

Austria

Self-rule

INSTITUTIONAL DEPTH AND POLICY SCOPE

Austria is a federation with one regional tier composed of nine *Länder* (states). The ninety-nine *Bezirke* (districts) operate as deconcentrated state and *Land* administrations, but their average population classifies them as local (Council of Europe: Austria 2000).¹ We code Austria from the end of Allied occupation in 1955.

There have been no major legislative changes in institutional depth or policy scope since 1945, the year when the Austrian federation of 1920 and its constitution of 1929 were reinstated.² The constitution explicitly lists the extensive legislative powers of the central government, as well as the more limited legislative powers of the *Länder*. *Länder* exercise residual powers and have authority over housing, health, social services, land reform, labor law, and education (Bullman 2001; C 2014, Arts. 12, 14, and 15; Council of Europe: Austria 2000; Sturm 2002; Swenden 2006; Watts 1999a, 2008). The federal government retains authority over immigration (C 2014, Art. 10.3) and sets the legal framework for citizenship, though *Länder* have executive competence in citizenship (C 2014, Art. 11.1). *Länder* are also responsible for their own institutional set up, but important components—including the *Proporz* system whereby the composition of the executive reflects the relative strength of the political parties in the assembly, and the election of the provincial governor—are federally determined (Bußjäger 2012; Fallend 2011). Austria is often perceived as “among federations one of the most centralized” (Watts 1999b: 30), a “federation without federalism” (Erk 2004: 1), or “over-centralized” (Braun 2011: 36; see also Thorlakson 2003: 9; Elazar 1994: 27).

The federal capital, Vienna (*Wien*), is both a *Land* and a municipality. The municipal council doubles as *Land* parliament and the mayor doubles as *Land* governor (C 1930, Art. 108; Kiefer and Schausberger 2009). Vienna is subdivided into 23 municipal districts (*Gemeindebezirke*) which have their own district parliaments (*Bezirksvertretung*) and district chairpersons (*Bezirksvorsteher*) (Council of Europe: Austria 2000, 2011; Law No. 28/1968, Art. 3).³

FISCAL AUTONOMY

Major taxes (customs/excise, corporate, and personal income) as well as tax sharing are determined at the federal level (Thorlakson 2003). The *Finanz-Verfassungsgesetz* 1948 (Law No. 45/1948), a

¹ Law No. 14/1966, 59/1976, 11/1977, 208/1977, 19/1982, 60/1997, 26/2003 35/2007, and C 1968, Art. 3.

² Unless noted otherwise articles refer to the most recent consolidated version of the constitution of 2014.

³ Cities which have at least 20,000 inhabitants can have their own statute (*Stadtverfassung*) when their *Land* government approves and the federal government gives its consent (Law No. 1/1930, Art. 116). *Statutarstädte* have a similar legal status as municipalities except that they also exercise district (*Bezirke*) competences (Council of Europe: Austria 2000, 2011; Kiefer and Schausberger 2009). There are fifteen *Statutarstädte* with an average population size of less than 80,000.

federal law with constitutional status, sets out a framework for tax sharing, intergovernmental transfers, and cost sharing between the federation, *Länder*, and *Gemeinde* (municipalities) (Ruiz-Palmero 2017: 151–172; Swenden 2006: 128–130). *Länder* receive more than 95 percent of their revenues from tax sharing and can set the tax base and rate for the remaining 5 percent which includes minor taxes such as a fire insurance tax, entertainment tax, and a tax on tourism (Council of Europe: Austria 2011; Pernthaler 2002).

BORROWING AUTONOMY

Until the run-up to Economic and Monetary Union (EMU), there were no explicit, formal, or binding rules for debt financing. Since 1997, *Länder* borrowing has been constrained by the Federal Financial Decree (Law No. 787/1996).

The Federal Financial Decree formalizes an agreement negotiated in 1974 between the federal government and the *Länder* (Hauth 2009).^a It stipulates that regional and local governments have to distinguish between ordinary and extraordinary expenses (Thöni, Garbislander, and Haas 2002). Borrowing is restricted to financing extraordinary expenses, and only under certain conditions (Law No. 787/1996, Art. 4). This distinction is similar in spirit to the widespread golden rule provision which requires that only public investments can be financed by loans. *Länder* score 3 on borrowing autonomy until 1996, and 2 from 1997.

In practice, the distinction between ordinary and extraordinary expenses has been difficult to implement, and regional and local governments have tended to finance public investment via extraordinary budgets (Balassone, Franco, and Zotteri 2003). Moreover, regional governments are not required to seek federal government approval for their annual budgets, and this includes loan financing (Ruiz-Palmero 2017: 151–172). The federal government can, however, request detailed information on the regional budget at any time (Law No. 787/1996).

REPRESENTATION

Länder Landtage (parliaments) are directly elected every five or six years depending on the *Land* (C 2014, Art. 95). The *Landtag* elects its own *Landeshauptmann* or *Landeshauptfrau* (governor) and government (C 2014, Arts. 101–102).

Shared rule

LAW MAKING

The *Bundesrat* (upper chamber) is composed of representatives elected by *Land* parliaments (*L2*, *L3*) (C 2014, Art. 34). Each *Land* is allotted a number of seats proportional to its population, and these are divided among political parties according to their representation in the *Land* parliament (C 2014, Art. 35). The *Bundesrat* can initiate and vote on most legislation, but it can be overridden by a simple majority in the lower house (C 2014, Art. 42).

EXECUTIVE CONTROL

Federal and *Land* governments hold regular intergovernmental meetings. While the norm is to decide by consensus, even unanimity among *Länder* does not formally bind the federal government, which can use constitutional “escape clauses” to override *Länder* requests for participation in national and European policy making (C 2014, Art. 15a; Bolleyer and Bytzek 2009).

Since mid 1950s, the *Landeshauptleute* (governors) of the nine *Länder* meet, without federal government representation, in the *Landeshauptleutekonferenz* (conference of governors) two to four times a year (Pernthaler 2002; Sturm 2002).⁴ Although these horizontal intergovernmental meetings may produce binding agreements (Pernthaler 2002), they tend to be non-binding (Bußjäger 2015). An important exception is the *Integrationskonferenz der Länder* (EU integration conference of *Länder*), which prepares common statements and opinions before EU policies are discussed with the federal government (Karlhofer and Pallaver 2013; Law No. 39/1993).

FISCAL CONTROL

Länder are consulted on the base and rate of shared taxes in the upper chamber, but that body cannot veto tax legislation. In addition, the *Finanzausgleichsgesetz* (Revenue sharing law; Law No. 103/2007)⁵, which regulates the details of the *Finanz-Verfassungsgesetz*, is negotiated by the finance minister, the nine *Land* finance ministers, and the representatives of the municipalities before being presented to the *Nationalrat* (the lower chamber). Hence subnational governments must be consulted, but have no veto power (Fallend 2011). A government debt committee (*Staatsschuldenausschuss*) was set up in 1970 and was transformed into a fiscal advisory council (*Fiskalrat*) in 2013. This body makes recommendations on public debt (Ruiz-Palmero 2017: 151–172). The conference of governors (*Landeshauptleutekonferenz*) elects one member (of fifteen), who has no voting rights (Law No. 742/1996, Art. 4.1(2) and No. 149/2013, Art. 7).⁶

BORROWING CONTROL

Cost sharing among the federal government, *Länder*, and *Gemeinden* is regulated by a *Finanzausgleichsgesetz* (Law No. 103/2007) negotiated by all three levels of government for three years (until 1985 agreements were for six years). Consensus among federal and subnational governments is the norm, but subnational governments have no veto powers.

In order to meet the Maastricht stability criteria for membership in the EMU, all levels of government agreed on a Domestic Stability Pact (Law No. 35/1999 and No. 101/1999) in 1999. The initial pact stipulates that *Länder* as a group have to achieve an annual budgetary surplus of

⁴ Meine Abgeordneten. “KW 20: Landeshauptleutekonferenz tagt im Ländle.” <<http://www.meinabgeordneten.at>>.

⁵ The fiscal arrangement of 2008 (Law No. 103/2007) was extended in 2012, 2015 and 2017 (Council of Europe: Austria 2011; Law No. 4/2012, No. 17/2015, and No. 11/2016).

⁶ Fiskalrat. “Home” and “Aufgaben.”

<<http://www.staatsschuldenausschuss.at/de/staatsschuldenausschuss.jsp>> and

<<http://www.fiskalrat.at/Aufgaben.html>>.

0.75 percent of gross domestic product (GDP) over the period 2001–2004, while municipalities as a group must have a balanced budget (Journard and Kongsrud 2003; Balassone, Franco, and Zotteri 2003). Each *Land* had obligations, but could transfer surplus or deficit rights to other *Länder*. Sanctions for non-compliance required unanimity in a commission of representatives of all levels of government (Council of Europe: Austria 2011; Journard and Kongsrud 2003; Law No. 35/1999).⁷ In addition, the pact launched consultation mechanisms to manage disputes and improve the flow of information across levels of government (Balassone, Franco, and Zotteri 2003; Ruiz-Palmero 2017: 151–172).⁸

The pact was extended in 2002, 2008 and 2013 (Law No. 39/2002, No. 81/2008, and No. 30/2013) and the last version stipulates that total debt may not exceed 0.45 percent of GDP at the federal level and the combined debt of the *Länder* and municipalities may not exceed 0.1 percent of GDP (Law No. 30/2013, Arts. 4 and 6). The Domestic Stability Pact upgraded borrowing control for *Länder*, which score 2 from 1999.

CONSTITUTIONAL REFORM

Up to 1984, the *Bundesrat* did not have a veto over constitutional amendments, though its consultation was required. It also had the power to raise the hurdle for a vote on constitutional reform in the *Nationalrat*, including for any total revision (*Gesamtänderung*) (C 1929, Art. 44). A 1984 constitutional revision gave the *Bundesrat* the authority to veto constitutional reform that directly affects the federal–*Land* allocation of competences or the organization of the *Bundesrat* (Sturm 2002). Such constitutional amendments now require a supermajority in the *Bundesrat* (Bußjäger 2012; C 2014, Art. 44.2). The *Bundesrat* can also initiate a popular referendum for a partial revision of the constitution with one-third of its members (C 2014, Art. 44.3).

Primary references

⁷ Since 2002, the Domestic Stability Pact contains a sanction mechanism (*Sanktionsmechanismus*) which stipulates that a conciliation board (*Schlichtungsgremium*) must be established in case the federal court of auditors (*Bundesrechnungshof*) notifies a breach of the agreements (Law No. 39/2002, Art. 11 and No. 30/2013, Art. 19). The conciliation board consist of a total of six representatives: two nominated by the federal Ministry of Finance, two nominated by the current and following chair of the *Landeshaupleutekonferenz* (conference of *Land* governors), and two nominated by the associations representing municipalities and cities who do not have a vote. The conciliation committee invites the affected *Bund* or *Land* to take measures to achieve a balanced budget and in case the *Land* or *Bund* does not submit a plan or when the conciliation committee deems the plan not sufficient it can impose a fiscal sanction.

⁸ A consultation mechanism (*Konsultationsmechanismus*) obliges the *Bund*, *Länder* and *Gemeinden* to submit draft laws and regulations and legislative proposals to each other in order to facilitate financial compensation in case a law enacted by one government imposes costs for another government. All tiers of government can bring cases before a consultation board (*Konsultationsgremium*) which can request that the government which enacts legislation that poses costs on another government to financially compensate those costs (Council of Europe: Austria 2011; Law No. 35/1999).

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			Institutional depth	Policy scope	Fiscal autonomy	Borrowing autonomy	Representation		Self-rule
							Assembly	Executive	
Länder	I	1955-1996	3	3	2	3	2	2	15
	I	1997-2018	3	3	2	2	2	2	14

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Shared rule in Austria

		Law making						Executive control		Fiscal control		Borrowing control		Constitutional reform		Shared rule
		L1	L2	L3	L4	L5	L6	M	B	M	B	M	B	M	B	
Länder	1955-1983	0	0.5	0.5	0	0	0	1	0	1	0	1	0	2	0	6
	1984-1998	0	0.5	0.5	0	0	0	1	0	1	0	1	0	4	0	8
	1999-2018	0	0.5	0.5	0	0	0	1	0	1	0	2	0	4	0	9

National legislature has: L1 = regional representation; L2 = regional government representation; L3 = majority regional representation; L4 = extensive authority; L5 = bilateral regional consultation; L6 = veto for individual region. Total for shared rule includes the highest score of either multilateral (M) or bilateral (B).

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