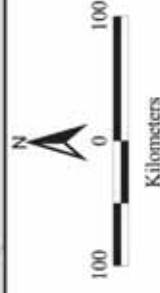


Republic of Austria

Capital: Wien (Vienna)
Population: 8.2 Million
(2002 est.)

Boundaries and place names are representative only and do not imply official endorsement.



Sources: CIA World Factbook;
Times Atlas of the World; ESRI Ltd.

Austria*

(Federal Republic of Austria)

ROLAND STURM

1 HISTORY AND DEVELOPMENT OF FEDERALISM

The Austrian Republic is a central European state (83,858 km²) with 8.1 million inhabitants (2002). It is the successor state of the Austrian-Hungarian Empire (1867–1918), which was a multinational empire, but had no federal structure. In 1918 Emperor Charles I, who ruled Austria from 1916–18, promised that he would introduce federalism in order to accommodate the diverse aspirations of the nationalities living in the Austrian-Hungarian Empire. His manifesto to the peoples of Austria (*Völkermanifest*) came, however, too late to have any practical consequences. It was not proclaimed until the last few weeks of the First World War and four days before the break-up of the Empire.

The first republic (1918–33/34) which succeeded the Empire adopted a federal constitution. This constitution of 1920, which is still in force today, was a compromise between the political intentions of the conservative Christian Social Party and those of the Social Democrats. Whereas the latter wanted a strong central power, the Christian Social Party favoured a high degree of state (*Land*) autonomy. Early Austrian federalism provided some disruptive effects on the unity of the country because it set the stage for bitter political conflict between the parties. It

* The Forum of Federations would like to thank Peter Bussjäger and Anna Gamper for their helpful comments on this article in the first edition of this volume.

became a forum for the battle of conservative state governments against the Land of Vienna, the national capital, which was social democratic.

The constitution itself was revised several times and every revision contributed to a strengthening of the federal level of Austrian politics. An agreement on the division of competencies in financial affairs was reached in 1922 and came into effect in 1925. (It must be noted, however, that today's division of financial jurisdiction is based on the *Financial Constitutional Act of 1925*.) In 1925 a decision was made on the internal administration of the Länder and on their competency in the field of public education (revised in a 1962 act). In 1929 the role of the political centre in Austrian politics was strengthened even more by the introduction of a directly elected head of state, a federal President. It was even decided to reform the Bundesrat, the Second Chamber, and to add to the representatives of the states the representatives of the major social groups of society (*Stände*).

The latter reform was not implemented, but it indicated the growing influence of anti-democratic thought which culminated in the new Austro-fascist constitution of 1934. The government became the legislator and several appointed institutions, among them a Council of the States (*Länderrat*), were entitled to agree or disagree but not to change legislation. Even this limited control of the government was, however, irrelevant, because Austria was ruled simply by orders of government. In 1938 German troops occupied Austria, and the country was incorporated into Nazi Germany as the "Ostmark" of the Third Reich.

In 1945, after the defeat of Nazi Germany, the constitution (*Bundesverfassungsgesetz*) of 1920 with all its revisions and the pre-1934 legislation were reinstated. Austria once again became a federal state. In the 1960s and 1970s the Austrian Länder tried to stop the trend towards ever greater centralization of power in Austrian politics. Although they succeeded in bringing about some constitutional change which strengthened their position vis-à-vis the federal government, Austria remains a country of "unitary" federalism – i.e., a country in which regional power is clearly subordinated to federal power.

In 1955 Austria regained its sovereignty in exchange for a constitutional guarantee of its permanent neutrality. In the same year the country became a member of the United Nations. Austria joined the Council of Europe in 1956, was co-founder of the European Free Trade Association (EFTA) in 1960, and became a member of the European Union (EU) in 1995.

2 CONSTITUTIONAL PROVISIONS RELATING TO FEDERALISM

The Austrian constitution is a long and detailed document which includes provisions not only on the tasks, but also on the institutional

framework of the Länder (states) and on local government. Article 2 of the constitution stipulates that Austria is a federal state which consists of nine autonomous Länder, namely Burgenland, Carinthia, Lower Austria, Upper Austria, Salzburg, Styria, Tirol, Vorarlberg and Vienna. Special provisions are made for Vienna. In Vienna the county Parliament has the additional function of a state Parliament, the town Senate has the function of a state government and the Mayor the function of a Governor (Article 108).

The legislation of the states is carried out by the state Parliaments (Article 95). In theory, the states could have wide-ranging powers because Article 15 gives them power over all matters not expressly assigned to the federation. Article 16 allows them even to engage in foreign policy. They are allowed to make treaties with neighbouring territories in matters which fall into their autonomous sphere of competence, although the federal government supervises the process and must consent to the treaty.

In practice, constant revisions of the constitution strengthened the federation. This was facilitated by the fact that for most of its post-war history Austria was governed by grand coalitions which could easily muster the two-thirds majorities in both houses of Parliament necessary for constitutional change. Only a two-thirds majority of the members of the National Council, and a simple majority of the members of the Federal Council, has to consent in order to pass a federal constitutional bill. Since 1984 a two-thirds majority of the Federal Council has been required, but only if such bills restrict Länder jurisdiction. According to Article 98 of the constitution, the federal government may object to a bill passed by a state Parliament, but the bill can nevertheless come into force if the state Parliament passes it a second time with a vote of at least half of its membership.

The central government possesses many of the most important powers in the federation, including all judicial powers, responsibility for the police and the military, and control of public accounts and the administration of public funds on all levels of government (Articles 121–128). (Article 127(c), however, allows the Länder to establish their own Courts of Auditors.) Public administration is above all organized as “*mittelbare Bundesverwaltung*” (indirect federal administration, Articles 102 and 103). This means that, when he/she executes federal law, the state Governor (*Landeshauptmann*) is bound by instructions from the federal government and individual federal ministers.

The states have also lost out financially. The constitution does not define tax-raising powers. This is left to federal legislation which cannot be vetoed by the states (*Fiscal Adjustment Act*). As a result the states have almost no tax income of their own and depend on tax income

shared by the federation or transfer payments by the federation. Today's federalism is strongly centralized but, nonetheless, based on the cooperation of the federal government and the Länder.

This cooperation finds its expression above all in the administration of federal laws by the Länder. The constitution distinguishes four kinds of legislation: (1) federal legislation executed by the federal government, for example in the fields of foreign policy, banking, peace, order and security, and trade and industry (Article 10); (2) federal legislation executed by the Länder, for example in the fields of nationality and right of citizenship, national housing affairs, highway police, sanitation or some aspects of inland shipping (Article 11); (3) Federal Framework Legislation in which the Länder have to issue implementing laws and have to provide the administration, for example in the fields of social welfare policies, land reform or some aspects of labour legislation (Article 12); and (4) Land legislation executed by the Land.

The Länder have a role in federal legislation. With a few exceptions, no law can be made without the consent of the Second Chamber of Parliament, the Bundesrat (Article 42). In the Bundesrat all states are represented in proportion to the number of nationals in each of them (Article 34). The state with the largest number of citizens delegates 12 members, every other state receives as many as the ratio in which its nationals stand to those in the first-mentioned state. Each state is entitled to at least three representatives. The number of representatives of each state is determined by the federal President after every general census which is usually held at 10-year intervals.

The members of the Bundesrat are elected by the state Parliaments for the duration of their respective legislative periods in accordance with the principle of proportional representation, but at least one seat must fall to the party having the second largest number of seats in a state Parliament or, should several parties have the same number of seats, the second highest number of votes at the last election to the state Parliament. When the claims of several parties are equal, the issue is decided by lot. The members of the Bundesrat need not belong to the state Parliament which delegates them, but they must be eligible for that state Parliament (Article 35).

As the members of the Bundesrat are selected by political parties, their first loyalty is to the party and not to the government of the state from which they come. In the Bundesrat they do not form state caucuses, but join their respective party group. These party groups do not form parliamentary parties of their own, but belong to one party group together with the members of the First Chamber of Parliament, the Nationalrat, and follow the instructions they are given there. The

political parties believe it would damage their political image if their representatives in the Second Chamber held views different from those of their colleagues in the First Chamber. This is further evidence of the low esteem in which Land identities are held in the Bundesrat and the subordinate role of the Bundesrat in federal politics.

A mild corrective which allows the expression of regional interests is the constitutional provision of Article 36(4). This provision gives the Governors the right to participate in the deliberations of the Bundesrat. They may even demand to be heard when topics are debated which concern their state. But they are not involved in the decision-making process.

A veto of the Bundesrat can only delay legislation, it cannot stop it. If the First Chamber of Parliament, the Nationalrat, in the presence of at least half its members once more carries its original resolution, this becomes law. In 1984 the constitution was revised and Article 44(2) was introduced which defines an exception to this rule. Constitutional changes which restrict Länder jurisdiction today need the consent of a two-thirds majority of the Bundesrat in the presence of at least half its members. The same majority is needed if the federal President follows the recommendation of the federal government and plans to dissolve a Land Parliament (Article 100). The representatives of the Land in question are not allowed to take part in this vote.

The Bundesrat is also involved in decisions which Parliament takes as a whole. The Bundesrat and the Nationalrat sit together as the Federal Assembly (*Bundesversammlung*) when the directly elected federal President is sworn in and for the adoption of a resolution on a declaration of war (Article 38).

The Constitutional Court is a joint institution of the federation and the Länder. It pronounces on conflicts of jurisdiction between the states as well as between the states and the federation (Article 138). Three of the 14 members of the Court and one of its six substitute members who the federal President appoints are nominated by the Bundesrat (Article 147). Other institutions also have the legal status of joint institutions. Among them are the Administrative Court (Article 130–136), the National Auditing Office (Articles 121–128), and the Ombudsmen Council (Article 148).

An important element of federalism in Austria is the self-coordination of the Länder. Although there are no constitutional provisions which provide a blueprint for the meetings of top civil servants of the Länder, Presidents of Land Parliaments or Governors, conferences of Länder representatives have become a device to coordinate and articulate Länder interests. Organizational support for these conferences is provided by a joint Länder office located with the government of Lower Austria.

3 RECENT POLITICAL DYNAMICS

In the 1960s and 1970s the Länder began to voice their discontent with the dominance of the federation in Austrian politics and demanded a strengthening of their position in order to strengthen federalism. As a consequence, some noteworthy corrections of the federal constitution were made in the years 1974, 1983, 1984, 1987 and 1988. But none of these constitutional changes was substantial.

At the end of the 1980s the Länder found themselves in a better bargaining position because their support for the planned membership in the European Union was needed. In 1989 an expert group (the so-called "Commission for Structural Reforms," *Strukturreformkommission*) was appointed. This commission had the task of identifying problems of the current division of jurisdiction between the federation and the Länder and suggesting solutions. The recommendations of the expert group, which were published in 1991, provided the context for negotiations between the Länder and the federation. These negotiations were completed in 1992 with an agreement between the governments of the states and the federal government on the reform of Austrian federalism (*Perchtoldsdorfer Paktum*). State Parliaments as well as the federal Parliament were ignored, a strategy which had negative political consequences.

It turned out that once the necessary legislation was introduced into Parliament, the agreement was not the end of political controversy. It took until 7 June 1994 before the federal government was able to present a constitutional reform bill. The decision on the bill was not made before the federal elections of 1994. In these elections the grand coalition of the Social Democrats (SPÖ) and the Conservatives (ÖVP) lost its two-thirds majority in the Nationalrat, which it needed for the planned reform. A new round of negotiations began, this time including the opposition parties. The new consensus found was in a number of aspects, however, watering down the concessions already made to the Länder. For this reason the state Governors' conference rejected the new compromise.

What followed was one year of absolute standstill. The general election which was held at the end of 1995 gave the grand coalition again a two-thirds majority of seats in the Nationalrat. The constitutional reform bill was re-introduced in its original form. But at the same time it was planned that this bill should be revised by the "Reform of Federalism" Task Force. This task force was made up of representatives of the states and the federation and was installed by the Governors' conference. Although the Governors tried time and again to make progress with the reform of federalism, the federal government was not responsive.

After the general election in 1999 the grand coalition broke apart. The new Conservative-Freedom Party (FPÖ) coalition did not have the necessary two-thirds majority for constitutional reform in Parliament and did not make constitutional reform one of its priorities. Austria's federalism remains in its constitutional design strongly centralized and unitary in character.

What can be counted as a success of the Länder is, however, that they were able to force the federal government to give them a role in the political decision-making process concerning the European Union (Article 23). The Länder argued that they would use Article 50(1) of the constitution, which stipulates that they need to agree to international treaties affecting their autonomous sphere of competence, and that they were willing to use their influence in the referendum campaign on the country's membership of the EU to strengthen the "No" camp if the government was not prepared to make concessions and to amend the constitution in their favour.

The federal government is now obliged to inform the Länder without delay about all EU initiatives which affect their jurisdiction or could be of interest to them. They have a right to comment on such proposals. If the Länder agree on a certain position concerning their autonomous sphere of competency, the federal government has to accept this position and has to vote accordingly on the European level. An exception can be made, however, for reasons which have to do with foreign policy or the European interests of Austria. The federal government needs to inform the Länder about such reasons without delay. Common views of the states are, however, not always the rule. Disagreement on policies among the Länder tends to undermine their position vis-à-vis the federal government in European politics.

If an EU initiative affects the competence of Austria's Länder, it is now possible that a politician nominated by the Länder can become the representative of Austria in negotiations between Austria and the EU. It is important to note that this is only a possibility, not a fixed rule. The federal government must agree to the handing over of its responsibility for foreign policy to the Länder. The Länder also have the right to nominate the Austrian members of the EU Committee of the Regions. One representative of each of the Länder is present at the office of the Permanent Representative of Austria in Brussels. Every state (except for Vorarlberg) also has its own quasi-embassy to the EU there.

Austrian federalism today has its greatest dynamic in the states themselves. An important factor which has sustained federalism is the federal structure of interest groups and political parties, as well as the strong historical roots of the Länder (except for the Burgenland which became a part of Austria as a result of the Treaty of Trianon of 1921).

It is telling that the Governors, who have no constitutional role in the Second Chamber and are outside the process of federal legislation, have become the engines of change. This reflects also the growing acceptance of diversity among the people in the states. The states use private company law to engage in activities, such as regional economic policy, labour market policies, health and culture policies. This is a way to become active in fields which the constitution reserves to the federal government.

What remains of the constitutional autonomy of the Länder gained additional importance in the 1990s. State constitutions were reformed, and now guarantee some basic rights which are wider than the rights guaranteed by the federal constitution or not part of the federal constitution. Many states not only introduced new forms of direct democracy, but also strengthened the powers of the Land Parliaments and Land audit offices vis-à-vis Land governments.

Another important factor for the political dynamic on the state level has been the differences in party political majorities and coalition arrangements between the states and between the states and the federation. It used to be the case that in all states – with the exception of Vienna and Vorarlberg – the constitution demanded that the relative strength of the parties in Parliament had to be mirrored in government. This gave the Governor a strong role as moderator. We now observe (above all in Steiermark) criticism against state Parliaments without opposition parties, and initiatives to introduce majority government, such as the constitutional reforms in Salzburg and Tirol in 1998.

Membership in the European Union has redefined the aims of the Land governments. Now, not only are they confronted with the example of federal states such as Germany and Belgium which give their federal sub-units a much greater role in national politics, they also have to come to grips with the economic challenge of regional competition in the Single European Market.

Still, federalism in Austria remains on the defensive. Some commentators would like to see more federalism and want to give new competencies to the Länder. But there have also been influential voices which suggest a reduction in the current number of Länder from nine to three, or the dissolution of Land Parliaments. They argue that for reasons of economic efficiency, one Land Parliament for all Länder (*Generallandtag*) would suffice. It could become the Second Chamber of Parliament and substitute for the current Second Chamber, the Bundesrat. Such radical proposals have not yet found the support of a two-thirds majority in Parliament which would be necessary for reform. Whether, as planned, a constitutional convention will be able to overcome the status quo remains to be seen.

The efficiency argument has, however, already led to a strengthening of the Länder in the administration of federal legislation. As one contribution to the federal government's effort to reduce the country's deficit, representatives of the federal government and the Länder agreed on a reform of public administration. The Land administration will now be the first and only point of access for citizens (*Verwaltungsreformgesetz 2001*).

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Table I
Political and Geographic Indicators

Capital city	Vienna
Number and type of constituent units	9 States (Länder (singular - Land)): Burgenland, Kaernten (Carinthia), Niederoesterreich (Lower Austria), Oberoesterreich (Upper Austria), Salzburg, Steiermark (Styria), Tyrol, Vienna, Vorarlberg.
Official language(s)	German
Area	83 858 km ²
Area – Largest constituent unit	Lower Austria – 19 174 km ²
Area – Smallest constituent unit	Vienna – 415 km ²
Total population	8 141 000 (2002)
Population by constituent unit (% of total population)	Vienna 19.3%, Lower Austria 19.1%, Upper Austria 17%, Styria 14.7%, Tyrol 8.3%, Carinthia 6.9%, Salzburg 6.4%, Voralberg 4.3%, Burgenland 3.4%
Political system – federal	Federal Republic
Head of state – federal	President Thomas Klestil, Oesterreichische Volkspartei (oVP), (1992/98). The President is directly elected to serve a 6-year term
Head of government – federal	Chancellor Wolfgang Schussel (oVP) (2000). The President appoints the Chancellor from the largest party or a coalition in the Nationalrat and the Chancellor nominates the Cabinet.
Government structure – federal	Bicameral: Federal Assembly (Bundesversammlung) <i>Upper House</i> – Bundesrat (Federal Council) has 64 members representing the constituent units. They are indirectly elected by state Parliaments. <i>Lower House</i> – Nationalrat (National Council), 183 members elected by proportional representation to serve for a 4-year term.
Number of representatives in lower house of federal government of most populated constituent unit	Lower Austria – 34 Freiheitliche Partei Österreichs (Freedom Party of Austria) FPÖ 52, Oesterreichische Volkspartei (Austrian People's Party) öVP 52 and Die Grünen (The Greens) Grüne 14.
Number of representatives in lower house of federal government of most populated constituent unit	Lower Austria – 31 seats (Vienna 28 seats)

Table I (continued)

Number of representatives in lower house of federal government for least populated constituent unit	Burgenland – 5
Distribution of representation in upper house of federal government	Lower Austria 12, Vienna 11, Upper Austria 11, Styria 10, Tyrol 5, Carinthia 5, Salzburg 4, Vorarlberg 3 and Burgenland 3
Distribution of powers	The federal government has exclusive powers to legislate and administer matters such as foreign affairs, the military, justice and finance. The Länder are responsible for the administration and implementation of federal legislation. Concurrent legislation includes areas such as hospitals, charity, rights of agricultural workers and land reform.
Residual powers	Residual powers belong to the states.
Constitutional court (highest court dealing with constitutional matters)	Constitutional Court (Verfassungsgerichtshof). The Constitutional Court is composed of a President, a Vice-President, 12 members, and 6 substitutes. The Bundesrat appoints 3 of the 14 court members and 1 substitute member. The federal President appoints the rest on recommendations by the federal cabinet and the Nationalrat.
Political system of constituent units	Unicameral: Each Land operates on its own constitutions and has an elected Assembly (Landtag or Diet). Membership ranges between 36-56 members, and all elect a government consisting of a Governor and Councillors. In the case of Vienna, the City Council fulfils the functions of a state Diet or Landtag.
Head of government – constituent units	Governor. Elected by the Diet, and responsible to this body.

Table II
Economic and Social Indicators

GDP	us\$232.9 billion at PPP (2002)
GDP per capita	us\$28 611 at PPP (2002)
National debt (external)	us\$12.1 billion (2001 est.)
Sub-national debt	N/A
National unemployment rate	5.1%
Constituent unit with highest unemployment rate	Vienna – 9.0%
Constituent unit with lowest unemployment rate	Upper Austria – 4.7%
Adult literacy rate	100%
National expenditures on education as a % of GDP	5.8%
Life expectancy in years	78 (2001)
Federal government revenues – from taxes and related sources	us\$51.7 billion (2002)
Constituent units revenues – from taxes and related sources	us\$15.2 billion (2002)
Federal transfers to constituent units	us\$15.2 billion (2002)
Equalization mechanisms	The Länder rely on tax income shared by, and transfer payments from, the federal government.

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