



Austrian Foreign Relations: Federal Precedence and Informal Regional Linkages

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As one of the older European federal systems, Austria's constitution of 1920 originally did not provide any role for its constituent units – the *Länder* – on the international stage. Under the traditional understanding that international legal standing is reserved for the federal state as a whole, all foreign powers have been concentrated in the federation. For the task of carrying out international obligations domestically, however, the internal division of powers between the Federation and the *Länder* remains in place. The federation is responsible for fulfilling its obligations stemming from international treaties, and has therefore been vested with considerable powers of control to ensure compliance by the *Länder* within their jurisdictions. In exchange, the *Länder* must be consulted before any treaty that might have an impact on their sphere is concluded by the federation. Generally, consultation of some kind takes place when appropriate, but none of the instruments to coerce implementation has ever been used. The fact that they exist has prevented blatant breaches of treaty obligations by the *Länder*. When violations do occur and entail liability for compensation, the responsible

Land has to bear the costs. However, because the constitution lacks explicit rules, courts have become involved at times.

Over time, the growth of international relations has increased their impact on the *Länder*; and the demand for cross-border coordination and cooperation in local and regional affairs has increased. For several decades, the *Länder* have been trying to bypass the federal monopoly in foreign affairs by creating a network of informal transnational arrangements. Although these agreements deal with governmental affairs, they cannot attain legal force under national public law or under international law. Nevertheless, they have been watched with increasing suspicion by the federal government, which lacks control over the conclusion of such agreements. On the other hand, the *Länder* governments have shown an increasing desire to have their transnational cooperation transformed into legally binding instruments.

The respective interests on both sides seemed to coincide when in 1989, by amendment to the federal Constitution, the Austrian *Länder* were granted the power to conclude international treaties with adjacent states or their component units within their sphere of competence. For the *Länder*, this opened the possibility of raising their transnational arrangements to the level of international law, but in exchange the federation succeeded in stipulating a complex framework of control over the conclusion of such treaties. The federal government must be informed before negotiations can start and it has to give its assent before the treaty may be concluded. In addition, full powers for both negotiations and conclusion must be issued by the federal president.

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These treaties are also subject to the same federal control regarding implementation as federal treaties. Thus, treaty obligations agreed to by a *Land* are viewed by the Constitution as if they were treaty obligations binding directly on the Republic of Austria.

Under the constitutional doctrine which bars the *Länder* from independent international standing, their treaty-making power has not offered them enough flexibility and has thus never been used in practice. Instead, the *Länder* have pursued their transnational cooperation on an informal level. This did not change under the European Outline Convention on Transfrontier Cooperation, adopted in 1980 to facilitate collaboration across border regions. In particular, Austria did not allow for legal bodies across the border as envisaged by the Protocol to the Convention adopted in 1995.

Austria's accession to the European Union (EU) in 1994 reinforced the position of the *Länder* in intergovernmental relations on matters of European integration, compensating them for the curtailment of their jurisdiction by European legislation. On the one hand, federal control over the implementation of EU law by the *Länder* may be exercised only after a breach of European Law has been stated by the EU. On the other hand, any measure

to be taken on the European level which might have an impact on *Länder* powers is subject to a sophisticated consultation procedure. This consultation procedure can result in a common position of the *Länder* that can even bind the Federation's position in the European decision-making process. Moreover, the *Länder* are entitled to be represented in Austrian delegations to the EU. With those instruments, the *Länder* have repeatedly succeeded in shaping the Federation's European policy.

Beyond that, the *Länder* seek to influence European regional policy directly at the European level. Besides their formal standing in the Committee of Regions, they associate with other European regions in several informal or private bodies in order to develop a comprehensive European Politics of Regions. In that context, they also coordinate their respective domestic positions vis-à-vis their central governments.

Conversely, the EU, in the framework of its cohesion policy, seeks to promote direct cross-border cooperation among regions. As the governments of member states are directly involved in setting up concrete projects, this intensifies not only cross-border cooperation as such, but also, on the Austrian side, internal coordination between the different levels of the federal system, including the municipal level. European and domestic politics are about to merge on a third, polycentric level of European decision making by transnational authorities. For these, European law has recently offered a new structure vested with legal personality, the so-called "European grouping of territorial cooperation". Because EU law prevails over the law of the member states, it could easily overcome the barriers which the Austrian constitution imposes on foreign relations of sub-national entities. EU law also exceeds the legal impact of the European Outline Convention, which will remain relevant for Austria only with regard to non-members of the EU and for matters outside the scope of EU law.

Yet the prospect of developing new, albeit functionally restricted, regional bodies across national borders is not being warmly embraced. Informal coordination and lobbying under the traditional legal framework seems to be preferred by the Austrian *Länder* themselves. This corresponds to their increasing role as informal political actors in an environment of economic globalization generally. Their newly-intensified diplomatic endeavours to open up new foreign markets for the domestic economy are being supported by the federal government, as long as they have no legal repercussions on the federation on the international level. Together with federal diplomatic representatives, national trade associations and private enterprises, they make up an informal network of Austrian economic foreign policy.

Overall, growth and diversification of foreign relations have considerably augmented the functions of regional governance in Austria. As the federation however, retains its legal precedence, the political role of the *Länder* is developing through informal linkages and networks which do not easily lend themselves to democratic transparency and accountability.