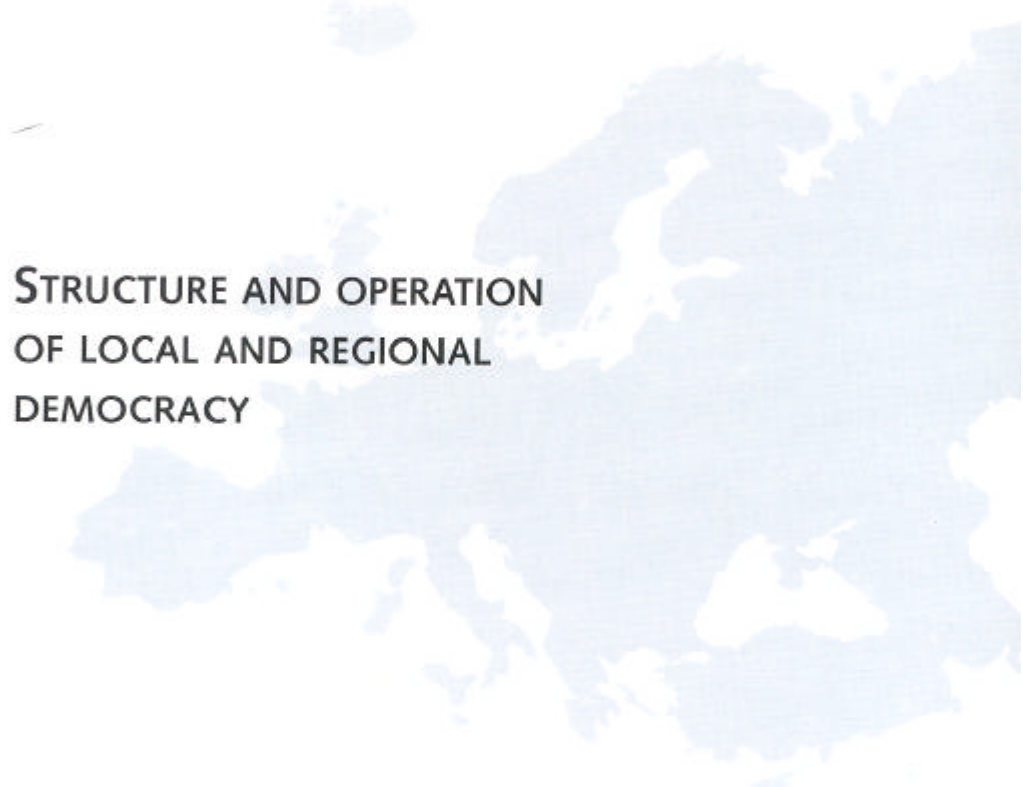


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**STRUCTURE AND OPERATION
OF LOCAL AND REGIONAL
DEMOCRACY**

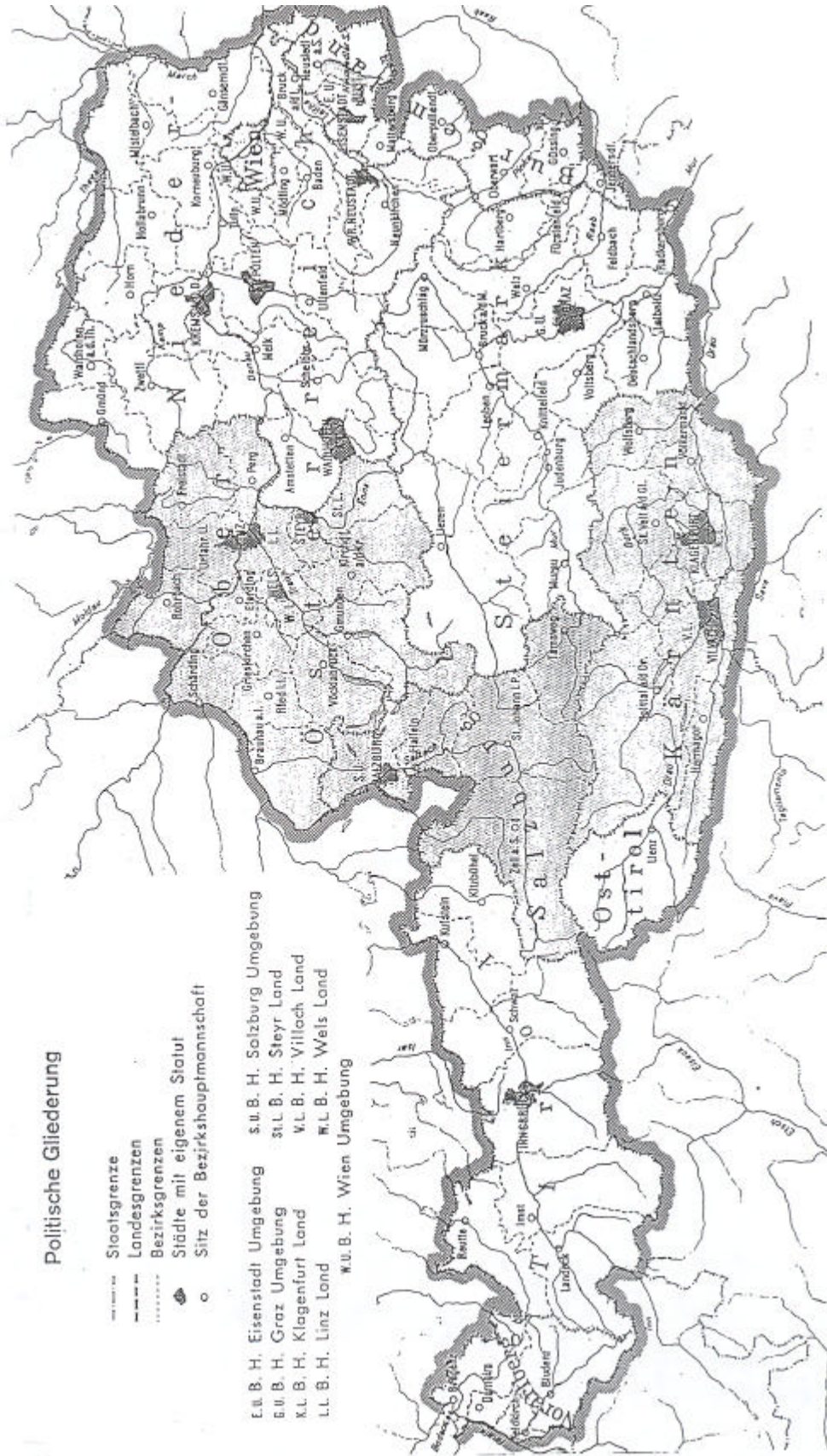
Austria

AUSTRIA
Territorial set-up

Politische Gliederung

- Staatsgrenze
- Landesgrenzen
- Bezirksgrenzen
- ◆ Städte mit eigenem Statut
- Sitz der Bezirkshauptmannschaft

- E.B.H. Eisenstadt Umgebung S.U.B.H. Salzburg Umgebung
- G.U.B.H. Graz Umgebung St.L.B.H. Steyr Land
- K.L.B.H. Klagenfurt Land V.L.B.H. Villach Land
- L.L.B.H. Linz Land W.L.B.H. Wels Land
- W.U.B.H. Wien Umgebung



STRUCTURE AND OPERATION OF LOCAL AND REGIONAL DEMOCRACY

Austria

Situation in 1999

Report adopted by the Steering Committee on Local and Regional Democracy (CDLR) in December 1999

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1. LEGAL BASIS

1.1. Constitutional provisions

The Federal Constitutional Act, which was adopted in 1920 and amended in 1929 (BGBl. No.1/1930) and 1962 (BGBl. No. 205/1962), lays down the basic rules concerning municipalities.

Article 2 states that Austria is a federal state formed of autonomous states (*Länder*): Burgenland, Carinthia (Kärnten), Lower Austria (Niederösterreich), Upper Austria (Oberösterreich), Salzburg, Styria (Steiermark), Tyrol (Tirol), Vorarlberg and Vienna (Wien).

Article 15 establishes the principle of general competence: all competencies which are not explicitly assigned by the Constitutional Act to the federal government belong to the *Länder* governments.

Articles 95 and 101 state that, in questions related to *Länder* competencies, the *Land* parliament (*Landtag*) adopts laws and the *Land* government enforces and executes them. The *Land* government consists of a governor (*Landeshauptmann*), a number of deputies and other members.

Articles 116 to 118 lay down the basis for the organisation and operation of local self-government.

Article 116

(1) Every *Land* is divided into municipalities. A municipality is a territorial corporate body entitled to self-administration while being at the same time an administrative local district. Every territory belonging to a *Land* must be a part of a municipality.

(2) The municipality is an independent economic entity. It is entitled, within the limits of the ordinary laws of the *Bund* (Union) and the *Länder*, to possess assets of all kinds, to acquire and to dispose of such at will, to operate economic enterprises and to manage its budget independently within the framework of the constitutional provisions governing finance and to levy taxes.

(3) A municipality with at least 20 000 inhabitants shall, at its own request, if *Land* interests are not thereby jeopardised, be awarded its own charter by way of *Land* legislation. Such an enactment may only be published with federal government approval. This shall be deemed given if the federal government has not informed the *Land* governor (*Landeshauptmann*) that the approval has been refused within eight weeks of the date of the enactment's arrival at the competent federal ministry. A town with its own charter shall also perform, besides its community administrative duties, those of the *Bezirk* administration.¹

1 The "Bezirk" is only an administrative district, not a self-governing entity.

Article 117

- (1) The relevant local authorities bodies shall be the following:
- a. the municipality council (*Gemeinderat*), a representative body to be elected by the qualified voters; it is the decision-making organ;
 - b. the board of the municipality (*Gemeindevorstand*); in towns with their own charter, the town senate (*Stadtrat*);
 - c. the mayor.

Article 118

(1) The municipality has its own sphere of competence and one assigned to it either by the Union or by the *Land*.

(2) Municipalities' own sphere of competence includes, apart from the matters mentioned in Article 116 (2), all matters that exclusively or preponderantly concern the local community as personified by the municipality and may reasonably be performed by the authority within the municipal boundaries. Legislation shall expressly specify matters of this kind as falling within the municipality's own sphere of competence.

(3) A municipality is guaranteed official responsibility in its own sphere of competence for performance of the following matters in particular:

1. appointment of the municipal bodies, notwithstanding the competence of election boards at a higher level; settlement of the internal arrangements for performance of the municipal tasks;
2. appointment of the municipal staff and exercising of official responsibility over them, notwithstanding the competence of disciplinary, eligibility and investigation commissions at a higher level;
3. local public safety administration; local events control;
4. administration of municipal traffic areas; local traffic police;
5. crops protection police;
6. local market police;
7. local sanitary police, especially in the field of emergency and first aid services, as well as matters pertaining to deaths and burial;
8. public decency;
9. local building police, excluding federal-owned buildings which serve public purposes; local fire control; local development (environmental) planning;
10. public services for extrajudicial settlement of disputes;
11. debtors' sale of goods.

(4) The municipality shall perform the business for which it is competent within the framework of the laws and ordinances of the Union and the *Land* on its own responsibility, free from instructions, and to the exclusion of legal redress by administrative authorities outside the municipality. A right of supervision pertains to the Union and to the *Land* over the municipality with respect to its performance in its own sphere of competence.

1.2. Main legislative texts concerning local/regional authorities

The *Länder* of Austria are entitled to determine the organisation of the municipalities and to pass further regulations pertaining to local authorities.

The fundamental laws are the local government acts (*Gemeindeordnung*) and acts governing local elections (*Gemeindewahlordnung*). These acts cannot be contrary to the Austrian Constitutional Act, in particular to Article 115. As Austria consists of nine *Länder*, nine different sets of legislation on local government exist.

2. STRUCTURE OF LOCAL/REGIONAL AUTHORITIES

2.1. Main subdivisions

The administrative structure of Austria therefore includes, in addition to the federal state (*Bund* or Union), the autonomous states (*Länder*) and the municipalities.

2.2. Statistical data

There are nine *Länder* and 2 359 municipalities (of which fifteen towns have their own statutes); in 1950, there were nine *Länder* and 3 999 communities (fifteen towns with their own statute).

2.2.1. Population (number of inhabitants)

Surface area and population of *Länder* (1998)

Land	Surface area (sq. km)	Population
Burgenland	3 966	276 067
Carinthia (Kärnten)	9 533	563 645
Lower Austria (Niederösterreich)	19 174	1 529 781
Upper Austria (Oberösterreich)	11 980	1 377 902
Salzburg	7 154	511 478
Styria (Steiermark)	16 387	1 206 346
Tyrol (Tirol)	12 647	661 931
Vorarlberg	2 601	344 752
Vienna (Wien)	631	1 600 280
Total	83 857	8 072 182
Average	9 312	896 909

Population of municipalities

Indicator	Population
Average population	3 421
Largest population	1 600 280
Smallest population	50

2.2.2. Distribution of municipalities according to population (from the census of 1991)

Number of inhabitants	Number	Percentage	Population	Percentage
Under 1 000	626	26.6	394 117	5.1
1 000-5 000	1 528	64.9	3 101 421	39.8
5 001-10 000	130	5.5	847 819	10.9
10 001-50 000	60	2.5	962 962	12.4
50 001-100 000	4	0.2	246 675	3.2
100 001-500 000	4	0.2	702 944	9.0
Over 500 000	1	0.2	1 539 848	19.8
Total	2 353	100.0	7 795 786	100.0

2.3. Special structures

The federal capital, Vienna, has a special status: it is at the same time a *Land*, a town with its own statute (called *Stadtverfassung* – town constitution) and a municipality. Therefore, the municipality council also acts as *Land* parliament, the town senate as *Land* government and the mayor as *Land* governor.

Vienna is also a town region. The capital is, together with thirty-two municipalities of Lower Austria, the core of this region with 116 other communities of this *Land* forming the outer circle.

A town region is a regional entity which is bigger than the administrative territorial structure. A town region is formed in major urban living areas with more than 15 000 inhabitants where there is either:

- an urban settlement of at least 10 000 inhabitants;
- several bigger centres with at least 5 000 inhabitants; or
- communities with more than 2 500 inhabitants living from non-agricultural activities when these communities are linked together in structure and function in a very close way, so that they have been formed into a nucleus of a living space.

The communities mentioned above are classified as town regions. They are surrounded by other communities, consisting largely of commuters. They form the so-called outer circle.

2.4. Procedures governing changes in structures

For changes in territories or municipality boundaries, mergers or separations of municipalities, a special decision of the municipal council and the approval of the *Land* government are required. In general, changes take the legal form of an ordinance of the *Land* government or a *Land* act. If through these changes district boundaries are altered, approval of the federal government is necessary.

The consultation of the inhabitants is not requested.

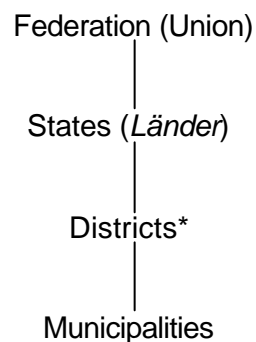
2.5. General units of state administration at local/regional level

The *Länder* have the constitutionally guaranteed right to execute some federal laws (which are enumerated in the Constitution) through their own authorities. This is referred to as indirect federal administration and is executed by the *Land* governor.

The lowest level of state administration is the district agency of administration (*Bezirkshauptmannschaft*), which performs both federal and *Land* executive duties, but does not constitute a self-governing entity. As a rule, the district agency of administration is also the supervisory authority of the municipalities.

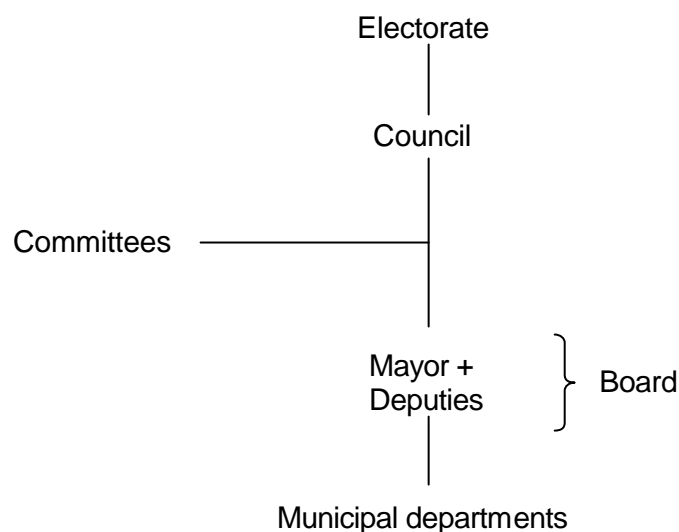
The municipal authorities perform their own tasks, as well as tasks that have been assigned to them by the Union or the *Land*. The mayor is responsible for the execution of these tasks.

STRUCTURE OF GOVERNMENT UNITS



* Administrative subdivisions of the *Länder*, with the exception of fifteen municipalities with charters and Vienna, the capital.

STRUCTURE OF A MUNICIPAL GOVERNMENT



3. ORGANS OF EACH CATEGORY OF LOCAL OR REGIONAL AUTHORITY

3.1. Deliberative body

3.1.1. Title and composition

The deliberative body of a *Land* is the *Land* parliament. It adopts the *Land* legislation on all matters which are not formally given to the federal authorities by the Constitution, including laws on the organisation and operation of local self-government.

The decision-making body of the municipality is its council (*Gemeinderat*). The council takes the most important decisions and is therefore the most important local self-government body. Each council has several specialised committees.

The number of members of a council depends on the number of inhabitants in the respective municipality and on the legislation governing its organisation.

3.1.2. Method of election

Article 117 (2) of the Constitutional Act deals with the main principles governing local elections. It states that elections to the municipal council are to be held according to equal, direct, secret and proportional voting.

Voting rights to municipal elections is acknowledged to all Austrian nationals having their principal residence in the respective community. The *Länder* laws can however stipulate that Austrian nationals who have a domicile, but not their principal residence in the respective community, are entitled to vote.

The conditions for acquiring active and passive voting rights in local elections may not be more restrictive than those stipulated in the regulations governing regional elections. *Länder* regulations on local elections may however stipulate that persons residing less than one year in a municipality do not have an active and passive voting right, if their stay in the respective community is obviously of short duration.

The *Länder* legislation also stipulates the conditions required for other European Union member state nationals to be granted active and passive voting rights.

The seats in the council and in the council committees are allocated to the parties according to the d'Hondt system.

3.2. Executive body

The executive body of the *Land* is its government, which is appointed by the *Land* parliament. All members of the *Land* government (therefore also the *Land* governor) are responsible for the implementation of *Land* competencies before the *Land* parliament.

The executive body of the municipalities is the board of the municipality (*Gemeindevorstand*). In towns with their own statute this body is called the city senate (*Stadtrat*). The board consists of members of the municipal council and is responsible to this body.

The number of members depends on the number of members of the council and it varies between three and twelve. They are elected by the council, proportionally to the represented parties.

3.3. Political head of the local/regional authority

The political head of the *Land* is the *Land* governor (*Landeshauptmann*). S/he must be a member of the *Land* government. S/he is responsible to the *Land* government for questions pertaining to the *Land's* own competencies and to the federal government for matters of indirect federal administration s/he must deal with (delegated competencies).

The *Land* governor represents the *Land*. S/he presides the *Land* parliament and is chief executive of the *Land* government's bureau.

The political head of a municipality is the mayor (*Bürgermeister*). S/he is responsible to the municipal council for matters related to her/his own sphere of competence and to the *Land* or federal government for competencies which are delegated by them.

The mayor is elected by and among the members of the municipal council in four *Länder*. In the other five *Länder*, s/he is elected directly by the inhabitants of the respective municipality. There was a clear shift towards direct election in the 1990s.

The mayor represents the community. S/he chairs the municipal council and the board of the municipality. S/he has the right to table motions and to give instructions. The mayor is the chief executive of the local authority office and the head of the municipal staff.

The mayor is responsible to the council and has to execute the decisions of the council. The board (in towns with their own statute – the city senate) has to deliberate on these matters, which are to be decided upon by the council, but it also has tasks within its own sphere of competence, for example, for personnel matters. The distribution of responsibilities is not always the same, because the legislation concerning local self-government is not the same for all *Länder*.

3.4. Head of administration

The administration of the *Land* is the responsibility of the *Land* government's bureau, which is run by the head of the regional authority (*Landesamtsdirektor*). In Vienna s/he is called the head of the municipal authority (*Magistratsdirektor*). This civil servant must have a university degree in law and is nominated by the *Land* government with the consent of the federal government. S/he is also a subsidiary organ of the *Land* governor/mayor in matters of indirect federal administration.

The name of the head of the municipal administration in towns with their own statutes differs according to the tradition and the importance of the town: *Magistratsdirektor*, *Stadtamtsdirektor* or *Stadtamtsleiter*. S/he is nominated by the municipal council. The level of education requested for this position differs according to the size of the town.

In other municipalities, the municipal office (*Gemeindeamt*) executes all tasks of general administration. The head of this office is the manager of the local authority office (*Gemeindeamtssekretär* or *Gemeindeamtsleiter*).

4. DIRECT CITIZEN PARTICIPATION IN DECISION-MAKING

Participation of the population in the decision-making process is stipulated in different ways in the nine constitutional acts and municipal regulations of the *Länder*. It is therefore difficult to present all of the solutions adopted in this respect. The essential common characteristics are however presented in this section.

4.1. Referendums

The *Länder* may organise referendums on draft legislative acts. They may be initiated on a motion from:

- the *Land* government;
- the *Land* parliament;
- a certain number (for example, 10 000) or a certain percentage of voters qualified for the *Land* parliament elections;
- a certain number (for example, eighty) of the municipalities of a *Land*.

Municipal referendums are provided for by local government acts, statutes of towns, or by separate laws in seven *Länder*. In the federal capital, Vienna, municipal referendums are provided for in the town constitution. In principle, only matters falling within the municipal general competence may be subject to a referendum.

Local government acts of some *Länder* have also instituted plebiscites without binding force.

Local referendums may be initiated by:

- the local council in all cases (two *Länder* require a qualified majority of two thirds for such a decision to be taken);
- a written motion signed by 25% (or 20%) of citizens entitled to vote at local council level in three *Länder*;
- the local council board or by a board conferred with the same authority in one *Land*;
- the mayor in two *Länder*.

In one *Land*, a local referendum is initiated on a motion from the local inhabitants and decided upon by the local council. The referendum is also held if the council fails to take a decision in this respect within a year, provided that the motion was signed by no less than 25% of the qualified voters.

4.2. Other forms of direct participation

The inhabitants of a municipality are entitled to formulate their opinions concerning the development plans, plans for building projects and the budgetary procedure. These opinions are presented to the council.

At both *Land* and municipal level, the population may initiate the adoption, the change or the annulment of a law, a decree, a resolution of the municipal council or a certain administrative measure. Such initiatives must be supported by a certain number or percentage of qualified voters for the respective *Land* parliament or municipal council (for example, 10 000 or one fifth).

Opinion polls may be organised in order to find out the will of the public on the initiative of the *Land* parliament, the *Land* government, the municipal council or mayor or a certain number of citizens.

In six *Länder*, special assemblies may be set up at municipal level in order to inform the public and to permit them to express their opinions on different municipal affairs. Such assemblies are organised at the request of a certain number of qualified voters or by decision of the mayor.

Finally, every citizen has a right of petition in four *Länder*.

5. STATUS OF LOCAL ELECTED REPRESENTATIVES

5.1. Conditions for standing in local elections

Any person over 18, 19, 20 or 21 years of age (depending on the *Land*) is eligible if s/he is an Austrian citizen or citizen of another European Union member state, if her/his main residence is in the respective community and s/he is not deprived of voting rights.

Mayors and members of the board of the municipality must have Austrian nationality.

Persons sentenced to more than one year's imprisonment may not stand for election.

5.2. Incompatibility of functions

A local or regional representative cannot be, at the same time:

- President of the Republic of Austria;
- member of the Commission for Public Complaints;
- president of an auditing department;
- judge of the Independent Federal Court for Asylum and of the High Courts for Administration and Constitution.

In the latter two cases, incompatibility applies for the whole term of office notwithstanding premature resignation.

A local elected representative (mayor, vice-mayor or councillor) is not allowed to have a leading role (for example, member of the board, managing director) in a public limited company, or in most types of private limited companies and savings banks, unless the community is itself a shareholder in these enterprises and the council agrees.

In exercising their work, mayors and members of controlling institutions must be unbiased. If they have been active in advisory procedures or decisions of first instance on business matters of public interest involving one of their relatives or in any situation which leaves any doubt as to their unprejudiced attitude, in the case of an appellate procedure they will subsequently be excluded from participation.

A mayor or a deputy mayor may be chief executive or a member of the municipal executive board. However, the mayor, his/her deputy and the head of the finance section cannot be members of the audit committee.

5.3. Financing of electoral campaigns

At national level, political parties in Austria are financed partly by the state (proportionally to the number of votes obtained in the last elections) and partly by membership subscription. The legal basis is a federal law regulating financial matters concerning political parties.

Some *Länder* have also adopted political party promotion laws. Only parties represented in the federal parliament or in the *Land* parliament can receive those promotion funds.

There is no specific public funding for parties represented in the municipal council. If a political party standing at local elections does not receive funds as a result of its participation in the federal or *Land* parliaments, the electoral campaign has to be financed mainly by its own funds, membership dues and donations. In practice, the main resource for a party involved in electoral campaigns only at local level is from donations.

5.4. Term of office

The term of office for local elected representatives is five or six years (depending on the legislation of the *Länder*).

A local representative may resign at any time without restrictions. A local representative who is disqualified from being elected during the term of office will also be deprived of his/her office.

A local or regional elected representative may not hold the function of president of the Administrative Court within a period of four years after the end of his/her term of office.

5.5. Duties and responsibilities

Local representatives must take part in the meetings of the municipal council and committees, arrive on time and stay until the end of the respective meetings. Any inability to attend has to be excused. A councillor will lose his/her office if s/he refuses to attend meetings three times.

Furthermore, there is an obligation of secrecy on official matters for all members.

The mayor has the right to request in writing that a member of the municipal council who has neglected his/her special duties, make amends for the respective situation, pointing out at the same time the legal consequences of his/her behaviour (loss of mandate).

The mandate is also lost if the elected representative refuses to take the vow or does not take up his/her mandate or a circumstance occurs which would have prevented his/her election.

Only the elected representatives of the city of Vienna and the *Land* governments must declare their financial situation and interests when they take up office and at the end of their term of office. Infringement of this rule may lead to dismissal from office. A mayor will lose his/her office if s/he does not obey instructions given by other authorities on matters related to their delegated competencies.

5.6. Working conditions

Working conditions for elected representatives are laid down by *Land* laws but are similar throughout Austria. Local elected representatives have at least one plenary meeting every three months while *Land* elected representatives have meetings of the parliament monthly. On average, each councillor is a member of one committee; meetings generally take place outside office hours for the municipalities, whereas they are held during the day at *Land* level. All elected representatives may benefit from secretarial services; an office is provided for members of the executive body (board) of large towns and for the members of the *Land* government.

Civil servants are released from their work for as long as they need to fulfil their duties as a member of a *Land* parliament. If this happens their salary is reduced accordingly. The regulations are laid down in *Land* law. At municipal level, civil servants of the federal state are allowed to leave their regular occupation up to a certain number of hours (mayor: sixteen hours per month, councillor: eight hours per month).

Training programmes for local and *Land* elected representatives are provided by the political parties and special associations of local representatives.

5.7. Remuneration

Elected representatives receive an allowance to compensate for loss of earnings and to cover expenses. This allowance is calculated in relation to the salary of senior officials. The refunding of expenses incurred while carrying out elective duties varies from one *Land* to the next. An attendance to recompense effective participation in meetings also exists.

There are special laws regulating salaries and pension schemes for representatives and full-time mayors of large towns.

Remuneration is subject to income tax and to deductions for insurance and retirement schemes.

5.8. Representation of the sexes

No information on the representation of the sexes is available. It seems however that women are under-represented. There are sixteen female mayors.

6. DISTRIBUTION OF POWERS IN LOCAL/REGIONAL AUTHORITIES

6.1. Constitutional provisions

The distribution of powers between the federal state and the *Länder* is regulated in Articles 10-15 of the Federal Constitutional Act, which grant *Länder* a general competence (a matter not explicitly transferred by the Federal Constitutional Act to the federal government remains within the sphere of competence of the *Länder*).

The Constitutional Act also regulates the sphere of competence of municipalities (see section 1.1). The *Länder* regulate the organisation of municipalities by local government acts (*Gemeindeordnungen*).

On matters within its own sphere of competence, the municipality has the right to pass local police ordinances of its free choice in order to prevent immediate expected grievances or to redress abuses affecting local community life, and to declare non-compliance with these ordinances an administrative infringement. These ordinances, however, must not violate existing laws or ordinances of the Union or *Land*.

The Constitutional Act also mentions the standard community. This means that every community has to fulfil the assigned tasks by itself, regardless of size or number of inhabitants or of being a town or not. However, Article 118 (7) stipulates that a municipality can request that some matters within its own sphere of competence be transferred by ordinance of the *Land* governor to the federal or *Land* authority. Consent of the federal or *Land* government is necessary for such a decision to be taken.

6.2. Participation in economics and spatial planning

The municipality may establish private law moral entities (including private companies) and is responsible for local spatial planning.

6.3. Delegated competencies

The *Land* governor is responsible for the indirect federal administration (delegated competencies). In this respect, s/he is bound by instructions given by the federal government and federal ministers.

The mayor must also implement and execute duties related to state administration, which are assigned to her/him by federal or *Land* law. The main delegated competencies are:

- organisation of the procedure for the election of the federal president, federal and *Land* parliaments;
- participation in the organisation of popular initiatives, plebiscites without binding force and referendums with binding force;

- supervision of matters pertaining to citizenship: municipal records of all persons of Austrian nationality and the register of marriages, births and deaths;
- domicile registration;
- protection of water and waterways;
- safety precautions against contagious diseases affecting livestock and other animals;
- statistical surveys.

The mayor is responsible to the federal or *Land* government for performing these tasks.

6.4. Proposals for change in the distribution of power

A reform of the distribution of power (*Bundesstaatsreform*) is under discussion but has made no headway as yet.

The competencies of local and regional authorities

AUSTRIA

Function	Competent authority			Type of competence				Exercise of the competence				Remarks
	State	Land	Municipality	Exclusive	Shared	Compulsory	Discretionary	Direct	Indirect	In own right	For another authority	
General administration												
Security, police	?		?	?		?		?				
Fire protection			?			?		?				
Civil protection	?					?		?				
Justice	?			?				?				
Civil status register			?			?		?				
Statistical office											privatised	
Electoral register			?			?		?			?	
Education												
Pre-school education			?	?		?		?	?			
Primary education			?			?		?	?			
Secondary education	?	?	?		?	?		?	?			
Vocational and technical	?	?	?		?	?		?				
Higher education	?			?		?		?				
Adult education			?				?	?		?		
Other												
Public health												
Hospitals	?	?	?		?	?		?				
Health protection	?		?		?	?		?				

The competencies of local and regional authorities

AUSTRIA

Function	Competent authority			Type of competence				Exercise of the competence				Remarks
	State	Land	Municipality	Exclusive	Shared	Compulsory	Discretionary	Direct	Indirect	In own right	For another authority	
Social Welfare												
Kindergarten and nursery			?	?		?		?				
Family welfare services		?	?	?	?	?	?	?	?			
Welfare homes		?	?		?	?	?	?	?			
Social security	?	?	?		?	?		?				
Other												
Housing and town planning												
Housing			?	?			?	?	?	?		
Town planning			?	?		?	?	?		?		
Regional /spatial planning		?	?	?		?		?				
Environment, public sanitation												
Water & sewage			?	?		?		?	?			
Refuse collection & disposal			?	?		?		?	?			
Cemeteries & crematoria			?	?		?		?				
Slaughterhouses			?				?	?				
Environmental protection	?		?	?		?		?	?			
Consumer protection	?			?				?				
Culture, leisure & sports												
Theatres & concerts	?	?	?	?			?		?	?		
Museums & libraries	?	?	?	?			?		?	?		
Parks & open spaces	?	?	?	?			?		?	?		
Sport & leisure			?			?		?	?			

7. CO-OPERATION AND OTHER TYPES OF LINKAGE BETWEEN LOCAL/REGIONAL AUTHORITIES

7.1. Associations of municipalities

7.1.1. Constitutional provisions

Article 116a

(1) To perform individual tasks within their own sphere of competence, municipalities may form associations by way of agreement. Such agreements are subject to approval by the supervisory authority. Approval shall be given by ordinance if there is an appropriate agreement in conformity with the law between the communities concerned and if the formation of an association:

- does not impair the function as self-governing bodies of the municipalities concerned, when tasks emanating from the public administrative order and constraint are to be carried out,
- is in the interest of the municipalities concerned for reasons of expediency, efficiency and economy in cases where the municipalities have to conduct business under private law.

(2) In the interest of expediency, the relevant constitutional provisions (Articles 10-15) may provide the formation of associations for the performance of individual tasks. However, the function of the municipalities as self-governing bodies and administrative local districts must thereby not be impaired. When associations are formed by means of an executing measure, the municipalities concerned shall be given a hearing prior to formation.

(3) Insofar as associations of municipalities are to undertake matters within the municipality's own sphere of competence, any municipality which is a member of the association shall be accorded decisive influence on the performance of the functions of the association.

(4) Legislation by the Union or the *Land* shall regulate the organisation of associations of municipalities, their bodies having to include in any event an assembly, composed of elected representatives from all member municipalities, as well as an association chairman. With respect to associations, formed by way of agreement, provisions shall furthermore be laid down, regarding membership and termination of membership by municipalities, as well as the dissolution of the associations of municipalities.

(5) Responsibility for regulating matters to be carried out by the associations of municipalities shall be determined in accordance with the general provisions of this Federal Constitutional Law.

7.1.2. Organisation

The organisation of associations of municipality is regulated by *Land* law.

Every municipality has at least one vote in the association's assembly. The assembly elects the board and the chairman, issues decrees and fixes the budget and the fees. The board is a deliberative body which must have to decide primarily on issues concerning personnel policy. The chairman represents the association, executes the decisions of the assembly and the board and is the executive manager of the association.

If the association is a compulsory one for matters within the assigned sphere of competence, there is no board and the chairman is the mayor of the municipality where the association is based. S/he is responsible for taking all operational decisions except on budget adoption.

Solid waste, sewerage and school buildings are the fields for which associations of municipalities are most often set up.

7.2. Agreements concluded by the *Länder*

The *Länder* may conclude contracts with the Union or among themselves in order to implement tasks within their respective sphere of competence more effectively.

The conclusion of such agreements in the name of the Union is, depending on the subject, incumbent on the federal government or federal minister. Agreements which are to be binding also on the federal authorities can be concluded by the federal government only with the approval of the House of Representatives.

Agreements between the *Länder* can only be made about matters of their autonomous sphere of competence and must without delay be brought to the federal government's knowledge.

Moreover, the *Länder* are authorised to conclude international treaties with adjacent states. The legal basis is Article 15a of the Constitutional Act.

7.3. Representation of interests

There are two associations which represent the interests of local authorities: the Austrian Association of Towns and Cities (*Österreichische Städtebund*) and the Austrian Association of Municipalities (*Österreichischer Gemeindebund*).

7.3.1. Constitutional provisions

Article 115

(3) The Austrian Association of Towns and Cities and the Austrian Association of Municipalities are competent to represent the interest of the municipalities.

Article 23c

(4) The nomination of Austrian members of the Committee of the Regions and their deputies shall be effected on the basis of proposals from the *Länder* as well as from the Austrian Association of Towns and Cities and the Austrian Association of Municipalities. In this connection *Länder* shall each propose one representative, and the two associations jointly three representatives.

Article 23d

(1) The *Bund* must inform the *Länder* without delay of all projects within the framework of the European Union which affect the *Land's* autonomous sphere of competence or could otherwise be of interest to them and it must grant them the opportunity to present their views within a reasonable interval to be fixed by the *Bund*. Such comments shall be addressed to the federal chancellery. The same holds good for the municipalities insofar as their own sphere of competence or other important interest of the communities are affected. Representation of the municipalities in these matters is incumbent on the Austrian Association of Towns and Cities and the Austrian Association of Municipalities (Article 115, paragraph 3).

7.3.2 Competencies and operation

Membership of these associations is on a voluntary basis. They are both private-law entities and are funded exclusively from contributions of the member communities. They are entitled by constitution or law not only to take part in law-making and to participate in the nomination of some Austrian delegates to the European Committee of the Regions, but also to conclude some types of treaties.

The principal tasks of these associations are:

- fiscal equalisation: to look after the interests of local governments in the negotiations on the sharing out of budgetary funds and taxation rights between the federal government, the *Land* and the local authorities (revenue sharing).
- preparation of legislation: they are involved in the law-making procedures and express the point of view of local government on some one hundred federal regulations every year. Representatives are moreover active in a number of advisory bodies in such fields as the environment or welfare.

7.4. Co-operation with counterparts in other countries

7.4.1. Multilateral activities

Following a decision of the *Reichsgericht* in the nineteenth century, the Austrian Association of Towns and Cities and the Austrian Association of Municipalities are entitled to co-operate with their counterparts in other countries.

They are members of the Council of European Municipalities and Regions (CEMR) and thus also of the International Union of Local Authorities (IULA). Austria's representative on the Executive Committee of IULA alternates every two years between the Association of Town and Cities and the Association of Municipalities. The same procedure has been agreed with regard to the CEMR Bureau, the European Committee of the Regions Bureau and the Standing Committee of the Chamber of Local Authorities of the CLRAE.

7.4.2. New independent states

Since the opening of the frontiers in central and eastern Europe, co-operation with these countries has become an important field especially for the Austrian Association of Towns and Cities. Relevant programmes have since enabled more than 10 000 mayors and local government decision-makers and experts coming from the central and east European states to visit Austrian local authorities to study the practice of local government policies and management. These activities are very important for Austria's role in the enlargement of the European Union.

8. FINANCE

The Constitutional Finance Law of 1948 stipulates the federal and *Land* competencies in the area of taxation. It contains the fundamental rules covering the financial status and the financial relationship between territorial authorities. The basic principle is that the federal government and the other territorial authorities shall themselves meet the costs incurred by the performance of their duties unless legislation has stipulated otherwise. Federal legislation is bound by the federal constitution, when creating new regulations and duties, to ensure that these do not place demands on the territorial authorities which would exceed their capabilities.

8.1. Taxes

The different types of taxes are provided for by legislation: their revenue goes to the federal government alone, to the federal government and the other territorial authorities, to the *Länder* alone, to the *Länder* and the municipalities, or to the municipalities alone.

The category to which a tax belongs is stipulated by federal legislation (Revenue Sharing Act). Before the law is passed, intensive discussions and political negotiations take place amongst the territorial authorities, ending in a formal political agreement which is then transferred into a federal law. This law is in force for a determined period of time (three to four years).

8.1.1. Local authorities' "own taxes":

Name of tax	Judicial basis	Extent
Payroll tax (communal tax)	Federal law	Fixed percentage of salary
Secondary residence tax	<i>Land</i> law	Fixed rate
Taxes for the use of public space in municipalities and its airspace	<i>Land</i> law	Fixed amount according to kind of use
Local administration tax	federal law	Fixed amount as per performance
Real estate tax	<i>Land</i> law	Highest percentage of unit value
Beverage tax	<i>Land</i> law	Fixed percentage of turnover
Entertainment tax	<i>Land</i> law	Highest percentage of entrance fee ¹
Tax for holding livestock	<i>Land</i> law	Highest amount per animal per year ¹
Tax on offerings of sale ²	<i>Land</i> law	Fixed rate
Tax for notifications	<i>Land</i> law	Fixed percentage of turnover
Fees for the use of local facilities and installations	<i>Land</i> law	Highest percentage of maintenance cost ¹
Tax for short-stay parking	<i>Land</i> law	Highest amount per half hour ¹
Tourism tax	<i>Land</i> law	Highest amount per guest per day ¹

1 The law fixes the highest percentage or amount which is permitted to be levied (i.e. 10% of entrance fee, ATS 600 per animal per year).

2 This tax is payable when people voluntarily offer movable goods (e.g. agricultural products, livestock, etc.) or put such goods up for auction.

Local authorities are not free to set these taxes or introduce new types of taxes, as the list of taxes, the tax bases and tax rates are established either by the *Land* or by federal law.

No taxes are levied by local authorities in addition to federal or *Land* taxes.

8.1.2. Shared taxes of which local authorities receive a fixed proportion of the amount collected locally

The most important of these are:

Type of tax	Local authority share ¹ (percentage)	Percentage of total municipal revenue
Income tax	24.42	4.31
Tax on capital yield	65.98	2.02
Tax on ground purchase	96.00	3.54

1 In accordance with the Revenue Sharing Act of 1997.

8.1.3. Taxes of which local authorities receive a share which does not depend on the amount collected locally

The most important of these are:

Type of tax	Local authority share ¹ (percentage)	Percentage of total municipal revenue
Wages tax	16.00	15.25
VAT	12.37	15.40
Various taxes on alcohol	27.51	0.63

¹ In accordance with the Revenue Sharing Act of 1997.

As from 1998, local authorities receive 14.51% of the total amount of taxes on corporation profits, capital yield, income, wages and salaries.

In 1996, local authorities' total revenue was ATS 155.4 billion. Of this, ATS 30.9 billion was collected from their own local taxes (communal tax, beverage tax, real estate tax and so on) and ATS 50.7 billion from shared federal taxes (VAT, wage tax, income tax).

More detailed financial tables appear in the appendix.

8.2. Grants

Grants from higher authorities amount to 12% of the total local financial resources. The grant system is regulated by law. Practically all grants are dependent upon financial contributions from the local authorities themselves.

8.3. Arrangements for financial equalisation

Apart from the definition of the various taxes, the Revenue Sharing Act also contains other special regulations aiming at a certain degree of financial equalisation of territorial authorities' resources.

8.3.1 Special funds

It mainly stipulates the sums to be allocated to the various funds, such as the family benefit fund, the environment fund, the water management fund or the fund for hospital financing. Before revenues are shared amongst territorial authorities, a certain percentage is withheld for allocation to these funds. As they are used according to needs and not to contributions, these funds have an equalisation effect.

8.3.2. Apportionment of local and regional authorities' share

The percentage share defined by this law is mainly determined by political negotiations, in which the municipalities – represented by both associations – request the reimbursement of expenses incurred in the performance of duties assigned to them by other public authorities. Apportionment of the revenues obtained by the *Länder* and the municipalities to individual territorial authorities varies according to the type of tax: it may depend on its sources, the percentage of participation or a population indicator, whereby a mixture of forms is also applied to ensure fair distribution. The population indicator is not directly proportional to the number of inhabitants. This is in accordance with the idea that, although all municipalities have the same legal status, the inhabitants of larger territorial communities and conurbations place different demands on local authorities and they thus have different financial requirements.

8.3.3. Contingency payments

The intercommunal revenue sharing system is also aimed at reducing the discrepancy between the financial power of the municipalities and their actual financial requirements. Thus, before each municipality's share of the collective federal taxes is apportioned, 13.5% of the total municipal share is subtracted and given to the *Länder* for forwarding to the municipalities as a contingency payment. This money is earmarked and is forwarded to the municipalities by the *Länder* on the basis of specially predetermined guidelines, for example, to balance the budget or to carry out large-scale projects, and therefore has an equalisation role.

8.4. Other sources of income

Municipalities have the right to operate economic enterprises.

8.5. Borrowing

Municipalities need authorisation from the supervisory authority (*Land* government) to take out loans. They act freely on the financial market but usually contact local credit institutions.

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.

8.6. Economic control exercised by higher authorities

Economic control is exercised by the supervisory authority. It examines the management of the municipality from the point of view of expediency and economic efficiency. If restrictions are necessary, negotiations similar to those preceding the Revenue Sharing Act have to take place.

8.6.1. Consultation mechanism

Following the Maastricht Treaty, all three levels of territorial authorities in Austria agreed on a new form of co-operation to ensure that the country meets the EMU criteria.

In order to prevent new legislation from putting too much financial pressure on the budget of *Länder* and municipalities, an amendment to the federal constitution was made by the federal parliament and subsequently by decisions of the *Länder* parliaments, setting up a consultation mechanism.

According to this mechanism, the costs of new regulations have to be clearly calculated and if they exceed a certain level negotiations have to be started. A small body consisting of representatives of the three levels of government – the local level being represented by the Austrian Association of Towns and Cities and the Austrian Association of Municipalities – has to deal with the proposed legislative act and should try to find a solution for funding the financial implications.

If the negotiating body fails to agree on who should cover the financial implications of the new piece of legislation, the cost is to be borne by the level of government which adopts it – at least for a certain period of time (until the next period to which the Financial Equalisation Act applies). This is a very powerful tool for avoiding excessive financial pressure on municipalities resulting from decisions of other authorities and for securing a certain part of the budget to be decided upon and used locally.

The consultation procedure applies to regulations passed by the Union and the *Länder*.

On the other hand, all three levels of territorial authorities have agreed to avoid excessive deficits and have decided how to share the financial sanctions in case the consolidated public deficit exceeds 3% of the GDP.

9. SUPERVISION OF LOCAL AND REGIONAL ADMINISTRATION

Within its own sphere of competence, the municipality is entitled to execute the tasks assigned to it without any outside influence and, to the exclusion of legal redress, free from instructions from outside authorities. In order to guarantee the constitutional protection of citizens and to ensure that the municipality does not go beyond its sphere of competence and that it performs the duties legally assigned to it, the Constitution provides for a right of supervision to be exercised by the federal or *Land* government. In some *Länder*, *Land* regulations delegate matters of supervision to the district governor.

The supervisory authorities may annul illegal instructions or acts, either generally applicable or affecting individual persons.

Furthermore, the *Land* has the right to examine the management of the municipality in respect of thrift, economy and expedience. The result of the examination has to be transmitted to the mayor for presentation to the municipal council. The mayor has to inform the supervisory authority within three months of the measure undertaken as to the result of the examination.

The supervisory authority is also entitled to gather information about any municipal matter. The municipality has an obligation to give all the required information to the supervisory authority and to allow on-the-spot examinations.

The securing of loans by the municipality also requires approval by the supervisory authority.

In cases of a repeated breach of law, the most extreme measure at the disposal of the supervisory authority is the dissolution of the council, the appointment of a government commissioner and the calling of new elections in the municipality.

The municipality is considered as a party in supervisory proceedings; it is given the right of complaint against the supervisory authority before the Administrative Court and the Supreme Constitutional Court.

10. REMEDIES FOR INDIVIDUALS AGAINST DECISIONS OF LOCAL/REGIONAL AUTHORITIES

Anyone who considers that his/her rights have been infringed by a decision of a municipal organ, acting within its own sphere of competence, may file a protest to the supervisory authority within two weeks of the date of issue of the said decision. This complaint must be formulated after exhaustion of all administrative appeal remedies (the council or town senate for a municipality).

The individual citizen has the right of appeal against the decision of a territorial authority of higher level, according to the provisions of the administrative proceedings law (objections, appeal against decisions) of the respective *Land*.

When these procedures have been exhausted, the matter can be brought to the Administrative Court or to the Supreme Constitutional Court.

11. LOCAL/REGIONAL ADMINISTRATIVE PERSONNEL

There are two categories of municipal employees, those ruled by public law and those ruled by private law.

In both categories, civil servants are classified depending on their education:

- university degree;
- high school;
- secondary school and subsequent vocational training;
- secondary school only.

This classification affects the possibility of acquiring certain professional positions.

The regulations concerning local authority staff are virtually the same as those for staff working in the federal and *Länder* administrations. This applies both to recruitment and to working conditions. Because of constitutional regulations, there must be the possibility of changing between services.

The authority responsible for human resources management (administrative and financial issues) is established by legal regulations issued by the municipal council or its executive board. It also depends on the size of the municipality: in large municipalities, personnel matters may be delegated to the administration.

11.1. Civil service governed by public law

All working conditions are regulated by public law and the appointment is based on a decree.

The employee obtains the status of a civil servant and secures it until his/her death. Employment of a civil servant may be ended before death only by resignation or dismissal for a grave infraction of discipline ordered by a disciplinary committee of the local authority.

Pensions for former municipal civil servants are paid by the municipality.

11.2. Employment under private law

The appointment is based on a bilateral contract which is predetermined by a general agreement between the associations of employers and employees.

The total number of municipal administrative personnel is about 150 000 including Vienna and the social and health services (hospitals).

12. REFORMS ENVISAGED OR IN PROGRESS

Discussions are being held about amendments to the Constitution, including changes in the regulations concerning administrative supervision and remedies against local decisions. An administrative court at regional (*Land*) level might also be created.

APPENDIX

Table 1: Structure of municipal revenue in 1995

Source of finance	Municipalities , not including Vienna (percentage of total municipal revenue)	Vienna as a <i>Land</i> and a municipality (percentage of total municipal revenue)
Municipal taxes	27.83	11.30
Fees	10.90	5.49
Revenue share	35.64	26.88
Financial allocations	9.06	15.72
Other revenue	16.57	40.62
Total	100.00	100.00

Table 2: Local own taxes (1995)

Taxes	Revenue for municipalities (not including Vienna)		Revenue for Vienna (as a <i>Land</i> and a municipality)	
	(million ATS)	percentage of GNP	(million ATS)	percentage of GNP
Real estate tax I	347	0.02	3	0.00
Real estate tax II	4 082	0.25	1 002	0.06
Trade tax	979	0.06	489	0.03
Communal tax	14 437	0.88	5 796	0.35
Beverage tax and ice cream tax	4 536	0.28	950	0.06
Entertainment tax	262	0.02	640	0.04
Tax for holding livestock	67	0.00	29	0.00
Common interests tax	2 941	0.18	6	0.00
Tax on offerings for sale	148	0.01	498	0.03
Fees for the use of local facilities and installations	569	0.04	1 469	0.09
Announcement tax	348	0.02	609	0.04
Tourism, spa and cure tax	634	0.04	87	0.01
Administration tax	279	0.02	114	0.01
Other local taxes	483	0.03	1 273	0.08
Total taxes raised by the municipality	30 112	1.85	12 965	0.80
Fees	11 790	0.72	6 293	0.38
Total own revenue	108 186	6.61	114 729	7.00
Municipal taxes as a percentage of own revenue	27.83	–	11.30	–
Fees as a percentage of own revenue	10.90	–	5.50	–

Table 3: Shared taxes: proceeds of municipalities (Vienna included)

Type of tax	Municipal share (percentage of amount raised)	Municipal proceeds in 1995		Municipal proceeds	
		million ATS	percentage of GNP	million ATS	percentage of GNP
Income tax	24.15	4 831	0.30	5 973	
Income tax on wages and salaries	15.99	21 695	1.33	23 379	
Capital-yield tax I	65.98	2 057	0.13	3 180	
Capital-yield tax II	20.00	1 600	0.10	2 044	
<i>Land</i> value tax	96.00	72	0.00	70	
Value-added tax	12.37	18 334	1.12	21 037	
Alcohol tax	30.00	3	0.00	3	
Beer tax	27.51	612	0.04	573	
Mineral oil tax	2.13	690	0.04	728	
Wine tax	27.51	31	0.00	1	
Sparkling wine tax	27.51	108	0.01	87	
<i>Land</i> purchase tax	96.00	5 287	0.32	5 388	
Liquor surcharge and monopoly compensation	27.51	175	0.01	338	
TOTAL	–	58 073	3.55	66 849	