

# COVID-19 crisis challenging Austria's cooperative federalism



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In an analysis published on the Cambridge Core blog on April 12, 2020 (<https://www.cambridge.org/core/blog/2020/04/12/austrias-response-to-the-coronavirus-pandemic-a-second-perspective>) author Thomas Czypionka wrote: "Despite its fragmented healthcare system, strong federalism and relatively poor public health capacity, Austria has so far fared surprisingly well in the current crisis. After the swift and decisive introduction of rather drastic measures, infections have shown considerable decline. As one of the first European countries to impose them, restrictions will be gradually lifted in the coming weeks."

This statement gives the impression that Austria is managing the crisis comparatively well despite, rather than because of, its federal structure. But is Austrian federalism actually "strong" when it comes to crisis management in a pandemic situation?

According to the Austrian Federal Constitution (B-VG), competences on health matters are distributed between the Federation and the Länder (States). However, the Federation has – in the given context – the competence to pass and execute laws concerning public health, with the exception of the organisation of hospitals and municipal sanitation (Art 10 par 1 n. 12 B-VG). This includes the competence of managing the prevention of epidemics and pandemics.

Federal administration in public health has to be executed by the Land Governors and the subordinated district authorities of the Länder (so called indirect federal administration). According to Art. 103 par. 1 B-VG, Governors are bound to the instructions of the Federal Government and individual Federal Ministers (Art. 20). They are also obliged, in order to

effect the implementation of such instructions, to employ the powers available to them in their capacity as a functionary of the province's autonomous sphere of competence.

This system of indirect federal administration is characteristic of Austrian federalism and its cooperative element: on the one hand, the federal government is legally in a position to enforce its will vis-à-vis the state governors; but on the other hand, the action taken also depends on the capacities of the Länder and their commitment to confront the crisis.

Based on these provisions, the competent authorities execute the "Epidemiegesetz" (a federal law, with roots stretching back to 1913). As this law was ill-suited to deal with the current pandemic, various new regulations have been passed by the Austrian parliament within recent weeks. The most notable of these is the "Covid19-Maßnahmengesetz", which came into force on 16 March 2020.

Based on the COVID-19-Maßnahmengesetz, the competent authorities on a federal and land level are entitled to issue decrees prohibiting entry to business premises (for customers and economic operators; § 1) as well as other specified locations (§ 2). Decrees can be issued by the





Minister of Health (no. 1), the Governor of the Land (no. 2), and the district administrative authority (no. 3) in their respective jurisdiction (the entire country, the Land, the district territory or parts of the district territory).

On the basis of the COVID-19-Maßnahmengesetz, the enforcement bodies have issued various ordinances which executed the “lockdown” in Austria by prohibiting the “entering of public places”. Exceptions have been allowed for activities required to meet basic daily needs. The Minister of Health also issued an ordinance on provisional measures to prevent the proliferation of COVID-19, prohibiting access to the customer areas of retail and service company premises and of leisure and sports facilities.

The fact that all the legal instruments used to take action during the crisis have already been amended several times reflects the pressure under which the legislative and regulatory bodies have been working, as well as the need to continually adapt the legal framework to the dynamic developments.

All levels of government emphasise the good cooperation that has been maintained so far during the outbreak. Despite the far-reaching powers of the federal government, it remains the task of the Länder to provide sufficient capacity in hospitals or in relation to testing, for example. To date this has worked well, especially if you compare Austria with other countries dealing with the outbreak. Up to now, tensions between federal and land authorities have only become apparent in isolated cases. In Vienna, for example, the City opened its parks to the public, while those owned by the federal government remained closed.

Perhaps more prominently, critics have expressed in numerous domestic and foreign media outlets that the authorities of the province of Tyrol reacted too late and inadequately to the spread of the virus in the Tyrolean ski resort of Ischgl. The time has not yet come to assign fault for mistakes that might have been made in the response to the outbreak. Since the executing authorities are acting under the responsibility of the federal government, their actions also remain to be examined. To this point, the good cooperation between federal government and land authorities in tackling the crisis does not seem to have been adversely affected by these criticisms.

So far, it can be said that the Austrian type of cooperative federalism has passed its test in the face of the COVID-19 pandemic. This is despite the fact that it appears some mistakes have been made in addressing the outbreak which need to be worked through in due course.

