

Committee on the Honouring of Obligations and Commitments by Member States of the European Charter of Local Self-Government (Monitoring Committee)

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Monitoring of the European Charter of Local Self-Government in Austria

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Summary

This report is prepared following the second monitoring visit to Austria since the country ratified the Charter in 1987.

It welcomes the constitutional and legal recognition and substantial implementation of the principle of local self-government in Austria, the introduction of the *Länder* Administrative Courts to strengthen the Austrian federalism, the extension of the competences of the associations of local authorities to cooperate and the reforms carried out since 2011 with a view to clarifying the distribution of competences between the Federation, the *Länder* and local authorities. The adoption of the New Government Plan with the objective, among other things, to tackle some of the outstanding issues reflected in this report has also been welcomed.

At the same time, the rapporteurs stress that in Austria, there is still a high degree of complexity in the allocation of powers. Subnational authorities' tax-raising power continues to be low and they rely extensively on intergovernmental transfers. The criminal legislation places a disproportionate personal responsibility on local elected representatives which, coupled with inadequate social conditions, leads to mayors' vulnerability and, consequently, prevents a broad range of potential candidates from standing for local election.

Hence, the recommendation invites the Austrian authorities, among other things, to provide the *Länder* and municipalities with greater freedom to set rates and base of their own-source taxes, align the criminal legislation regarding the liability of mayors with the principle of free exercise of elected mandate, and improve social conditions under which elected functions are exercised.

It also calls on Austria to sign and ratify, in the near future, the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority (CETS No. 207).

1 L: Chamber of Local Authorities/R: Chamber of Regions
EPP/CCE: European People's Party Group in the Congress
ILDG: Independent Liberal and Democratic Group
SOC/G/PD: Group of Socialists, Greens and Progressive Democrats
ECR: European Conservatives and Reformists Group;
NR: Members not belonging to a political group of the Congress

PRELIMINARY DRAFT RECOMMENDATION

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

a. Article 2, paragraph 1.b, of the Charter of the Congress of Local and Regional Authorities appended to Statutory Resolution CM/Res(2020)1, stipulating that one of the aims of the Congress is “to submit proposals to the Committee of Ministers in order to promote local and regional democracy”;

b. Article 1, paragraph 2, of the Charter of the Congress of Local and Regional Authorities appended to Statutory Resolution CM/Res(2020)1, 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 the effective implementation of the principles of the European Charter of Local Self-Government”;

c. Chapter XVII of the Rules and Procedures of the Congress on the organisation of monitoring procedures;

d. the Sustainable Development Goals (SDG) of the United Nations 2030 Agenda for Sustainable Development, particularly Goal 11 for sustainable cities and communities and Goal 16 for peace, justice and strong institutions;

e. the Guidelines for civil participation in political decision making, adopted by the Committee of Ministers on 27 September 2017;

f. Recommendation CM/Rec(2018)4 of the Committee of Ministers to member States on the participation of citizens in local public life, adopted on 21 March 2018;

g. Recommendation CM/Rec(2019)3 of the Committee of Ministers to member States on supervision of local authorities' activities, adopted on 4 April 2019;

h. the previous Congress recommendation 302 (2011) on local and regional democracy in Austria, adopted on 24 March 2011;

i. the appended explanatory memorandum on the monitoring of the European Charter of Local Self-Government in Austria.

2. The Congress points out that:

a. Austria signed the European Charter of Local Self-Government (ETS No. 122, hereinafter “the Charter”) on 15/10/1985 and ratified it on 23/09/1987, with entry into force on 01/09/1988; Austria is not bound by Article 4, paragraphs 2, 3 and 5, Article 7, paragraph 2, Article 8, paragraph 2 and Article 11 of the Charter;

b. Austria has not signed the Additional Protocol to the Charter on the right to participate in the affairs of a local authority;

c. the Committee on the Honouring of Obligations and Commitments by Member States of the European Charter of Local Self-Government (hereinafter: the “Monitoring Committee”) decided to examine the situation of local and regional democracy in Austria in the light of the Charter. It instructed Marc COOLS, Rapporteur on local democracy (Chamber of Local Authorities, ILDG) and Andrew DISMORE, Rapporteur on regional democracy (Chamber of Regional Authorities, SOC), with the task of preparing and submitting to the Congress a report on the monitoring of the European Charter of Local Self-Government in Austria. The delegation was assisted by Professor Diana IANCU, member of the Group of Independent Experts on the European Charter of Local Self-Government, and the Congress Secretariat;

d. the monitoring visit took place from 10 to 12 December 2019. During the visit, the Congress delegation met representatives of various institutions at all levels of government. The detailed visit programme is appended to the explanatory memorandum;

e. the co-rapporteurs wish to thank the Permanent Representation of Austria to the Council of Europe and all those whom they spoke to during the visit.

3. The Congress notes with satisfaction:

- a. The Constitutional and legal recognition and substantial implementation of the principle of local self-government in Austria at federal and *Länder* level;
- b. the reforms carried out since 2011 in Austria with a view to clarifying the distribution of power between the Federation, *Länder* and municipal authorities;
- c. the introduction of the *Länder* Administrative Courts to strengthen the Austrian federalism;
- d. the constitutional extension of the powers of associations of local authorities to conclude, on the basis of Land legislation, agreements among themselves and jointly perform their functions, and to establish – with the consent of the *Länder* concerned – associations operating across Land borders;
- e. the adoption of the New Government Plan with the objective, among other things, to tackle outstanding issues of the *Länder* and municipalities low level of fiscal autonomy, to adapt the criminal law to current challenges (in particular, section 153 of the Austrian Criminal Code) and to evaluate the powers of cities, municipalities and municipal associations to conclude agreements on the basis of Article 15a of the Federal Constitution.

4. The Congress expresses concern, however, over the following points:

- a. the persistently low degree of fiscal autonomy of subnational authorities and their extensive reliance on intergovernmental transfers. This reduces financial sustainability of subnational governments and their ability to keep pace with the increases in the costs of carrying out their tasks (9.1-9.4);
- b. the criminal legislation regarding the mayors' liability that places a disproportionate personal responsibility on local elected representatives and thus seems inconsistent with the principle of a free exercise of the local mandate (7.1). Coupled with inadequate social conditions, this leads to mayors' vulnerability and prevents a broad range of potential candidates from standing for local election;
- c. unbalanced distribution of exclusive regulatory powers to the benefit of federal and *Länder* authorities and a high degree of complexity in the powers' allocation which jeopardises the exercise of local self-government.

5. In light of the foregoing, the Congress requests that the Committee of Ministers invite the Austrian authorities to:

- a. enlarge the *Länder's* and municipalities' tax-raising power, by providing them with greater freedom to set rates and base of their own-source taxes. This will strengthen local fiscal autonomy, ensure financial sustainability and long-term resilience of sub-national government;
- b. modify the criminal legislation regarding the liability of mayors when they carry out their functions in such a way as to align it with the principle of free exercise of elected mandate, and improve social conditions under which elected functions are exercised;
- c. simplify and clarify the allocation of powers and when elaborating relevant legislation refrain from unnecessarily limiting local authorities' tasks and responsibilities with due regard for the principle of subsidiarity;
- d. refrain from over-regulation and make sure that the changes in legislative powers of the *Länder* leave enough margin for regional autonomy;
- e. modify the Federal Constitutional Law to allow the associations of local authorities to participate in agreements between the Federation and the *Länder* on all matters that concern them;
- f. enhance the support for training for local government staff, especially in small and medium-sized municipalities, to strengthen their capacity to deliver the high-quality public services;
- g. ratify articles 4.2, 4.3 and 11 of the Charter since they are applied in practice;

h. sign and ratify, in the near future, the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority (CETS No. 207).

6. The Congress calls on the Committee of Ministers and the Parliamentary Assembly of the Council of Europe to take account of this recommendation on the monitoring of the European Charter of Local Self-Government in Austria and the accompanying explanatory memorandum in their activities relating to this member State.

DRAFT

DRAFT EXPLANATORY MEMORANDUM

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1. INTRODUCTION: AIM AND SCOPE OF THE VISIT, TERMS OF REFERENCE

1. Article 1, paragraph 2, of the Charter of the Congress of Local and Regional Authorities appended to Statutory Resolution CM/Res(2020)1, stipulates 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 the effective implementation of the principles of the European Charter of Local Self-Government.”

2. The Republic of Austria (hereinafter: Austria) became the 15th member State of the Council of Europe on 16 April 1956. Austria signed the Charter on 15 October 1985 and ratified it on 23 September 1987. While the entry into force was scheduled for 1 September 1988, Austria declared herself bound solely by the following articles and paragraphs of the Charter: article 2, article 3 (paragraphs 1 and 2), article 4 (paragraphs 1, 4 and 6), article 5, article 6 (paragraphs 1 and 2), article 7 (paragraphs 1 and 3), article 8 (paragraphs 1 and 3), article 9 and article 10. That declaration was in line with the provisions of article 12, paragraph 2 of the Charter.

3. Austria also signed and ratified the following documents relevant to the area of local and regional democracy:

- i. European Outline Convention on Transfrontier Co-Operation between Territorial Communities or Authorities ETS No.106 (ratification on 18 October 1982);
- ii. Additional Protocol to the European Outline Convention on Transfrontier Co-Operation between Territorial Communities or Authorities ETS No. 159 (ratification on 17 March 2004);
- iii. Protocol no. 2 to the European Outline Convention on Transfrontier Co-Operation between Territorial Communities or Authorities ETS No. 169 (ratification on 22 September 2006).

4. However, Austria has not signed, nor ratified the following documents relevant to the area of local and regional democracy:

- iv. Convention on the Participation of Foreigners in Public Life at Local Level;
- v. Protocol no. 3 to the European Outline Convention on Transfrontier Co-Operation between Territorial Communities or Authorities concerning Euroregional Co-Operational Groupings (ECGs);
- vi. Additional Protocol to the European Charter of Local Self-Government on the right of participate in the affairs of a local authority.

5. The first monitoring exercise following the Austrian ratification of the Charter was organised in 2010. The report on “Local and regional democracy in Austria”² expressed satisfaction over the state of local democracy which followed the Charter in general and recommended that the Austrian Government introduced an overall institutional reform of the federal system, clarifying competences and strengthening local government financially. It also encouraged efforts for better representation of women at local and regional level and recommended that the Austrian authorities signed and ratified the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority (ETS n° 207)

6. This report is the result of a second monitoring visit in Austria and was prepared for the Congress by Mr Marc COOLS, rapporteur on local democracy (Chamber of Local Authorities, ILDG) and Mr Andrew DISMORE, rapporteur on regional democracy (Chamber of Regional Authorities, SOC/G/PD), who were accompanied by the Congress secretariat, and assisted by Dr Diana-Camelia Iancu, member of the Group of Independent Experts on the European Charter of Local Self-Government. The rapporteurs wish to express their thanks to the expert for her assistance in the preparation of this report. This group of persons will be hereinafter referred to as “the delegation”.

7. During the monitoring visit organised in December 2019, the delegation met with members of the National Delegation of Austria to the Congress, the Austrian Association of Cities and Towns, the Austrian Association of Municipalities, the leadership of Vienna, Graz and Raaba-Grambach, as well as the President of the Federal Council and the President of the Austrian Court of Audit, members of the management of the Federal Chancellery, the Federal Ministry of the Interior, the Federal Ministry of

² The Report (CG 20) 8 / 3 March 2011), delivered by Irene Loizidou (Cyprus, R, EPP/CD) and Marc Cools (Belgium, L, ILDG), is available online at: <https://rm.coe.int/090000168071aca8>.

Finance, the Constitutional Court, the Ombudsman Board, the Court of Audit in Styria and Land Authorities of Styria. The detailed programme of the visit is appended to the present report.

8. The rapporteurs would like to thank the Permanent Representation of Austria to the Council of Europe as well as all the interlocutors for the information they provided to the delegation during the visit.

9. According to Rule 79 of the Rules and Procedures of the Congress of Local and Regional Authorities of the Council of Europe, the preliminary draft report was sent on 18 May 2020, to all interlocutors met during the visit for comments and possible adjustments or corrections (hereinafter referred to as “consultation procedure”). The present report is based on the comments received which have been considered by the co-rapporteurs before submission for approval to the Monitoring Committee.

2. INTERNAL AND INTERNATIONAL NORMATIVE FRAMEWORK

10. Political scholars typically argue that Austria is a fair example of consensual democracy;³ there is often a grand coalition⁴ governing the federal territory, proportionality is the principal standard of political representation, civil service appointment and allocation of public funds, and vital minority interests are protected by minority veto. Different tiers of government share powers and interact with a plurality of actors and interests in order to consolidate good governance.

11. For legal scientists⁵, Austria presents an interesting centralized model of federalism, with a Federation (*Bund*) playing a dominant role and the *Land* and municipal governments being more peripheral. With various horizontal and vertical cooperative instruments (e.g. Conference of Land Governors – *Landeshauptleutekonferenz*; Austrian Conference on Spatial Planning - *Österreichische Raumordnungskonferenz*), Austria “operates as a negotiated federal regime”⁶.

12. The Austrian constitutional law is rather fragmented: there is one core document, the Federal Constitutional Act of 1920 (*Bundes-Verfassungsgesetz*, hereinafter: B-VG)⁷, and various other acts,

3 Lijphart, Arend. 1969. “Consociational Democracy, *World Politics*, vol. 21, no.2, pp. 207-225; Lijphart, Arend. 1977. *Democracy in Plural Societies: A Comparative Exploration*. New Haven: Yale University Press; Daalder, Hans. 1974. “The Consociational Democracy Theme”, *World Politics*, vol.26, issue 4, pp.604-621; Barry, Brian. 1975. “The Consociational Model and Its Dangers”. *European Journal of Political Research*, vol. 3, issue 4, pp. 393–412; Vatter, Adrian; Stadelmann-Steffen Isabelle. 2013. “Subnational Patterns of Democracy in Austria, Germany and Switzerland”, *West European Politics*, vol. 36, issue 1, pp. 71-96; Boogards, Matthijs; Helms, Ludger; Lijphart, Arend. 2019. “The Importance of Consociationalism for the Twenty-First Century Politics and Political Science”, *Swiss Political Science Review*, vol. 25, issue 4, pp.341-356; Kelly, Brigid Brooks. 2019. *Power-Sharing and Consociational Theory*, Cham: Palgrave Macmillan.

4 Until recently the governing coalition was formed out of SPÖ - *Sozialdemokratische Partei Österreich* (Social Democratic Party of Austria) and ÖVP - *Österreichische Volkspartei* (Austrian People's Party) with the social partnership between worker and employer representatives.

5 Bussjäger, Peter. 2010. “Between Europeanisation, Unitarism and Autonomy. Remarks on the Current Situation of Federalism in Austria”, *Revista d'Estudis Autonomics i Federals*, no.10, pp. 11-34; Stelzer, Manfred. 2011. *The Constitution of the Republic of Austria. A Contextual Analysis*. Hart Publishing, Oxford; Gamper, Anna. 2012. “Local Government in Austria”, in: Angel – Manuel Moreno (ed.), *Local Government in the Member States of the European Union: A Comparative Legal Perspective*, National Institute of Public Administration Spain, Madrid, pp. 23-44.

Bussjäger Peter. 2012, “Sub-national Constitutions and the Federal Constitution in Austria” in: Michael Burgess and Alan G. Tarr (eds.), *Constitutional Dynamics in Federal Systems*, McGill-Queen's University Press, Montreal & Kingston, pp.88-106; Bussjäger, Peter; Schramek, Christoph; Jöhler, Mirella. 2018. “Federalism and Recent Political Dynamics in Austria”. *Journal of Self-Government*, vol. 28, pp. 74-100.

6 Bussjäger, Peter. 2015. “Austria's Cooperative Federalism”, in: Günther Bischof and Ferdinand Karhofer (eds.), *Austrian Federalism in Comparative Perspective*, Contemporary Austrian Studies, vol. 24, UNO Press, pp.11-33.

7 The text was adopted in 1930 and amended on many occasions (an exhaustive list of the amendments is available online at:

<https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10000138>. In this report, the official English translation of the Federal Constitution was used (available online at:

https://www.ris.bka.gv.at/Dokumente/ErV/ERV_1930_1/ERV_1930_1.html]; for the 2014-2019 amendments, the Rapporteurs relied on an unofficial translation. A comprehensive list of English official translations of Austrian legislation is available at: <https://www.ris.bka.gv.at/Ergebnis.wxe?Abfrage=ErV>

such as: “ordinary” constitutional acts, international treaties (of constitutional rank) and “constitutional provisions” incorporated in ordinary statutes (which have constitutional rank and are voted with constitutional quorum)⁸.

13. Pursuant to article 44.1 of B-VG, constitutional laws or constitutional provisions contained in simple laws can be passed by the National Council (*Nationalrat*) only in the presence of at least half the members and by a two thirds majority of the votes cast. Furthermore, constitutional laws or constitutional provisions contained in simple laws restricting the competence of the *Länder* in legislation or execution require the consent of the Federal Council (*Bundesrat*) which must be imparted in the presence of at least half the members and by a majority of two thirds of the votes validly cast (article 44.2, B-VG). The total revision of the Federal Constitution requires, additionally, a referendum (*Volksabstimmung*) by the federal people (article 44.3, B-VG), and in order to be decisive, an absolute majority of the validly votes cast (article 45, B-VG). The partial revision of the Federal Constitution demands a referendum only if one third of the members of the National Council or the Federal Council so demands (article 44.3 and 42, B-VG)⁹.

14. Historically, the *Länder* played an important part in the development of Austria, following the dissolution of the Austrian-Hungarian monarchy, in 1918. Seven of today's nine *Länder* participated in the drafting of the Federal Constitution¹⁰ and alongside the central government in Vienna agreed that the new republic should be a federation. Later, after the Second World War, in 1945, while the “provisional constitution” spoke of an Austrian unitary state, the *Länder* pushed for a federation once again.

15. Today, chapter 1 of B-VG describes Austria as a democratic republic and a federal state, formed by nine autonomous *Länder*: Burgenland, Carinthia (*Kärnten*), Lower Austria (*Niederösterreich*), Upper Austria (*Oberösterreich*), Salzburg, Styria (*Steiermark*), Tyrol (*Tirol*), Vorarlberg, and Vienna (*Wien*). The highest executive organs in Austria are the Federal President (*Bundespräsident*), the Federal Ministers (*Bundesminister*) and the state secretaries (*Staatssekretäre*), and the members of the Land governments (*Landesregierungen*) (article 19.1, B-VG).

16. The legislative power of the Federation is exercised by the National Council (*Nationalrat*) jointly with the Federal Council (*Bundesrat*) (article 24, B-VG). The National Council is elected in accordance with the principles of proportional representation on the basis of equal, direct, personal, free and secret

8 Under the general name of “Federal Constitutional Laws”, one can enumerate, *inter alia*, the following: Rights of the Home Act (*Gesetz zum Schutze des Hausrechts, RGBl. Nr. 88/1862*), Basic Law on the General Rights of Nationals (*Staatsgrundgesetz – StGG, RGBl. Nr. 142/1867*), Resolution of the Provisional National Assembly (*Beschluß der Provisorischen Nationalversammlung über die Aufhebung der Zensur, StGBI. Nr. 3/1918*), National Socialism Prohibition Act 1947 (*Verbotsgesetz 1947, StGBI. Nr. 13/1945*), Neutrality Act (*Neutralitätsgesetz, BGBl. Nr. 211/1955*), Federal Constitutional Act on Elimination of Racial Discrimination (*Durchführung des Internationalen Übereinkommens über die Beseitigung aller Formen rassistischer Diskriminierung, BGBl. Nr. 390/1973*), Federal Constitutional Act of 10 July 1974 on Guaranteeing the Independence of Broadcasting (*Sicherung der Unabhängigkeit des Rundfunks, BGBl. Nr. 396/1974*), Limitation of emoluments of persons in highest offices (*Begrenzung von Bezügen oberster Organe, BGBl. Nr. 281/1987*), Personal Liberty Act (*Schutz der persönlichen Freiheit, BGBl. Nr. 684/1988*), Federal Constitutional Act on the Accession of Austria to the European Union (*Beitritt Österreichs zur Europäischen Union, BGBl. Nr. 744/1994*), Limitation of Emoluments of Holders of Public Offices (*Bezügebegrenzungs-BVG (Bezügebegrenzungsgesetz), BGBl. I Nr. 64/1997*), Federal Constitutional Act for a nonnuclear Austria (*Atomfreies Österreich, BGBl. Nr. 149/1999*), Federal Constitutional Act on Media Cooperation and Media Funding (*BVG Medienkooperation und Medienförderung, BGBl. I Nr. 125/2011*), Federal Constitutional Act on the Rights of Children (*Rechte von Kindern, BGBl. I Nr. 4/2011*), and the Federal Constitutional Act on sustainability, animal protection, comprehensive environmental protection, on water and food security as well as research (*Nachhaltigkeit, Tierschutz, umfassender Umweltschutz, Sicherstellung der Wasser und Lebensmittelversorgung und Forschung, BGBl. I Nr. 111/2013*). The English translation of the above-mentioned acts was provided by the Legal Information System of the Republic of Austria (RIS - *Rechtsinformationssystem des Bundes*), available online at: www.ris.bka.gv.at. For more details, please see: Lachmayer, Konrad 2019. “The Constitution of Austria in International Constitutional Networks: Pluralism, Networks and Diversity”, in Anneli Albi, Samo Bardutzky, *National Constitutions in European and Global Governance: Democracy, Rights, the Rule of Law (National Reports)*, Springer Open, pp.1271-1322.

9 For further information, please see: Referendum Act 1972 (*Volksabstimmungsgesetz 1972 – VabstG*). Also, for a comparative understanding of referendum (*volksabstimmung*) and consultation of the people (*volksbefragung*), please consult the official webpage of The Federal Ministry of the Interior:

<https://www.bmi.gv.at/410/Volksabstimmungsgesetz.aspx>, January 2020).

10 Bussjäger, Peter et al. 2018, *op.cit.* (see footnote 5).

suffrage by men and women who have completed their sixteenth year of life on the day of election (article 25.1) The legislative period of the National Council lasts five years, calculated from the day of its first meeting, but in any case until the day on which the new National Council meets (article 27.1). The National Council elects the President and the Second and Third Presidents from among its members (Article 30.1).

17. The *Länder* are represented in the Federal Council in proportion to the number of nationals in each Land (article 34.1, B-VG). While the largest representation is of twelve members, every Land is entitled to a representation of at least three members (article 34.2, B-VG). The members of the Federal Council and their substitutes are elected by the Land Parliament in accordance with the principle of proportional representation. However, at least one seat must fall to the party having the second largest number of seats in a Land Parliament or, should several parties have the same number of seats, the second highest number of votes at the last election to the Land Parliament. The members of the Federal Council don't need to belong to the Land Parliament which delegates them; instead they must be eligible for that Land Parliament (article 35.1 and 2, B-VG).

18. The Federal President is elected by the federal people for a term of six years (article 60.1, B-VG). The Federal Chancellor (*Bundeskanzler*), the Vice-Chancellor and the other Federal Ministers are entrusted with the highest administrative business of the Federation in so far as this is not assigned to the Federal President (article 69.1, B-VG). Pursuant to article 142, B-VG, the members of the Federal Government are responsible to the National Council (article 76, B-VG).

19. OECD's Government at a Glance 2019¹¹ reads that accessibility of government data is the highest in Austria among OECD countries (with a score of 0.97 – on 0-1 scale with 1 value). Austria is also among the best performing OECD countries in proximity of health care provision and ranked 6th out of 36 OECD countries in terms of the tax-to-GDP ratio in 2018 (with a ratio of 42.2% compared to the OECD average of 34.3%)¹². According to the Serving Citizens indicator (2018), 49% of Austrian citizens express their confidence / satisfaction with the national government (as compared to 45% - the average for OECD countries), 70% with the judicial system (while 56% is the average for OECD countries) and 71% in education system (with 66% being the average for OECD countries).

20. In the European Union, Austria is one of the countries with the highest share of resident foreigners (after Luxembourg, Cyprus, Latvia and Estonia). In total, 48.8% of all foreigners in Austria are citizens of the European Union. The three largest communities of European foreigners in Austria are represented by Serbs (118.000), Turks (117.000) and citizens from Bosnia and Herzegovina (95.000). The community of non-European citizens in Austria accounts for 180.000 people from Asia (excluding Turkey and Cyprus), about 36.000 have citizenships of African and around 21.000 of American countries, and 1.500 citizens are from Australia and Oceania¹³. Article 8, B-VG reads that "The Republic (Federation, *Länder* and municipalities) subscribe to its linguistic and cultural multiplicity having grown, expressed in the indigenous ethnic groups. Language and culture, existence and preservation of these ethnic groups are to be respected, safeguarded and to be supported".

21. In general, Austrian citizenship is a pre-condition to enjoy active and passive rights to vote; however, following Austrian accession to the European Union (in 1995), European citizens living in Austria may also take part in European and municipal elections. Voters – men (since 1907) and women (since 1918) – may participate in nation-wide elections (National Council, European Elections and Presidential Elections), as well as in Land elections (Land Parliamentary Elections, Municipal Elections, Mayoral Elections, where applicable)¹⁴.

22. Pursuant to article 1 of the Federal Act on the Financing of Political Parties (*Parteiengesetz 2012 – PartG*), a constitutional provision, the existence and diversity of political parties are key elements of Austria's democratic order. There are currently more than 1.000 registered political

11 Austria Fact Sheet 2019 is available here: <http://www.oecd.org/gov/gov-at-a-glance-2019-austria.pdf>

Further data on Austria is available at: <http://www.oecd.org/austria/>.

12 *Revenue Statistics 2019 – Austria*, available online at: <http://www.oecd.org/tax/tax-policy/revenue-statistics-austria.pdf>.

13 Austrian Statistics, 2018. *Austria. Data. Figures. Facts*. Vienna, available online at:

https://eu2018.statistik.at/fileadmin/euratspraesidentschaft/downloads/austria_data_figures_facts.pdf

14 The Federal Ministry of the Interior, 2019, https://www.bmi.gv.at/412_english/

parties in Austria¹⁵. The most preeminent political parties are: Austrian People's Party (*Österreichische Volkspartei*, hereinafter: ÖVP), Social Democratic Party of Austria (*Sozialdemokratische Partei Österreichs*, hereinafter: SPÖ), Freedom Party of Austria (*Freiheitliche Partei Österreichs*, hereinafter: FPÖ), The Greens – The Green Alternative (*Die Grünen - Die Grüne*, hereinafter: GRÜNE) and The New Austria and Liberal Forum (*NEOS - Das neue Österreich*, hereinafter: NEOS).

23. The last elections to the office of the Federal President took place on 4 December 2016 and had a voter turnout of 74.2% (in the second ballot). The elected president was Alexander Van Der Bellen (party member of GRÜNE)¹⁶. The past elections for the National Council took place on 29 September 2019 and had a voter turnout of 75.5%. As of 2019, the distribution of seats in the National Council is: ÖVP – 37,5% (71 mandates); SPÖ – 21,2% (40 mandates); FPÖ – 16,2% (31 mandates); GRÜNE – 13,9% (26 mandates); NEOS – 8,1% (15 mandates). On January 2020, a new coalition government was formed between ÖVP (11 ministries) and GRÜNE - *Die Grünen - Die Grüne Alternative* (The Greens – The Green Alternative) (5 ministries), led by Sebastian Kurz (ÖVP) as chancellor and Werner Kogler (GRÜNE) as vice chancellor¹⁷.

24. The new Government plan: *Aus Verantwortung für Österreich 2020-2024*¹⁸, introduces several priorities that the rapporteurs consider relevant to the scope of this Report, namely: a) examination of a reform of local taxes with regard to structures, effectiveness and assessment bases; the strengthening of tax autonomy for *Länder* and municipalities is under analysis; b) strengthening the share of the financing of the municipalities; c) evaluation of the constitutional power of cities, municipalities and municipal associations to conclude agreements on the basis of 15a B-VG; d) increasing the efficiency and transparency of the agreements concluded on the basis of article 15a, B-VG, between the Federation, the *Länder* and municipalities; e) increasing the efficiency and quality benefits of cooperation between municipalities (abolition of VAT); f) simplification and promotion of municipal cooperation; g) strengthening the own contribution of the financing of the municipalities; and h) adapting the criminal law to current challenges (which includes the assessment and examination of the Austrian Criminal Code, section 153 – *Untreue (Strafgesetzbuch – StGB)*).

2.1 Local Government System (Constitutional and Legislative Framework, Reforms)

25. The Federal Constitution refers to “municipalities” (*Gemeinden*) as “local communities” (*Ortsgemeinden*) (article 115, B-VG). According to article 115, save as competence on the part of the Federation is expressly stipulated, Land legislation prescribes laws pertaining to municipalities in accordance with the principles included in Section 6: Self-administration (*Selbstverwaltung*).

26. Both Federal and Land Constitutions see the municipality as a legal entity enjoying a self-governing authority. They also acknowledge the economic independence of municipalities, as they state that municipalities are entitled within the limits of the federal and Land laws, to possess assets of all kinds, to acquire and to dispose of such at will, to operate economic enterprises as well as to manage their budgets independently within the framework of the financial constitution and to levy taxes (article 116.1 and 2, B-VG).

27. Furthermore, B-VG gives the municipalities with at least 20.000 inhabitants the right to enjoy their own charter (*Statut*). If Land interests are not jeopardised by such requests, and the Federal Government consents to it, then such municipalities become Statutory cities (*Stadtrecht*). In this capacity, they will perform besides both municipal administrative duties and those relevant to district administration (article 116.3, B-VG). Presently, there are 15 statutory cities in Austria: Eisenstadt, Graz, Innsbruck, Klagenfurt, Krems an der Donau, Linz, Rust, Salzburg, St. Pölten, Steyr, Villach, Waidhofen an der Ybbs, Wels, Vienna, Wiener Neustadt.

28. According to article 115.3, B-VG, the Austrian Association of Cities and Towns (*Der Österreichische Städtebund*¹⁹) and the Austrian Association of Municipalities (*Österreichischer*

15 Austrian Parliament, 2019, data available online at:

<https://www.parlament.gv.at/ENGL/PERK/PK/PP/index.shtml>

16 Austrian Ministry of the Interior, 2019, data available online at: <http://wahl16.bmi.gv.at/>

17 Austrian Ministry of the Interior, 2019, data available online at: <https://wahl19.bmi.gv.at/>

18 The document is available online at:

https://www.wienerzeitung.at/em_daten/wzo/2020/01/02/200102-1510_regierungsprogramm_2020_gesamt.pdf

19 Official webpage: <https://www.staedtebund.gv.at/>

*Gemeindebund*²⁰) are competent to represent the interests of municipalities in Austria. Pursuant to article 23d, B-VG, the Federation must inform municipalities without delay regarding all projects within the framework of the European Union which affect their own sphere of competence or other important interests. Their representation is incumbent to the two associations presented above.

29. Founded in 1915, the Austrian Association of Cities and Towns represents 255 members, including all towns with more than 10.000 inhabitants. Its main task is to represent the interest of local government in negotiations over the sharing of budgetary funds and taxing rights between the Federation, the Land and local authorities.

30. There are 2.095 municipalities in Austria²¹, of which 2.084 are members of the Austrian Association of Municipalities. The Austrian Association of Municipalities is an umbrella for 10 Land associations, namely: Burgenland Association of Municipalities (*Burgenländischer Gemeindebund*), Association of Social Democrats Community Representatives in Burgenland (*Verband sozialdemokratischer Gemeindevertreter im Burgenland*), Carinthian Association of Municipalities (*Kärntner Gemeindebund*), Lower Austrian Association of Municipalities (*Niederösterreichischer Gemeindebund*), Association of Social Democrats Community Representatives in Lower Austria (*Verband sozialdemokratischer GemeindevertreterInnen in Niederösterreich*), Upper Austrian Association of Municipalities (*Oberösterreichischer Gemeindebund*), Salzburg Association of Municipalities (*Salzburger Gemeindeverband*), Styrian Association of Municipalities (*Gemeindebund Steiermark*), Tyrolean Association of Municipalities (*Tiroler Gemeindeverband*), and Vorarlberg Municipal Association (*Vorarlberger Gemeindeverband*).

20 Official webpage: <https://gemeindebund.at/>

21 Since 2015, due to several municipal structural reforms the number of municipalities in Austria has decreased: from 2.354 to 2.100 on 1 January 2015; from 2.100 to 2.098 on 1 January 2018; from 2.098 to 2.096 on 1 January 2019; from 2.096 to 2.095 on 1 January 2020. Source: Österreichischer Gemeindebund, 2020 (<https://gemeindebund.at/struktur-der-gemeinden/>).

31. Austrian municipalities are rather small and rural communities dominate the landscape (Table 1).

Population / <i>Länder</i>	Up to 100	101 - 500	501 - 1.000	1.001 - 2.500	2.501 - 5.000	5.001 - 10.000	10.001 - 20.000	20.001 - 50.000	Over 50.000	Total
Burgenland	1	16	41	86	22	4	1	0	0	171
Carinthia	0	0	12	70	30	12	5	1	2	132
Lower Austria	1	19	88	288	113	39	18	6	1	373
Upper Austria	0	10	78	203	99	35	8	3	2	438
Salzburg	0	7	15	34	42	14	5	1	1	119
Styria	0	2	14	139	85	32	12	2	1	286
Tyrol	4	33	59	110	50	16	6	0	1	279
Vorarlberg	0	16	18	29	16	8	5	4	0	96
Total	6	103	325	959	459	159	60	17	8	2.095

Table 1: Size of Austrian municipalities by Land tier (*Länder*)²²

32. Since 2011, there were several amendments brought to the Federal Constitution, inter alia:

- i. Election Rights Amendment Act (*Wahlrechtsänderungsgesetz 2011*)²³;
- ii. Nursing Allowance Reform Act (*Pflegegeldreformgesetz 2012*)²⁴;
- iii. Implementation Act of the Optional Protocol to the Convention against Torture (*OPCAT-Durchführungsgesetz*)²⁵;
- iv. European Citizens' Initiatives Introductory Act (*Europäische-Bürgerinitiative-Gesetz - EBIG-Einführungsgesetz*)²⁶;
- v. Federal Constitutional Law restructuring the security authorities (*BVG Sicherheitsbehörden - Neustrukturierung 2012*)²⁷;
- vi. Administrative jurisdiction amendment (*Verwaltungsgerichtsbarkeits-Novelle 2012*)²⁸;
- vii. Federal law amending the federal constitutional law and the Balance of Payments Stabilisation law – European Stability Mechanism accompanying amendment (*ESM-Begleitnovelle*)²⁹;
- viii. School authorities - Administrative Reform Act (*Schulbehörden – Verwaltungsreformgesetz*)³⁰;
- ix. Youth Education Act (*Jugendausbildungsgesetz*)³¹;
- x. Election Rights Amendment Act (*Wahlrechtsänderungsgesetz 2017*)³²;
- xi. Education Reform Act (*Bildungsreformgesetz 2017*)³³.

²² Source: Österreichischer Gemeindebund, 2019, available online at:

<https://gemeindebund.at/struktur-der-gemeinden/>

²³ BGBl. I No. 43/2011, available online at:

https://www.ris.bka.gv.at/Dokumente/BgblAuth/BGBLA_2011_I_43/BGBLA_2011_I_43.html

²⁴ BGBl. I No. 58/2011, available online at:

https://www.ris.bka.gv.at/Dokumente/BgblAuth/BGBLA_2011_I_58/BGBLA_2011_I_58.html

²⁵ BGBl. I No. 1/2012, available online at:

https://www.ris.bka.gv.at/Dokumente/BgblAuth/BGBLA_2012_I_1/BGBLA_2012_I_1.html

²⁶ BGBl. I No. 12/2012, available online at:

https://www.ris.bka.gv.at/Dokumente/BgblAuth/BGBLA_2012_I_12/BGBLA_2012_I_12.html

²⁷ BGBl. I No. 49/2012, available online at:

https://www.ris.bka.gv.at/Dokumente/BgblAuth/BGBLA_2012_I_49/BGBLA_2012_I_49.html

²⁸ BGBl. I No. 51/2012, available online at:

https://www.ris.bka.gv.at/Dokumente/BgblAuth/BGBLA_2012_I_51/BGBLA_2012_I_51.html

²⁹ BGBl. I No. 65/2012, available online at:

https://www.ris.bka.gv.at/Dokumente/BgblAuth/BGBLA_2012_I_65/BGBLA_2012_I_65.html

³⁰ BGBl. I No. 164/2013, available online at:

https://www.ris.bka.gv.at/Dokumente/BgblAuth/BGBLA_2013_I_164/BGBLA_2013_I_164.html

³¹ BGBl. I No. 62/2016, available online at:

<https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20009604>

³² BGBl. I No. 106/2016, available online at:

https://www.ris.bka.gv.at/Dokumente/BgblAuth/BGBLA_2016_I_106/BGBLA_2016_I_106.html

³³ BGBl. I No. 138/2017, available online at:

https://www.ris.bka.gv.at/Dokumente/BgblAuth/BGBLA_2017_I_138/BGBLA_2017_I_138.html

33. The introduction of the Land administrative courts (see para 148) is of particular relevance. When introduced to the Federal Council for its opinion, the participants in the debates saw the proposed changes as means to strengthen Austrian federalism, comply with the European Convention on Human Rights and to cut the red tape.³⁴

34. Pursuant to article 116a, B-VG, as revised in 2011³⁵, municipalities can by agreement associate in municipal associations. Such an agreement requires the sanction of the supervisory authority.

2.2. Status of the capital city

35. Since 1 January 1922, Vienna has been one of the nine autonomous federal *Länder* of Austria. The City of Vienna has a special position within Austria because it is the federal capital (the seat of Austria's highest authorities), a federal Land and municipality with the legal status of a Statutory City (article 5, B-VG and article 1, of the Constitution of the Federal Capital Vienna - *Wiener Stadtverfassung 1968*, hereinafter: WStV)³⁶.

36. Pursuant to article 8, WStV, Vienna governance structure is represented by: the Council (*Gemeinderat*), the City Senate (*Stadtsenat*), the Mayor (*Bürgermeister*), Senior city councillors (*Amtsführenden stadträte*), Municipal councils (*Gemeinderatsausschüsse*), Commissions of the municipal council (*Kommissionen des Gemeinderates*), the Investigation committee of the municipal council (*Untersuchungskommission des Gemeinderates*), District representatives (*Bezirksvertretungen*), District leaders (*Bezirksvorsteher*), District committees, the Magistrate and a City Audit Office.

37. The members of the Council are directly elected (article 10, WStV) and there are 100 seats to be filled, for a five years mandate - article 13, WStV. The Council elects the mayor (article 31, WStV). Pursuant to article 22, WStV, meetings of the Council are public, and depending on technical possibilities, they can be transmitted in real time on the internet and recorded on a storage medium. The recorded sessions can be kept publicly accessible to everyone on the internet (paragraph 1a). Article 18, WStV regulates the Council clubs (*Klubs des Gemeinderates*): at least three members of the Council, belonging to the same campaigning party have the right to form a club, chaired by a club chairman. The chairman of the Council and the chairmen of the clubs form the Presidential conference (*Präsidialkonferenz des Gemeinderates*). This is an advisory body to support the chairman of the Council in its administration. Wherever possible, the recommendations of the Presidential Conference must be made by mutual agreement (article 24, WStV).

38. Political parties represented in the Council are entitled to representation in the City Senate depending on their strength. The number of city senators must be at least nine and not more than fifteen (article 34, WStV).

39. Articles 61 and 61a of WStV regulate the District Council. Its members are elected for a period of five years on the basis of direct, secret and personal proportional representation rights of all those eligible to vote in the district council elections according to the Viennese municipal electoral code (1996). The meetings of the District Council are public.

40. The special status of Vienna is acknowledged once again by articles 113 and 114, WStV, which need to be read in conjunction with articles 108-109 and 112 of B-VG. As such, Vienna Council is also the Land Parliament of Vienna (*Landtag für Wien*), and its commissions are Parliament commissions. The Mayor of Vienna is also the Land Governor (*Landeshauptmann*), the City Senate is also the Land Government (*Landesregierung*), and the City Audit of Vienna is also the State Office Audit.

41. In Vienna, the final results of the 2015 City elections were the following³⁷: 39,6% SPÖ, 30,8% FPÖ, 11,84% GRÜNE, 9,2% ÖVP and 6,2% NEOS; they translated in the following distribution of seats

34 For further reference, please consult:

https://www.parlament.gv.at/PAKT/VHG/BR/BRSITZ/BRSITZ_00809/fnameorig_270812.html#Seite_0037.html

35 Amendment to strengthen the rights of the municipalities, BGBl. I No. 60/2011, available online at:

https://www.ris.bka.gv.at/Dokumente/BgblAuth/BGBLA_2011_I_60/BGBLA_2011_I_60.html

36 Document available online at:

<https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=LrW&Gesetzesnummer=20000308>.

37 Source: official website of the City of Vienna: <https://www.wien.gv.at/english/NET-EN/GR151/GR151-109.html>

in the Land Parliament and the City Council: SPÖ - 44 seats, FPÖ - 34 seats, GRÜNE - 10 seats, ÖVP - 7 seats, and NEOS – 5 seats.

42. In 2018, Vienna City had a total expenditure of 14.00 billion Euro; and total investments worth 2.23 billion Euro.³⁸

2.3 Legal status of the European Charter of Local Self-Government

43. Austria ratified the European Charter of Local Self-Government in 1987 and following parliamentary approval, the Charter was published in the Federal Law Gazette (BGBl 1988/357). Consequentially, it became part of the Austrian legal system.

44. The Report of the Constitutional Committee on the European Charter of Local Self-Government including the Declaration of the Republic of Austria according to Article 12.2 (1987) stated that: “the provisions of the convention declared binding by Austria are already considered in Austrian constitutional law, the Charter is neither amending nor supplementing the Constitution. However, regardless of the fact that its provisions are essentially complied with by the applicable municipal law, it is to be regarded as supplementary to the law and therefore requires the approval of the National Council”.³⁹ The National Council resolved that the Charter would require special modification by domestic laws to become directly applicable.⁴⁰

2.4 Previous Congress reports and recommendations

45. The Congress of Local and Regional Authorities of the Council of Europe adopted its first Recommendation on local and regional democracy in Austria since the ratification of the Charter of Local Self-Government in 2011.⁴¹ The Congress noted with satisfaction that local governments in Austria derive their powers from Federation and / or the *Länder*, under a system that reflects subsidiarity and is, in general, in conformity with the norms of the Charter.

46. The Congress invited the Austrian authorities:

- i. to consider an overall institutional reform of the federal system in Austria, *inter alia*, on modifying the composition and functions of the Federal Council in order to make it better suited to representing Land interests, transforming the system of indirect federal administration to direct Land administration, introducing the Land Administrative Courts and modifying the division of powers;
- ii. to elaborate systematic legislation, in accordance with the principle of subsidiarity, clarifying the powers of each level of government (municipalities, *Länder* and the federation) on the basis of the work of the Austrian Convention and more recent reform proposals;
- iii. 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;
- iv. to grant to municipalities and *Länder* larger tax autonomy allowing them to raise an increasing amount of their own taxes and to make sure that when their competences are extended, this is followed by the allocation of necessary financial resources;
- v. 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;
- vi. 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”;

38 Idem footnote 46.

39 GP XVII RV 90 AB 184 S. 25, available online at:

https://www.parlament.gv.at/PAKT/VHG/XVII/I/I_00184/imfname_263952.pdf

40 See also: Gamper, Anna. 2012, *op.cit.* in footnote 5.

41 The Recommendation 302 (2011) – Local and regional democracy in Austria. The text of the Recommendation is available online at: <https://rm.coe.int/1680719098>.

- vii. 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;
- viii. 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 *Länder* concerned expressly requests this;
- ix. to take into consideration Congress Recommendation 288 (2010) and to take concrete measures to encourage better representation of women at local and regional level;
- x. 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;
- xi. 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;
- xii. 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.

3. HONOURING OF OBLIGATIONS AND COMMITMENTS: ANALYSIS OF THE SITUATION OF LOCAL AND REGIONAL DEMOCRACY ON THE BASIS OF THE CHARTER (ARTICLE BY ARTICLE⁴²)

3.1 Article 2: Foundation of local self-government

The principle of local self-government shall be recognised in domestic legislation, and where practicable in the constitution.

47. B-VG specifically recognizes the first core element of local self-government, namely, the existence of “local authorities endowed with democratically constituted decision-making bodies”. Firstly, articles 6 to 8 identify the municipal level, as one where fundamental rights of the Austrian citizens need to be protected. Secondly, Chapter VI on Municipalities, and more specifically, article 117 enumerates the municipal authorities, namely: a) the municipal council (*Gemeinderat*), the general representative body to be elected by those entitled to vote in the municipality; b) the municipal executive board (city council) (*Gemeindevorstand / Stadtrat*), or in Statutory cities, the city senate (*Stadtssenat*); c) the mayor (*Bürgermeister*).

48. Pursuant to article 117.2, B-VG, the municipal council is elected on the basis of proportional representation by equal, direct, personal and secret suffrage by the male and female federal nationals who have their main domicile in the municipality. And although specific election regulations may occur, the conditions for suffrage and electoral eligibility may not be more restrictive than in the electoral regulations for the Land Parliament. Paragraph 6 indicates that the mayor is elected by the municipal council. B-VG recognizes, however, the possibility of the *Länder* to stipulate in their constitutions that the mayor shall be elected by those with municipal council suffrage.

49. Local self-government is also enshrined in Municipal codes of all *Länder*⁴³, namely, in Burgenland Municipal Code (*Burgenländische Gemeindeordnung 2003*)⁴⁴, Carinthian Municipal Code (*Kärntner Allgemeine Gemeindeordnung 1998*)⁴⁵, Lower Austrian Municipal Code (*NÖ Gemeindeordnung 1973*)⁴⁶, Upper Austrian Municipal Code (*Oö. Gemeindeordnung 1990*)⁴⁷, the

42 This chapter will provide an analysis of all the provisions of the Charter, whether or not they have been ratified. However, non-ratified provisions will not give rise to the recommendation.

43 The enumeration does not include Vienna, as its distinctive character has been already presented in section 2.2.

44 Document available online at:

<https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=LrBgl&Gesetzesnummer=20000221>.

45 Document available online at:

<https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=LrK&Gesetzesnummer=10000276>.

46 Document available online at:

<https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=LrNO&Gesetzesnummer=20000105>

47 Document available online at:

<https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=LrOO&Gesetzesnummer=10000288>

Municipal Code of Salzburg (*Salzburger Gemeindeordnung 1994*)⁴⁸, Styrian Municipal Code (*Steiermärkische Gemeindeordnung 1967*)⁴⁹, The Municipal Code of Tyrol (*Tiroler Gemeindeordnung 2001*)⁵⁰, The Municipal Code of Vorarlberg (*Vorarlberg Gesetz über die Organisation der Gemeindeverwaltung 1985*)⁵¹. These documents include references to the two other core components of local self-government, namely: autonomy in exercising local power and resources necessary to accommodate local needs.

50. In Burgenland, the Municipal Code (article 14) identifies the following organs of the municipality: the municipal council, the municipal board, the mayor and the municipal treasurer. Elections are direct, free, secret, proportional and all Austrians residing in the municipality can vote, as well as members of another EU country who are registered in the municipality. The members of the municipal council as well as the mayor are elected for a period of five years (articles 16-17). Burgenland differentiates between *Marktgemeinde* – of greater economic importance for the surrounding areas, and *Stadtgemeinde* – municipalities that have gained particular importance for the wider area due to their economic structure, their cultural institutions, their population or traffic situation (article 3.1).

51. In Carinthia, according to the Municipal Code, the municipal council is elected by all municipality citizens for a mandate of six years (articles 2, 18 and 19). Similar provisions apply to the mayor as well (article 23).

52. The Lower Austrian Municipal Code describes the organs of the municipality (the municipal board, the municipal council, the mayor) (article 18). The mayor is elected from among the municipal councillors by the municipal council (article 26).

53. The Upper Austrian Municipal Code enumerates the municipal organs in article 17 and states that the mayor is elected by the municipal council (article 25). In addition, article 3 recognizes the right of the Land government to create municipalities of different kinds, upon their request, and in the limits of the population (municipalities with more than 2.000 inhabitants may apply to become *Marktgemeinde* and those with more than 4.500 inhabitants, *Stadtgemeinde*).

54. In Salzburg, the municipal council, the municipal leadership, the mayor, and the committees are the local authorities (article 18). The mayor is directly elected by all the eligible voters in the municipality (article 35).

55. The Styrian Municipal Code enumerated the following local authorities: the municipal council, the municipal board (*Gemeindevorstand*), the mayor, the management committees, the specialized committees, and the municipal treasurer (article 14). Styria enjoys directly elected municipal councils and mayors elected by the municipal council for a term of five years (articles 16, 17 and 19). In addition, article 3 states that the designation *Marktgemeinde* may be given only to municipalities of more than 3.000 inhabitants, whereas that of *Stadtgemeinde* to those of at least 10.000 inhabitants.

56. In Tyrol, the Municipal Code describes the local authorities in article 21 and stipulates the length of the mandate: six years (article 25).

57. The Municipal Code of Vorarlberg indicates in article 20 that the municipal council is to be directly elected by Austrian citizens and foreign citizens of the Union who have the right to vote according to the municipal electoral law; and in article 61 that the municipal council elects the mayor. The political mandate is for five years (article 35).

58. During the monitoring visit, the members of the Austrian National Delegation to the Congress as well as of the National Associations acknowledged the legal recognition and substantial implementation of the principle of local self-government in Austria.

48 Document available online at:

<https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=LrSbg&Gesetzesnummer=10000813>

49 Document available online at:

<https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=LrStmk&Gesetzesnummer=20000218>

50 Document available online at:

<https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=LrT&Gesetzesnummer=20000101>

51 Document available online at:

<https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=LrVbg&Gesetzesnummer=20000047>

59. The rapporteurs observe that elements of the principle of self-government are present in the Federal Constitution, as well as in the Land Municipal Codes, and therefore conclude that Austria complies with article 2.

3.2 Article 3: Concept of local self-government

3.2.1 Paragraph 1

Local self-government denotes the right and the ability of local authorities, within the limits of the law, to regulate and manage a substantial share of public affairs under their own responsibility and in the interests of the local population.

60. The Explanatory Report to the Charter⁵² states that “it is not possible to define precisely what affairs local authorities should be entitled to regulate and manage. (...) The traditions of member states as to the affairs which are regarded as belonging to the preserve of local authorities differ greatly. In reality most affairs have both local and national implications and responsibility for them may vary between countries and over time and may even be shared between different levels of government”.

61. In Austria, there are four essential types of power:⁵³

- i. Exclusive federal power (of legislation and execution, according to article 10, B-VG);
- ii. Federal legislation power and Land execution power (article 11, B-VG);
- iii. Federal legislation power for general principles and Land implementing and execution power (article 12, B-VG);
- iv. Exclusive Land power (of legislation and execution, article 15, B-VG).

62. Pursuant to article 118, B-VG, a municipality has its own sphere of competence and one assigned to it either by the Federation or the Land. Its own sphere of competence comprises, apart from the matters mentioned in article 116.2, B-VG (on municipal associations, *Gemeindeverbände*), all matters exclusively or preponderantly the concern of the local community as personified by a municipality and suited to performance by the community within its local boundaries. Legislation shall expressly specify matters of that kind as being such as fall within the municipality's own sphere of competence.

63. B-VG (article 118.3), as well as the Municipal codes of the *Länder* include, in the area of municipal power, the following matters in particular:

- i. appointment of the municipal organs, notwithstanding the competence of election boards at a higher level; settlement of the internal arrangements for performance of the municipal functions;
- ii. appointment of the municipal staff and exercise of the service prerogative over them, notwithstanding the competence of disciplinary, eligibility, and exam commissions at a higher level;
- iii. local public security administration (article 15.2, B-VG), local events control;
- iv. administration of municipal traffic areas, local traffic police;
- v. crops protection police;
- vi. local market police;
- vii. local sanitary police, in particular in the field of emergency and first aid services as well as matters pertaining to deaths and interment;
- viii. public decency;
- ix. local building police; local fire control; local development planning;
- x. public services for extra-judicial settlement of disputes;
- xi. voluntary sale of movables.

64. In addition, municipalities are entitled in matters pertaining to their own sphere of competence to issue on their own initiative local police ordinances for the prevention of imminently to be expected or existing nuisances interfering with local communal life as well as to declare non-compliance with them an administrative contravention. Such ordinances may not violate existing laws and ordinances of the Federation and Land (article 118.6, B-VG).

⁵² Document available online at: <https://rm.coe.int/16800ca437>

⁵³ Gamper, Anna. Koch, Bernhard. 2014. “Federalism and Legal Unification in Austria”, in: Daniel Halberstam and Mathias Reimann(eds.), *Federalism and Legal Unification*, Springer, pp.104-110.

65. The municipality shall conduct the business for which it is competent within the framework of the laws and ordinances of the Federation and the Land on its own responsibility, free from instructions and under exclusion of legal redress to administrative authorities outside the municipality. According to article 117.7, B-VG, the business of the municipalities is to be conducted by the local administrative office (city administrative office), and that of Statutory cities by the City administration. A civil servant with legal training shall be appointed to take charge as the city administration's chief executive of the City administration's internal services.

66. In matters of their own sphere of competence the Federation and the Land have a right of supervision over the municipality (article 119a, B-VG). The mayor, the members of the municipal executive board (city council, city senate) and, if appointed, other executive officials are accountable to the municipal council for the performance of their functions relating to the municipality's own sphere of competence (article 118.5, B-VG). Also, according to article 117.8, B-VG the Land legislature can, in matters pertaining to the municipality's own sphere of competence, provide for the direct participation and assistance of those entitled to vote in the municipal council election.

67. During the monitoring visit, representatives of Austrian municipalities and associations appreciated that while the status of local government in Austria has generally improved since 2011, there still remains a need to redefine the scope of local responsibilities and ensure the financial sustainability of (small and medium) municipalities.

68. The rapporteurs welcome the recent reforms undertaken by Austria in order to strengthen local self-government and thereby encourage Austrian authorities to continue channelling their efforts to generate good local governance. The rapporteurs conclude that Austria complies with the provisions of this article yet look forward to the translation of the New Government Plan (January 2020) into concrete measures intended to consolidate further the constitutional role and place of municipalities in Austrian federalism.

3.2.2 Paragraph 2

This right shall be exercised by councils or assemblies composed of members freely elected by secret ballot on the basis of direct, equal, universal suffrage, and which may possess executive organs responsible to them. This provision shall in no way affect recourse to assemblies of citizens, referendums or any other form of direct citizen participation where it is permitted by statute.

69. As presented above (section 3.1), all Austrian *Länder* guarantee the principles incumbent on local representative democracy. In all cases, municipalities are represented by freely elected councillors and mayors and the meetings of the deliberative bodies are usually public and open to external scrutiny.

70. In addition, in all municipal codes, just as advised by the Charter and its Explanatory Report, there are several instruments available to hold elected officials administratively and politically accountable. The following paragraphs present a non-exhaustive overview of such instruments.

71. For Burgenland, article 51 of the Municipal Code regulates the town meetings (*Gemeindeversammlung*), article 52, the consultation of the people (*Volksbefragung*), article 53 the citizens' initiative, article 54 the referendum (*Volksabstimmung*) and article 55 the right to petition and appeal the municipal decisions.

72. In Carinthia, section 11 of the Municipal Code describes the rules on the consultation of the people (*Gemeindevolksbefragung*) and section 12 regulates the citizens' meetings as instruments for holding the elected officials accountable.

73. In Lower Austria, the Municipal Code recognizes the right of initiative to all municipal voters (article 16), while section 5 regulates the consultation of the people (*Volksbefragung*).

74. The Municipal Code of Upper Austria regulates the referendum (*Volksabstimmung*) in article 31a, article 38, the consultation of the people (*Volksbefragung*) in article 38, and the citizens' initiative in article 38b.

75. In Salzburg, the Municipal Code speaks of the town meetings (article 66), referenda and consultations of the people (articles 67, 69 and 70), as well as citizens' initiatives (*Bürgerbegehrens*) (articles 71 to 74).

76. The Styrian Municipal Code recognizes the ability of the municipal council to express distrust in the mayor (article 36), while the citizen involvement in policy-making is regulated in section 6 of the Constitution of Styria (Citizens' rights in municipality).

77. Articles 61 to 65 of the Municipal Code of Tyrol regulate the consultation of the people (*Volksbefragung*), article 66 the town meetings and article 67 the right to petition.

78. Finally, in Vorarlberg, article 21 regulates the requests, article 22 the referendum, article 23 the consultation of the people, and article 25 the right to petition.

79. Bearing the above into consideration, the rapporteurs consider that Austria complies with this paragraph.

80. During the monitoring visit, the rapporteurs observed, on several occasions, that local participatory democracy is deeply rooted in the daily life of Austrian municipalities. However, the rapporteurs take note of the fact that Austria has not yet signed nor ratified the Additional Protocol on the right to participate in the affairs of a local authority (CETS no.207). Considering that there are no envisaged technical impediments, and in light of the positive examples of public participation in local decision-making, the rapporteurs strongly encourage Austrian authorities to sign and ratify the said Protocol.

3.3 Article 4: Scope of local self-government

3.3.1 Paragraph 1

The basic powers and responsibilities of local authorities shall be prescribed by the constitution or by statute. However, this provision shall not prevent the attribution to local authorities of powers and responsibilities for specific purposes in accordance with the law.

81. As presented in above, section 3.2.1 the Federal Constitution (B-VG) and the Municipal Codes of Austrian *Länder* regulate the allocation of legislative powers between the Federation, the *Länder* and the municipalities.

82. Considering the exchanges between the rapporteurs and representatives of the National Associations and the National Delegation of Austria to the Congress, and following the documentation on the implementation of local self-government in Austria, the rapporteurs acknowledge that there is a high degree of complexity in the allocation of powers between the *Länder* and the Federation, and that municipalities are, to some extent, peripheral.

83. However, the rapporteurs appreciate the wording of the Explanatory Report to the Charter, namely, that: "it is not possible, nor would it be appropriate to attempt, to enumerate exhaustively the powers and responsibilities which should appertain to local government throughout Europe". Therefore, they conclude that Austria complies with this provision.

3.3.2 Paragraph 2

Local authorities shall, within the limits of the law, 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.

84. In accordance with article 12.2. of the Charter, Austria has not declared itself bound by this provision.

85. The Explanatory Report of the Charter indicates that "in addition to the responsibilities assigned by legislation to specific levels of authority, other needs or possibilities for action by public bodies may

present themselves. Where these fields of action have local implications and are not excluded from the general competence obtaining in most member states, it is important to the conception of local authorities as political entities acting in their own right to promote the general welfare of their inhabitants that they have the right to exercise their initiative in these matters”.

86. Pursuant to articles 10 to 15 and 118, B-VG, in Austria, the allocation of legislative powers is exclusive: either the Federation or the *Länder* may regulate, implement and/or execute in the public interest, in different areas, as decided by the constitutional law (and its subsequent legal texts).

87. Pursuant to article 116.2, B-VG, municipalities are independent economic entities, and have, as indicated by article 118.1, B-VG, their own sphere of competence and one assigned to them either by the Federation or the Land. As such, municipalities enjoy some (residuary)⁵⁴ powers, as indicated, inter alia, by article 85 (Constitution of Burgenland), article 58 (Constitution of Lower Austria), article 66 (Constitution of Upper Austria), article 51 (Constitution of Salzburg), article 74 (Constitution of Tyrol), and article 74 (Constitution of Vorarlberg).

3.3.3 Paragraph 3

Public responsibilities shall generally be exercised, in preference, by those authorities which are closest to the citizen. Allocation of responsibility to another authority should weigh up the extent and nature of the task and requirements of efficiency and economy.

88. In accordance with article 12.2. of the Charter, Austria has not declared itself bound by this provision.

89. Pursuant to the Explanatory Report of the Charter, this paragraph articulates the general principle that the exercise of public responsibilities should be decentralized and in fact, names the subsidiarity principle.

90. For Austria, as argued in the Report on Definition and Limits of the Principles of Subsidiarity⁵⁵, the principle of subsidiarity has been particularly important, and it has to be seen as a means of strengthening local democracy, and not at all (except in case of real need) as a means of diminishing the local level in favour of the regional, or the regional in favour of the central.

91. The principle of subsidiarity is embedded, at the Land level, in several constitutional laws (e.g. article 1.3, Constitution of Carinthia; article 4, Constitution of Lower Austria; article 9.2, Constitution of Upper Austria; and article 7, Constitution of Vorarlberg).

92. Finally, article 23g, B-VG, introduces the principles of subsidiarity in connection with the European Union: “The National Council and the Federal Council present their view in a founded comment to a drafted legal act in the framework of the European Union, for which reason the draft is incompatible with the subsidiarity principle”. In a similar vein, some Land constitutions speak of subsidiarity when introducing their views on projects within the framework of the European Union (e.g. article 50b, Constitution of Salzburg; article 55, Constitution of Vorarlberg).

93. Taking into consideration the existing legal provisions as indicated above (in Sections 3.3.2 and 3.3.3, as well as the daily reality of Austrian cooperative federalism, where *Länder* and (to some extent) municipalities are granted the right to fully exercise their own public responsibilities, the rapporteurs invite the Austrian authorities to ratify paragraphs 2 and 3 of article 4 of the Charter since they appear to be applied in practice.

3.3.4 Paragraph 4

Powers given to local authorities shall normally be full and exclusive. They may not be undermined or limited by another, central or regional, authority except as provided for by the law.

⁵⁴ Gamper, Anna. 2012, *op.cit.*, p.33.

⁵⁵ Report prepared for the Steering Committee on Local and Regional Authorities (CDLR), Local and regional authorities in Europe, No. 55, Strasbourg 1994. The document is available online at: <https://rm.coe.int/1680747fda>

94. The Explanatory Report to the Charter underlines that in the interest of clarity and for the sake of avoiding any tendency towards a progressive dilution of responsibility, powers allocated to local authorities should normally be full and exclusive.

95. As already indicated (e.g. by article 15.1, B-VG), Austria is a highly centralized federation: what is of no exclusive responsibility of the Federation, is legislated by it and executed by the *Länder*, framed by it (in general principles) and implemented and executed by the *Länder* or legislated and executed by the *Länder*. The municipalities do have their share of responsibilities and they are actively engaged in federal and Land policy-making (article 118.1, B-VG, regulates that municipalities have their own set of powers and one assigned by the Federation or the Land).

96. Austrian municipalities perform their duties under their own responsibilities, free from instructions and under exclusion of legal redress by administrative authorities outside the municipality. As indicated by article 118.7, on application by a municipality, the performance of certain matters in its own sphere of competence can, in accordance with article 119a.3, B-VG, be assigned by ordinance of the Land Government or by ordinance of the Governor to a Land authority. In so far as such an ordinance is meant to assign competence to a federal authority, it requires the consent of the Federal Government. In so far as such an ordinance by the Governor is meant to assign competence to a Land authority, it requires the consent of the Land Government. Such an ordinance shall be rescinded as soon as the reason for its issue has ceased.

97. Pursuant to article 119a, B-VG, municipalities are under constant supervision so that they do not infringe laws and ordinances in dealing with their own responsibilities, in particular do not overstep their powers, and fulfil the duties legally devolving upon them.

98. During the monitoring visit, the rapporteurs observed that there is an unbalanced distribution of exclusive regulatory powers to the benefit of central and/or *Länder* authorities. This presents a threat to exercise of local self-government. However, considering the complexity of Austrian cooperative federalism, the rapporteurs conclude that Austria complies with this paragraph. Still, they invite the Austrian authorities to avoid unnecessary limitation of the municipalities' powers.

3.3.5 Paragraph 5

Where powers are delegated to them by a central or regional authority, local authorities shall, insofar as possible, be allowed discretion in adapting their exercise to local conditions.

99. In accordance with article 12.2. of the Charter, Austria has not declared itself bound by this provision.

100. Pursuant to the Explanatory Report of the Charter, this paragraph builds on the familiarity of local authorities with local conditions. When receiving delegated tasks, local authorities "should, when possible, be allowed to take account of local circumstances in exercising delegated powers".

101. In Austria, according to article 119, paragraphs 1 and 2, B-VG, in performing delegated tasks, municipalities need to comply with the federal or Land laws, and the mayor – the person responsible for performing the said tasks, is bound by the instructions provided by the Federation or the *Länder*. Therefore, as suggested by the doctrine with regard to delegated functions, "municipalities have no right to self-government and serve as mere administrative units."⁵⁶

102. In light of the foregoing, the rapporteurs conclude that this provision is not fully respected in Austria.

⁵⁶ Gamper, Anna. 2012. "Local Government in Austria", in: Angel – Manuel Moreno (ed.), *Local Government in the Member States of the European Union: A Comparative Legal Perspective*, National Institute of Public Administration Spain, Madrid, p.31.

3.3.6 Paragraph 6

Local authorities shall be consulted, insofar as possible, in due time and in an appropriate way in the planning and decision-making processes for all matters which concern them directly

103. The right of local authorities to be consulted by higher levels of government is a fundamental principle of European legal and democratic practice and pillar of good governance building. In fact, the Congress formulated several principles that should guide the consultation process, namely: mutual respect between all actors; openness and transparency; responsiveness, with all actors providing appropriate feedback⁵⁷.

104. Pursuant to article 10.3, B-VG, before the Federation concludes state treaties which make necessary implementing measures in the sense of article 16, B-VG or affect the autonomous sphere of competence of the *Länder* in another way it must give the *Länder* the opportunity to give their opinion. If the Federation is in possession of a uniform opinion of the *Länder*, the Federation is bound thereby when concluding the state treaty. The Federation may depart therefrom only for compelling foreign policy reasons; it shall without delay advise the *Länder* of these reasons.

105. According to article 14b.3, B-VG, when legislating on public tendering, the Federation has to grant the *Länder* opportunity to participate in the preparation of draft bills; in addition, if the execution of such legislation falls under the business of the *Länder*, the latter need to give their consent.

106. Article 23d, B-VG states that the Federation must inform the *Länder* and municipalities, should they be concerned, without delay regarding all projects within the framework of the European Union which affect their autonomous sphere of competence or could otherwise be of interest to them and it must allow them opportunity to present their views within a reasonable interval to be fixed by the Federation. Such comments shall be addressed to the Federal Chancellery. In these matters, representation of the municipalities is incumbent on the Austrian Association of Cities and Towns (Austrian Municipal Federation) and the Austrian Association of Municipalities (Austrian Communal Federation) (article 115.3, B-VG).

107. Austria is known, also, for its informal horizontal cooperation of the *Länder*, taking the form of a Conference between Land Governors (*Landeshauptleutekonferenz*). These Conferences act as true political fora where unanimity is required to reach a decision⁵⁸. In addition, as already presented (above 3.2.2) all Land constitutions have specific regulations pertaining to public consultation (referenda, public initiatives, etc.).

108. Pursuant to article 34.1, B-VG, the *Länder* are represented in the Federal Council in proportion to the number of nationals in each Land. The members of the Federal Council are elected by the Land Parliaments. The Federal Council has the right to submit legislative proposals to the National Council (article 41.1, B-VG), every enactment of the National Council⁵⁹ is conveyed by its President to the Federal Council (and save as otherwise provided by the constitutional law) an enactment can be authenticated and published only if the Federal Council has not raised a reasoned objection to the enactment (article 42.2, V-VG). To the extent an enactment of the National Council requires the consent of the *Länder*, it is to be notified by the Federal Chancellor pursuant to article 42, B-VG, immediately after the procedure has been closed to the Land Government Offices of the *Länder* concerned. The consent is deemed to be granted if the Governor of the Land does not notify the Federal Chancellor within eight weeks after the day on which the enactment has been served to the Land Government Office, that consent is denied. Before expiry of this period the enactment may only be published if the Governors of the *Länder* concerned have notified the express consent of the Land (article 42a,

57 OECD, 2010, Better regulation in Europe: Austria 2010, OECD Publishing.

58 Idem footnote above.

59 There are exceptions: e.g. article 42.5, B-VG: The Federal Council has no claim to participation in so far as National Council enactments concern the National Council's rules of procedure, the dissolution of the National Council, a federal law providing detailed regulations on the making of the Federal finance frame law, the Federal finance law and on the household of the Federation, a temporary provision consonant with article 51a.4, B-VG or a disposal of federal property, the assumption or conversion of a federal liability, the contraction or the conversion of a federal monetary debt, the sanction of a final federal budget account.

B-VG). Finally, the Federal Council needs to give its consent when constitutional laws or constitutional provisions contained in simple laws restrict the competence of the *Länder* in legislation and execution (article 44.2).

109. Considering the above, the rapporteurs assess that there are effective consultation mechanisms of local authorities in place, and that Austria complies with provision 4.6 of the Charter.

110. However, during the monitoring visit, the rapporteurs took note of the municipalities' interest in having a stronger (constitutional) voice at the federal level, especially when financial matters are concerned (e.g. in the distribution of shares from the federal taxes; in concluding agreements on the basis of 15a B-VG; etc.).

111. The rapporteurs reiterate the invitation to the Austrian authorities to consider modifying Federal Constitutional Law in order to allow the associations of municipalities to participate in agreements between the Federation and the *Länder* on all matters that concern them. Also, fully considering the particularities of the Austrian consensual-driven policy making, the rapporteurs underline the importance of considering the municipalities equal partners of the Federation and the *Länder*.

3.4 Article 5: Protection of local authority boundaries

Changes in local authority boundaries shall not be made without prior consultation of the local communities concerned, possibly by means of a referendum where this is permitted by statute.

112. In Austria, the Municipal codes of the *Länder* include specific provisions for boundary changes. For Burgenland article 7 indicates that a Land law is required to change the boundaries of municipalities against the will of a participating municipality; otherwise, municipalities have the option of voluntarily deciding on their new borders (including merger or separation).

113. In Carinthia, article 7 to 8a of the Municipal code regulate changes in the boundaries: the Land government can, by law, change municipal boundaries to the extent required by the social, economic and cultural structure of the municipalities involved, if these municipalities request it by means of corresponding municipal council resolutions and have reached an agreement on any property dispute. A municipality can be divided into two or more municipalities, if there is a favourable majority (of at least two thirds) in the municipal council, each community arising or affected by the separation is likely to provide the means for its continuation and the separation corresponds better to the social, economic and cultural structure of the community members and community interests. For Lower Austria, the Municipal code regulates in Section 2: border changes, mergers and separations. For each resolutions of the municipalities involved, and the approval of the Land government are required. Separations may occur if either: a decision is taken by the municipal council (with a majority of three quarters of the votes cast) or, a referendum on the separation of the municipality, which also includes a provision for property law, has the approval of at least three quarters of the voters in the new communities to be formed, and with the participation of at least two thirds of those entitled to vote in each of the communities to be newly formed. For Upper Austria, Section 10 deals with border changes: they can all be accepted at the will of the municipal councils, and if the municipalities are in opposition, when a Land law is issued. Similar provisions pertaining to divisions and border changes are contained by the Municipal Code of Salzburg (article 7 to 11) and Tyrol (articles 5-6). In Vorarlberg, border changes must be made at the will of the municipalities and with the approval of the state government (article 6) and if there is opposition, a Land law is required.

114. The Styrian Municipal Code – Section II provides that in order to change the boundaries of municipalities, the municipal councils of the participating municipalities must agree, and the Land government must approve them. The approval is to be granted if the changes are made for reasons of public interest and considering the geographic location of the municipality, and capacity to fulfil its legal tasks. Public interests are to be understood in particular as economic, infrastructural, regional planning and transport policy, demographic or financial reasons. A law is required to change borders against the will of a participating municipality.

115. Pertaining to the issue of changing borders in the Styrian amalgamation reform⁶⁰, during the monitoring visit, the rapporteurs met with Styrian Land representatives, as well as with the mayor of Raaba-Grambach, one of the merged municipalities, opposing the process. As indicated by the interviewees, local community, as well as elected officials from different municipalities affected by the reform were both formally and informally consulted. Albeit the result of the consultation was favourable to merger in just 85% of the cases (and not all), the consultation did occur and the legal conditions for achieving the merger were met.

116. Considering the above, the rapporteurs conclude that Austria complies with this paragraph.

3.5 Article 6: Appropriate administrative structures and resources

3.5.1 Paragraph 1

Without prejudice to more general statutory provisions, local authorities shall be able to determine their own internal administrative structures in order to adapt them to local needs and ensure effective management.

117. Article 116, B-VG states that the municipality is an independent economic entity, entitled to self - administration and, within the limits of the law, to possess assets of all kinds, to acquire and to dispose of such at will, to operate economic enterprises to manage its budget independently within the framework of the financial constitution and to levy taxation.

118. The business of the municipalities will be conducted by a local administrative office (city administrative office or city administration), managed by a civil servant with legal training (article 117.7). The mayor, the members of the municipal executive board (city council, city senate) and, if appointed, other executive officials are responsible to the municipal council for the performance of their functions (article 118.5, B-VG).

119. Considering the above, the rapporteurs conclude that Austria complies with the provision of this paragraph.

3.5.2 Paragraph 2

The conditions of service of local government employees shall be such as to permit the recruitment of high-quality staff on the basis of merit and competence; to this end adequate training opportunities, remuneration and career prospects shall be provided.

120. All Austrian *Länder* have regulations for civil servants and contractual employees at local level: e.g. Burgenland Municipal Employees Act⁶¹, Vorarlberg Municipal Employees Act⁶², etc. These regulations include specific elements pertaining to rights, career prospects and benefits.

121. Article 21.1, B-VG, regulates that legislation and execution in matters pertaining to the service code, including the regulations on service contracts, and for staff representation rights of employees of the *Länder*, the municipalities, and the municipal associations are, save as provided otherwise, incumbent on the *Länder*. Disputes arising from contractual employment are settled by the courts of justice.

122. During the monitoring visit, the rapporteurs noted the concerns raised by small and medium sized municipalities that local effective management is unlikely to occur when professional, technical advice is not available. All local authorities need to be able to recruit and retain high quality personnel in order to provide high quality services to their local communities. During the consultation procedure, the Association of Austrian Municipalities also pointed out that as local government becomes increasingly

60 For further reference, please visit: <http://www.gemeindestrukturreform.steiermark.at/>

61 Document available at:

<https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=LrBgl&Gesetzesnummer=20001002>

62 Document available at:

<https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=LrVbg&Gesetzesnummer=20000291>

complex in terms of the legislation to strictly comply with to avoid personal liability, both elected representatives and administrative staff need more extensive legal knowledge.

123. The rapporteurs invite the Austrian authorities to reflect on opportunities to intensify trainings for local personnel, and to identify solutions for ensuring a high quality, proficient and continuous delivery of local public services in all, but especially in small and medium-sized municipalities. According to the Association of Austrian municipalities, this would also enable small municipalities to cope with ever-increasing legal complexity without being forced into unwanted mergers.

124. Despite those reservations and that the situation in practice could be improved, the rapporteurs note that overall Austria formally complies with the provision of this paragraph.

3.6 Article 7: Conditions under which responsibilities at local level are exercised

3.6.1 Paragraph 1

The conditions of office of local elected representatives shall provide for free exercise of their functions.

125. A free exercise of the local mandate implies free access to resources (electronic, material, etc.) necessary to perform properly the tasks indicated by existent regulations. Article 22, B-VG, provides that the Federation, the *Länder*, the municipalities and the municipal associations as well as the other self-administering entities (as described by Chapter 6, Section B, B-VG) are bound within the framework of their legal sphere of competence to render each other mutual assistance.

126. In relation to the accessibility of the legal norms to the locally elected, the Legal Information System of the Republic of Austria (*Rechtsinformationssystem des Bundes - RIS*) is a computer-assisted information system on Austrian law, which is coordinated and operated by the Federal Ministry for Digital and Economic Affairs. RIS started in 1983 when the essential features of the system were designed. After federal legislation had been incorporated, the court decisions were included as well. Since June 1997, RIS, which previously had been accessible only to the public administration, is available on the Internet free of charge⁶³. In addition, the platform www.offnerhaushalt.au, a service of KDZ, Centre for Administrative Research, offers free access to municipal financial data of Austrian municipalities. Furthermore, the Federal Budget Act 2013⁶⁴ states that the Federal Minister of Finance supports the personnel of municipalities and municipal institutions by providing standardized ICT solutions and IT processes, by means of prior arrangements or contracts (article 44a.1).

127. Resolution 393 (2015) on conditions of office of elected representatives⁶⁵ acknowledges that “elected representatives need to work harder than ever to meet the unsatisfied needs and expectations of their constituents. Although most local and regional politicians have to combine their elected political responsibilities with another full-time job, they are at the same time expected to be available quasi full-time for their political work, often at the expense of their family responsibilities and leisure time” (paragraph 1). It also recognizes that “the low levels or absence of pay for local and regional elected representatives is also an important factor, as is the lack of appropriate training for them”.

128. During the monitoring visit, the rapporteurs understood that although the status of locally elected representatives is well established and generally enjoys popularity amongst their constituencies, it becomes increasingly difficult to attract interested men and women to take over executive responsibilities in some municipalities in Austria. This was partially explained by a combination of factors, amongst which interlocutors with whom the delegation met during the visit mentioned the low level of salaries received by mayors or the low level of social security. This leads to a reduced political engagement in local politics, in particular by women as stressed by the Association of Austrian Municipalities during the consultation procedure. This situation is aggravated by the fear of personal

63 It is available at: <https://www.ris.bka.gv.at/>

64 Document available here :

https://www.ris.bka.gv.at/Dokument.wxe?Abfrage=Erv&Dokumentnummer=ERV_2009_1_139

65 Document available at:

<https://rm.coe.int/conditions-of-office-of-elected-representatives-bureau-of-the-congress/168071a464>

liability⁶⁶ for political decisions of local elected representatives, i.e. under section 153 of the Austrian Criminal Code⁶⁷.

129. Pertaining to the salaries, the figures valid for January 2020 are presented in Table 2.

Population	Burgenland	Carinthia	Lower Austria	Upper Austria		Salzburg	Styria	Tyrol	Vorarlberg
				Full time	Part time				
Under 500	2.367,00	3.067,50	2.840,38	3.524,10	2.851,60	4.715,10	2.272,90	2.763,50	1.952,40 - 6.038,41 ¹⁾
501 - 1000	2.745,70	3.067,50	2.840,38	3.524,10	2.851,60	4.715,10	2.727,50	3.531,20	2.133,49 - 6.038,41 ¹⁾
1001 - 1500	3.029,70	3.478,00	3.313,78	3.990,50	3.318,00	4.715,10	3.636,60	4.606,20	2.324,77 - 8.554,34 ¹⁾
1501 - 2000	3.219,10	3.516,20	3.313,78	3.990,50	3.318,00	4.715,10	3.636,60	4.606,20	2.546,19 - 8.554,34 ¹⁾
2001 - 2500	3.408,50	3.924,60	3.313,78	4.456,90	3.784,40	5.480,00	4.091,20	5.125,70	2.707,19 - 8.554,34 ¹⁾
2501 - 3000	3.692,50	3.962,80	3.313,78	4.456,90	3.784,40	5.480,00	4.091,20	5.125,70	2.707,19 - 8.554,34 ¹⁾
3001 - 3500	3.976,50	4.248,10	3.313,78	5.169,50	4.157,50	6.244,50	4.545,80	5.125,70	2.888,36 - 8.554,34 ¹⁾
3501 - 4000	3.976,50	4.375,70	4.260,57	5.169,50	4.157,50	6.244,50	4.545,80	5.125,70	2.888,36 - 8.554,34 ¹⁾
4001 - 4500	4.260,60	4.413,80	4.260,57	5.169,50	4.157,50	6.244,50	4.545,80	5.125,70	2.888,36 - 8.554,34 ¹⁾
4501 - 5000	4.260,60	4.528,60	4.260,57	6.896,90	4.996,80	6.244,50	4.545,80	5.125,70	2.888,36 - 8.554,34 ¹⁾
5001 - 6000	4.544,60	4.671,20	5.000,40	6.896,90	4.996,80	6.754,10	5.455,00	5.676,30	3.502,27 - 11.573,53 ¹⁾
6001 - 7000	4.544,60	4.671,20	5.000,40	6.896,90	4.996,80	6.754,10	5.455,00	5.676,30	3.502,27 - 11.573,53 ¹⁾
7001 - 8000	4.890,80	4.802,00	5.000,40	6.896,90	4.996,80	7.200,20	5.909,50	5.676,30	3.502,27 - 11.573,53 ¹⁾
8001 - 9000	4.890,80	4.802,00	5.000,40	6.896,90	4.996,80	7.200,20	5.909,50	6.321,90	3.502,27 - 11.573,53 ¹⁾
9001 - 10000	4.890,80	4.871,10	5.000,40	6.896,90	4.996,80	7.722,70	5.909,50	6.321,90	3.502,27 - 11.573,53 ¹⁾
10001 - 11000	4.890,80	6.854,90	5.909,57	7.714,30	5.701,40	7.722,70	6.818,70	7.996,80	4.448,23 - 14.089,56 ¹⁾
11001 - 13000	4.890,80	6.854,90	5.909,57	7.714,30	5.701,40	8.143,30	6.818,70	7.996,80	4.448,23 - 14.089,56 ¹⁾
13000 - 15000	4.890,80	6.854,90	5.909,57	7.714,30	5.701,40	8.449,00	6.818,70	7.996,80	4.448,23 - 14.089,56 ¹⁾
15001 - 20000	4.890,80	7.004,60	6.364,15	8.532,50	6.519,60	8.449,00	7.727,90	7.996,80	5.182,88 - 15.162,03 ¹⁾
Over 20000	4.890,80	7.520,60	7.727,89	9.351,70	7.337,90	8.449,00	8.637,00	7.996,80	5.182,88 - 15.162,03 ¹⁾
Over 30000	4.890,80	7.520,60	7.727,89	9.351,70	7.337,90	8.449,00	9.091,60	7.996,80	5.182,88 - 15.162,03 ¹⁾

Table 2: Comparative overview of mayors' salaries (except Statutory cities), gross earnings⁶⁸

130. Pursuant to section 153 of the Austrian Criminal Code, breach of trust (Untreue) is defined as follows: "Whoever knowingly abuses the authority conferred to him by statute, official order or contract to dispose of property not belonging to him or to oblige this other person and causes damage to another person in this way, shall be liable to imprisonment for up to six months or a fine of up to 360 daily rates. Authority is misused by anyone who unjustifiably violates such rules that serve to protect the property of the beneficial owner. Whoever causes a damage exceeding 3,000 Euros shall be liable to imprisonment for up to three years, whoever causes damage exceeding 50,000 Euros shall be liable to imprisonment from one to ten year."⁶⁹

131. Article 119.3, B-VG, states that: the mayor can - without detracting from his/her responsibility - on account of their factual connection with matters pertaining to the municipality's own sphere of competence transfer individual categories of matters pertaining to the assigned sphere of competence to members of the municipal executive board (city council, city senate), other organs created in accordance with article 117.1, B-VG or members of official bodies for performance in his/her name. In these matters the organs or members concerned are bound by the instructions of the mayor and responsible in accordance with paragraph 4. The latter (article 119.4, B-VG) continues: in so far as intent or gross negligence can be laid at their charge, the authorities named above can on account of breach of law as well as on account of noncompliance with an ordinance or instruction be declared to have forfeited their office, by the Governor if they were acting in the field of federal execution, by the Land

⁶⁶ Please see also the Report on Liability of Local Elected Representatives for Acts or Omissions in the Course of Their Duties (1998), Local and regional authorities in Europe, no. 67, available online at: <https://rm.coe.int/16806f93c8>

⁶⁷ BGBl. Nr. 60/1974, available online at:

<https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10002296>. For the Code of Criminal Procedure (BGBl. No.631/1975), please visit:

https://www.ris.bka.gv.at/Dokumente/BgblPdf/1975_631_0/1975_631_0.pdf. Last amendment (2019) is available here: <https://www.ris.bka.gv.at/eli/bgbl/1/2019/111>.

⁶⁸ Source:

https://gemeindebund.at/website2016/wp-content/uploads/2020/01/bundeslaendervergleich-2020_buergermeisterbezuage.pdf

⁶⁹ Adapted after: OECD: Directorate for Financial and Enterprise Affairs, 2010, *Austria – Phase 1 bis, Review of Implementation of the Convention*, (OECD Anti-Bribery Convention), available online at: <https://www.oecd.org/daf/anti-bribery/anti-briberyconvention/46227111.pdf>

Government if they were acting in the field of Land execution. Should such a person belong to the municipal council, the membership is not thereby affected.

132. Also, article 23, B-VG, provides that the Federation, the *Länder*, the municipalities and the other bodies and institutions established under public law are liable for the injury which persons acting on their behalf in execution of the laws have by illegal behaviour culpably inflicted. Therefore, persons acting on behalf of *Länder* and municipalities are liable, in so far as intent or gross negligence can be laid at their charge, for the injury for which the legal entity has indemnified the injured party. Similarly, they are liable for the injury which in execution of the laws they have by illegal behaviour inflicted directly on the legal entity.

133. The rapporteurs draw attention to the fact that the vulnerability of elected representatives (pertaining to inadequate payment and insurance liability) was also raised in 2011, by the Report on Local and Regional democracy in Austria (CG(20)8). Considering that the new Government Plan acknowledges the need to analyse the Criminal Code, the rapporteurs express their confidence that this time elected representatives would receive proper attention and their status will be improved.

134. In light of the foregoing, the rapporteurs consider that it is important to modify the criminal legislation with regard to the liability of local and regional elected representatives when carrying out their duties so that it does not infringe on their autonomy to exercise their elected mandate. In the rapporteurs' view this would also encourage citizens from all sectors of the population to stand for local election.

135. Until this is achieved, the rapporteurs conclude that Austria partially complies with the requirement of this paragraph.

3.6.2 Paragraph 2

They shall allow for appropriate financial compensation for expenses incurred in the exercise of the office in question as well as, where appropriate, compensation for loss of earnings or remuneration for work done and corresponding social welfare protection.

136. In accordance with article 12.2. of the Charter, Austria has not declared itself bound by this provision.

137. As mentioned above, during the monitoring visit local and regional elected representatives and their associations raised the issue of unfair material compensation for their work.

138. In this regard, in line with Congress recommendation 383 (2015) on conditions of office of local elected representatives, the rapporteurs note that the levels of payment established at national or regional level should be such as to avoid disparities among authorities and the financial reward should be adequate for the work performed by local and regional elected representatives. This would also stimulate the interest of a broader range of people to stand for local election and contribute to preventing risks of corruption.

139. Given that there is material compensation for local and regional elected representatives in Austria, but its adequacy does not appear to be achieved, the rapporteurs conclude that the situation in Austria is partially compliant with the requirement of this provision.

140. The rapporteurs would like to reaffirm their opinion that social welfare protection of Austrian local elected representatives needs to be strengthened as an important measure to safeguard local democracy and local public interest.

3.6.3 Paragraph 3

Any functions and activities which are deemed incompatible with the holding of local elective office shall be determined by statute or fundamental legal principles.

141. According to the Explanatory Report on the Charter, this paragraph provides that disqualification from holding local elective office should only be based on objective legal criteria and not on ad hoc decisions.

142. In this respect, the Austrian Land regulations provide specific and objective criteria for disqualifying a locally elected person. In addition, municipal codes of different *Länder* clearly state the conditions when office is lost (e.g. for Burgenland, article 48; in Carinthia, Section 68a; and in the case of Salzburg, articles 21 and 22).

143. The rapporteurs conclude that Austria complies with the requirement of this paragraph.

3.7 Article 8: Administrative supervision of local authorities' activities

3.7.1 Paragraph 1

Any administrative supervision of local authorities may only be exercised according to such procedures and in such cases as are provided for by the constitution or by statute.

144. Pursuant to article 119a.2 and 3, B-VG, the Land has the right to examine the financial administration of a municipality with respect to its thrift, efficiency, and expediency. The result of the examination is conveyed to the mayor for submission to the municipal council. Within three months, the mayor informs the supervisory authority of the measures taken by reason of the result of the check. In so far as a municipality's own sphere of competence comprises matters deriving from the sphere of federal execution, the right of supervision and its legislative regulation lie with the Federation, in other respects with the *Länder*; the right of supervision is exercised by the authorities of the ordinary public administration, in matters of their own sphere of responsibilities, the Federation and the Land have the right of supervision over the municipality.

145. As indicated by article 121.1, B-VG, the Austrian Court of Audit is the competent institution to examine the administration of public funds by the municipal associations and the municipalities. It is directly subordinate to the National Council and independent from the Federal Government and the Land Governments. Article 127a, B-VG clarifies the scope of supervision in the case of *Länder*. The Austrian Court of Audit examines the financial administration of municipalities with at least 10.000 inhabitants as well as the financial administration of endowments, funds and institutions administered by the authorities of a municipality or persons (groups of persons) appointed for the purpose by the authorities of a municipality. The examination extends to the arithmetical correctness, compliance with existing regulations, and the employment of thrift, efficiency and expediency in the financial administration. The mayor transmits annually to the Austrian Court of Audit and simultaneously to the Land Government the budget estimates and the final budget accounts. The Austrian Court of Audit also examines the financial administration of enterprises where a municipality with at least 10.000 inhabitants is either the sole participant or holds at least fifty per cent of the share, stock, or equity capital together with other legal entities falling within the competence of the Austrian Court of Audit or where the municipality is either their sole or joint operator with other such legal entities. The Austrian Court of Audit is competent to examine the financial administration of corporations under public law using funds of a municipality with at least 10.000 inhabitants. At the substantiated request of the Land Government the Court examines the financial administration of municipalities with less than 10.000 inhabitants. Each year only two such requests may be filed. Such requests are only allowed regarding such municipalities which, compared to other municipalities, show a conspicuous development in debts or liabilities.

146. Tables 3 and 4⁷⁰ offer a simplified outline of the auditing of local government in Austria:

Overview	External audit		Internal audit	
Institution	Austrian Court of Audit, 9 provincial audit bodies	Municipal oversight	Audit body of the city	Internal audit
Allocation	Auxiliary body of the legislature	Body of the administration		
Characteristics	Functional, organizational independence	Procedural independence, subject to direction and to instructions with exceptions (audit bodies of the cities)		
	Legal protection by the supreme court against interference			
	Public reporting	Non-public reporting	Reporting to the (highest) administrative body with exceptions (audit bodies of the cities)	
	Ex-post audit body		Also concomitant audit	

Table 3: Auditing the local government (external and internal audit)

Responsibility for	Province	Municipalities with at least 10,000 inhabitants	Municipalities with less than 10,000 inhabitants	Municipal associations
Austrian Court of Audit	All provinces	All municipalities	–	All municipal associations
Provincial audit bodies	Respective province	–	All municipalities of the respective province (with the exception of Lower Austria)	–
Municipal oversight	–	All municipalities of the respective province		All municipalities of the respective province
Audit body of the city	–	Respective municipality		–
Internal audit	Respective entity			

Table 4: Audit responsibilities

147. One of the Audit missions focusing on the fiscal equalization scheme for financially weak municipalities – BUND 2017/38 took place between February and May 2016 and audited the Ministry of Finance, Salzburg, Styria and Tyrol between 2011 and 2015. The auditors found undesired distributive effects and a lack of distributive goals⁷¹. On other accounts, the audits substantiated the lack of transparency of the financial flows between municipalities and *Länder* and the lack of strategic goals and eventually led the path to a reform (in 2017, with the Financial Equalisation Act).

148. Pursuant to article 129, B-VG, all *Länder* have Administrative Courts. They pronounce judgment on complaints on allegations of illegality against rulings by administrative authorities; against the unlawful exercise of direct administrative power and compulsion on the ground of breach of duty to reach a decision by an administrative authority. Pursuant to Article 130.2, B-VG, "Federal or Land legislation may confer other competences on the Administrative Courts to decide on 1. complaints of unlawful conduct of an administrative authority in executing the law; or 2. complaints of unlawful conduct of a contract making authority in matters of public procurement; or 3. disputes in matters relating to the

⁷⁰ Source: documents prepared for the Monitoring visit by *Rechnungshof Österreich*, 10.12.2019.

⁷¹ Idem footnote above.

employment of civil servants; or 4. complaints, disputes or requests in other matters. In matters of federal enforcement which are not directly dealt with by federal authorities, as well as in matters of Art. 11, 12, 14 paras. 2 and 3 and 14a paras. 3 and 4, federal acts pursuant to sub-paras. 1 and 4 may only be promulgated with the consent of the Länder”.

149. Pursuant to articles 137 to 138a, B-VG, the Constitutional Court pronounces on pecuniary claims against the Federation, the *Länder*, the municipalities and municipal associations which cannot be settled by ordinary legal process nor be liquidated by a ruling of an administrative authority. At the request of the Federal Government or a Land Government concerned, it establishes whether an agreement within the meaning of Art. 15a.1, B-VG exists and whether the obligations arising from such an agreement, save in so far as it is a matter of pecuniary claims, have been fulfilled. If it is stipulated in an agreement within the meaning of article 15a.2, B-VG, the Constitutional Court also establishes on application by a Land Government concerned whether such an agreement exists and whether the obligations arising from such an agreement, save in so far as it is a matter of pecuniary claims, have been fulfilled.

150. Considering the above, as well as the exchanges held during the monitoring visit, the rapporteurs conclude that Austria complies with the requirements of this paragraph.

3.7.2 Paragraph 2

Any administrative supervision of the activities of the local authorities shall normally aim only at ensuring compliance with the law and with constitutional principles. Administrative supervision may however be exercised with regard to expediency by higher-level authorities in respect of tasks the execution of which is delegated to local authorities.

151. In accordance with article 12.2. of the Charter, Austria has not declared itself bound by this provision.

152. As indicated by the Explanatory Report, the Charter presents a general preference for checks of legality and not expediency; and although the latter are not prohibited, they are to be severely restricted to delegated competences.

153. Pursuant to article 118.4, B-VG, the municipality performs the business for which it is responsible, within the framework of the laws and ordinances of the Federation and the Land, on its own responsibilities free from instructions and under exclusion of legal redress to administrative authorities outside the municipality.

154. The Federation and the Land exercise the right of supervision over the municipality to ensure that it does not infringe laws and ordinances when dealing with its own sphere of competence, in particular that it does not overstep its sphere of competence, and fulfils the duties legally devolved upon it (Article 119a.1).

155. However, the *Länder* have the right to examine the financial administration of a municipality with regard to its thrift, efficiency, and expediency (article 119a.2, B-VG) which, in the opinion of the rapporteurs, may go beyond the control of legality.

156. Considering the above, in the rapporteurs' view, the situation in Austria only partially complies with this provision.

3.7.3 Paragraph 3

Administrative supervision of local authorities shall be exercised in such a way as to ensure that the intervention of the controlling authority is kept in proportion to the importance of the interests which it is intended to protect.

157. The principle of proportionality is well enshrined in the Constitutional laws of Austria and its *Länder*.

158. During the monitoring visit, the rapporteurs heard no complaints from the elected representatives at local and regional levels and their associations about the lack of respect of the principle of proportionality of supervision in practice.

159. It appears that, although less apparent than in the case of political representation, proportionality as understood by the Charter in this paragraph is observed.

160. Considering the above, it seems to the rapporteurs that Austria complies with the requirements of this paragraph.

3.8 Article 9: Financial resources

3.8.1 Paragraph 1

Local authorities shall be entitled, within national economic policy, to adequate financial resources of their own, of which they may dispose freely within the framework of their powers.

161. According to the Financial Constitutional Law⁷² (section I – Financial equalization), unless specified otherwise, the federal government and the other regional authorities bear the effort that arises from carrying out their tasks. Land governments are entitled to levy a surcharge from the municipalities or, where applicable, from the municipal associations. A maximum of the Land levy can be set by federal law. Pursuant to section 7.1 of the Federal Budget Act⁷³, Land governors are heads of budget-managing bodies to the extent they act in the capacity of federal entities.

162. Legally, the taxes are divided into the following categories (article 6, Financial Constitutional Law):

- i. Exclusive federal levies, the proceeds of which flow entirely to the federal government.
- ii. Levies shared between the federal government and the *Länder* (municipalities), in the income of which the federal government and the *Länder* (municipalities) participate;
- iii. Exclusive Land taxes, the proceeds of which flow entirely to the *Länder*;
- iv. Levies shared between *Länder* and municipalities, in the revenue of which *Länder* and municipalities participate
- v. Exclusive municipal taxes, the proceeds of which flow entirely to the municipalities.

163. According to KDZ⁷⁴, the total income of the municipalities in 2017 (Figure 1) amounted to 20 billion Euro.

72 Published in BGBl no.45/1948, available online at:

<https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10003819>.

73 Document available online at:

https://www.ris.bka.gv.at/Dokument.wxe?Abfrage=Erw&Dokumentnummer=ERV_2009_1_139

74 Source of this Figure and the following paragraphs: KDZ own calculations 2019 based on *Statistics Austria: municipal financial data 2017*, p.12, in Biwald, Peter; Mitterer, Karoline; Seisenbacher, Marion, 2019, *Österreichischer Gemeindefinanzen 2019 - Entwicklungen 2008 bis 2022*, Österreichischer Städtebund/KDZ – Zentrum für Verwaltungsforschung, Wien, available online at: <https://www.kdz.eu/de/gemeindefinanzen-2019>

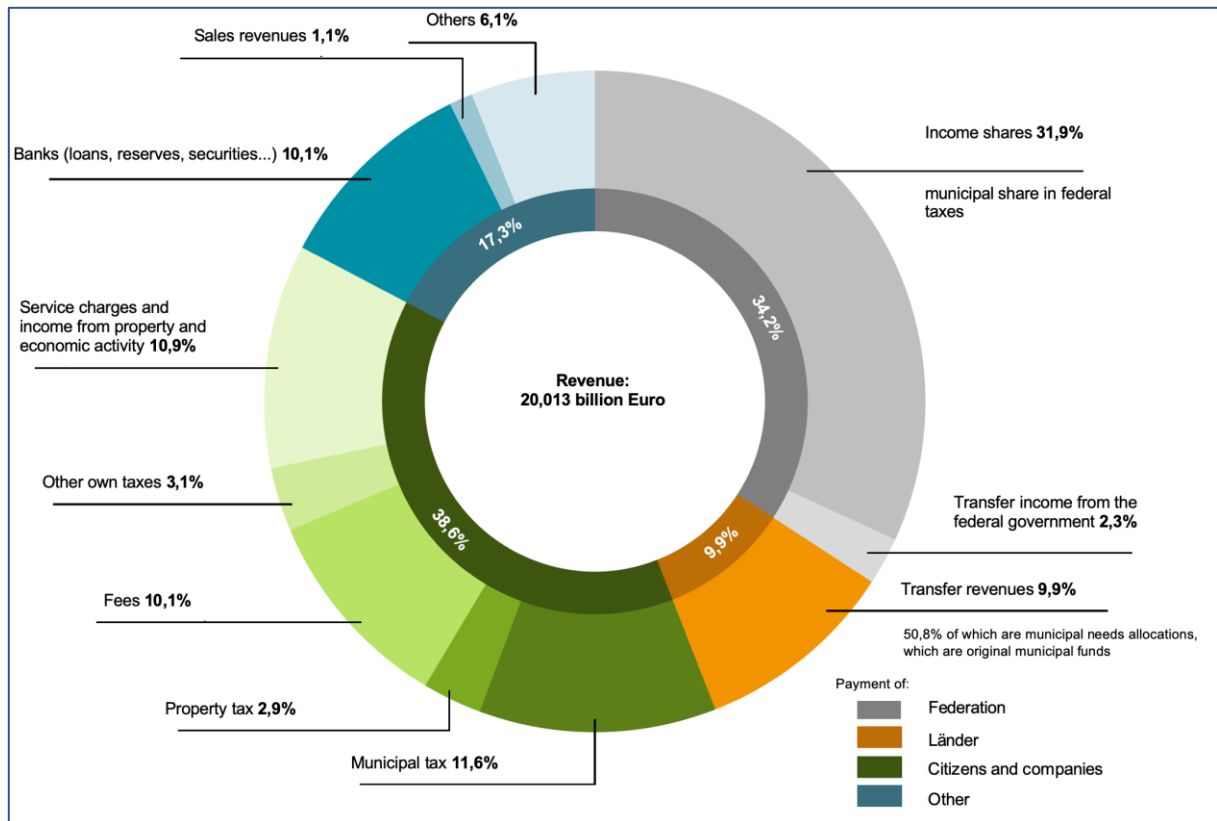


Figure 1: Overview of municipal revenue 2017

164. As presented by KDZ (2019), “almost a third of this is accounted for by income shares (share of municipalities in the total of taxes levied by the federal government, especially income tax, wage tax, sales tax, corporate tax)”.

165. In this regard, it should be noted that the income sharing system among the three levels of government is defined by the Intergovernmental Fiscal Relations Act which is periodically negotiated between the federal Minister of Finance, representatives of *Länder* and the local governments.

166. According to the KDZ “only around 10 percent of the funds are transfer revenues from the federal states or to a small extent from municipalities. These are, for example, investment grants or ongoing subsidies in the childcare sector. With almost 39 percent of the funds, the majority of the income comes directly from citizens and companies. The most important factors here are the local (municipal) tax (wages-based employer contribution), fees (especially for water, sewage and waste) and service fees (e.g. kindergarten contributions, income from renting and leasing). Land (property) tax is of comparatively little importance here”. According to the Association of Austrian Municipalities, the tax-base is outdated and does not reflect real-estate values. About 17% of revenues can be attributed to other sources. Examples include bank related sources, for instance loans, release of reserves and securities. Finally, there is the “Other” category, where one could include: withdrawals from outsourced businesses, sales revenues or transfers from non-local authorities (for example, businesses).

167. “In order to obtain an assessment of how the income situation of the municipalities has changed in recent years, the following focuses exclusively on the income of the federal government, the federal states, the municipalities and citizens. This is referred to below as “current income and capital transfer income”. The majority of the above-mentioned income is current - therefore recurring - income. Only the capital transfer income from the federal states or other municipalities - for example for investment grants - is non-recurrent. If one only looks at the income mentioned here, the dynamics of the individual income categories are quite different (Figure 2). Current transfer income increased the most. This is due in 2010 to 2011 to additional transfer income from the federal states to cushion the financial and economic crisis and in 2017 to additional funds from the FAG 2017. Very stable developments in the area of dedicated taxes have been evident with + 29 percent since 2008, the fees and performance fees

with + 28 percent and - since the financial crisis - with the share of earnings with + 23 percent. There were fluctuations in the capital transfer income - depending on the municipal investments made”.

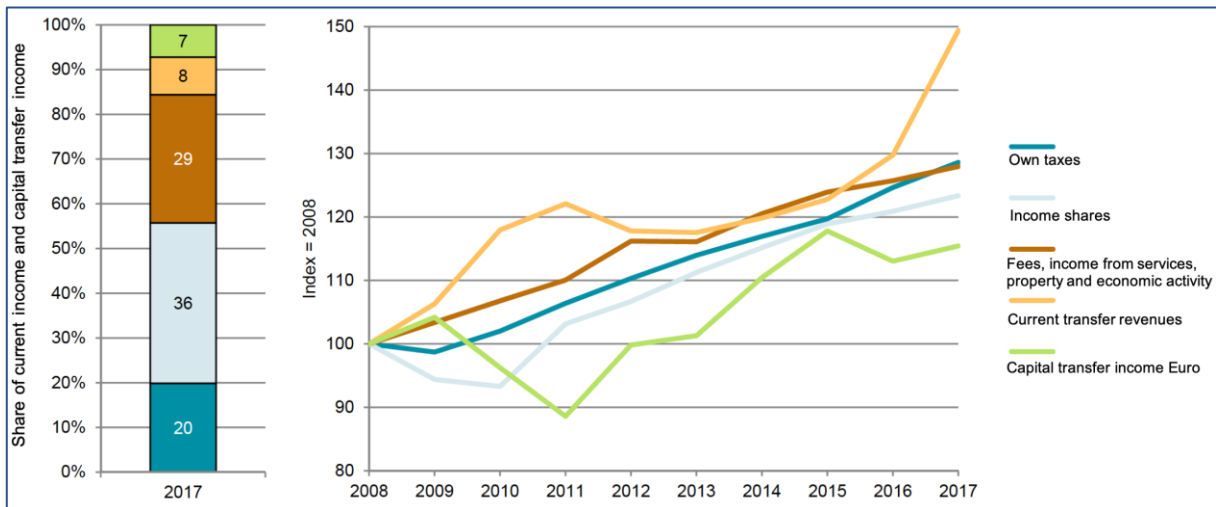


Figure 2: Distribution and development of current income and capital transfer income by income category, 2008 to 2017⁷⁵

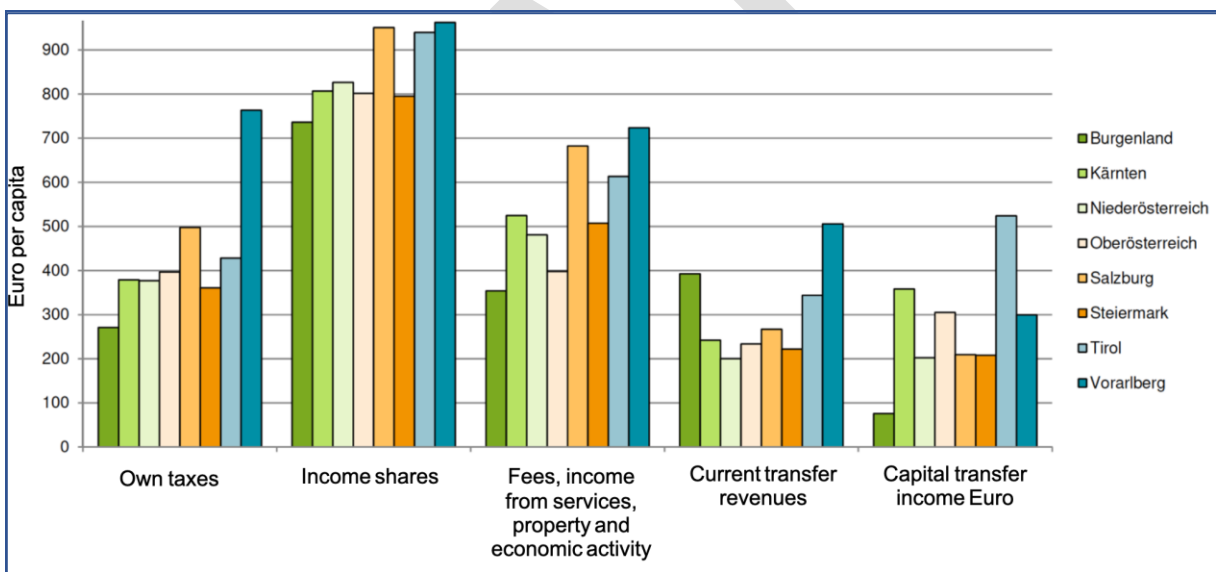


Figure 3: Average current income and capital transfer income by federal state in Euro per capita, 2017⁷⁶

168. In the Explanatory Report to the Charter, this paragraph seeks to ensure that local authorities are not deprived of their freedom to determine expenditure priorities. During the monitoring visit, especially small and medium-sized municipalities complained about the lack of sufficient resources necessary to deal with the demands of the local community (e.g. to start infrastructural works, to entertain larger police forces, etc.). Additionally, the data above show that more access to autonomous local taxes is still desired, despite the fact that a significant part of local income comes from income-sharing based on political agreement among all levels of government.

169. The rapporteurs wish to remind the authorities that the previous Report on Local and Regional Democracy in Austria (2011) also pointed out that municipalities have practically no discretion with regard to local taxes. This is worrying, as local democracy without adequate financial sustainability is at

75 Source: idem, p.16.

76 Source: idem above.

risk. During the consultation procedure, the Association of Austrian Municipalities pointed out that a long overdue reform of local property tax would allow to modernise the calculation method and strengthen the municipalities' own tax base.

170. The rapporteurs note that despite the consensus-based revenue sharing system in Austria, subnational authorities lack their own taxes. Consequently, they conclude that Austria partially complies with this provision.

3.8.2 Paragraph 2

Local authorities' financial resources shall be commensurate with the responsibilities provided for by the constitution and the law.

171. According to the Explanatory Report to the Charter, this principle assumes that there should be an adequate relationship between the financial resources available to a local authority and the tasks it performs. This relationship is particularly strong for functions which have been specifically assigned to it.

172. During the consultation procedure, the Austrian delegation to the Congress pointed to an imbalance between the *Länder* and municipal responsibilities and the financial resources required to fulfil them. According to the Austrian delegation, although the *Länder* are involved in the negotiations on the distribution of revenues, greater financial autonomy for the *Länder* would be preferable to this form of consensual federalism. According to the Austrian delegation to the Congress, the complex system of revenue sharing and intergovernmental transfers, as well as the *Länder* and the municipalities' own financial resources should be reformed to enable them to generate sufficient and legally secure revenues to fulfil their responsibilities.

173. In line with the concerns expressed above and in para 3.8.1 about the low level of autonomous taxes available to local authorities, notwithstanding the consensus-based tax-sharing, the rapporteurs consider that Austria is partially complying with this provision.

3.8.3 Paragraph 3

Part at least of the financial resources of local authorities shall derive from local taxes and charges of which, within the limits of statute, they have the power to determine the rate.

174. As already mentioned in section 3.8.1 and stressed in the previous Congress report, subnational authorities' level of autonomous taxes is very low. According to the OECD data⁷⁷, "in 2016 tax revenues represented around 10% of subnational government revenues, well below the OECD average for federal countries of 47.5%. In 2016, tax revenue represented a small share of SNG revenue, amounting to 14.6% of local revenue and 5.6% of *Länder* revenues. As a share of GDP and public tax revenue, SNG tax revenue in Austria is well below the OECD average for federal countries (8.8% of GDP and 42.4% of public tax revenue). Approximately 95% of all tax revenue is levied by federal revenue offices as tax administration is carried out mostly at the federal level. Municipalities levy slightly more than 4% and *Länder* less than 1% of the total tax revenue. Municipalities can only regulate local taxes if they are entitled to those taxes by either the federal or state law".

175. As for *Länder*, the same OECD report underlines that they "receive a negligible amount of tax income. In 2018, the tax autonomy to raise the housing subsidy contribution (*Wohnbauförderungs-beitrag*, currently 1% of payroll) was transferred from the central government to the *Länder*".

176. Although municipalities can levy some local taxes (such as municipal business tax (*Kommunalsteuer*) and the property tax (*Grundsteuer*), they have no discretion in setting the tax base

⁷⁷ 2019 Edition of the World Observatory of Subnational Finance and Investment, Austria county profile, OECD, <http://www.sng-wofi.org/country-profiles/Fiche%20AUSTRIA.pdf>

which is defined at the federal level. Municipalities have only limited discretion regarding the rate of the real property tax within limits set by regional regulations.

177. The representatives of local and regional authorities and their associations with whom the delegation met during the monitoring visit, particularly stressed the limited level of their own tax income of subnational government in Austria and the need to strengthen local tax raising powers as a key to local financial autonomy.

178. During the consultation procedure, the Austrian delegation to the Congress particularly stressed the need in a certain degree of fiscal leeway for proper and efficient functioning of a federal system. It advocated a higher degree of sub-national autonomy in tax and financial matters in the system of cooperative federalism in Austria.

179. The rapporteurs emphasise that local taxation is a critical indicator in measuring local autonomy. In the rapporteurs' view, the low proportion of their own income coming from local taxes raises doubts over the financial independence of local authorities in Austria. However, since formally a part of the financial resources of subnational authorities derives from local taxes, the rapporteurs conclude that Austria partially complies with this provision.

3.8.4 Paragraph 4

The financial systems on which resources available to local authorities are based shall be of a sufficiently diversified and buoyant nature to enable them to keep pace as far as practically possible with the real evolution of the cost of carrying out their tasks.

180. As presented by KDZ (2019), "the overall income of the municipalities has been characterized by high stability in recent years. This can be seen in all important revenue areas. Their own taxes developed most strongly with + 29 percent since 2008, followed by fees and service charges with + 28 percent and the income share with + 23 percent. (...) The investment activity of the municipalities (without outsourced companies) amounted to EUR 3.6 billion in 2017 and can thus follow up on the pre-crisis years. While public investment in the municipalities' core budget increased significantly, public investment in outsourced units is stagnating. Investments even declined in the municipalities' own businesses (quasi-corporations). Investments in education (especially for kindergartens and compulsory schools) developed particularly dynamically, which are mainly reflected in the core budget of the municipalities. In contrast, investments in the service sector developed significantly below average."

181. The rapporteurs note again that local authorities in Austria do not enjoy sufficient share of their own taxes to be able to keep pace with increases in the cost of carrying out their tasks. The rapporteurs conclude that more efforts need to be invested in generating sustainable local finances, and therefore, consider that Austria complies partially with this provision.

3.8.5 Paragraph 5

The protection of financially weaker local authorities calls for the institution of financial equalisation procedures or equivalent measures which are designed to correct the effects of the unequal distribution of potential sources of finance and of the financial burden they must support. Such procedures or measures shall not diminish the discretion local authorities may exercise within their own sphere of responsibility.

182. The Austrian Stability Programme, Update for the period 2017 to 2022 and Austrian Draft Budgetary Plan 2018 (update)⁷⁸ states that "at the end of 2016 intensive negotiations on future intergovernmental fiscal relations were successfully closed with an agreement and the signing of the Pact on a new Intergovernmental Fiscal Relations Act 2017 (IFRA 2017) by the Federal Government, the *Länder* and municipalities. IFRA 2017 implements a first step towards more task-orientation, more transparency and simplifications as well as strengthened tax autonomy of the *Länder* (p.38)". It continues by saying that: "one of the key elements to safeguard the pace of fiscal consolidation is the Austrian Internal Stability

⁷⁸ Available online at: https://ec.europa.eu/info/sites/info/files/economy-finance/en_stapro_final.pdf

Pact. From 2017 its rules require the federation, the *Länder* and municipalities to achieve structurally balanced budgets as a basic principle. The agreement covers the following key issues: a rule on a structurally balanced general government budget (“debt brake”), with the structurally balanced budget defined as a structural general government deficit not below -0.45% of GDP; a rule on the allowed annual expenditure growth (expenditure brake); a rule on public debt reduction as defined in ESA terms (adjustment of the debt ratio); and a rule on ceilings for public guarantees, whose implementation was harmonized in the course of the negotiations on intergovernmental fiscal relations in 2017. From 2019, the maximum number of guarantees by the central government and the states is limited to 175% of the revenues of the entity, while for municipalities it is limited to 75% of revenues; and rules to strengthen budgetary coordination and medium-term budgetary planning of all governments, mutual exchange of information and transparency”.

183. KDZ (2019) considers that the area of public debt is stable, overall and points to the success of the Austrian Stability pact. For the public debt by *Länder* in Euro / capita, 2017, see Figure 4.

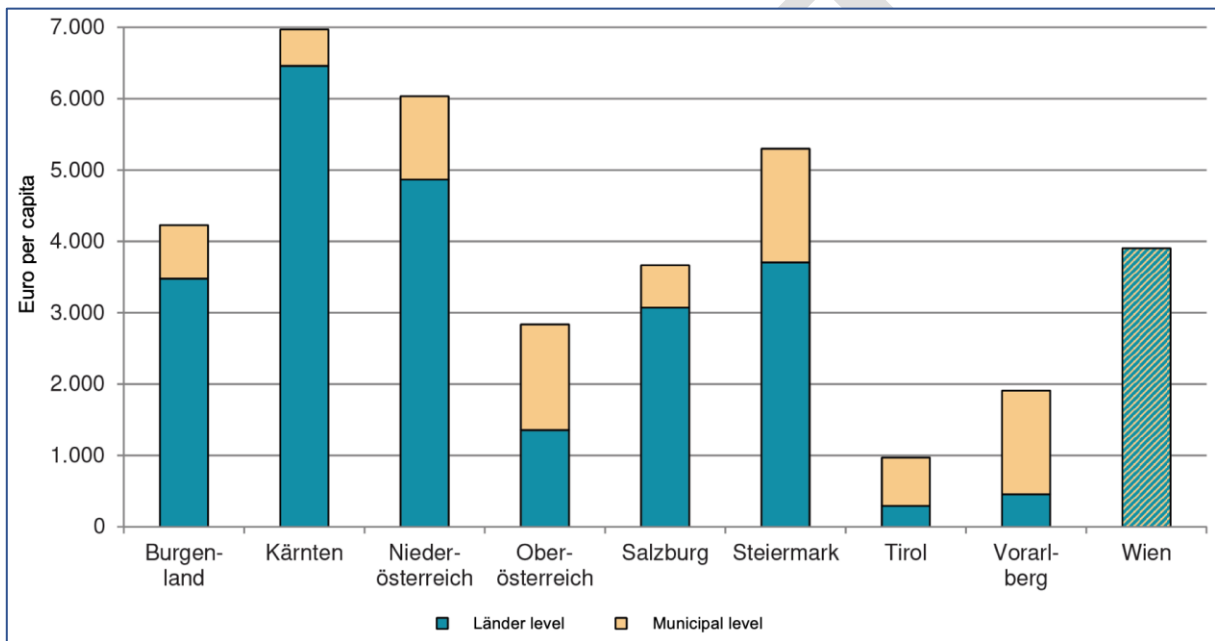


Figure 4: Public debt by *Länder* in Euro / capita, 2017⁷⁹

184. As mentioned above, a significant part of subnational government revenue comes from financial equalisation procedure. This procedure is based on tax-sharing and regulated by Fiscal Relations Act, agreed between the three levels of government. Among the most important shared taxes are VAT, corporation tax, income tax, etc.

185. Tax-sharing is calculated on a formula basis, and formulas are distinct for *Länder* and municipalities. Both formulas use such indicators as the number of inhabitants and local revenues. The number of inhabitants is the most important indicator for both. For municipalities, an indicator of a weighted population index (WPI) is used: in municipalities up to 10,000 inhabitants one inhabitant counts a factor which is multiplied by $1 \frac{41}{67}$ (= around 1.61), in municipalities between 10,001 and 20,000 inhabitants - by $1 \frac{2}{3}$, between 20,001 and 50,000 inhabitants by 2 and in communities with more than 50,000 inhabitants by $2 \frac{1}{3}$. For statutory cities with the population of up to 20,000 inhabitants, the multiplier of 2 is used.

⁷⁹ Biwald, Peter; Mitterrer, Karoline; Seisenbacher, Marion, 2019, op.cit., p.33.

Table 5: Shared taxes: allocation formulas – vertical allocation:

	federal gov.	states	local govs.
Shared taxes – standard formula	67.934 %	20.217%	11.849%
Shared taxes – special formulas:			
Advertising Tax	4.000%	9.083%	86.917%
Real Estate Tax	4.000%	-	96.000%

Source: information provided by the Federal Ministry of Finance

186. According to the officials of the Federal Ministry of Finance with whom the delegation met during the visit, the fiscal relations system aims to achieve fiscal equity.

187. During the monitoring visit, the rapporteurs heard no complaints from their interlocutors about fiscal equalisation.

188. In light of the above, the rapporteurs consider that Austria complies with this provision, insofar as the financial equalization institution is concerned.

3.8.6 Paragraph 6

Local authorities shall be consulted, in an appropriate manner, on the way in which redistributed resources are to be allocated to them.

189. Municipalities are represented in the 15a agreements (article 15a, B-VG) on the Stability Pact and the Consultation Mechanism by their associations (namely, according to article 115.3, B-VG: Austrian Association of Cities and Towns (Austrian Municipal Federation) and the Austrian Association of Municipalities (Austrian Communal Federation).

190. During the monitoring visit, the rapporteurs were told that beyond the existing agreements, the associations consider themselves properly consulted on financial matters in practice.

191. The rapporteurs consider that Austria complies with this provision of the Charter.

3.8.7 Paragraph 7

As far as possible, grants to local authorities shall not be earmarked for the financing of specific projects. The provision of grants shall not remove the basic freedom of local authorities to exercise policy discretion within their own jurisdiction.

192. The Intergovernmental Fiscal Relations Act defines various types of grants, such as between grants to cover special needs or purposes of other governments, non-earmarked block grants, special need transfers and earmarked grants. For example, there are investment grants or ongoing subsidies in the childcare sector.

193. General grants are aimed at equalising the average revenue of *Länder* and municipalities resulting from tax-sharing.

194. Special grants are made to accomplish a specific task or to achieve a certain goal, and evidence for the use of these funds must be provided. For example, the federal government granted to *Länder* a special grant for hospital financing in the amount of € 690.8 million in 2018 and € 718.0 million in 2019.

195. In contrast, other financial allocations can in principle be used freely by *Länder* and municipalities. An example of this is the new federal financial allocation to the *Länder* and municipalities to ensure sustainable household management, especially in the areas of health, care and social affairs, € 300 million annually (§ 24 FAG 2017).

196. During the monitoring visit, the delegation did not hear any complaints from the representatives of local and Land authorities with whom it met about the negative impact of the share of earmarked grants on their financial autonomy.

197. In light of the foregoing, the rapporteurs consider that Austria complies with this provision, but needs to reflect on the financial sustainability of local self-government in the long term.

3.8.8 Paragraph 8

For the purpose of borrowing for capital investment, local authorities shall have access to the national capital market within the limits of the law.

198. Municipalities are free to borrow, although as a general rule they can only borrow for investment projects. Borrowing of municipalities is regulated by each Land.

199. During the monitoring visit, the rapporteurs heard no complaints from local elected representatives about their borrowing autonomy. They consider that this provision is generally respected in Austria.

3.9 Article 10: Local authorities' right to associate

3.9.1 Paragraph 1

Local authorities shall be entitled, in exercising their powers, to co-operate and, within the framework of the law, to form consortia with other local authorities in order to carry out tasks of common interest.

200. Pursuant to article 116a, B-VG, for the performance of their matters municipalities can agree to associate in municipality associations (*Gemeindeverbände*). Such an agreement requires the sanction of the supervisory authority. The sanction shall be conferred by ordinance if a lawful agreement between the municipalities concerned is on hand and the formation of the municipal association:

- 1) does not in the case of performance of matters appurtenant to the sovereign administration jeopardize the function of the municipalities concerned as self-administering corporate bodies;
- 2) in the case of performance of matters appurtenant to the municipalities as holders of private rights it lies for reasons of expediency, economic efficiency, and thrift in the interest of the municipalities concerned. The organs of such created municipal associations need to be formed on democratic principles, and it is the *Länder* that prescribe their actual organisation.

201. Article 116a.6, B-VG introduces the possibility of a merger of municipalities of different *Länder* to municipal associations. Such a situation, however, can be permitted under the provision of an agreement between the respective *Länder* pursuant to article 15a, B-VG, in which in particular provisions on the approval of the formation of municipal associations and the implementation of supervision must be contained.

202. Considering the above, the rapporteurs conclude that Austria complies with this provision.

3.9.2 Paragraph 2

The entitlement of local authorities to belong to an association for the protection and promotion of their common interests and to belong to an international association of local authorities shall be recognised in each State.

203. All municipal codes of the *Länder* allow municipalities to form municipal associations, administrative associations and conclude agreements (e.g. in Burgenland, the relevant articles are 20, 21 and 22a; for Carinthia, articles 17, 81 and 82; in Lower and Upper Austria, Section 3; for Salzburg, articles 12 and 48; in Styria, articles 37, 38 and 38a for small regions; in Tyrol, articles 129 et seq and 142a and finally, in Vorarlberg, article 93 et seq. and article 97).

204. The rapporteurs conclude that Austria complies with this provision.

3.9.3 Paragraph 3

Local authorities shall be entitled, under such conditions as may be provided for by the law, to co-operate with their counterparts in other States.

205. According to article 23c.4, B-VG, proposals for the nomination of members of the Committee of the Regions and their deputies is made by the Federal Government on the basis of proposals presentations from the *Länder* as well as from the Austrian Association of Municipalities and the Austrian Association of Cities and Towns. Each Land is to propose a member and its deputy; the other members and their deputies are to be proposed by the Austrian Association of Municipalities and the Austrian Association of Cities and Towns.

206. Durà (2018)⁸⁰ provides several examples of best practices in Euroregions. Among those, there are several which involve several Austrian *Länder* and cities, including The International Lake Constance Conference, founded in 1972 is the joint platform of different territorial administrations surrounding Lake Constance (German, Austrian, Swiss, and Lichtenstein); the Euregio Bodensee; Europaregion; Via Salina Euregio, INN TAL Euregio.

207. Considering the above, the rapporteurs conclude that Austria complies with this provision.

3.10 Article 11: Legal protection of local self-government

Local authorities shall have the right of recourse to a judicial remedy in order to secure free exercise of their powers and respect for such principles of local self-government as are enshrined in the constitution or domestic legislation.

208. In accordance with article 12.2. of the Charter, Austria has not declared itself bound by this provision.

209. Pursuant to article 119.a.9, B-VG, a municipality is party to supervisory authority proceedings and is entitled to lodge complaint with the Administrative Court (articles 130 to 132, B-VG). It is party to the proceedings before the Administrative Court and is entitled to file a final complaint at the Supreme Administrative Court (article 133, B-VG) and a complaint at the Constitutional Court (article 144, B-VG).

210. During the monitoring visit at the Austrian Constitutional Court, the rapporteurs were presented with several cases where municipalities defended their right to local self-government: e.g. E50/2015 on

⁸⁰ Durà A., Camonita F., Berzi M. and Noferini A. 2018. *Euroregions, Excellence and Innovation across EU borders. A Catalogue of Good Practices*. Barcelona, Department of Geography, UA, available online at: https://ec.europa.eu/futurium/en/system/files/ged/recot_crii_catalogue_0.pdf

the alcohol prohibition regulation of the municipal council of Innsbruck⁸¹; and G386/2018 on the violation of the principle of local self-government through zoning plans in Sankt Ulrich am Pillersee.⁸²

211. Taking into consideration the above, as well as the *Länder* constitutional provisions as described briefly further in section 4.3 the rapporteurs invite the Austrian authorities to ratify Article 11 of the Charter since it is respected in practice.

4. ANALYSIS OF THE SITUATION OF REGIONAL DEMOCRACY IN THE LIGHT OF THE REFERENCE FRAMEWORK FOR REGIONAL DEMOCRACY

4.1 Antecedents: main developments concerning regional democracy

212. Between 2012 and 2013, Austria has completely reorganized the system of administrative legal review. The so called “9+2 model”, consisting in a Federal Administrative Court (*Bundesverwaltungsgericht*), a Federal Fiscal Court (*Bundesfinanzgericht*), and nine Land Administrative Courts (*Landsverwaltungsgerichte*), became effective on 1 January 2014.

213. Since 2011, a number of relevant reforms affected the distribution of power between the Federation, the *Länder* and municipal authorities⁸³. Amongst them, a new Federal Act on Education Reform⁸⁴ (*Bildungsreformgesetz 2017*) introduced educational directorates (*Bildungsdirektionen*) which function as concurrent federal and Land authorities (article 113, B-VG). In 2018, the abolition of the pursuing and care clawback (*Pflegeregress*)⁸⁵ raised a lot of discussions and eventually successfully tested the cooperative federalism which Austria is known for (and an agreement between the Federation and the *Länder* was reached). Other relevant developments occurred in relation to the “guaranteed minimum income”. While a harmonization at the level of the Federation was agreed between 2010 and 2016, since 2017, as a new agreement had not been reached, *Länder* started to establish autonomously new programmes on social welfare (e.g. Burgenland, Lower and Upper Austria). However, by 2018, the Austrian Federal Constitutional Court annulled parts of Lower Austria’s social security model and led the way for additional talks between the Federation and the Land representatives of Lower Austria. Finally, in 2019, to harmonize the social welfare area, the Federal Law on the Principles of Social Assistance (Basic Act on Social Assistance)⁸⁶ was adopted. The Law was challenged in the Constitutional Court on the ground of alleged violation of the federal distribution of competences, but the court decided that there was no inadmissible interference into the jurisdiction of the *Länder*⁸⁷.

214. The current Governmental Plan introduces new areas of reform for local self-government. As past experiences suggest, mainly because of the high degree of interaction between the Federation and the *Länder*, an intense use of information cooperation instruments is expected.

4.2 Constitutional scheme for regional democracy

215. Pursuant to article 95.1, B-VG, legislation in the *Länder* is carried out by the Land Parliament (*Landtag*). The Land Parliaments are elected by equal, direct, personal, free and secret suffrage on the basis of proportional representation by the male and female Land citizens who in accordance with the Land Parliament electoral regulations are entitled to vote. Detailed regulations on

81 Decision available online at:

https://www.ris.bka.gv.at/Dokumente/Vfgh/JFR_20151209_15E00050_01/JFR_20151209_15E00050_01.html

(last access: February 2020)

82 Decision available online at:

https://www.ris.bka.gv.at/Dokumente/Vfgh/JFR_20190312_18G00386_01/JFR_20190312_18G00386_01.html

(last access: February 2020)

83 Bussjäger, Peter; Schramek, Christoph; Jöhler, Mirella. 2018, *op.cit.* (see *Supra* footnote 8).

84 Document available online at:

https://www.ris.bka.gv.at/Dokumente/BgblAuth/BGBLA_2017_I_138/BGBLA_2017_I_138.html

85 Social policy tool which allowed the Lands to claw back from income and / or property of those in need of care or from third parties (relatives) in order to disburden social security agencies. Please see for further reference: Bussjäger, Peter; Schramek, Christoph; Jöhler, Mirella. 2018, *op.cit.*

86 See Sozialhilfe-Grundsatzgesetz BGBl. I Nr. 41/2019 at <https://www.ris.bka.gv.at/eli/bgbl/I/2019/41>

87 Decision of Federal Constitutional Court G164/2019 ua (G164/2019-25, G171/2019-24), at

https://www.vfgh.gv.at/downloads/VfGH_Erkenntnis_G_164_G_171_2019_12_Dezember_2019.pdf and press-release https://www.vfgh.gv.at/medien/VfGH_zu_Sozialhilfe-Grundsatzgesetz_Hoehstsatzsysteme.de.php

the election procedure are determined by the Land Parliament electoral regulations (article 95.4, B-VG). The members of a Land Parliament enjoy the same immunity as the members of the National Council (article 96.1, B-VG).

216. Article 97, B-VG, stipulates that a Land law requires a vote by a Land Parliament, authentication and countersignature in accordance with the provisions of the Land concerned, and publication by the Governor in the Land Law Gazette. Inasmuch as a Land law foresees the participation in its execution of Federal organs the consent of the Federal Government must be obtained. Such enactments are to be notified immediately after the resolution of the Land Parliament by the Governor to the Federal Chancellery. Consent shall be deemed granted if within eight weeks after the day of the enactment's receipt at the Federal Chancellery the Federal Government has not informed the Governor that the co-operation of the federal authorities is refused. Before the expiry of this deadline publication of the enactment may only ensue if the Federal Government has expressly agreed.

217. Pursuant to article 100.1, B-VG, every Land Parliament can, at the request of the Federal Government and with the consent of the Federal Council, be dissolved by the Federal President; such a dissolution may however be decreed only once for the same reason. The motion in the Federal Council must be carried in the presence of half the members and by a majority of two thirds of the votes cast. The representatives of the Land whose Land Parliament is to be dissolved may not participate in the decision.

218. In addition, article 100.1 and 3, B-VG indicate that the executive power in each Land is exercised by a Land Government (*Landesregierung*) to be elected by the Land Parliament. The Land Government consists of the Governor (*Landeshauptmann*), the requisite number of deputies, and other members. According to article 105, B-VG, the members of the Land Government are accountable to the Land Parliament pursuant to article 142, B-VG.

4.3 Internal organisation

219. The Constitutional law of Burgenland 1981 (*Landes-Verfassungsgesetz vom 14. September 1981 über die Verfassung des Burgenlandes*)⁸⁸ declares Burgenland as a democratic and social *Rechtsstaat* and an independent federal state of Austria (article 1), with Eisenstadt as the capital and seat of the Land Parliament and Government. The Land Parliament in Burgenland consists of 36 members, elected for a term of five years (articles 10.1 and article 12). Members of the Land Parliament elect the members to be sent to the Federal Council (article 49) and members of the Land Government (article 53, as revised in 2014⁸⁹). In a recent reform (2013)⁹⁰, the Land Administrative Court (*Landesverwaltungsgericht*) was introduced in Burgenland (article 66a).

220. The Constitutional law of Carinthia 1996 (*Kärntner Landesverfassung-K-LVG*)⁹¹ proclaims Carinthia as an independent and future-oriented country in a united Europe that is committed to democratic, social and federal principles as well as the principle of subsidiarity, maintains the independence of the regions and ensures their participation in European decisions. It acknowledges, as well, that Carinthia is a federal state of Austria (article 1.1), where direct democracy and civil society engagement are of utmost importance (article 1.4). The Land and the municipalities are obliged to safeguard the living conditions for present and future generations by protecting and caring for the environment (article 7a.1). During the consultation procedure, the President of the Carinthia Parliament additionally informed the rapporteurs that in 2017⁹², Carinthia confirmed its commitment to its increased linguistic and cultural diversity, as reflected by the Slovene ethnic group in Carinthia, as well as to the respect, protection and promotion of language, culture, traditions and cultural heritage and the equal welfare for all compatriots (article 5.2). The capital of Carinthia is Klagenfurt am Wörthersee (article 7). The Land

88 Document available online at:

<https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=LrBgl&Gesetzesnummer=10000141>

89 LGBl. No. 64/2014, available online at:

https://www.ris.bka.gv.at/Dokumente/Lgbl/LGBl_BU_20141217_64/LGBl_BU_20141217_64.html

90 LGBl. No. 75/2013, available online at:

https://www.ris.bka.gv.at/Dokumente/Lgbl/LGBl_BU_20131217_75/LGBl_BU_20131217_75.html

91 Document available online at:

<https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=LrK&Gesetzesnummer=10000208>

92 LGBl. No. 25/2017, available online at:

https://www.ris.bka.gv.at/Dokumente/LgblAuth/LGBlA_KA_20170629_25/LGBlA_KA_20170629_25.html

Parliament has 36 members (article 8), elected for a term of five years (article 14). The Land Parliament elects the members of the Land Government (article 47). In 2014⁹³, K-LVG introduced also the Land Administrative Court (article 59a).

221. Article 1 of the Constitutional law of Lower Austria 1979 (*NÖ Landesverfassung*)⁹⁴ states that Lower Austria is an independent federal state of Austria. Article 4 enumerates the goals and principles of government action; among them, one can mention: subsidiarity, economy, legality, expediency and proportionality. The capital of Lower Austria and the seat of the Land Parliament and Government is St. Pölten (article 5). Pursuant to article 8, the Land Parliament consists of 56 members, elected for a term of five years. They, in turn, elect the members of the Land Government (article 35). Article 57 acknowledges that the municipalities in Lower Austria have the right to self-administration, while article 60 grants them the right to be heard prior to the enactment of any Land laws and ordinances.

222. The Constitutional law of Upper Austria 1991 (*Oö. Landes-Verfassungsgesetz*)⁹⁵ acknowledges Upper Austria as a future-oriented, independent state of Austria, which is committed to a united Europe, democratic, social and federal principles, as well as the principle of subsidiarity, and which maintains the independence of the regions and ensures their participation in European decisions (articles 1 and 1a). The capital seat of Upper Austria is the city of Linz (article 4). Pursuant to article 6, Oö. L-VG, as revised in 2013⁹⁶, the Land legislation is exercised by the Land Parliament (consisting of 56 members, article 16), enforced by the Land Government, which is elected by the Land Parliament (article 43), and by the Land Administrative Court (article 54a). Furthermore, Upper Austria recognizes the principles of sustainable development, subsidiarity, proportionality and the rule of law (article 9).

223. The Land of Salzburg recognizes the principles of democracy and rule of law and participates as a region in European integration and in cross-border and interregional cooperation (article 1, The constitutional law of Salzburg 1999 (*Landes-Verfassungsgesetz*)⁹⁷. The Land Parliament (formed by 36 members) legislates, monitors the implementation of the laws, appoints the Land Government and elects its representatives to the Federal Council (article 11). The capital is Salzburg (article 12). Since 2013⁹⁸, a Land Administrative Court ensures the legality of public administration (article 43a).

224. The Constitution of Styria (*Landes-Verfassungsgesetz 2010*)⁹⁹ declares Styria as an independent part of Austria (article 1). The Land Parliament consists of 48 members (article 10.1), elected for five years (article 12), and elects the Land Government (article 36). The seat of the Land Parliament and the Government, as well as of the Land Administrative Court (article 44a, as introduced in 2013)¹⁰⁰ is the capital city, Graz (articles 4 and 11).

225. In Tyrol, the Constitutional law (*Tiroler Landesordnung 1989*)¹⁰¹ acknowledges Tyrol as an independent, integral part of Austria (article 1) and promotes the principles of legality, economy and expediency in performing the tasks that are not expressly assigned to the Federal Government (articles 1.2 and 7.6). The Land capital and the seat of the Land Parliament and Government is Innsbruck (articles 5, 16.2). The Land Parliament consists of 36 members (article 16.1), elected for a period of five years (article 18). The Parliament elects the members of the Federal Council to be sent on behalf of

93 LGBl. No. 55/2013, available online at:

https://www.ris.bka.gv.at/Dokumente/Lgbl/LGBl_KA_20130805_55/LGBl_KA_20130805_55.html

94 Document available online at:

<https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=LrNO&Gesetzesnummer=20000038>

95 Document available at:

<https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=LrOO&Gesetzesnummer=10000595>

96 LGBl, No. 8/2013, available online at:

https://www.ris.bka.gv.at/Dokumente/Lgbl/LGBl_OB_20130215_08/LGBl_OB_20130215_08.html

97 Document available online at:

<https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=LrSbg&Gesetzesnummer=10001123>

98 LGBl No. 15/2013, available online at:

https://www.ris.bka.gv.at/Dokumente/Lgbl/LGBl_SA_20130228_15/LGBl_SA_20130228_15.html

99 Document available online at:

<https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=LrStmk&Gesetzesnummer=20000229>.

100 LGBl no. 56/2013, available online at:

https://www.ris.bka.gv.at/Dokumente/Lgbl/LGBl_ST_20130528_56/LGBl_ST_20130528_56.html

101 Document available online at:

<https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=LrT&Gesetzesnummer=10000103>

Tyrol (article 43), as well as the members of the Land Government (article 45). Article 70b, introduced in 2012¹⁰², states that Tyrol is also the base of the Land Administrative Court.

226. Vorarlberg is an independent part of Austria, committed to the principles of democracy and self-administration (articles 1, 7 and 73, of the Constitutional law of Vorarlberg, *Verfassungsgesetz über die Verfassung des Landes Vorarlberg 1999*).¹⁰³ The capital of Vorarlberg is Bregenz, the seat of the Land Parliament, the Government and the administrative court (article 4). The Land Parliament is elected for a term of five years and consists of 36 members (articles 15.1 and 16.1). It elects the members to be sent to the Federal Council (article 40) and those of the Land Government (article 41.3). The administrative jurisdiction of the Land is exercised by the Land Administrative Court (Article 71a), a provision introduced in 2013.¹⁰⁴

4.4 Analysis of the situation of regional democracy on an article by article basis, from the perspective of the Council of Europe reference framework for regional democracy

4.4.1 Regional competences

227. Pursuant to articles 10.1, 14.5, B-VG, the Federation has powers of legislation and execution, inter alia, in the following matters:

- i. popular initiatives (*Volksbegehren*), referenda (*Volksabstimmungen*) and consultations of the people (*Volksbefragungen*) as provided by the Federal Constitution; constitutional jurisdiction; administrative jurisdiction with the exception of the organisation of the Administrative Courts of the *Länder*;
- ii. federal finances, in particular taxes to be collected exclusively or in part on behalf of the Federation; monopolies;
- iii. maintenance of public peace, order and security including the extension of primary assistance in general, but with the exception local public safety matters; the right of association and assembly; matters pertaining to personal status, including the registration of births, marriages and deaths, and change of name; aliens' police and residence registration;
- iv. traffic-system relating to the railways, aviation and shipping in so far as the last of these does not fall under article 11, B-VG; motor traffic; matters, with exception of the highway police, which concern roads declared by federal law as Federal highways on account of their importance for transit traffic; river and navigation police in so far as these do not fall under article 11, B-VG; the postal and telecommunications system;
- v. mining; forestry, including drifting; water rights; control and conservation of waters for the safe diversion of floods or for shipping and raft transport; regulation of torrents; construction and maintenance of waterways; regulation and standardization of electrical plants and establishments as well as safety measures in this field; provisions pertaining to electric power transmission in so far as the transmission extends over two or more *Länder*; matters pertaining to steam and other power-driven engines; surveying;
- vi. social and contractual insurance; nursing care allowance; social compensation legislation;
- vii. public health with the exception of burial and disposal of the dead and municipal sanitation and first aid services, but only sanitary supervision with respect to hospitals, nursing homes, health resorts and natural curative resources;
- viii. organisation and command of the federal police; settlement of the conditions pertaining to the establishment and organisation of other security forces with the exception of municipal constabularies; settlement of the conditions pertaining to the arming of security forces and their right to make use of their weapons.
- ix. population policy;
- x. public practice schools, kindergartens, training centres and training student hostels attached to a public school for the purpose of practical instruction as provided by the curriculum; publicly maintained student hostels intended exclusively or mainly for pupils of the practice schools

102 LGBl no. 147/2012, available online at:

https://www.ris.bka.gv.at/Dokumente/Lgbl/LGBl_TI_20121220_147/LGBl_TI_20121220_147.html

103 Document available online at :

<https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=LrVbg&Gesetzesnummer=20000001>.

104 LGBl no. 14/2013, available online at:

https://www.ris.bka.gv.at/Dokumente/Lgbl/LGBl_VO_20130411_14/LGBl_VO_20130411_14.html.

mentioned above; the service-code for and staff representation rights of teachers, educational assistants and kindergarten teachers at the public institutions mentioned above;

228. Pursuant to articles 11.1, 14.2, 14a.3, B-VG, in the following matters, legislation is the business of the Federation, execution that of the *Länder*:

- i. nationality;
- ii. professional associations in so far as they do not fall under article 10, B-VG but with the exception of those in the field of agriculture and forestry as well as in the field of alpine guidance and skiing instruction and in that of sport instruction falling within *Länder* autonomous competence;
- iii. social housing administration with the exception of the promotion of domestic dwelling construction and domestic rehabilitation;
- iv. road police;
- v. sanitation;
- vi. inland shipping as regards shipping licences, shipping facilities and compulsory measures pertaining to such facilities insofar as it does not apply to the Danube, Lake Constance, Lake Neusiedl, and boundary stretches of other frontier waters; river and navigation police on inland waters with the exception of the Danube, Lake Constance, Lake Neusiedl, and boundary stretches of other frontier waters;
- vii. environmental impact assessment for projects relating to those matters where material effects on the environment are to be anticipated; in so far as a need for the issue of uniform regulations is considered to exist, the approval of such projects;
- viii. animal protection, to the extent not being in the competence of federal legislation according to other regulations, but with the exception of hunting or fishing;
- ix. labour-legislation and protection of workers and employees in so far as these are agricultural and forestry workers;
- x. service code for and staff representation rights of teachers at public compulsory schools. Such federal laws can empower Land legislatures to issue implementing provisions to individual provisions which shall be precisely specified;
- xi. religious instruction;
- xii. the service code for and staff representation rights of teachers at public agricultural and forestry vocational schools and technical colleges and of educational assistants at publicly maintained student hostels exclusively or mainly designated for pupils of these schools, excepting however matters of official competence for the exercise of the service prerogative over these teachers and educational assistants.

229. According to articles 12, 14.3, and 14a.4, B-VG, in the following matters, legislation as regards principles is the business of the Federation, the issue of implementing laws and execution the business of the *Länder*:

- i. social welfare; medical and nursing homes;
- ii. electricity in so far as it does not fall under article 10, B-VG;
- iii. framework organisation (structure, organisational forms, establishment, maintenance, dissolution, local districts, sizes of classes and instruction periods) of public compulsory schools;
- iv. framework organisation of publicly maintained student hostels provided exclusively or mainly for pupils of compulsory schools;
- v. professional employment qualifications for kindergarten teachers and educational assistants to be employed by the *Länder*, municipalities, or municipal associations at the centres and student hostels provided exclusively or mainly for pupils of compulsory schools;
- vi. as regards the agricultural and forestry vocational schools in matters pertaining to definitions of the instructional objective, the obligatory subjects, and free tuition as well as in matters pertaining to compulsory schooling and transfer from a school in one Land to a school in another Land;
- vii. as regards the agricultural and forestry technical colleges in matters pertaining to the definition of admission requirements, instructional objective, organisational forms, extent of the teaching and obligatory subjects, free tuition, and the transfer from a school in one Land to a school in another Land;
- viii. in matters pertaining to the public status of private agricultural and forestry vocational schools and training colleges except for schools falling under article 14a.2 (b), B-VG;
- ix. as regards the organisation and competence of advisory boards who in matters pertaining to article 14a.1, B-VG participate in the execution by the *Länder*.

230. According to article 15, B-VG, in so far as a matter is not expressly assigned by the Federal Constitution to the Federation for legislation or also execution, it remains within the *Länder* autonomous sphere of competence. In matters of local public security administration, that is that part of public security administration which exclusively or preponderantly affects the interests of the local community personified by the municipality and which, like preservation of public decency and defence against the improper creation of noise, can suitably be undertaken by the community within its local boundaries, the Federation has authority to supervise the conduct of these matters by the municipality and to redress any observed shortcomings by instructions to the Governor (article 103, B-VG). Inspectoral agents of the Federation can for this purpose be delegated to the municipality; in each and every case the Governor shall be informed.

231. As indicated by article 15.3, B-VG, the provisions of *Länder* legislation in matters pertaining to theatres and cinemas, public shows, performances and entertainments shall transfer, for areas of a municipality, in which the police directorate of a land simultaneously is security authority of first instance, to the police directorate of the Land, at least the superintendence of the events, in so far as this does not extend to technical operation, building police and fire police considerations, and the participation by the administration in the initial stage of grant of licences as stipulated by such legislation. Pursuant to article 15.4, B-VG, to what extent executive responsibility matters in the domain of the road police with the exception of local traffic police (article 118.3 (4), B-VG) and the river and navigation police on the Danube, Lake Constance, Lake Neusiedl, and boundary stretches of other frontier waters, for areas of a municipality in which the police directorate of a Land simultaneously is security authority of first instance, shall be assigned to the police directorate of the Land, shall be prescribed in corresponding laws of the Federation and the Land concerned.

232. Furthermore, as indicated by article 15.9, B-VG, within the scope of their legislation *Länder* are authorized to make necessary provisions also in the field of criminal and civil law to regulate a matter. Article 14a.1, B-VG, adds to the list of *Länder* exclusive powers with regard to agricultural and forestry schooling as well as with regard to agricultural and forestry education in matters pertaining to student hostels and in matters pertaining to the service code for and staff representation rights of teachers and educational assistants at schools and student hostels falling under this article. As of 2019, and the latest amendment to the Federal Constitution¹⁰⁵, Land governments also determine by ordinance the organisation of political districts (*politische Bezirke*).

233. During the consultation procedure, the Head of the Austrian delegation to the Congress pointed out that the concept of the Austrian Federal Constitution provides for a general competence of the *Länder*. So, in principle, all regulatory competences which the Constitution has not expressly assigned to the Federation remain within their competence. However, in practice, the Austrian *Länder* have only rather weak legislative powers of their own, notwithstanding extensive executive functions - including the implementation of federal decisions in the so-called indirect federal administration. This issue was already noted in the 2011 Monitoring Report.

234. According to the Head of the Austrian delegation, the fact that the federal government has acquired regulatory powers in many matters of practical importance such as criminal law, civil law, company law, most other aspects of business law, education, science, welfare, communication, health care, contradicts the original general orientation of the Federal Constitution.

235. During the consultation procedure, some members of the Austrian delegation also informed the rapporteurs about the tendency to so-called "competence divestments" – that they exemplified by the recent reform of the Austrian health care system. They warned against Austrian federalism mutating into a purely executive federalism under the argument of the unbundling of competences.

236. Some members of the Austrian delegation pointed out that if the further reform of Article 12 of the Federal Constitution would be planned, it should not lead to the situation that the *Länder* only keep the executive powers in these areas and that legislative competence is marginalised and thus de facto shifts to the federal government. They further suggested transforming the system of the indirect federal administration into the direct *Länder* administration and modifying the distribution of competences in favour of the *Länder* in order to maintain federalism in Austria as an effective and legitimately accepted system.

105 BDBI. I No. 14/2019, available online at:
https://www.ris.bka.gv.at/Dokumente/BgblAuth/BGBLA_2019_I_14/BGBLA_2019_I_14.html.

237. During the monitoring visit, the rapporteurs did not sense the presence of imminent danger of competence upscaling to the Federal level which would not leave enough margin for regional autonomy. It should also be mentioned that neither the Charter nor the Council of Europe Reference Framework for Regional Democracy expresses an option in favour of any specific form of political organisation. However, should the fears expressed by some Austrian members about the legislative powers being taken away from the *Länder* or undermined by over-regulation at the federal level materialise in such a way as to jeopardise regional autonomy, this would go against the spirit of the Reference Framework for Regional Democracy and the principle of subsidiarity.

238. Pursuant to article 15a, B-VG, the Federation and the *Länder* may conclude agreements among themselves about matters within their respective sphere of competence. The conclusion of such agreements in the name of the Federation is, depending on the subject, incumbent on the Federal Government or the Federal Ministers. Agreements which are to be binding also on the authorities of the federal legislature can be concluded by the Federal Government only with the consent of the National Council. Agreements between the *Länder* can only be made about matters pertaining to their autonomous sphere of competence and must without delay be brought to the Federal Government's knowledge.

239. Finally, it is worthwhile noticing that the *Länder* are competent to participate directly in negotiations at the European Union level (article 23d.3, B-VG).

4.4.2 *Relations with other sub-national territorial authorities*

240. As detailed in the Sections above, *Länder* enjoy the right to draft laws that are to be respected by the municipalities, supervise the municipalities, and enter into agreements with them.

4.4.3 *Involvement in the State decision-making process*

241. As presented earlier in this Report, the *Länder* are represented in the Federal Council, and very much involved in the overall Austrian policy-making process, both formally, and informally. The Federal Constitutions and the Land constitutions (described in detail in the sections above) advocate in favour of the Austrian cooperative federalism.¹⁰⁶

242. During the consultation process, the Austrian delegation to the Congress however pointed to the political and legal weakness of the Federal Council, as a "Länder chamber", in the legislative process of the Federation, especially on financial issues. It stressed that the *Länder* have an absolute right of veto in the federal constitutional and legislative process only in a few exceptional cases. The Austrian delegation to the Congress suggested reorganising the composition and functions of the Federal Council in order to make it better suited to represent the interests of the *Länder*. It regretted that the reform of the Federal Council with the aim of transforming it into a fully-fledged chamber of the *Länder* with legal and political weight has been discussed for decades, but without success.

243. During the visit, however, the rapporteurs were left with the impression that the *Länder* do have various possibilities to influence the legislative decision-making process at the federal level. In any way, the choice of the system of organisation of the Federal Council should be left in the hands of domestic legislation. But if the reform of the Federal Council is revisited again, it should be considered in close consultation between the Austrian authorities of all levels in line with the principles of the Charter.

4.4.4 *Supervision of regional authorities by State authorities*

244. Pursuant to article 121.1, B-VG, the Austrian Court of Audit is the competent institution to examine the administration of public funds by the *Länder*, the municipal associations and the municipalities. The Court is directly subordinate to the National Council and independent of the Federal Government and the Land Governments. Article 127, B-VG clarifies the scope of supervision in case of *Länder* ". The Austrian Court of Audit shall examine the financial administration of the *Länder* in their autonomous sphere of competence as well as the financial administration of endowments, funds and institutions administered by the executive officers of a Land or persons (groups of persons) appointed for the

106 Bussjäger, Peter. 2015. "Austria's Cooperative Federalism", in: *op.cit.*

purpose by authorities of the Land. The examination shall extend to arithmetical correctness, compliance with existing regulations, and the employment of thrift, efficiency and expedience in the financial administration; it shall not however include the resolutions passed by the constitutionally competent representative bodies with respect to the financial administration. The Austrian Court of Audit also examines the financial administration of enterprises where the Land is either the sole participant or holds at least fifty per cent of the share, stock, or equity capital together with other legal entities falling within the competence of the Austrian Court of Audit or where the Land is either their sole or joint operator with other such legal entities. As regards the powers of examination in case of de facto control article 126b.2, B-VG also applies. Moreover, the competence of the Austrian Court of Audit extends to enterprises in any additional category where the conditions pursuant to this paragraph exist. The Austrian Court of Audit is competent to examine the financial administration of corporations under public law using Land funds.

245. The supervision of the Constitutional Court (Article 140), the relations with the Ombudsman Board (e.g. article 148b, B-VG) and those with the Administrative Court (Articles 129 et seq.) are also to be observed in the sections above.

4.4.5 *Protection of regional self-government*

246. Regional self-government is protected by the Federal Constitution and by a long-standing tradition in Austrian policy-making. Despite the rather centralized federalism which Austria is known for, the powers of the *Länder* are deeply embedded in a consensus-driven democratic system.

4.4.6 *Right of association*

247. As described above in section 3.9.3, there are several examples of best practices for cross-border associations in the form of Euroregions.

248. Also, during the monitoring visit, several examples of cooperation were offered: e.g. between the Land of Styria and that of Carinthia (for large scale infrastructure projects) and between Burgenland and Carinthia (for research projects).

4.4.7 *External relations. Trans-frontier co-operation*

249. Article 16.1, B-VG, recognizes the right of the *Länder* to conclude state treaties with states, or their constituent states, bordering on Austria, in matters within the *Länder's* own sphere of competence. The Governor must inform the Federal Government before the initiation of negotiations about such a state treaty. The Federal Government's consent must be obtained by the Governor before their conclusion. State treaties concluded by a Land in accordance with article 16.1, B-VG 1 shall be revoked on demand by the Federal Government. If a Land does not duly comply with this obligation, competence in the matter passes to the Federation.

4.4.8 *Regional Finances*

250. Figure 5 presents the Maastricht Balance B.9 2015-2018, Government Deficit by subsectors and *Länder*¹⁰⁷:

107 Source: STATISTICS AUSTRIA. Rounding differences not balanced Compiled on October 21, 2019. Data according to ESA 2010, Federal Ministry of Finance.

Sector/Subsector/Land	2015	2016	2017	2018	2015	2016	2017	2018
	in million Euro				as percentage of Gross Domestic Product (GDP)			
General Government	-3.477	-5.488	-2.754	763	-1,01	-1,54	-0,74	0,20
Central Government	-4.120	-4.397	-3.156	-542	-1,20	-1,23	-0,85	-0,14
State Government (excl. Vienna)	389	-1.307	206	631	0,11	-0,37	0,06	0,16
Burgenland	112	60	65	81	0,03	0,02	0,02	0,02
Kärnten	66	-1.162	40	67	0,02	-0,33	0,01	0,02
Niederösterreich	-69	-59	53	141	-0,02	-0,02	0,01	0,04
Oberösterreich	-34	7	146	291	-0,01	0,00	0,04	0,08
Salzburg	92	62	69	53	0,03	0,02	0,02	0,01
Steiermark	227	-153	-107	-4	0,07	-0,04	-0,03	0,00
Tirol	29	-8	-45	45	0,01	0,00	-0,01	0,01
Vorarlberg	-33	-55	-16	-41	-0,01	-0,02	0,00	-0,01
Vienna	-159	-191	-139	114	-0,05	-0,05	-0,04	0,03
Local Government (excl. Vienna)	138	-33	-137	-12	0,04	-0,01	-0,04	0,00
Burgenland	-2	-5	-15	-1	0,00	0,00	0,00	0,00
Kärnten	29	13	-5	3	0,01	0,00	0,00	0,00
Niederösterreich	24	14	22	55	0,01	0,00	0,01	0,01
Oberösterreich	-17	-36	-72	91	-0,01	-0,01	-0,02	0,02
Salzburg	55	27	-7	8	0,02	0,01	0,00	0,00
Steiermark	61	43	50	-8	0,02	0,01	0,01	0,00
Tirol	-27	-69	-106	-120	-0,01	-0,02	-0,03	-0,03
Vorarlberg	17	-19	-3	-41	0,00	-0,01	0,00	-0,01
Social Security Funds	275	441	472	571	0,08	0,12	0,13	0,15

Figure 5

251. Figure 6¹⁰⁸ depicts the Maastricht Debt B.9 2015-2018, Government Debt by subsectors and *Länder*.

Sector/Subsector/Land	2015	2016	2017	2018	2015	2016	2017	2018
	in million Euro				as percentage of Gross Domestic Product (GDP)			
General Government	292.265	295.612	289.253	284.758	84,7	83,0	78,2	73,8
Central Government	255.441	257.283	251.245	245.913	74,2	72,2	67,9	63,7
State Government (excl. Vienna)	21.185	21.914	21.381	21.223	6,0	6,2	5,8	5,5
Burgenland	1.054	1.030	1.018	1.016	0,3	0,3	0,3	0,3
Kärnten	3.212	4.171	3.627	3.439	0,9	1,2	1,0	0,9
Niederösterreich	8.497	8.132	8.105	8.091	2,3	2,3	2,2	2,1
Oberösterreich	1.878	1.955	1.987	1.891	0,5	0,5	0,5	0,5
Salzburg	2.106	1.935	1.687	1.475	0,6	0,5	0,5	0,4
Steiermark	4.098	4.381	4.584	4.868	1,2	1,2	1,2	1,3
Tirol	172	149	220	254	0,0	0,0	0,1	0,1
Vorarlberg	167	161	153	190	0,0	0,0	0,0	0,0
Vienna	6.440	6.955	7.289	7.538	1,9	2,0	2,0	2,0
Local Government (excl. Vienna)	8.138	8.355	8.434	8.760	2,4	2,3	2,3	2,3
Burgenland	204	212	216	n.a	0,1	0,1	0,1	n.a
Kärnten	328	306	304	n.a	0,1	0,1	0,1	n.a
Niederösterreich	1.915	2.001	2.002	n.a	0,6	0,6	0,5	n.a
Oberösterreich	2.316	2.279	2.333	n.a	0,7	0,6	0,6	n.a
Salzburg	349	328	333	n.a	0,1	0,1	0,1	n.a
Steiermark	1.947	2.079	1.989	n.a	0,6	0,6	0,5	n.a
Tirol	507	555	631	n.a	0,1	0,2	0,2	n.a
Vorarlberg	572	596	627	n.a	0,2	0,2	0,2	n.a
Social Security Funds	1.060,3	1.104,8	903,9	1.323,4	0,3	0,3	0,2	0,3

Figure 6

252. The *Länder* contribute financially to Austria's EU membership obligations (which amounted to 16,835 % of the VAT own resources and the gross national income own resources deducted to this end from their revenue shares in 2019).

108 Idem.

5. OTHER MATTERS RELATED TO THE FUNCTIONING OF LOCAL AND REGIONAL SELF-GOVERNMENT

253. Pursuant to article 78a, B-VG, the supreme security authority is the Federal Minister of the Interior. Subordinate to it are the police directorates of the *Länder* followed by the district administrative authorities in their capacity as security authorities. According to article 78b, B-VG, every Land has a police directorate, headed by a police director appointed by the Federal Minister of the Interior.

254. Pursuant to article 148, B-VG, everyone can lodge complaint with the Austrian Ombudsman Board (AOB) against alleged maladministration by the Federation, including its activity as a holder of private rights in particular for alleged violation of human rights, provided that they are affected by such maladministration and in so far as they do not or no longer have recourse to legal remedy. The AOB also handles complaints about the *Länder* and local authorities on the entire federal territory, except for Vorarlberg and Tyrol. These *Länder* have made use of the possibility offered by Article 148 i paragraph 2, B-VG to establish their own Ombudsman Offices with the tasks similar to those of the AOB for the area of their *Länder* administration. The Tyrolean and Vorarlberg Ombudsman Offices are solely competent regarding the complaints concerning their *Länder* and local authorities.

255. Pursuant to Article 148 b Paragraph 1, B-VG, all bodies of the Federal Government, the *Länder* and the municipalities, must support the Austrian Ombudsman Board in the fulfilment of its duties. For example, they must grant access to data upon request. The AOB renders annually a report of its activity to the National Council and the Federal Council. According to the information provided by the AOB during the consultation procedure, in 2019, it conducted 2,917 investigations in the *Länder* and municipal administration. Most of the complaints concerned social welfare (27.5 %), in particular needs-based minimum benefit system, youth welfare and matters relating to people with disabilities. Approximately one in five complaints (21 %) concerned regional planning, housing and building law, followed by issues related to citizenship law as well as the traffic police and community affairs.

256. Finally, pursuant to article 7.2 and 3, B-VG, the Federation, *Länder* and municipalities subscribe to the de-facto equality of men and women. They are legally allowed to take measures to eliminate gender inequalities, if detected.

6. CONCLUSIONS AND RECOMMENDATIONS

257. Austria is a fair example of consensual democracy, exhibiting a centralized model of federalism. Since the last Report of the Congress on the Local and Regional Democracy in Austria, reforms were made in order to strengthen local and regional self-government.

258. Since 2011, a number of relevant reforms affected the distribution of power between the Federation, the *Länder* and municipal authorities¹⁰⁹. Amongst them, a new Federal Act on Education Reform¹¹⁰ (*Bildungsreformgesetz 2017*) introduced educational directorates (*Bildungsdirektionen*) which function as concurrent federal and Land authorities (article 113, B-VG). In 2018, the abolition of the nursing and care clawback (*Pflegeregress*)¹¹¹ raised a lot of discussions and eventually successfully tested the cooperative federalism which Austria is known for (and an agreement between the Federation and the *Länder* was reached). On the other hand, the adoption, in 2019, of the Federal Law on the Principles of Social Assistance (Basic Act on Social Assistance) to harmonize the social welfare area led to the litigation in the Constitutional Court concerning the constitutionality of the distribution of competences envisaged by this piece of legislation. The court found no violation in this respect.

109 Bussjäger, Peter; Schramek, Christoph; Jöhler, Mirella. 2018, *op.cit.* (see *Supra* footnote 8).

110 Document available online at:

https://www.ris.bka.gv.at/Dokumente/BgblAuth/BGBLA_2017_I_138/BGBLA_2017_I_138.html

111 Social policy tool which allowed the Lands to claw back from income and / or property of those in need of care or from third parties (relatives) in order to disburden social security agencies. Please see for further reference: Bussjäger, Peter; Schramek, Christoph; Jöhler, Mirella. 2018, *op.cit.*

259. The new Government plan: *Aus Verantwortung für Österreich 2020-2024*¹¹², introduces several priorities that appear highly relevant to the future of local and regional democracy in Austria. Examining further the reform of local taxes, strengthening the local financing of the municipalities, increasing the efficiency and transparency of the agreements concluded on the basis of article 15a of the Federal Constitution, increasing the efficiency and quality benefits of cooperation between municipalities (abolition of VAT), strengthening the own contribution of the financing of the municipalities; and adapting the criminal law to current challenges (which includes the assessment and examination of the Austrian Criminal Code, section 153 – breach of trust). These are deemed relevant by the conclusions of the present report as well.

260. The rapporteurs acknowledge that in Austria, there is a high degree of complexity in the allocation of powers between the *Länder* and the Federation, and that municipalities are, to some extent, peripheral since administrative tasks fulfilled by municipalities, even in their autonomous sphere of competences, have to be conferred on them explicitly by the relevant Federal or *Länder* legislation. The overlapping responsibilities between the three tiers of government, as well as the unbalanced distribution of exclusive regulatory powers to the benefit of central and/or regional authorities may hinder local democracy in Austria. The rapporteurs invite the Austrian authorities to abstain from unnecessary limitation of the powers of the municipalities and focus on granting them the tools necessary to achieve good local governance.

261. On the same note, the rapporteurs would like to point out that taking away legislative powers from the *Länder* or undermining them by over-regulation at the federal level so as not to leave enough margin for regional autonomy may go against the spirit of the Council of Europe Reference Framework for Regional Democracy and the principle of subsidiarity.

262. The rapporteurs invite Austrian authorities to consider modifying the Federal Constitutional Law in order to allow the associations of local authorities to participate in agreements between the Federation and the *Länder* on all matters that concern them.

263. Although the status of locally elected representatives is well established and generally enjoys popularity amongst their constituencies, the rapporteurs have noted that it has become increasingly difficult to attract interested men and women to take over executive responsibilities in some municipalities. This was partially explained by a combination of factors, amongst which were mentioned the low level of remuneration and the fear of personal liability of local elected representatives under section 153 of the Austrian Criminal Code. The rapporteurs draw attention to the fact that the vulnerability of elected representatives (pertaining to inadequate payment and insurance liability) was also raised in 2011, by the Report on Local and Regional democracy in Austria (CG(20)8).

264. The rapporteurs wish to remind the Austrian authorities that the previous Report on Local and Regional Democracy in Austria (2011) also pointed out that municipalities have practically no discretion with regard to local taxes. This is highly worrying, as local democracy without adequate financial sustainability is at risk.

265. The rapporteurs invite the Austrian authorities to reflect on opportunities to intensify training for local government staff, and to identify solutions for ensuring the high quality, proficient and continuous delivery of local public services in all Austrian municipalities (and especially in small and medium-sized municipalities).

266. The rapporteurs appreciate the reforms undertaken by the Austrian authorities in order to broaden the scope of local self-government and, considering the existing regulations as well as the omnipresent cooperative federalism, invite them to ratify articles 4 paragraphs 2 and 3, and 11 of the Charter which are complied with in practice.

267. The rapporteurs take note of the fact that Austria has not yet signed nor ratified the Additional Protocol on the right of participate in the affairs of a local authority (CETS no.207) yet find there are no technical impediments for such a decision to occur. Furthermore, considering the positive examples of public participation in local decision-making, the rapporteurs strongly encourage Austria to proceed with the formalities of signing and ratifying the above-mentioned Additional Protocol.

112 The document is available online at:

https://www.wienerzeitung.at/_em_daten/wzo/2020/01/02/200102-510_regierungsprogramm_2020_gesamt.pdf.

APPENDIX – Programme of the Congress Monitoring visit to Austria

CONGRESS MONITORING VISIT TO AUSTRIA
Vienna, Graz, Raaba-Grambach (10-12 December 2019)

PROGRAMME

Congress delegation:

Rapporteurs:

Mr Marc COOLS

Rapporteur on local democracy
Chamber of Local Authorities, ILDG¹¹³
Municipal Councillor, Uccle, Belgium

Mr Andrew DISMORE

Rapporteur on regional democracy
Chamber of Regional Authorities, SOC/G/PD¹¹⁴
Member of London Assembly, United Kingdom

Congress Secretariat:

Ms Svitlana PEREVERTEN

Co-Secretary to the Monitoring Committee

Ms Jade BELGHALI

Assistant to the Monitoring Committee

Expert:

Dr Diana IANCU

Member of the Group of Independent Experts of the Congress
on the European Charter of Local
Self-Government

Interpreters:

Ms Michaela SPRACKLIN

Mr Alexander ZIGO

113 ILDG: Independent Liberal Democrat Group in the Congress

114 SOC/G/PD: Group of Socialists, Greens and Progressive Democrats

Tuesday, 10 December 2019
Vienna

MEEsTING WITH MEMBERS OF THE AUSTRIAN DELEGATION TO THE CONGRESS AND EXPERT

- **NATIONAL DELEGATION OF AUSTRIA TO THE CONGRESS**

Mr Harald SONDEREGGER, Head of the delegation, President of the Vorarlberg Parliament
Ms Pauline STERRER, Mayor of Rüstorf
Ms Waltraud SCHWAMMER, Mayor of Dechantskirchen
Mr Reinhart ROHR, President of the Carinthia Parliament
Mr Peter FLORIAN SCHUETZ, Member of the State Parliament of Vienna
Mr Gerhard KARNER, 2nd Vice-President of the Lower-Austria Regional Parliament

- **EXPERT:**

Univ. Prof. Dr Peter BUSSJÄGER, Professor at the Department of Public Law, State and Administrative Theory, University of Innsbruck

MEETING WITH THE NATIONAL ASSOCIATIONS

- **ASSOCIATION OF AUSTRIAN CITIES AND TOWNS (*Österreichischer Städtebund*)**

Dr Johannes SCHMID, Vice-Secretary General
Mr Oliver PUCHNER, responsible for financial and economic matters
Mag. Alexander LESIGANG, responsible for European and International affairs

- **ASSOCIATION OF AUSTRIAN MUNICIPALITIES (*Österreichischer Gemeindebund*)**

Mag. Nicolaus DRIMMEL, Deputy Secretary General

VIENNA CITY HALL

Mr Ernst WOLLER, President of Vienna Regional Parliament (*Landtagspräsident und Gemeinderat*)

AUSTRIAN COURT OF AUDIT (ACA)

Dr Margit KRAKER, President
Dr Barbara KÖNIG, Director General, Audit Division 2 - Construction, Federal Buildings, Municipalities and Public Health, Care, Social Affairs
Dr Helga KRAUS, Director General, Audit Division 4 - Public Finances and EU Funding, Energy, Environment
Ms Sandra FUCHS, EU-Liaison Officer, International Affairs Unit
Ms Monika GONZALEZ-KOSS, Head of Unit, International Affairs
Dr Christian GRÜNER, Office of the President
Mr Andreas MAYRBÄURL, Auditor, Unit Financial Equalization, Data Analysis
Mr Klaus PICHLER, Head of Unit, Financial Equalization, Data Analysis

PARLIAMENT

Mr Karl BADER, President of the Federal Council
Mr Georg MAGERL, EU and International Services, Secretary of the Austrian
Delegation to the Parliamentary Assembly of the Council of Europe

OMBUDSMAN BOARD (AOB)

Mag. Martina CERNY, Chief of Cabinet of Ombudsman Walter Rosenkranz
Dr Michael MAUERER, Chief of Cabinet of Ombudsman Werner Amon
Ms Dietrun SCHALK, staff member of the international unit
Ms Nina OCHSENHOFER, staff member of the international unit

Wednesday, 11 December 2019
Vienna

FEDERAL CHANCELLERY

Mag. Roland ARBTER, Officer for Regional Policy and for Town and Country
Planning, Federal Ministry for Sustainability and Tourism
Mr Josef BAUER, Head of the Department for International Affairs and
Administration, Federal Ministry for Constitution, Reform, Deregulation and
Justice
Mr Karl-Heinz TANNER, Deputy Head of Department for Institutional Affairs of
the European Union

FEDERAL MINISTRY OF THE INTERIOR

Mag. Dr Mathias VOGL, Director General for Law
Mag. Walter GROSINGER, Deputy Director General, Head of Directorate for
Legislation and Law
MMag. Annika SALBRECHTER, Unit for Bi- and Multilateral Affairs, Department
for International Affairs, Directorate General I - Central Administration

FEDERAL MINISTRY OF FINANCE

Mag. Dr Anton MATZINGER, Deputy Director General - DG II, Budget and
Public Finances Department
Mr Ákos KÁSZONI, Unit II, Intergovernmental fiscal relations, DG II, Budget and
Public Finances Department
Ms Gerlinde ZIMMER, Fiscal Relations, DG II, Budget and Public Finances
Department

CONSTITUTIONAL COURT

DDr Stefan Leo FRANK, Secretary General

Thursday, 12 December 2019
Graz, Raaba-Grambach

CITY HALL OF GRAZ

Mr Siegfried NAGL, Mayor of Graz
Mr Mario EUSTACCHIO, Deputy Mayor
Mr Martin HAIDVOGL, Chief Executive Director
Mr Karl KAMPER, Financial Director
Mr Maximilian MAZELLE, Head of the Department of Communication

Ms Diana MATERI, Mayor's Office, Economy, International Relations and Tourism
Mr Timo KÖHLER, Head of the Unit of Citizen Participation
Mr Hans PUTZER, Mayor's Office, responsible for Graz as Capital of Human Rights
Mr Max AUFISCHER, Deputy Chairman of the Human Rights Advisory Council
Ms Claudia SACHS-LORBECK, Head of Unit, Office of International Relations
Ms Andrea HARRICH, Office of International Relations
Ms Verena ENNEMOSER, Head of the Executive Office of the Mayor
Mr Walther NAUTA, Executive Office of the Mayor

COURT OF AUDIT OF STYRIA

Mag. Heinz DROBESCH, Director

LAND AUTHORITIES OF STYRIA

MMag. Barbara EIBINGER-MIEDL, *Landesrätin* (Regional Minister) for Economy, Tourism, Digitalisation, Science and Research
Mag. Dr Maximilian WEISS, Director of the Landtag (Regional Parliament)
Mag. Dr Peter EBNER, Head of Budget Department, Office of the Regional Government
Mr Manfred KINDERMANN, Department for Municipalities and Elections, Head of Unit Legal affairs and elections, Office of the Regional Government
Ms Andrea EBNER-VOGL, Legal Service and Constitutional Law, Office of the Regional Government
MMag. Roland GARBER, Member of Cabinet, *Landesrätin* Barbara Eibinger-Miedl
Mag. Stefan BÖRGER, Department for Culture, Europa and external relations, Head of Unit Europe and external relations, Office of the Regional Government

RAABA-GRAMBACH

Mr Karl MAYRHOLD, Mayor
Mag. Bernhard NEUMAYR, Head of Office