDGE ECONOMY.

Nikos Skoutaris, From Dual to Cooperative Federalism (2011) 7 EUROPEAN CONSTITUTIONAL LAW REVIEW 325.

Pavy Eeva, 'Committees of Inquiry in National Parliaments - Comparative Survey' (2020) EUROPEAN PARLIAMENT, POLICY DEPARTMENT FOR CITIZENS' RIGHTS AND CONSTITUTIONAL AFFAIRS, DIRECTORATE-GENERAL FOR INTERNAL POLICIES

<https://www.europarl.europa.eu/RegData/etudes/STUD/2020/649524/IPOL_STU(2020)649524_EN.pdf>.

Philipp Dann, 'European Parliament and Executive Federalism: Approaching a Parliament in a Semi-Parliamentary Democracy' (2003) 9 EUROPEAN LAW JOURNAL 549.

Pascale Cancik, 'Vom Charme Formaler Anknüpfungen im Parlamentsrecht' (2010) 49 DER STAAT 251.

Obwexer W, 'Kompetenzverteilung in Der Europäischen Union' in Anna Gamper and others, *Föderale Kompetenzverteilung in Europa* (Nomos Verlag 2016).

Simona Piattoni, 'Federalism and the EU' in John Loughlin and others, *Routledge Handbook of Regionalism and Federalism* (Routledge 2013).

Schütze R, *From Dual to Cooperative Federalism : The Changing Structure of European Law* (Oxford University Press 2009).

Servent A, *The European Parliament* (Palgrave Macmillan 2018).