

The Congress of Local and Regional Authorities



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Local and regional democracy in Austria

Monitoring Committee

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Summary

The report considers the situation of local and regional democracy in Austria. It is the first monitoring report since Austria ratified the European Charter of Local Self-Government in 1987. It expresses satisfaction over the state of local democracy which is in compliance with the Charter in general and underlines the specific cooperative nature of the Austrian federal system linking various levels of local and federal government. It takes note, however, that the efforts made to restructure the federal system have not produced tangible results and expresses concern that local governments are still under considerable supervision by federal authorities, particularly as regards limitations on fiscal and administrative autonomy.

The report recommends to the Austrian Government to introduce an overall institutional reform of the federal system, clarifying competences and strengthening local government financially, by granting them more resources and flexibility, including tax autonomy and the possibility to conclude agreements with the federal authorities. It also encourages efforts for better representation of women at local and regional level and recommends that the Austrian authorities sign and ratify the Additional Protocol to the Charter on the right to participate in the affairs of a local authority.

¹ L: Chamber of Local Authorities / R: Chamber of Regions
ILDG: Independent and Liberal Democrat Group of the Congress
EPP/CD: European People's Party – Christian Democrats of the Congress
SOC: Socialist Group of the Congress
NR: Members not belonging to a Political Group of the Congress



A. DRAFT RECOMMENDATION²

1. The Congress of Local and Regional Authorities of the Council of Europe refers to:

a. Article 2, paragraph 1.b of Statutory Resolution (2007) 6 relating to the Congress, which provides that one of the aims of the Congress shall be “to submit proposals to the Committee of Ministers in order to promote local and regional democracy”;

b. Article 2, paragraph 3 of Statutory Resolution (2007) 6 relating to the Congress, stipulating that “The Congress shall prepare on a regular basis country-by-country reports on the situation of local and regional democracy in all member states and in states which have applied to join the Council of Europe, and shall ensure, in particular, that the principles of the European Charter of Local Self-Government are implemented”;

c. the explanatory memorandum on local and regional democracy in Austria drawn up by the Rapporteurs, Marc COOLS and Irene LOIZIDOU following an official visit to Austria from 24 to 26 March 2010.

2. The Congress recalls that:

a. Austria ratified the European Charter on Local Self-Government on 23 September 1987. The Charter entered into force on 1 September 1988. On depositing the instruments of ratification, Austria stated in its declaration that it would not be bound by Article 4, paragraphs 2, 3 and 5, Article 7, paragraph 2, Article 8, paragraph 2 and Article 11 of the Charter. This declaration is in line with the provisions of Article 12, paragraph 1 of the Charter;

b. the present Recommendation on local and regional democracy in Austria is the first one since Austria’s ratification of the Charter;

c. the Institutional Committee³ of the Congress appointed Marc COOLS and Irene LOIZIDOU as co-rapporteurs to prepare and submit a Recommendation on local and regional democracy in Austria.

3. The Congress wishes to thank Austrian authorities at central and local levels, the Association of Austrian Towns and Cities, the Association of Austrian Municipalities, experts and all interlocutors for the information conveyed to the delegation.

² Preliminary draft recommendation approved by the Monitoring Committee on 17 February 2011.

Members of the Committee:

L. O. Molin (President), *M. Abuladze*, *U. Aldegren*, *K. Andersen*, *L. Avetyan* (alternate: *E. Yeritsyan*), *A. Babayev*, *M. Barcina Angulo*, *V. Belikov*, *G. Bergemann* (alternate: *C. Vosschulte*), *M. Bespalova*, *P. Bosch I Codola*, *Z. Broz*, *A. Buchmann*, *X. Cadoret*, *M. Capdevila Allares*, *S. Carugo*, *D. Chichinadze*, *I. Ciontolo*, *B. Collin-Langen*, *M. Cools*, *J. Costa*, *D. Cukur*, *L. Dellai*, *M. De Lamotte*, *G. Doganoglu*, *M. Fabbri*, *M. Gaju*, *V. Gebel*, *G. Geguzinskas*, *S. Glavak*, *S. Guckian*, *M. Guegan*, *M. Gulevskiy*, *H. Halldorsson*, *D. Heatley*, *J. Hepburn*, *B. Hirs*, *J. Hlinka*, *C. Hughes*, *A. Ibrahimov*, *J. Jalinska* (alternate: *M. Juzupa*), *S. James*, *A. Jaunsleinis* (alternate: *N. Stepanovs*), *M. Jegeni Yildiz*, *J-P Klein*, *I. Kulichenko*, *O. Arild Kvaløy*, *J. Landberg* (alternate: *M. Juhkami*), *F. Lec*, *J-P Liouville*, *I. Loizidou*, *M. Magomedov*, *P. Mangin* (alternate: *J-M Belliard*), *T. Margaryan*, *G. Marsan*, *H. Marva*, *V. Mc Hugh*, *M. Merrild*, *I. Micallef*, *I. Michas*, *T. Mikus*, *K. Miskiniene*, *G. Mosler-Törnström*, *A. Muzio*, *A. Ocana Rabadan*, *V. Oluiko*, *R. Paita*, *G. Pieper*, *H. Pihlajasaari*, *G. Pinto*, *C. Radulescu*, *R. Rautava* (alternate: *S. Ruponen*), *H. Richtermocova*, *A. Rokofillou*, *D. Ruseva*, *S. Sallaku*, *V. Salygin*, *V. Sau*, *J. Sauwens*, *P. Schowtka*, *W. Schuster*, *D. Shakespeare*, *P. Shatri*, *M. TAMILOS*, *A. Torres Pereira*, *V. Udovychenko*, *A. Ugues*, *G. Ugulava* (alternate: *P. Zambakhidze*), *A. Uss*, *V. Varnavskiy* (alternate: *A. Borisov*), *P. Van Der Velden*, *L. Vennesland*, *L. Verbeek*, *H. Weninger*, *K. Whitmore*, *J. Wiene*, *U. Wüthrich-Pelloli*, *N. Zeybekci*, *J. Zimola*, *D. Zmegac*.

N.B.: The names of members who took part in the vote are in italics.

Secretariat of the Committee : *S. Poirel*, *S. Cankocak* and *L. Nikoghosyan*

³ Following the Congress reform, the monitoring activities carried out by this Committee were taken over by the Monitoring Committee set up on 1st December 2010.

4. The Congress notes with satisfaction that:

a. local governments in Austria derive their powers from the federation and/or *Länder* under a system that reflects the principle of subsidiarity and in general is in conformity with the norms of the European Charter of Local Self-Government;

b. the cooperative nature of Austrian federalism (“cooperative federalism”) is a key element of the Austrian federal system, implying that all changes are carried out through both formal and informal consultation mechanisms between municipalities, federated states (*Länder*) and the federation.

5. The Congress notes that:

a. a reform of the Austrian federal system has been on the political agenda for a long time. In the recent decade several attempts have been made to restructure the federal system and to clarify the competences of the different levels through constitutional change, but they have not produced tangible results;

b. Austria has not signed the Additional Protocol to the Charter on the right to participate in the affairs of a local authority although Article 117, paragraph 8 of the Federal Constitution determines that the legislation of the *Länder* can foresee direct participation of the citizens;

c. local governments are subject to a considerable degree of supervision by federal and *Länder* authorities;

d. mayors are subject to instructions from the federal authorities when exercising tasks delegated to municipalities.

6. The Congress notes with concern that:

a. despite the fact that municipalities are assigned powers of their own, which are supplemented by an array of delegated tasks, in practice, there are several important areas where responsibilities overlap or where closely related activities are performed and co-financed by different levels of government;

b. municipalities have practically no discretion with regard to local taxes and the proportion of own-source taxes in budget revenue amounting to 21 % is relatively low. The fiscal autonomy of both Austrian municipalities and *Länder* is too limited to allow the effective exercise of discretion. This is evident from the low share of own taxes at the subnational level;

c. Article 15a of the Federal Constitutional Law, giving the possibility to conclude treaties/agreements between the federation and the *Länder* or among the *Länder* on matters within their respective sphere of competences, does not allow for the participation of municipalities in such agreements.

7. *The Congress recommends that the Committee of Ministers invite the Austrian authorities to take account of the following suggestions:*

a. to consider an overall institutional reform of the federal system in Austria. Such a reform is necessary for federalism to operate effectively in Austria in the future and for Austrians to continue accepting it as a legitimate system. The reform should concentrate, *inter alia*, on modifying the composition and functions of the Federal Council in order to make it better suited to representing *Länder* interests, transforming the system of indirect federal administration to direct *Land* administration, introducing *Land* Administrative Courts and modifying the division of powers;

b. to elaborate systematic legislation, in accordance with the principle of subsidiarity, clarifying the competences of each level of government (municipalities, federated states and the federation) on the basis of the work of the Austrian Convention and more recent reform proposals;

c. to strengthen the role of municipalities in the preparation of the Financial Equalisation Law, by introducing a legally binding consultation of the Austrian Association of Cities and Towns and the Austrian Association of Municipalities during the negotiation process;

d. to grant to municipalities and *Länder* larger tax autonomy allowing them to raise an increasing amount of own taxes and to make sure that when their competences are extended, this is followed by the allocation of necessary financial resources;

e. to enhance the flexibility of municipality associations (*Gemeindeverbände*) by abolishing the remaining limitations to inter-municipal cooperation across *Land* borders and by increasing the competences of such associations;

f. to consider modifying Federal Constitutional Law in order to allow municipalities to participate in agreements between the federation and the *Länder* foreseen by Article 15a of the Federal Constitution, as this is already the case for the "Consultation Mechanism" and the "Austrian Stability Pact";

g. to consider modifying the existing legislation in order to tackle the issue of liability of mayors in executing their functions as well as to improve the social conditions of mayors such as their pension and unemployment schemes;

h. to restrain from extending the competences of the federal Court of Auditors to supervise the budget of municipalities with less than 10.000 inhabitants, unless the *Land* concerned expressly requests this;

i. to take into consideration Congress Recommendation 288 (2010) and to take concrete measures to encourage better representation of women at local and regional level;

j. to guarantee a minimal representation of the Association of Austrian Towns and Cities and the Association of Austrian Municipalities in the Committee of Regions of the European Union;

k. to reconsider the restrictions on the extent of the Charter articles by which Austria is bound with a view to lifting some or all of them. This could be the case for Article 11 of the Charter, which is respected in practice in Austria;

l. to sign and ratify the Additional Protocol to the European Charter on Local Self-Government on the right to participate in the affairs of a local authority in the near future.

8. *The Congress recommends that the Parliamentary Assembly take account of the aforementioned observations and recommendations, in the framework of its procedure of periodic reporting on member states not currently under a monitoring or post-monitoring procedure;*

9. *The Congress recommends that the Austrian authorities responsible for local self-government appoint a high-level government representative to attend one of the Congress sessions to make a presentation on the state of local and regional democracy in Austria following the adoption of this Recommendation.*

B. EXPLANATORY MEMORANDUM

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Introduction

1. In accordance with Article 2, paragraph 3 of Statutory Resolution CM/Res(2007)6 of the Committee of Ministers of the Council of Europe, the Congress of Local and Regional Authorities (hereafter referred to as the Congress) prepares regular reports on the situation of local and/or regional democracy in all member states of the Council of Europe.

2. The responsibility of monitoring missions of the Congress is exercised by the Institutional Committee. A report is prepared following a monitoring visit and first presented to the members of the Committee before being discussed in the plenary session.

3. The primary reference text for the monitoring missions is the European Charter of Local Self-Government (ETS n° 122, hereafter referred to as the Charter). For those member states with regional structures, Congress Resolution 299 (2010) underlines that the Council of Europe Reference Framework for Regional Democracy (hereafter referred to as the Reference Framework) is also to be used as a reference.

4. Austria joined the Council of Europe in 1956 and ratified the Charter on 23 September 1987. The Charter entered into force on 1 September 1988. On depositing the instruments of ratification, Austria stated in its declaration that it would not be bound by Article 4, paragraphs 2, 3 and 5, Article 7, paragraph 2, Article 8, paragraph 2 and Article 11. This declaration is in line with the provisions of Article 12, paragraph 1 of the Charter.

5. This report is the result of a first monitoring exercise in Austria following its ratification of the Charter. For this first monitoring mission, Marc COOLS, Belgium (L, ILDG) and Irene LOIZIDOU, Cyprus (R, EPP/CD) were appointed local and regional democracy rapporteurs respectively. They were assisted by Professor Ivan VOLODIN, member of the Group of Independent Experts on the European Charter of Local Self-Government and by Anna STAHL of the Secretariat of the Institutional Committee of the Congress.

6. The delegation paid a visit to Austria from 24 to 26 March 2010. In Vienna it met elected representatives of the two chambers of the Federal Parliament (*Nationalrat* and *Bundesrat*) and senior officials from the Federal Chancellery (*Bundeskanzleramt*), the Ministries of the Interior and of Finance, the Constitutional Court (*Verfassungsgerichtshof*) and the Court of Auditors (*Rechnungshof*) and the City of Vienna. In St. Pölten, the capital of the *Land* of Lower Austria (*Niederösterreich*), the delegation met representatives of the regional parliament of Lower Austria (*Landtag*) and the government of Lower Austria (*Landesregierung*). In addition, it visited the town (*Marktgemeinde*) of Traisen, where it held a meeting with the mayor and members of the municipal council.

7. The rapporteurs wish to thank all those who made themselves available in Vienna, St. Pölten and Traisen to receive the delegation and give their views on the current situation in the country. The rapporteurs also thank the Head of the Austrian delegation to the Congress, Dr Herwig VAN STAA and the Secretary of the Austrian delegation, Dr Andreas GREITER.

I. THE AUSTRIAN FEDERAL ARCHITECTURE AND ITS LEGAL FRAMEWORK

8. The civil-law system employed in Austria is hierarchical in structure, with the Federal Constitutional Law (*Bundes-Verfassungsgesetz* or *B-VG*) as a supreme norm itself. The Federal Constitutional Law does not however constitute a systematic codification of all Federal Constitutional Law, as additional federal constitutional laws and many provisions of a constitutional nature exist outside of it.

9. According to Article 2 of the Federal Constitutional Law, Austria is a federation (*Bund*) composed of nine federated states (*Länder*). These are Burgenland, Carinthia (*Kärnten*), Lower Austria (*Niederösterreich*), Salzburg, Styria (*Steiermark*), Tyrol (*Tirol*), Upper Austria (*Oberösterreich*), Vienna (*Wien*) and Vorarlberg. The largest *Land* in size is Lower Austria (19.174 sq.km) and the smallest *Land* is the capital Vienna (631 sq.km). Despite its small surface, Vienna shares with Lower Austria the status of the largest *Land* in terms of population (1.600.280 in Vienna and 1.529.781 in Lower Austria).

10. The Federal Constitutional Law states that the head of the federation is the Federal President, who is directly elected by popular vote every six years. The head of the Federal Government is the Federal Chancellor (*Bundeskanzler*), who is appointed by the Federal President (*Bundespräsident*).

11. The federal Parliament consists of two chambers: the Federal Council (*Bundesrat*) and the National Council (*Nationalrat*). Legislation typically requires co-operation of both houses. The Lower Chamber of Parliament, the National Council, which is elected every five years by direct popular vote, plays the dominant role in the law-making process in Austria.

12. The Second Chamber of Parliament, the Federal Council (*Bundesrat*), is made up of representatives of the federated states, with the number of deputies being proportional to each *Land's* population (12 members maximum and 3 members minimum).

13. The members of the Federal Council are elected by *Land* legislatures (*Landtage*), but they do not have to be members of regional parliaments. They must however be eligible to the respective regional parliament. The representatives of each *Land* in the Federal Council therefore reflect the proportion of political parties in the respective *Land* Parliament. This linkage between *Land* Parliaments and the Federal Council forms the basis for the continuity of the latter, which, in effect, amounts to a permanent term. Following the election of a new *Land* Parliament (usually every five to six years, depending on the respective *Land* Constitution), the number of representatives of the *Land* may change, but the Federal Council itself continues. It currently has 62 members. In the course of time, the number of delegates from a given *Land* may alter as a result of changes in its population. The

Federal Constitutional Law provides that the number of representatives of each *Land* in the Federal Council is determined by the Federal President every ten years, following the national census.

14. The Federal Council has limited powers in the law-making process originating in the National Council. On the other hand, it has an absolute veto concerning negative changes to *Länder* powers in the Federal Constitutional Law. There are also some other kinds of suspensive veto.

15. Within the *Länder* 84 district authorities (*Bezirkshauptmannschaften*), composed of civil servants of the *Länder*, implement federal and *Land* legislation. The districts (*Bezirke*) are merely administrative entities and encompass the territories of several municipalities.

II. REGIONAL DEMOCRACY

1. Competences

16. According to current legal interpretation of the Federal Constitutional Law, the *Länder* enjoy “relative constitutional autonomy”. They are free to regulate in particular all organisational affairs as long as no provisions of a *Land* Constitution directly contravene any provisions of the Federal Constitution (Article 99 of the Federal Constitutional Law).

17. Both legislative and administrative powers are shared by the federation and the *Länder*. Although Article 15, paragraph 1 of the Federal Constitutional Law states that all matters not specifically assigned to the federation remain with the autonomous sphere of competence of the *Länder*, in political reality the greatest share of legislative powers lies with the *Bund*. The *Länder* governments however perform the lion’s share of implementation.

18. There are four main types of distribution of powers in Austria. Most commonly, the federation has both legislative and administrative authority over the matters assigned to it. Article 102 of the Federal Constitutional Law refers to the system of so-called “indirect federal administration” (*mittelbare Bundesverwaltung*) which does not alter the distribution of powers but stipulates that federal laws (that fall into the administration of the federation) are, in principle, executed by *Land* authorities on behalf of the federation. In a smaller range of matters, the federation is responsible for legislation and the *Länder* for administration. In a third category of matters, the federation passes framework laws, with the *Länder* being responsible for implementing legislation and administration. Lastly, the *Länder* are fully competent for both legislation and administration with regard to all matters that are not explicitly listed as falling within federal competence.

19. However, there are relatively few matters, which fall into the residual category of powers. Most matters are assigned to the federation and fall into the first category mentioned above. Moreover, some of the matters, which were previously assigned to the *Länder*, e.g. livestock protection, have recently been transferred to the remit of the federation.

20. The lack of power of the *Länder* is to some extent offset by the existence of a system of indirect federal administration whereby the *Länder* carry out a significant proportion of tasks of the federation, which have not been formally transferred to *Länder* functions. In fact, most federal administrative competences are carried out by the *Länder* on behalf of the federation, but the federation does not thereby lose its formal competence.

21. Whatever legislative and administrative powers the *Länder* may have, they do not exercise judicial power.

22. There was much discussion about whether *Länder* Administrative Courts (*Verwaltungsgerichte*) should be established in order to strengthen *Länder* powers and relieve the Federal Administrative Court (*Verwaltungsgerichtshof*) of the burden of dealing with all administrative appeals once the administrative process has been completed. A major step was taken in this direction when, following a constitutional amendment, so-called independent administrative senates (*unabhängige Verwaltungssenate*) were set up in each *Land*. Although they are tribunals in the sense of Article 6 of the European Convention on Human Rights, they are not courts, but administrative *Länder* agencies. They are invested with a number of important functions, including the provision of a second level of decision-making in relation to administrative offence proceedings and dealing with appeals.

23. Conflicts between the *Bund* and the *Länder* can be settled by the Federal Constitutional Court (*Verfassungsgerichtshof*). Disputes over the allocation of competences concerning local authorities are however rather rare.

2. Land Parliament (*Landtag*)

24. Since *Länder* may perform legislative functions of their own, they are granted the right to have their own legislatures (*Landtage*). The Federal Constitutional Law lays down provisions on the election, composition and role of the *Länder* parliaments, but leaves the *Länder* constitutions to regulate them in greater detail. Each *Land* constitution differs from the others, reflecting regional specificities. The legislative period is 5 years in 8 *Länder* and 6 years in Upper Austria.

25. The election system is very similar to that of the National Council; the same electoral principles apply and the *Länder* are left to determine, through their own legislation, the rules on whether entitlement to vote and stand for election should be more generous than those applied in elections to the National Council. The Federal Constitutional Law also expressly applies the provisions concerning immunity of the members of the *Land* Parliament and the public nature of parliamentary debates to *Land* Parliaments.

26. Each *Land* constitution contains detailed or supplementary provisions concerning the election and composition of *Land* legislatures, which must be in conformity with the Federal Constitutional Law.

27. The *Länder* may not, however, introduce bicameral systems, nor may they provide specific representation for minority groups.

28. The Federal Constitutional Law also provides that *Länder* parliaments will be responsible for law-making in the *Länder* and broadly outlines the law-making procedure. Bills must pass the *Land* Parliament, must be signed and countersigned in the manner determined by the Federal Constitutional Law and must be published in the *Land* Gazette by the *Land* governor (*Landeshauptmann/frau*).

29. The *Land* Parliaments may decide quorums and majorities necessary for the passage of ordinary laws, but the Federal Constitutional Law stipulates that constitutional legislation requires a quorum of half of the members of the legislature and a two-thirds majority.

30. The law-making procedure of the *Länder* is not free from federal influence, as Article 98 of the Federal Constitutional Law provides that all bills must be communicated to the Office of the Federal Chancellor before being published in the *Land* Gazette. Within eight weeks of such communication, the Federal Government may object to a bill on the grounds that it endangers federal interests. In this case, however, he must explain the reasons.

31. If the Federal Government was consulted before a *Landtag* passed a bill, an objection may only be made if the bill is considered *ultra vires*. Unless the assistance of the federal administrative bodies is required by a bill (Article 97 of the Federal Constitutional Law), any federal veto may be overruled by the *Land* Parliament, with a quorum of half its members.

32. The Federal President does not play any role in the *Länder* law-making process. However, he/she may dissolve *Land* Parliaments on the proposal of the Federal Government. This power is restricted, however, as *Land* Parliaments may not be dissolved twice for one and the same reason. Furthermore, consent of the Federal Council is required.

3. Land executive (*Landesregierung*)

33. *Land* governments are responsible for administration of the *Länder*. According to Article 101 of the Federal Constitutional Law, they comprise the *Land* Governor (*Landeshauptmann/frau*), his/her deputies and other members of the *Land* government. The *Land* Governors are elected by the *Land* Parliaments, according to either a proportional or a majority system. Members of the *Land* governments need not themselves be members of the *Land* Parliament, but they must be eligible for election to it. The Governors preside over the *Land* governments and swear oaths to the Federal President with respect to the Federal Constitutional Law before assuming office.

34. The *Land* governments are assisted by *Land* Government Offices (*Amt der Landesregierung*) consisting of several departments which have to deal both with indirect federal and with *Land* administrative tasks. When the offices perform *Land* administrative tasks, officials report to the *Land* governments or their individual members. When they are dealing with indirect federal tasks, they report to the *Land* Governors.

4. Involvement in decision-making at federal level

35. This involvement is first and foremost reflected in representation of the *Länder* on a national decision-making body in the form of the Federal Council. Bills may be introduced by the Federal Council (one third of the members required). In practice, however, it is the Federal Government, which introduces bills, usually following non-binding consultation with experts and elected representatives or groups, which may be affected by a particular legislative proposal.

36. The Federal Council may only object to a bill passed by the National Council; the latter may overrule the objection (a quorum of half its members is necessary). The Federal Council can neither object to nor veto bills that concern the federal budget and assets or standing orders of the National Council. In these cases, the Federal Council's involvement in the federal law-making process is restricted to the right to be informed about the laws concerned.

37. In a few cases the Federal Council enjoys an absolute right of veto, which means that the bill cannot be overruled by the National Council and thereby become law without the Federal Council's consent. Article 44 paragraph 2 regulates one case of an absolute veto (if a constitutional amendment provides for the reduction of *Länder* competences). Another case is Article 35, under which, the Federal Council may veto any bill that would seek to alter the constitutional rules regarding the election and composition of the Federal Council itself. There exist also other cases in legislation.

38. To date, however, the Federal Council has never vetoed a bill in the sense of an absolute veto. Politically it is not expected to do so, bearing in mind the fact that its members tend to represent the parties rather than the *Länder*. Members of the Federal Council have a "free mandate" in the sense that they are not bound by instructions from *Länder* parliaments or governors. Moreover, it has become common practice to conclude so-called coalition pacts, which means that members of the Federal Council who belong to the parties that form the Government must not vote against bills passed by the National Council.

39. In recent years the very existence of the Federal Council has been questioned in Austria. Some complain that it does not act as a real regional chamber, while others want to abolish the bicameral system and replace it by an alternative mechanism of representing *Länder* interests. Different proposals with regard to the Federal Council have been discussed but no consensus on this issue could emerge among the various players.

5. *Länder* supervision and instructions

The *Länder* are compensated to some extent for their lack of legislative powers by the system of indirect federal administration, which requires *Länder* governments to perform federal administrative tasks on behalf of the federation. When carrying out federal administrative tasks, *Länder* governors and their sources are subject to instructions from the federal ministry competent in the matter concerned.

6. Financial and fiscal relations of the federation, *Länder* and municipalities

40. In addition to the Federal constitutional Law and the Fiscal Constitutional Law (*Finanz-Verfassungsgesetz*), fiscal relations between the different levels of government are governed by several pieces of legislation, with a key one being the Fiscal Equalisation Law (*Finanzausgleichsgesetz*). The Fiscal Equalisation Law is an ordinary federal law, which is re-negotiated on a consensual basis between the federal minister of finance, the respective finance ministers of the *Länder* and representatives of the *Österreichischer Städtebund* and *Österreichischer Gemeindebund* before the Federal Government submits the draft law to the Parliament. It is normally negotiated every four years but has on occasion been set over six-year periods. Following national elections in late 2006, the law for 2005-2008 was cancelled early, and a new one was agreed to cover a six-year period (2008-2013). However, there is no legal requirement for the negotiations, although

the Constitutional Court assumes that the Fiscal Equalisation Law does not discriminate against a level of government, if all of them agreed on the Law before.

41. The Fiscal Equalisation Law specifies how revenues are to be allocated between the different levels of government, and how various transfers among the various tiers (for vertical and horizontal equalisation, environmental purposes, infrastructure, housing development, health, education, etc) are to be made.

42. The Fiscal Equalisation Law not regulating the budgets, another important piece of legislation is the Austrian Stability Pact (*Österreichischer Stabilitätspakt*), which sets a multi-year general government fiscal balance target and allocates this target between the Federal, *Länder* and municipal governments. In recent times, there have been slippages in meeting Stability Pact targets, particularly at the *Länder* level. For example, the Austrian Stability Pact for the 2005-2008 period targeted a balanced budget by 2008, implying significant consolidation and requiring surpluses at *Länder* level. Progress towards this target was limited, however, and under the new Austrian Stability Pact for 2008-2013, the target for achieving a balanced budget has been pushed back to 2010. The Austrian Stability Pact has become an effective instrument for integrating the budgetary policies of the autonomous sub-national authorities into the national consolidation scheme.

43. Under the Fiscal Constitutional Law and the Fiscal Equalisation Law, the *Länder* may levy and spend taxes. The federal system is rather centralised by international standards, with the Federal Government (including social security funds) accounting for about 70 percent of general government spending, the *Länder* for 17 percent and municipalities for 13 percent as of 2006. However, most federal taxes are not exclusive; there are shared federal taxes where only the federation levies the tax, but shares the revenues with the *Länder* and municipalities.

44. In terms of expenditure responsibilities, the Constitution lists all the competencies of the Federal Government, and anything not listed is generally dealt with by the *Länder* and municipalities. Among other things, the Federal Government is responsible for higher education, vocational training, labour legislation, most public pensions, all health care excluding hospitals, framework legislation for hospitals and family support. *Länder* responsibilities include social welfare, primary education, hospitals, regional infrastructure, transport and pensions for *Länder* civil servants, while municipal responsibilities include local police, local infrastructure and social services. But there is a difference between a *Land* and a municipal power: The distribution of powers allocates competences either at federal or *Land* level (the municipalities are not involved in that stage). The municipalities derive their powers only through federal or *Land* laws that are bound to allocate autonomous municipal powers according to the Federal Constitutional Law.

45. In practice, however, there are several important areas where responsibilities overlap or where closely related activities are performed and co-financed by different levels of government, including health care, education and the social safety net. For example, the health sector is financed and administered jointly by the Federal Government, *Länder* governments, municipalities and the social security funds, with rather opaque lines of responsibility. This may lead to a situation, as was the case with a Vienna hospital in the 1990s, where services are denied to outside patients.

46. While the Constitution assigns primary responsibility for hospitals to the *Land* governments, their financing is more broad-based. For example, while municipalities are generally not responsible for hospitals, they are required to contribute amounts ranging from 35 to 60 percent of their own taxes to their respective *Land* governments to help finance health care. The responsibility for maintenance of schools is shared by *Land* and municipalities. Also, the *Länder* are responsible for legislation on working conditions for teachers, while school curricula are set by the Federal Government. Teachers employed by the *Länder* are typically paid by the Federal Government. The provision of childcare and promotion of language skills is a *Länder* responsibility, but a portion of the expenditure is financed by earmarked federal grants. Such overlaps raise questions as to the efficiency of the system as a whole, let alone the problem of coordination.

47. In addition, there is substantial delegation of tasks from higher to lower levels of government. With the exception of defence and taxation, the bulk of the administrative tasks of the Federal Government are actually carried out by *Länder* officials. There is agreement that such tasks make up a large share of activities at the *Land* level, but exact estimates are not available. The federal and *Land* governments also delegate tasks to municipal governments, including elections, citizenship

procedures and water, etc. As a result, discretionary spending currently constitutes around 2 percent of municipal budgets.

48. This system of joint responsibilities in key spending sectors had been supported by a web of intergovernmental revenue sharing and transfers, which had remained rather complex and opaque until recently. Of late, however, serious attempts have been made to simplify the system: a uniform allocation formula for most taxes has been introduced and most Federal Government transfers have been converted into fixed unconditional shares of the total revenue pool from joint taxes. Currently, over 90 percent of all general government tax revenue is collected as joint taxes at the federal level, and 73 percent, 15 percent and 12 percent of the joint revenues are transferred to federal, *Land* and municipal governments respectively.

49. In addition to their limited discretion over expenditure, sub-national governments have weak fiscal autonomy. The own taxes of the *Länder* (mostly the fire protection tax *Feuerschutzabgabe* and the entertainment tax *Lustbarkeitsabgabe*) account for less than one percent of general government revenue, while the own taxes of municipalities (mostly property and municipal payroll taxes) account for about 5 percent of general government revenue. The low fiscal autonomy has been seen as a cause of reduced efficiency of spending at the sub-national level and a factor in increased aggregate spending. No wonder that Austria has thus far been unable to implement sufficient expenditure savings to offset tax cuts implemented in recent years, thereby weakening the structural fiscal position.

50. The power to regulate financial equalisation is confined to the federation and although financial equalisation acts are traditionally negotiated by the representatives of the three territorial entities (the federation, *Länder* and municipalities), federal laws usually allocate most profitable taxes to the federal level, leaving the *Länder* hardly any important taxes of their own, thus making them dependent on their shares in joint federal taxes, as well on federal subsidies and allocations.

51. In order to avoid unintended financial burdens for the *Länder* and the municipalities by new laws a “consultation mechanism” (*Konsultationsmechanismus*) obliges the federation, the *Länder* and the municipalities to reach a consensus before the new measures are adopted. On 15 January 1999 the federation, the nine *Länder*, and the municipalities (represented by the Austrian Association of Municipalities and the Austrian Association of Cities and Towns) signed an agreement, obliging the federation and the *Länder* to inform the other partners – including the municipalities – about draft legislation and possible administrative and financial impact, which its implementation could have on them. The consultation mechanism involves information obligations, an assessment of the costs and the possibility to establish a consultation committee with representatives of all government levels to submit a recommendation to the legislator.

52. The consultation mechanism also contains the possibility to bring an action before the Constitutional Court which, in case of a breach, can decide penalties. If a consensus has not been reached or if the consultation process is not followed properly, Federal Government or the government of a *Land*, must bear the cost prescribed by the legislation. In practice the consultation mechanism has proven an effective tool, ensuring that the Bund does not unilaterally pass costs on the sub-national entities. The consultation process encounters nevertheless several procedural difficulties, for example the financial impact of draft legislation is not calculated properly or the deadlines fixed for commenting on government initiatives are too short. In practice in most cases negotiations have resulted in adaptation (or abandonment) of the federal proposals taking into account the concerns or objections of the *Land* / *Länder* or associations. The rapporteurs see the consultation procedure in general as a significant step towards reinforcing cooperation between different levels of government and developing the culture of consultation.

7. Austria’s cooperative federalism

53. A key characteristic of Austria’s federal system is its consensus-oriented and cooperative approach. The limited constitutional autonomy of the *Länder* is compensated by different mechanisms allowing the *Länder* to unite their interests and to establish a political counterpart to strong legal powers of the federation. Although this “cooperative federalism” is mostly informal, it nevertheless proves to be efficient.

54. A major tool of cooperative federalism is the Conference of *Land* Governors (*Landeshauptleutekonferenz*), which is not foreseen by the Federal Constitutional Law, but has become an important political instrument for co-ordinating *Länder* efforts and protecting their interests from the federation. It usually meets four times a year and for specific occasions.

55. The most far-reaching legal instrument of “co-operative federalism” is Article 15a of the Federal Constitutional Law, giving the possibility to conclude under public law treaties/agreements between the federation and the *Länder* or among *Länder* on matters within their respective sphere of competences. These agreements are often made in order to reach an individual financial solution (e.g. health care).

56. Two main examples of such an agreement are the Austrian Stability Pact (*Österreichischer Stabilitätspakt*) and the consultation mechanism (*Konsultationsmechanismus*). Although Article 15a only authorises agreements between the federation and the *Länder*, a constitutional act of authorisation has been passed in order to also allow municipalities to take part in the Austrian Stability Pact and in the consultation mechanism.

8. The reform process

57. Reform of the Austrian federal system has been on the political agenda for decades. Attempts have been made to restructure the federal system and to clarify the competences of the different levels through constitutional change, but were without much success.

58. A major constitutional reform effort was undertaken in 2003, when the Austrian Convention (*Österreichischer Verfassungskonvent*) was set up, comprising some 70 members from different walks of life (constitutional lawyers, politicians and lobbyists, etc). It was chaired by the former President of the Austrian Court of Auditors and was expected to draw up a draft constitution by the end of 2004.

59. The work of the Convention did not proceed smoothly due to the conflicting views of the parties concerned on the subject matter, although a draft was presented informally by the chairperson. The matter had been referred to a special parliamentary committee, which was established immediately after the failure of the Constitutional Convention.

60. In 2007 another expert committee was set up that was successful in so far as it launched a big constitutional reform that was enacted in 2008. The committee failed, however, to produce any other constitutional reform, apart from a draft on a reform of federalism in 2008, which did not receive the consent of the *Länder* governors. So far, the reform process again seems to be at an end, apart from political demands that are raised periodically.

61. Very recently, a constitutional draft on the installation of *Land* administrative courts to replace the Independent Administrative Senates has been presented. This proposition is a controversial one, as it would grant the *Länder* judicial powers.

9. Conclusion

62. Austrian federalism is characterised by the *Länder* having extensive executive functions, including the implementation of federal decisions (indirect federal administration), and rather weak legislative powers of their own. In relations between the *Länder* governors and federal ministers, the *Länder* governors are subordinate to the federation only where indirect federal administration is concerned.

63. Only federal bodies – the National Council and the Federal Council are involved in federal constitutional law-making, with the exception of some cases where the *Länder* have a direct absolute veto in the federal law-making process.

64. Almost all matters of practical importance, including, but not only, criminal law, civil law, corporate law, most other aspects of economic law, education, science, welfare, communications and the health care system are regulated by the federation.

65. The *Länder* are politically and legally weak in the Federal Council with regard to the adoption of financial equalisation provisions and generally in terms of financial relations with the federation.

66. It should be noted that fiscal units in federal systems typically suffer from imbalances between their expenditure responsibilities and taxation powers, meaning a system of intergovernmental revenue sharing and grants needs to be set up in most cases.

67. Institutional reform seems inevitable if federalism is to operate effectively in Austria in the future and if Austrians are to continue to accept it as a legitimate system. Options for change include modifying the composition and functions of the Federal Council in order to make it better suited to representing *Länder* interests, transforming the system of indirect federal administration to direct *Land* administration, introducing *Land* Administrative Courts and modifying the division of powers.

68. It is clear that a significant degree of fiscal autonomy is required for the proper and efficient functioning of a federal system. Accordingly, a number of fiscal areas are typically cited as needing reform. Among them:

- (i) disclosure and accounting standards and benchmarking of expenditure norms, particularly at municipal levels,
- (ii) overlapping and unclear expenditure responsibilities across different levels of government, which blur accountability,
- (iii) the complex system of revenue sharing and intergovernmental transfers, which creates incentive problems,
- (iv) weak sub-national fiscal autonomy.

69. A key element of the Austrian system, which should however not be neglected, is the cooperative nature of Austrian federalism ("cooperative federalism"), implying that all changes are carried out through mostly informal consultation between the *Bund*, the *Länder* and the municipalities.

III. LOCAL SELF-GOVERNMENT

1. The constitutional and legal foundation of municipalities (*Gemeinden*)

70. The Federal Constitutional Law of Austria recognises the principle of local self-government. Article 116 B-VG states that each *Land* is composed of municipalities and that each municipality is a territorial and administrative body of its own, enjoying the right of self-administration. The territorial tier of government below the *Länder* are the municipalities and the districts.

71. The Federal Constitutional Law (Articles 116 and 118) lays down the requirements for the organisation and operation of local self-government.

72. According to *Statistisches Jahrbuch 2010*, within the *Länder* there are a total of 2,357 municipalities: 15 cities with their own statutes (*Statutarstädte*), 198 towns (*Stadtgemeinden*), 759 markets (*Marktgemeinden*) and 1,385 villages (*Ortsgemeinden*). Given that Austria's population is about 8 million, the average municipality has around 3,500 inhabitants and about 1,500 municipalities have fewer than 2,000 inhabitants. There are 24 municipalities with more than 20,000 inhabitants, while the smallest municipality has a population of around 60. Austria has thus a large number of small municipalities.

73. Furthermore, under Article 115, the *Länder* may lay down detailed legislative frameworks for local authorities (*Gemeindeordnung*), in accordance with the principles of the Federal Constitutional Law. In this respect, *Land* constitutional and ordinary legislation usually determines the administrative arrangement of local territory, electoral processes at local level, local taxes, the representation of local authorities in the *Land* legislative process and municipalities' rights to initiate legislation, referendums or opinion polls.

74. The *Länder* have also passed a number of ordinary laws in order to implement the rules established by the Federal Constitutional Law and by their own Constitutions respectively. These concern issues such as local government acts, city statutes and inter-municipal associations, etc.

75. The Federal Constitutional Law does not distinguish between different types of municipalities, but refers to the concept of "uniform municipality" (*Einheitsgemeinde*), which means that all municipalities have to perform the same tasks and must be granted equal legal treatment, irrespectively of the size,

financial capacity, population or status (city, town, market or village). Only Vienna, the capital of Austria, and 15 other cities have a particular status and are required to perform specific tasks of district administration.

2. Differentiation between state power and local self-government (Article 3 of the Charter)

76. The constitutional principle of differentiation between state bodies (federal and regional) and local self-government bodies is the basic guarantee of local autonomy. Municipalities in Austria are not merely administrative units but also autonomous bodies with a right to self-government. This is demonstrated by the fact that administrative tasks are performed by bodies other than the federation and constituent *Länder*. As is characteristic of self-government, their sphere of competence includes own/autonomous (Article 118 of the Federal Constitutional Law) and assigned/delegated functions (Article 119 of the Federal Constitutional Law).

77. When municipalities perform tasks within their own sphere of competences, they may not be given instructions by the federation or *Länder*. When they perform delegated tasks, however, they are subject to instructions from federal or *Länder* authorities.

3. Apportionment of powers (Article 4 of the Charter)

78. Under Article 4, paragraph 3 of the Charter, the distribution of powers and responsibilities should be based on the principle of subsidiarity, which requires that “public responsibilities” be exercised by the “authorities closest to the citizen”. This approach appears to apply to local self-government in Austria.

79. Municipalities’ powers have a sound written basis in the Federal Constitutional Law, which reflects the principle of subsidiarity. Apart from the provisions mentioned above, Articles 116 and 118 of the Federal Constitutional Law also stipulate that municipalities’ own sphere of competences includes all matters that exclusively or preponderantly concern their local communities and may reasonably be performed by the authorities within their municipal boundaries. Article 118 sets out a demonstrative list of matters for which municipalities are responsible.

80. Municipalities’ own responsibilities cover issues of local interest as defined by the respective *Land*, in addition to those set out by the Federal Constitutional Law. They include the police, urban and spatial planning, transport, environmental protection, water supply and sewerage, household waste collection, construction and upkeep of primary and vocational schools, as well as health (municipal hospitals) and welfare.

81. Delegated responsibilities include, among other things, civil registration, organisation of elections and health measures, etc.

82. In addition, the federation and the *Länder* share responsibilities with the municipalities in areas such as education and health care. However, this is not an “original” sharing system, since the constitutional distribution of powers only allocates powers either at federal or *Land* level. Only in a second step, municipalities derive powers from federal or *Länder* laws.

83. The Federal Constitutional Law provides that municipalities perform the tasks for which they are responsible within the framework of the legislation of the federation and the *Länder* on their own responsibility and without instructions.

84. This provision seems to comply with the principle of full and exclusive powers (Article 4, paragraph 4 of the Charter) at least to the extent that the powers assigned contain no provision for intervention by other bodies or levels of government. Nevertheless, even when they perform tasks in their own spheres of competence, local authorities are subject to supervision by both the federal and/or *Land* authorities.

85. In this connection, it should be noted that Austria does not consider itself bound by Article 4, paragraphs 2 and 5 of the Charter, which provide for local authorities to have “full discretion to exercise their initiative with regard to any matter which is not excluded from their competence nor assigned to any other authority” and in “adapting their exercise to local conditions” in cases where powers are delegated.

4. Municipal Institutions

86. The Federal Constitutional Law (Article 117) recognises three main bodies of local self-government: the municipal council, the municipal board and the mayor.

4.1. Municipal council (*Gemeinderat*)

87. The municipal council is the highest authority of the municipality. Pursuant to Article 117, local councils are directly elected by the citizens, according to the same electoral principles as apply to the election of the National Council. The councils are representative and decision-making bodies.

4.2. Municipal board (*Gemeindevorstand*)

88. Municipal boards are collegiate bodies elected by the local councils in a proportional representation voting system. In Statutory cities they are called municipal senate (*Stadtssenat*). In the 2,357 municipalities of Austria there are about 42,250 municipal councillors.

4.3. Mayor (*Bürgermeister*)

89. The Federal Constitutional Law provides that mayors are elected by local assemblies. Since 1995, however, it has allowed the *Länder* to deviate from this provision. So far, six *Länder* have adopted constitutional provisions allowing the direct election of mayors.

90. Mayors are the political heads of the municipalities, representing the community and chairing the municipal councils and the boards of the municipalities. They have the right to table motions and to issue instructions.

91. Mayors are accountable to the municipal councils for matters related to their spheres of competence. For performing all tasks delegated to the local level they are subject to the instructions of either the federal or *Länder* authorities, depending on whether the task in question involves a federal or *Länder* competence.

92. In the event of illegal conduct, mayors may be dismissed by the *Land* government on behalf of the *Land* or by the *Land* Governor on behalf of the federation.

93. While mayors of larger towns exercise their functions full-time, most mayors head small municipalities and fulfil their mandate alongside their normal job. During the monitoring visit, the delegation has been informed about the difficulty of small municipalities to find candidates for the position of mayor due to poor social conditions, in particular with regard to pension and unemployment schemes. Some interlocutors also expressed the fear that an increasing liability of the mayor in cases of accidents may hinder potential candidates.

5. Statutory cities (*Statutarstädte*)

94. Although there is no legal distinction between different types of municipalities, some cities have their own statute/own constitution (*Stadtverfassung*) and are so-called “statutory cities” (*Statutarstädte*).

95. In accordance with Article 116, paragraph 3 of the Federal Constitutional Law, this status is granted to municipalities with at least 20,000 inhabitants, if this does not jeopardise *Land* interests. The status involves a specific kind of *Land* law, which requires the approval of the Federal Government. At present, 15 towns have statutes of their own⁴, mostly because they are regional capitals or for historic reasons, but the option is open to other municipalities if the aforementioned conditions are met.

⁴ Eisenstadt, Rust, Klagenfurt, Villach, Wiener Neustadt, St. Pölten, Krems, Waidhofen/Ybbs, Linz, Steyr, Wels, Salzburg, Graz, Innsbruck, Wien.

96. The major difference between “ordinary” municipalities and cities with their own statute is that statutory cities hold the functions of administrative districts and have to carry out those administrative tasks within their territories, which are usually performed by various administrative agencies.

97. The mayors are both the heads of the elected local governments and of the federated state territorial administrations.

6. The specific case of the capital city Vienna

98. Vienna has 1,6 million inhabitants for an area of 414 square kilometres. It was an integral part of Lower Austria until 1922 and has today a special statute being a *Land* of its own, a municipality and a statutory city. The municipal council therefore also acts as *Land* Parliament, the municipal senate as *Land* government and the mayor as *Land* Governor.

99. Due to its double status as both a *Land* and a municipality, Vienna in the fiscal equalisation scheme receives its share both as *Land* and as municipality.

100. As capital city Vienna has no specific rights, with the exception that it hosts all federal institutions.

101. Vienna’s double political and administrative system is in line with the Congress Recommendation 219 (2007) on the Status of capital cities calling for a democratically elected municipality in the capital city. The city councillors perform a dual function, since they are elected to both the municipal council and the *Land* Parliament. In other words, they are both city councillors and *Land* deputies.

102. Vienna is subdivided into 23 municipal districts, which have their own district parliaments with certain powers. They are headed by elected district chairpersons. The powers and financial resources of the districts seem very limited.

103. The mayor chairs the municipal senate and convenes its meetings. Beneath the Mayor there are the executive city councillors as heads of the municipal authority’s working groups, the 23 municipal district chairpersons and all municipal employees. The Mayor represents the city abroad.

7. Austrian Association of Municipalities and Austrian Association of Cities and Towns

104. Under Article 115 of the Federal Constitutional Law, two associations are competent to represent the interests of local authorities: the Austrian Association of Municipalities (*Österreichischer Gemeindebund*), representing smaller towns and the Austrian Association of Cities and Towns (*Österreichischer Städtebund*) representing larger cities.

105. Membership of these associations is voluntary. They are both private-law entities and are funded solely by contributions from the member communities. They are entitled by constitution or law not only to participate in the appointment of some Austrian delegates to the EU Committee of the Regions, but also to conclude the agreement on a consultation mechanism and the Austrian Stability Pact.

106. Their principal tasks are to defend the interests of municipalities in the periodic negotiations of the Fiscal Equalisation Law (*Finanzausgleichsgesetz*), in the negotiations on intergovernmental revenue sharing and express their point of view on the many bills that originate in the national parliament.

107. The associations (like the *Länder*) pay very close attention to the limitations on local self-government which may result from certain international agreements. In particular, they have adopted various resolutions to prevent agreements such as those of the GATS (General Agreement on Trade and Services) covering public services like water, health, urban transport and social services which are currently delivered by the *Länder* or municipalities.

8. Status of elected representatives

108. In addition to the Federal Constitutional Law, the status of local elected representatives is determined by the *Länder* local government acts and acts governing local elections. The relevant

legislation must not be contrary to the Federal Constitutional Act, in particular, Article 115. Different legislation on local self-government applies in each of the nine *Länder*.

109. Depending on the *Land* legislation, local representatives' terms of office are five or six years. Elected representatives may resign at any time without restrictions. A restriction does, however, apply following their resignation: they may not hold the post of president of the Administrative Court within a period of four years.

110. *Land* legislation makes provision for the work of elected representatives: civil servants are released from their duties for a specific number of hours.

111. Elected representatives receive allowances to compensate for loss of earnings and to cover expenses. The reimbursement of the expenses incurred while carrying out elective duties varies from *Land* to *Land*. The amount reimbursed is not adequate everywhere, and in some *Länder* there is a clear shortage of candidatures for the position of municipal councillors.

112. There are special *Land* laws governing salaries and pension schemes for the elected representatives and full-time mayors of large towns. Small municipalities are, however, left out of these schemes and their mayors suffer from inadequate social security cover. Mayoral salaries for municipalities under 500 inhabitants range from €11,967 (US\$16,403) per year in Burgenland to €21,910 (US\$30,033) in Tyrol, and for cities over 20,000 inhabitants from €88,536 (US\$121,360) in Lower Austria to €110,670 (US\$151,700) in Upper Austria. Improvements in local councillors' position (social cover, insurance liability, etc.) are requested by many elected officials.

113. Women's representation in the various Austrian elective assemblies and in the various executive bodies is relatively weak and political reforms are needed to improve this situation. The number of female mayors increased from forty-five in 2003 to seventy-three in 2005, a significant increase, but still only a 3.1% share of the leadership positions.

9. Protection of local self-government (Article 5 of the Charter)

114. Changes in municipal boundaries and the merging or splitting of municipalities require a special decision by the municipal council and the approval of the *Land* government. From a legal point of view, the changes take the form of ordinances of the *Land* government or *Land* acts.

115. Depending on the legislation in each *Land*, the public does not necessarily have to be consulted.

10. The system of administrative supervision of local authorities (Article 8 of the Charter)

116. Under Article 8, paragraph 2 of the Charter "any administrative supervision of the activities of local authorities shall normally aim only at ensuring compliance with the law and with constitutional principles". Theoretically, supervision of the activities of local government organs focuses solely on lawfulness. In particular, when municipalities act within the area of local self-government, they are not subject to instructions from the federal or *Länder* authorities.

117. To ensure lawfulness, a number of supervisory instruments involving, for example, the right to information, the right to repeal unlawful local orders and the right to approve local ordinances in some cases and even to dissolve local assemblies are available to the federation and the *Länder*.

118. The federation may exercise its supervisory powers with regard to the performance of the federal tasks that are carried out by municipalities.

119. The *Länder* also have the power to examine the budgets of municipalities with reference to the criteria of economy, efficiency and expediency.

120. Municipalities are normally supervised by the district agencies, by the *Länder* governments and by the *Land* Governor on behalf of the federation.

121. Clearly, at least some of these provisions go beyond the notion of the supervision of lawfulness. They definitely imply administrative supervision, which is acceptable in the case of functions delegated to municipalities.

11. Budgetary and financial control of local authorities

122. Budgetary and financial control measures at municipal level depend on each *Land's* legislation. While the municipalities in most *Länder* are audited by the control authority in their respective *Land* (*Gemeindeaufsicht*), all of the *Länder* have established their own Regional Courts of Auditors (*Landesrechnungshöfe*).

123. Until 1st January 2011 pursuant to Article 127 a, paragraphs 1 and 3 of the Federal Constitutional Law, all municipalities with at least 20,000 inhabitants were subject to auditing by the Federal Court of Auditors (*Rechnungshof*). During the visit the delegation had been informed of the concerns among locally elected representatives that the supervision (considered to be extremely stringent) by the Federal Court of Auditors could also be applied to municipalities with fewer than 20,000 inhabitants. Following amendments introduced to the Federal Constitution on 14 December 2010, this number has been reduced to 10,000 inhabitants, which covers about 70 municipalities.

12. Financial and fiscal autonomy of local authorities (Article 9 of the Charter)

124. Article 9 of the Charter devotes much attention to the financial resources of local authorities, which are regarded as one of the best guarantees of their autonomy.

125. The major provisions on financial and fiscal autonomy of Austrian municipalities are set out, in addition to the Federal Constitutional Law, in the Fiscal Constitutional Law (*Finanz-Verfassungsgesetz*). According to Section 2 of the Fiscal Constitutional Law, municipalities must meet the expenses incurred in the performance of their tasks, whether they belong to their autonomous or delegated sphere of competence, unless federal or *Länder* legislation stipulates otherwise. Such legislation must not, however, contravene Section 4 of the Law, which lays down the principle of fiscal equality and requires the federation and the *Länder* to take account of the limits on the efficiency of each territorial entity and the distribution of public tasks between them.

126. Pursuant to Section 6 of the Fiscal Constitutional Law, municipalities are entitled to levy either exclusive local taxes or shared taxes. Section 7 gives the federal legislature the power to regulate federal shared taxes, to declare specific taxes to be exclusively local taxes and to authorise municipalities to levy certain taxes on account of resolutions adopted by local councils.

127. *Länder* legislatures are mainly responsible for determining shared *Länder* taxes and exclusive local taxes. They may also require local governments to levy certain taxes if their budgetary position so demands.

128. The Fiscal Constitutional Law also provides that financial appropriations may be granted to municipalities by both the federation and the *Länder* in the form either of rate support grants or of allocations in accordance with specific requirements.

129. A more detailed determination is made by the Fiscal Equalisation Law (*Finanzausgleichsgesetz*), which is re-negotiated on a consensual basis, although there is no legal requirement for this. The municipalities are represented by the Austrian Association of Cities and Towns and the Austrian Association of Municipalities in these negotiations. If an agreement is reached between all “partners”, the Constitutional Court will assume that the Fiscal Equalisation Law does not discriminate them. Although the agreement does not have a legal character, it may thus have a legal effect should a Fiscal Equalisation Law be challenged before the Constitutional Court.

130. In addition, two agreements seeking to coordinate fiscal relations have been concluded by the federation, the *Länder* and, on behalf of municipalities, the Austrian Association of Towns and the Austrian Association of Municipalities. These agreements are the “consultation mechanism” and the “stability pact”, which are described in more detail in paragraphs 53 and 57 of this report.

131. The basic principle regarding financial and tax resources is consistent with the distinction between local authorities’ own or inherent powers and the powers delegated to them by higher levels of government (the federation or *Länder*).

132. It should be pointed out, however, that only local taxes are to be regarded as local authorities' own revenue, of which they, "within the limits of statute, have the power to determine the rate" (Article 9.3 of the Charter). As the legislation stands, the scope for giving local authorities increased fiscal autonomy therefore seems rather limited.

133. Municipalities have little leeway regarding their own-source taxes. They are not allowed to set the rates or introduce new taxes, as the list of taxes, the tax bases and most of the tax rates are determined either by the *Land* or by federal law.

134. Furthermore, municipalities require authorisation from the supervisory authority (*Land* government) to take out loans. The criteria taken into account by the *Länder* for granting municipalities permission to take out loans are the purpose of the loan and the income situation of the municipality.

135. Municipalities' limited discretion over the rates and base of their tax revenue results in a situation where the proportion of shared taxes in municipal budgets has been gradually increasing, suggesting no improvement in municipal fiscal autonomy.

136. Given the differences in municipalities' revenues, an appropriate equalisation scheme is of particular importance. This is mainly determined by political negotiations, in which municipalities are represented by both associations.

13. Rural exodus

137. As in other European countries, rural exodus is a reality in Austria. The number of municipalities increased by 2.5% from 2,300 in 1976 to 2,357 in 2008. In rural areas 178 municipalities have fewer than 500 inhabitants, and two-thirds (1,528) of all municipalities have between 501 and 2,500 inhabitants. Over half of Austria's population (55.6%) live in municipalities of up to 10,000 inhabitants; hence the average size is only 3,539 inhabitants. By reducing the population of certain rural municipalities, it reduces their capacity for action.

14. Inter-municipal cooperation

138. Given the important number of small municipalities, inter-municipal cooperation is a key feature of local government in Austria, as it provides the necessary economies of scale and expertise that individual municipalities lack. The Federal Constitutional Law (Article 116a) provides that municipalities may join together – by agreement or by law – to form "Municipality Associations" (*Gemeindeverbände*) to deal with common specific matters within their own sphere of competences.

139. The Municipality Associations may be voluntary as well as mandatory. In the first case the approval of the supervisory authority is necessary. This approval must be given under certain conditions specified in the Federal Constitutional Law. Cases where cooperation may be imposed by the legislation concern, for example, waste-management associations.

140. Inter-municipal co-operation has been growing rather quickly in areas such as school education, environmental protection, water supply, health and social services. For the moment, the Federal Constitutional Law allows municipality associations only to serve one specific purpose within a particular *Land*. This explains growing claims for increasing the flexibility of this tool, allowing the establishment of municipality associations across different *Länder* and for various purposes.

15. Direct democracy: Citizens' participation

141. It is interesting to note that Austria has not signed the Additional Protocol to the Charter on the right to participate in the affairs of a local authority although Article 117, paragraph 8 of the Federal Constitutional Law determines that the legislation of the *Länder* can foresee direct participation of the citizens.

142. Depending on the legislation of each *Land*, the citizens of the municipalities have various possibilities to participate directly in the decisions of their communities, such as citizens' vote (*Bürgerabstimmung*), citizens' initiative (*Bürgerbegehren*), citizens' consultation (*Bürgerbefragung*) and annual citizens' assemblies (*Bürgerversammlung*).

16. Conclusions

143. Local governments in Austria derive their powers from the federation and/or *Länder* under a system that reflects the principle of subsidiarity. At the same time, even in the area of their own/ autonomous tasks, local governments are subject to a high degree of supervision by federal and *Länder* authorities, which clearly goes beyond the concept of the supervision of lawfulness. It should also be noted that mayors are subject to instructions from the federal authorities when exercising tasks delegated to municipalities.

144. Municipalities are assigned powers of their own, which are supplemented by an array of delegated tasks. In practice, however, there are several important areas where responsibilities overlap or where closely related activities are performed and co-financed by different levels of government.

145. Municipalities have practically no discretion with regard to local taxes and the proportion of own-source taxes in budget revenue amounting to 21 % is relatively low.

146. The fiscal autonomy of both Austrian municipalities and *Länder* is too limited to allow the effective exercise of discretion. This is evident from the low share of own taxes at the sub-national level.

147. Sub-national fiscal autonomy should ideally be strengthened in a revenue-neutral fashion. The issue of increasing sub-national fiscal autonomy raises the question of which taxes should be assigned to each of the different levels of government. A subsidiarity principle applies here, too. In particular, taxes should be assigned to the lowest level of government capable of implementing them efficiently without creating significant spillovers and externalities in relation to other regions.

148. A degree of fiscal autonomy is normally required in order for local governments to be able to adapt properly to the preferences of their residents. Moreover, responsibility for levying taxes strengthens the accountability of local governments to their voters. Local governments are believed to be better able to discern the preferences of their residents, more aware of local conditions and also more accountable to their residents. Thus they can better accommodate the preferences of local residents, which improves allocative efficiency, the efficiency of provision of local services and welfare.

Appendix 1**Programme of the Congress monitoring visit to Austria
Vienna, St. Pölten, Traisen, 24-26 March 2010**

Mr Marc COOLS	Rapporteur on local democracy, member of the Institutional Committee of the Congress, Deputy Mayor of Uccle, Belgium
Mrs Irene LOIZIDOU	Rapporteur regional democracy, member of the Institutional Committee of the Congress and Municipal Councillor of Engomi, Cyprus
Prof. Dr. Ivan VOLODIN	Member of the Group of Independent Experts on the European Charter of local Self-Government, Russian Federation

Wednesday, 24 March 2010 (Vienna)

Prof. Dr. Theo ÖHLINGER, Professor of public law at the University of Vienna and former member of the Austrian Convention (*Österreichischer Verfassungskonvent*)

MAG. Dr. Matthias VOGEL, Head of Section III on Law
Mr Ulrich THEIMER, Division III/2, Ministry of Interior

Dr. Anna SPORRER, Constitutional Service,
Mag. Christoph LANNER, Constitutional Service,
Diplo-Ing. Manfred BRUCKMOSER, Coordination Service, Section on regional policy, Federal Chancellery (*Bundeskanzleramt*)

Dr. Britta WAGNER, Secretary General
Dr. Harald EBERHARD, Academic Assistant, Constitutional Court

Mag. Renate BRAUNER, Deputy Mayor and Deputy Governor of Vienna
and officials from different departments of the city administration

Dr. Anton MATZINGER, Head of Section II/3 Intergovernmental Fiscal Relations
Mag. Gerlinde PRÖLL, Section II/3 Intergovernmental Fiscal Relations, Ministry of Finance

Thursday, 25 March 2010 (St. Pölten and Traisen)

Ing. Johann PENZ, President of the Regional Parliament (*Landtag*) of Lower Austria (*Niederösterreich*)

Mag. Johanna MIKL-LEITNER, Minister of the Regional Government (*Landesregierung*) of Lower Austria
and Members of the Regional Parliament (*Landtag*) of Lower Austria

Mr Herbert THUMPSE, Mayor of the town of Traisen,
Ms Marianne FÜGL, Vice-mayor of Traisen
and other members of the municipal council

Mr Jan Kai KAINER, deputy Chairman of the Financial Committee of the National Council, Parliament

Dipl.-Ing. Bernhard KRATSCHMER, Head of Section S5-6 on municipality administration
and municipality associations, Federal Court of Auditors
Mag. Helga Berger, Head of the Communication department, Federal Court of Auditors

Dr. Herwig VAN STAA, Head of the Austrian Congress Delegation
Dr. Andreas GREITER, Secretary of Austrian Congress Delegation

Friday, 26 March 2010 (Vienna)

Dr. Franz Eduard KÜHNEL, Chair of the Committee of Internal Affairs of the Federal Council, Parliament

Mag. Barbara PRAMMER, President/Speaker of the National Council, Parliament

Dr. Thomas WENINGER Secretary General of the Association of Austrian Towns and Cities, GR

Erwin MOHR, Vice-president of the Vorarlberg municipality association

Dr. Andreas ROSNER Head of the *Länder* Liaison Office

Dr. Elisabeth HEINZEL-SCHIEL, official of the government of Lower Austria, Department for Europe