



CHAPTER 4

Austria

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This chapter explores the role of local government in Austria's federal system. It argues that municipalities play a rather junior role compared to federal and *Länder* government levels, and that the practice of 'three-level federalism' is essentially confined to financial relations, though even here local governments do not really enjoy equal standing. Unsurprisingly, the associations representing local government continue to call for a stronger voice in political and constitutional affairs. In addition, the chapter shows that while various crises (especially those besetting the smaller municipalities) exacerbate structural problems, they can also work as catalysts for much-needed reform. The global financial crisis of 2007–2008 played precisely such a role; whether the Covid-19 pandemic will do so too remains to be seen.

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1 COUNTRY OVERVIEW

As a country made up predominantly of mountain, forest, and grassland regions, Austria's local government structure is characterised by its high number of small and rural municipalities. In 2020, 8.9 million people lived in a territory of 83,883 km² comprising a total of 2095 municipalities.¹ Of these municipalities, 1842 (88 per cent) have less than 5000 inhabitants, 244 have between 5001 and 50,000 inhabitants, and only nine have populations larger than that.² While six municipalities are home to no more than 100 people, the capital city Vienna has a population of 1.9 million, or some 22 per cent of Austria's total population. Vienna and the eight next largest cities drive population growth and are forecast to account for nearly two-thirds of this growth up to 2040.³ Meanwhile, 40 per cent of Austrian local governments have experienced a decline in population over the last decade, with small rural municipalities in the northern parts of Styria, Carinthia, and Lower Austria being the most affected.

With regard to general socioeconomic indicators, the country has benefitted from positive long-term trends, even though the Covid-19 pandemic is having a significant impact. Compared to many other countries, Austria is relatively wealthy, as can be seen in its high Human Development Index (HDI) score of 0.92 in 2020, which gave the country a ranking of 18th place in the world in that year.⁴

In terms of the legal and political system that sets the scene for local government, several characteristics should be borne in mind. Austria belongs to the civil law tradition and was established as a 'democratic

¹ Statistik Austria, 'Population Reaches 8.93 Million at the Beginning of 2021', www.statistik.at/web_en/statistics/PeopleSociety/population/125348.html (accessed 9 June 2021).

² Österreichische Gemeindebund, 'Struktur der Gemeinden', <https://gemeindebund.at/themen-zahlen-und-fakten-struktur-der-gemeinden/> (accessed 9 June 2021).

³ ÖROK, 'Kleinräumige Bevölkerungsprognose für Österreich 2018 bis 2040' (2019), www.oerok.gv.at/fileadmin/user_upload/Bilder/2.Reiter-Raum_u_Region/2.Daten_und_Grundlagen/Bevoelkerungsprognosen/Prognose_2018/Bericht_BevPrognose_2018.pdf (accessed 9 June 2021).

⁴ UNDP, 'Human Development Report 2020. The Next Frontier: Human Development and the Anthropocene', <http://hdr.undp.org/en/2020-report> (accessed 9 June 2021).

republic'⁵ and 'federal state' consisting of nine 'autonomous *Länder*'⁶ in 1920. Its politics have long been dominated by two parties: the Social Democratic Party of Austria (SPÖ) and the conservative Austrian People's Party (ÖVP). Their combined share of votes amounted to more than 80 per cent in all the national parliamentary elections held between 1945 and 1986. Since then, however, other parties (especially the right-wing Freedom Party of Austria, FPÖ, and, more recently, the liberal-left Green Party) have become increasingly influential. In January 2020, a federal government coalition brought together the ÖVP and the Greens to form a ruling bloc. Meanwhile, in the *Länder*, the two-party domination of politics has declined similarly, and though the ÖVP and the SPÖ still hold all governor positions (the ÖVP with six and the SPÖ with three), ruling coalitions in six of the nine *Länder* include various smaller parties.

2 HISTORY, STRUCTURES, AND INSTITUTIONS OF LOCAL GOVERNMENT

Autonomous municipalities in Austria were the fruit of the liberal-democratic revolution of 1848, and the following year witnessed the adoption of both a new constitution and with it a Provisional Law on Municipalities. In 1862, a further new law established several elements of local government which continue to exist today, including the differentiation between delegated and autonomous powers. Due to political disagreements, the Austrian Constitution of 1920⁷ included only general provisions on local government and any reforms were deferred until 1925.⁸

⁵ Constitution of 1920, article 1.

⁶ Constitution of 1920, article 2.

⁷ The Austrian Constitution in a broad sense consists of the main document, that is, the Federal Constitutional Act of 1920, a number of additional federal constitutional acts, single constitutional provisions in ordinary federal laws and certain international treaties with constitutional rank. 'The Constitution' in this chapter refers to the main document adopted in 1920. If other parts of constitutional law are referred to (for example, the 1948 Financial Constitutional Act), this is done explicitly.

⁸ Harald Eberhard, 'Austria. Municipalities as the "Third Tier" of Austrian Federalism', in Carlo Panara and Michael R Varney (eds) *Local Government in Europe: The 'Fourth Level' in the EU Multilayered System of Governance* (Routledge, 2015) 1–25.

Pending some consensual solution, the basic provisions of the 1862 law remained in force until 1962. It was only then—a full century later—that a comprehensive constitutional amendment took place. This amendment supplemented the local government principles of 1920 with a number of more concrete provisions, especially regarding the relations between the mayor and the municipal council. Subsequent amendments have addressed the regulation of municipal associations and the possibility of introducing instruments of direct democracy (1984); the constitutional entrenchment of Austria's two local government associations (1988); the authorisation of the *Länder* constitutions to opt for direct mayoral elections (1994); and authorisation of inter-municipal cooperation (2011).

Despite these substantial amendments, today there is still no provision for autonomous entities standing between Austria's *Länder* and the municipalities such that the latter can be regarded as synonymous with 'local governments'.⁹ The 79 district commissions (*Bezirkshauptmannschaften*) that stand above the municipalities are merely administrative units which perform a variety of functions for the federal and *Land* governments and are led by civil servants of the respective *Land* instead of by political bodies. The Constitution of 1920 in fact already had enabled second-tier local governments with elected authorities. This was done by pooling 'ordinary' municipalities and thus creating so-called 'regional' municipalities (*Gebietsgemeinden*).¹⁰ However, establishing these was dependent on a constitutional amendment—and lack of political consensus has made this impossible ever since. As a result, across the country 'ordinary' municipalities have remained the only tier of local government (as the government level closest to the people). There is no direct rule by the federal or *Länder* governments over any parts of Austrian territory, including even military areas.

The Austrian Constitution adheres in general to the principle of municipal uniformity, though the 15 cities constitute an important exception to this. In terms of article 116(3) of the Constitution, certain cities have their own statutes and perform both ordinary municipal functions and those exercised concerning other municipalities by the above-mentioned

⁹ Anna Gamper, 'The Third Tier in Austria: Legal Profiles and Trends of Local Government' (2008) 8(1) *Croatian Public Administration* 71–94.

¹⁰ Article 120.

district commissions.¹¹ A first group of cities enjoys this status on account of their historical rights. Most of these rights remain important today. For example, all *Länder* capitals except for Bregenz (Vorarlberg) have their own statute, though similar historical rights also apply to Rust (in Burgenland), despite its only having 2000 inhabitants. Explicit recognition by their respective *Land* grants this status to a second group of cities. Article 116(3) stipulates as conditions for this that the city must have a population of at least 20,000 inhabitants; that the interests of the *Land* are not impaired; and that there is a specific request from the municipality concerned. Only when these conditions are met can an ordinary *Land* law enact city statute. Other categories of local government are Austria's 186 cities (without the 'own city' statute) and 771 market towns. These are ordinary municipalities from a constitutional perspective and merely have their importance recognised with this designation through *Länder* legislation.

In line with the principle of municipal uniformity, there are few asymmetries from a legal perspective: the cities with own statutes performing district functions¹²; the status of the capital Vienna as the only city which is also a *Land*¹³; the obligation of municipalities with at least 10,000 inhabitants to undergo an audit by the Austrian Court of Auditors¹⁴; and tax revenue-sharing based on the population size of local governments.

A predictable corollary of the principle of municipal uniformity, which requires all to basically fulfil the same responsibilities, is that municipalities are struggling in terms of their administrative and financial capacities. For this reason, inter-municipal cooperation through agreements and the creation of joint institutions has become extremely important. With the rising demand for costly social services such as old-age homes, nurseries, and after-school child care, joint provision is becoming the norm.

With regard to inter-municipal cooperation in general and municipal associations (*Gemeindeverbände*) in particular, recent decades have shown the clear advantages of having partial and flexible regulation at both

¹¹ On their role in a comparative perspective, see Karl Kössler and Annika Kress, 'European Cities between Self-Government and Subordination: Their Role as Policy-Takers and Policy-Makers', in Ernst Hirsch Ballin et al. (eds) *European Yearbook of Constitutional Law 2020: The City in Constitutional Law* (TMC Asser Press, 2021) 273–302.

¹² Article 116(3).

¹³ Article 108.

¹⁴ Article 127a.

the federal and *Land* levels.¹⁵ Municipal associations (which grew from 285 in 1980 to 2500 in 2012) are distinct legal entities under public law and have been regulated since 1962 by article 116a of the Constitution.¹⁶ They are used in particular in areas which need considerable investment. Voluntary associations are local initiatives which are approved by the respective *Land* if certain constitutionally entrenched criteria are met. Mandatory associations may be established by either federal or *Land* legislation after consultation with the municipalities concerned, and are often concerned with specific issues such as waste management. In both cases, however, it is the associations that act *instead* of the participating municipalities, and the latter do not have a legal right to issue instructions which bind the former.

A constitutional amendment in 2011 brought in several major changes. First, associations can now be established to fulfil more than a single purpose, though the principles of economy, efficiency, and expediency and the status of the participating municipalities as self-governing entities¹⁷ exclude the possibility of transferring too many, or too essential, autonomous functions to an association.¹⁸ Secondly, the reform enabled the creation of associations across *Länder* boundaries. Thirdly, all institutions of associations that are to perform autonomous functions have to be established according to certain democratic principles: all participating municipalities must be represented in the assembly, and they (and not citizens directly) also elect the members of this assembly (usually mayors), the chairperson, and, if it exists, the executive board.

Apart from municipal associations under public law, there are also alternative inter-municipal institutions under private law (for example, registered societies or companies of municipalities). They are complemented by public law instruments without legal personality such as

¹⁵ Andreas Kiefer and Franz Schausberger, 'Republic of Austria', in Nico Steytler (ed) *Local Government and Metropolitan Regions in Federal Systems* (McGill-Queen's University Press, 2009) 38–74.

¹⁶ Peter Bußjäger, 'Neue Rechtsgrundlagen der Gemeindekooperation in Österreich', in Elisabeth Alber and Carolin Zwilling (eds) *Gemeinden im Europäischen Mehrebenensystem: Herausforderungen im 21. Jahrhundert* (Nomos, 2014) 43–60.

¹⁷ Constitution, article 116(1).

¹⁸ Harald Stolzlechner, 'Bundesverfassungsrechtliche Schranken der Bildung von Gemeindeverbänden', in Peter Bußjäger and Niklas Sonntag (eds) *Gemeindekooperationen* (Braumüller, 2012) 13–28.

administrative associations (*Verwaltungsgemeinschaften*). The latter are often established for the joint operation of municipal offices and for carrying out day-to-day tasks such as procurement or accounting. As for inter-municipal agreements, since the advent of the above reform of 2011, public law accords (regulated by article 116b of the Constitution) complement the alternative of private law contracts (regulated by article 116(2)).¹⁹ Overall, there is a clear trend towards inter-municipal cooperation regulated under private law, largely on account of its greater flexibility, though only public law contracts can regulate areas in which the municipality acts in an authoritative manner (through official orders, ordinances, and the like).²⁰ After the reforms of 2011, inter-municipal cooperation has also come to be regarded as a viable alternative to boundary changes through mergers of local governments.

While inter-municipal boundaries were often disputed and sometimes changed during the time of demarcation in the mid-nineteenth century, waves of mergers have occurred only since the 1950s.²¹ Such mergers—especially during the 1960s and 1970s in Lower Austria, Kärnten, and Burgenland as well as in 2014 in Styria—resulted in a reduction of municipalities from 4099 in 1951 to today’s 2095. There has been, however, no consistent trend in this regard, and the three decades from the mid-1970s onwards have seen a slight increase in the number of local governments.

Any alterations to municipal boundaries typically require (according to the respective municipal codes of *Länder*) only a *Land* government ordinance, if the municipalities concerned agree, and otherwise an ordinary law. Municipal codes differ slightly regarding the procedures for consulting local governments and including populations in the decision-making process.²² They also often stipulate specific criteria for merger approval by the *Land*, such as geographic location, the ability to carry out

¹⁹ See section 7.

²⁰ Markus Matschek, *Interkommunale Zusammenarbeit* (Österreichischer Gemeindebund, 2011) 56.

²¹ Niklas Sonntag, ‘Interkommunale Zusammenarbeit und Gemeindezusammenlegungen in Tirol’, in Elisabeth Alber, Alice Engl, and Günther Pallaver (eds) *Politika 2016: Südtiroler Jahrbuch für Politik* (Edition Raetia, 2016) 323–338.

²² Council of Europe Congress of Local and Regional Authorities, ‘Monitoring of the European Charter of Local Self-Government in Austria’, CG-FORUM(2020)01-03final (8 September 2020) paras 112–114.

functions, or public interests with regard to infrastructure, demography, and finances.

In addition, the Constitutional Court emphasised that while the equality principle under article 7 of the Constitution—which generally disallows legislation not based on reasonable grounds (*Sachlichkeitsgebot*)—was typically satisfied in the case of mergers between small municipalities, it was necessary for both economic and cultural interests to be considered.²³ For mergers to happen, it was necessary to have an evaluation of the precise circumstances of each individual case. Thus, in 1983, the Constitutional Court invalidated an amalgamation in Lower Austria that it saw as a violation of article 7, given that the distance between the remote municipalities concerned and the lack of infrastructural links would prevent any actual improvement to the local government structure.²⁴ However, the Court did uphold Styria's territorial reform in 2010–2015, which then reduced the number of municipalities from 542 to 287. For the Court, article 7 would be violated only if any proposed amalgamation were 'due to very particular circumstances foreseeably absolutely inappropriate' to improving a local government structure.²⁵

With the judgement, the Court reiterated an important principle from earlier rulings.²⁶ This was that while the Constitution does not allow the collective abolition of municipalities as a level of government, it does (with one notable exception) permit the abolition of individual municipalities.²⁷ Consequently, even though consultation proved to be not in favour of amalgamation in 15 per cent of the cases, Styria's reform was judged lawful since all criteria stemming from the municipal code and case law were met and local communities as well as elected officials had been duly consulted.

²³ VfSlg 8108/1977.

²⁴ VfSlg 9819/1983.

²⁵ VfSlg 19894/2014.

²⁶ VfSlg 6697/1972; 7830/1976; 9373/1982.

²⁷ Only cities with own statutes that had this statute before the constitutional reform of 1962 cannot be abolished. See Franz Fallend, Armin Mühlböck and Elisabeth Wolfgruber, 'Die österreichische Gemeinde: Fundament oder "Restgröße" im Mehrebenensystem von Kommunen, Ländern, Bund und Europäischer Union?' in Forum Politische Bildung (ed) *Regionalismus, Föderalismus, Supranationalismus* (Vienna and Innsbruck, 2001) 45–61.

3 CONSTITUTIONAL RECOGNITION OF LOCAL GOVERNMENT

With regard to the recognition of local government in national and subnational constitutional law, Austria is an outlier in two respects. First, while other, older federal systems are typically either silent on local government or mention it only as a subject for subnational regulation, article 116(1) of Austria's 1920 Constitution emphasised that '[t]he municipality is a territorial entity with a right to self-government and at the same time an administrative unit'. Even though it did not place them on an equal footing with the nine *Länder* (only the latter are expressly mentioned as constituent units of the federal state),²⁸ the strong recognition of local self-government is remarkable. It can be traced as far back as the above-mentioned 1849 law which proclaimed in article 1 that '[t]he foundation of the free state is the free municipality'.

Secondly, Austria differs significantly from most other federal countries in the extent and depth of constitutional recognition that it gives to local government. Articles 115–120 of the Constitution go beyond the mere recognition of local government in their specification and (over)regulation of many issues, including the organisation, powers, and intergovernmental relations of municipalities. The resulting uniformity has been reinforced on occasion by the Constitutional Court. In one instance, in a landmark ruling, the Court invalidated the introduction of direct mayoral elections by the *Land* Tyrol and based its judgement on a quite extensive interpretation of constitutional limits.²⁹ The argument was that the fundamental constitutional principle of representative democracy, from which there only few exceptions, established at least implicit restraints that Tyrol had failed to observe when exercising its legitimate power to regulate local government under article 115(2).

Importantly, this extensive regulation of local government in the national Constitution and in case law considerably diminishes the leeway of both *Länder* legislation and their constitutions, given that the latter are not allowed to 'affect' the federal constitution.³⁰ This provision is

²⁸ Article 2(2).

²⁹ VfSlg 13500/1993.

³⁰ Article 99.

construed by the Constitutional Court as one that prohibits contradictions to both explicit provisions and implicit principles.³¹ Within these limits, the *Länder* constitutions typically contain rules on issues such as the territorial structure of local government; local elections; municipal taxes; the representation of local interests in the *Land's* legislative procedures; and direct democracy in municipalities. Unless federal legislative competence is explicitly stipulated, Article 115(2) of the Constitution not only allows ordinary *Land* legislation (based on national and subnational constitutional regulations) to regulate local government but even requires it to do so.³²

The European Charter of Local Self-government (adopted under the auspices of the Council of Europe) provides another source for the recognition of municipal autonomy. In several other countries, the Charter has binding effects only under international law, but in Austria it has been incorporated into domestic law. However, the real impact is diminished by opt-outs (through reservations and declarations) concerning certain provisions. Moreover, the remaining provisions were considered by Parliament as not directly applicable without domestic law,³³ while the Constitutional Court regarded others as insufficiently precise to be judicially enforceable.³⁴

In contrast to the provisions of the Charter, the above constitutional guarantees of self-government are both binding and judicially enforceable. Municipalities may lodge appeals against decisions of supervisory authorities with the Administrative Court or Constitutional Court (being courts of last resort),³⁵ and in the latter court also invoke their constitutional right to self-government. They are, in addition, allowed to challenge directly any ordinances or laws of the federal and *Land* governments that unlawfully deny them the exercise of their autonomous functions, whether by assigning these as the delegated tasks of municipalities or by

³¹ VfSlg 5676/1968.

³² See, for instance, the federal competence to establish municipal associations for certain tasks (article 116a (2)) and to regulate the supervision of certain autonomous functions (119a (3)).

³³ Anna Gamper, 'Local Government in Austria', in Angel Manuel Moreno (ed) *Local Government in the Member States of the European Union: A Comparative Legal Perspective* (INAP, 2012) 23–44.

³⁴ VfSlg 13235/1992.

³⁵ Article 119a (9).

assigning them to federal or *Land* authorities.³⁶ Both local policing and spatial planning have been the objects of important court proceedings in recent years.³⁷

As for Austria's capital city, Vienna, since 1921 it has had the status of not only a municipality (as a city with its own statute) but also a *Land* in its own right. This has several implications: in terms of article 108 of the Constitution, city institutions are simultaneously *Land* institutions; the mayor is also *Land* governor (even if he or she would be referred to as mayor); and the mayor is elected by the municipal council (*Gemeinderat*), as are the other members of the city's executive board (*Stadtssenat*). In addition, Vienna receives funding (within Austria's system of revenue-sharing) both as *Land* and as municipality (though it is important to note that it has responsibilities to fulfil in both roles. Some further particularities are linked to Vienna's special status as capital city even if these are rather few compared to other capitals.³⁸ These include the rules which require the supreme federal authorities to have their seats there,³⁹ as is also required of the first chamber of Parliament, as provided by article 25(1) of the Constitution.

4 GOVERNANCE ROLE OF LOCAL GOVERNMENT

In assessing the governance role of municipalities, two points should be noted. First, Austria's local governments do not enjoy original powers of their own. The Constitution distributes powers between federal and *Länder* governments: administrative functions for municipalities have to be conferred upon them explicitly in a secondary distribution through federal or *Land* legislation. Secondly, article 118(1) of the Constitution distinguishes between autonomous and delegated powers. The distinction, which has characterised the local government system since the mid-nineteenth century, is important because it determines the degree to which municipal authorities are policymakers or mere agents of other levels of government.

³⁶ See section 4.

³⁷ VfSlg 20031/2015; 20318/2019.

³⁸ Karl Kössler, *The Status of Capital Cities*, Report for the Council of Europe Congress of Local and Regional Authorities, CG-FORUM (2021)01-04final (12 February 2021).

³⁹ Article 5(1).

With regard to autonomous functions, article 116(1) (which enshrines a municipality's 'right to self-government') is complemented by the entrenchment of a subsidiarity principle in article 118(2). According to this provision, autonomous powers comprise 'all matters that exclusively or preponderantly concern the local community' and which are 'suited to performance by the community within its local boundaries'. It also stipulates that '[l]egislation shall expressly specify matters of that kind', such that the list of autonomous functions in article 118(3) is neither exhaustive nor able in itself to serve as the sufficient legal basis. Federal and *Land* legislation must transfer all matters that fulfil the criteria of article 118(2). If legislation fails to do so, it remains in force and is binding for the municipalities until specifically invalidated by the Constitutional Court.⁴⁰

The key element that grants a municipality some leeway in the performance of its autonomous functions is article 118(4). It specifies that a municipality acts in this area 'on its own responsibility free from instructions and under exclusion of legal redress to administrative authorities outside the municipality'. This provision is all the more remarkable since Austria otherwise adheres to the principle of ministerial accountability within a hierarchy culminating in the federal or *Land* government member responsible. Despite their relative freedom from instructions, in regard to autonomous functions municipalities still remain subject to supervision and, as provided by article 118(4) of the Constitution, are required to perform them 'within the framework of the laws and ordinances of the federal and Land governments'.⁴¹ The latter reference reiterates (specifically for the municipalities) the general principle of legality according to which '[t]he entire public administration shall be based on law'.⁴²

The Constitutional Court interprets rather strictly the requirement that municipalities act only based on law from the higher government levels.⁴³ There are some exceptions, though. One of them concerns urgent police ordinances: a municipality may issue these under article

⁴⁰ VfSlg 6944/1972; 8719/1979.

⁴¹ See section 6.

⁴² Article 18(1).

⁴³ VfSlG 6944/1972; 8719/1979; 10953/1986; 11633/1988; 12555/1990; 13633/1993.

118(6) ‘on its own initiative ... for the prevention of imminent or elimination of existing nuisances interfering with local communal life’. In practice, though, actions based directly on the Constitution are of quite limited importance.⁴⁴

Another exception relates to economic activities: article 118(2) expressly defines them as part of autonomous functions. Article 116(2) characterises the municipality as ‘an independent economic entity’, one entitled ‘to possess assets of all kinds’, ‘to operate economic enterprises’, and able to engage in such activities without enabling legislation.⁴⁵ However, the fact that all economic activities are prescribed to remain ‘within the limits of the general federal and *Länder* laws’ has been interpreted as subjecting them at least to several constitutional restraints, such as the principles of expediency, efficiency, and economy, the criteria for autonomous functions, and fundamental rights. Many local governments in fact own real estate and run municipal companies or hold shares in them, both for providing services as well as for making a profit.

Alongside the two special cases of local police ordinances and economic activities, other autonomous functions include the election of municipal institutions; responsibility for local roads and other infrastructure; public transport; landscape protection; building permits; local land-use planning; water supply; waste disposal; pre-school and school education; social services; and sports and cultural activities. Overall, recent decades have seen a shift in focus away from the traditional functions of public administration (such as taxation, permits, and policing) to the provision of general services of public interest, which shall be offered at affordable prices and with comparable quality in all parts of the municipal territory.

Local government performance of autonomous functions has been defined since 1920 by the principle of the ‘abstract uniform municipality’. This means that (aside from statutory cities and the capital Vienna) all municipalities have symmetrical responsibilities, irrespective of asymmetries arising from territorial size, population size, or economic and administrative capacity. A minimum standard for the discharge of responsibilities has to be ensured in all cases, despite the fact that the criterion of ‘local concern’ (articulated with the subsidiarity principle in article 118(2)) can lead to significant differences among municipalities in the

⁴⁴ Eberhard (n 8) 12.

⁴⁵ VfSlg 17.557/2005.

extent and forms of the performance of these responsibilities. It is evident that the insistence on abstract uniformity can create significant challenges, especially for small and rural local governments.

When a municipality is unable or unwilling to perform the necessary functions alone, there are (besides the radical solution of a merger) several potential solutions. Upon request by a municipality, an ordinance of the respective *Land* government may transfer specified autonomous functions to a *Land* or federal authority, as provided by article 118(7) of the Constitution. This solution has proved—in practice—to have quite considerable relevance.⁴⁶ In addition, manifold varieties of inter-municipal cooperation (already described)⁴⁷ exist, and local governments are also allowed to form public–private partnerships (PPP). Even when tasks are outsourced, local governments usually maintain decision-making and controlling powers. Austria is often characterised as a country in which the regulatory framework is not particularly amenable to cooperation with private actors and where scepticism towards privatisation is widespread (particularly so among local councillors).⁴⁸ Yet—mostly due to financial pressures—recent years have witnessed a trend towards commissioning private companies to perform some public services. Typical areas of these private–public partnerships (PPPs) are public transport,⁴⁹ housing,⁵⁰ and, increasingly (with the notable exception of Vienna), even the once clearly public tasks of the provision of water and disposal of wastewater.⁵¹

⁴⁶ Bußjäger (n 16) 45.

⁴⁷ See section 2.

⁴⁸ Eran Razin and Anna Hazan, ‘Attitudes of European Local Councillors towards Local Governance Reforms: A North–South Divide?’ (2014) 40(2) *Local Government Studies* 264–291.

⁴⁹ Alexandra Schantl, ‘Organization of Public Transport in Austria Focusing on Functional Urban Regions (City Regions)’, in Alexandra Schantl, Dalilah Pichler and Thomas Prorok (eds) *Local Government in Austria Responses to Urban-Rural Challenges* (2021) 11–15, <https://zenodo.org/record/5711026#.Yi7-TjXSI2x>.

⁵⁰ Lena Rücker and Alexandra Schantl, ‘Social Housing: The Case of Vienna’, in Alexandra Schantl, Dalilah Pichler and Thomas Prorok (eds) *Local Government in Austria Responses to Urban-Rural Challenges* (2021) 21–27, <https://zenodo.org/record/5711026#.Yi7-TjXSI2x>.

⁵¹ Lena Rücker, ‘Municipal Water and Wastewater Management in Austria’, in Alexandra Schantl, Dalilah Pichler, and Thomas Prorok (eds) *Local Government in Austria Responses to Urban-Rural Challenges* (2021) 16–20, <https://zenodo.org/record/5711026#.Yi7-TjXSI2x>.

As mentioned previously, the autonomous functions of municipalities are complemented by those delegated to them through federal or *Land* laws, as provided by article 119(1) of the Constitution. Since the Constitution neither enumerates delegated functions nor entrenches them in a general clause, national and subnational legislatures are left entirely free in this regard. In practice, though, federal and *Land* laws on nearly all subject matter are heavily reliant on the involvement of local governments for at least some tasks.

While we have observed that some leeway exists with regard to autonomous functions, mayors have less freedom of manoeuvre. As mayors are in charge of delegated functions as federal or *Land* authorities, they are bound to instructions from these superordinate government levels⁵² and may even be removed from office on grounds of negligence.⁵³ An instruction from a higher level of government may be disregarded by a mayor only for the reasons exhaustively listed in article 20(1), namely if it ‘was given by an authority not competent in the matter or compliance would infringe the criminal code’. However, the Constitution allows the mayor to assign specified categories of delegated tasks to members of the municipal board or to other local authorities. They are then bound to follow mayoral instructions, as provided by article 119(3). Some of the most typical of these delegated functions in Austrian municipalities are the organisation of federal and *Land* elections, as well as registration tasks such as the listing of citizens, marriages, births, and deaths. For other government levels, mayors also play a key role on the ground as officials closest to citizens—notably, in times of emergencies regarding civil protection in the event of natural disasters or urgent public health measures.

As for the institutions performing the autonomous and delegated functions of municipalities, article 117 of the Constitution provides a uniform minimum standard that the respective *Land* legislation must observe. Mandatory local authorities are the municipal council, municipal (executive) board (city council, city senate), and the mayor.

The municipal council falls short—given the absence of legislative powers—of being a parliament, but it is a generally representative

⁵² Article 119(2).

⁵³ Article 119(4).

body, does exercise a range of autonomous functions, and has extensive decision-making powers over (for instance) budgetary issues. It is usually granted residual competence for all matters not expressly assigned to other institutions.⁵⁴ Any other institutions which perform autonomous functions remain accountable to the municipal council.⁵⁵

The council is elected on the basis of proportional representation by equal, direct, personal and secret suffrage by all persons domiciled in the municipality, as provided by article 117(2)) of the Constitution. Voting rights are prescribed in this provision in great detail and (following the principle of homogeneous electoral systems)⁵⁶ in close alignment with the rules for the federal parliament. However, a number of *Länder* have made use of the space for some deviation, and, in 2004, lowered the minimum voting age for municipal elections from 18 to 16 years old. A few years later, this change was adopted in national elections. In addition to the Austrian Constitution's detailed regulation of local elections, it includes provisions regarding quora and majorities for decisions of the municipal council⁵⁷ as well as the (non-)public nature of its meetings.⁵⁸

Given the lesser role of municipal boards, the Constitution has few provisions about them. These do not go much beyond the rules above regarding the performance of certain delegated functions by municipal boards on behalf of a mayor and rules stipulating that they are accountable to municipal councils whenever they perform autonomous functions. Moreover, there is a provision that electoral parties have a right to be represented on such boards in accordance with their strength on municipal councils, as provided by article 117(5).

The mayor plays a central role as (usually) the chairperson of both the municipal council and the municipal board. He or she represents the municipality in its dealings with external actors, especially regarding economic activities, and manages the budget and local property issues. While the mayor is certainly the key player concerning delegated functions, he or she remains in charge of autonomous functions together with the municipal board only up to certain financial limits, and the municipal

⁵⁴ Gamper (n 33), 33.

⁵⁵ Article 118(5).

⁵⁶ VfSlG 17264/2004.

⁵⁷ Article 117(3).

⁵⁸ Article 117(4).

council remains the ultimate decision-making body. The tradition was that the municipal council elected the mayor,⁵⁹ but this was challenged by the introduction of direct mayoral elections in the Tyrol *Land* in 1991. The Constitutional Court held that this innovation violated the Constitution since the latter places the municipal council at the centre of local autonomy, not least through the above-mentioned accountability to it of all other institutions, as provided by article 118(5).⁶⁰ Any deviation from the quasi-parliamentary system at the local level would require explicit constitutional authorisation. Such authorisation subsequently appeared when article 117(6) was amended in 1994 to allow the *Länder* constitutions to introduce direct election of the mayor by those eligible to vote in municipal council elections. All the *Länder* (with the exceptions of Lower Austria, Styria, and Vienna) have made use of this possibility, though sometimes excluding the statutory cities.

Unlike the three institutions mentioned above, the municipal office is not a local authority with decision-making powers. Instead, it serves merely to provide administrative assistance to all functions, both autonomous and delegated. This supporting role is clearly circumscribed in *Länder* legislation and is rooted in article 117(7) of the Constitution, according to which municipal offices take care of all the ‘business of the municipalities’.

Beyond the constitutional minimum standard requiring the above-mentioned local authorities, *Länder* laws may establish additional bodies or empower the municipalities to do so. Typical examples of additional institutions are the chief magistrate and the municipal treasurer. In addition, Austria’s two largest cities feature elected representatives for their urban districts. While this innovation was introduced in Graz in 1993, direct elections in Vienna date back to the mid-nineteenth century. When Vienna extended the right to vote for district assemblies to non-European Union (EU) citizens with at least five years of permanent residence in the city, the Constitutional Court ruled this reform as unconstitutional.⁶¹ The ‘people’ in article 1 of the Constitution on Austria’s democratic character was read as ‘citizens’, such that elections to all general representative bodies (even below parliamentary level) would have to follow

⁵⁹ Article 117(6).

⁶⁰ VfSlg 13500/1993.

⁶¹ VfSlg 17264/2004.

uniform constitutional principles. This reasoning has been criticised since then as unduly restrictive of the constitutional autonomy of the *Länder* and consequently of federalism as a whole.⁶²

While article 1 has been interpreted as enshrining a general preference for representative democracy with only few exceptions,⁶³ these exceptions are also in place at the local level. Article 117(8) expressly stipulates that the *Länder* may provide ‘for the direct participation and assistance of those entitled to vote in the municipal council election’ with regard to autonomous functions. In contrast to the direct mayoral elections, this provision does not require entrenchment in the *Länder* constitutions but only in ordinary legislation. The range of possible instruments is thereby not limited to those anticipated at the federal and *Länder* levels (that is, referendum, popular initiative, and popular consultation), but also includes other forms of participation.⁶⁴

Of these instruments, the referendum (*Volksabstimmung*) is the most powerful, and is often used to veto resolutions made by municipal councils (though these typically have the power to decide whether to hold a referendum). The popular initiative (*Volksbegehren*) is available in all *Länder*, but in some cases is restricted to statutory cities. In most cases, a proposal put forward with enough votes must be deliberated upon, but it does not have to be implemented. The popular consultation (*Volksbefragung*) is similarly not binding. It is the oldest and used brought into action especially around planning decisions and large municipal projects. The above instruments cannot be brought into play with regard to decisions such as taxation, legal acts concerning individuals, municipal staff, and fundamental rights. Other factors also serve to limit the impact of participatory processes: the often very high thresholds for initiating them; their politicisation through targeted use by political parties for agenda-setting; and the prevalence of their status as merely non-binding tools.⁶⁵ This status in particular seems to contrast with the actual attitudes of

⁶² Anna Gamper, ‘Die Rolle der Bauprinzipien in der Judikatur des Österreichischen Verfassungsgerichtshofes’ (2007) 55(1) *Jahrbuch des Öffentlichen Rechts* 537–567.

⁶³ VfSlg 16241/2001.

⁶⁴ Peter Oberndorfer and Katharina Pabel, ‘Einrichtungen der direkten Demokratie in den Gemeinden’, in Katharina Pabel (ed) *Das österreichische Gemeinderecht* (2015) 1–57.

⁶⁵ Werner Pleschberger, ‘Kommunale direkte Demokratie in Österreich – Strukturelle und prozedurale Probleme und Reformvorschläge’, in Theo Öhlinger and Klaus Poier (eds) *Direkte Demokratie und Parlamentarismus* (Böhlau Verlag, 2015) 359–396.

Austrian local councillors, who (unlike their counterparts in other European countries) appear to be more open to active consultation with the people as well as to forms of co-decision-making.⁶⁶

With regard to participatory processes, there is considerable local variation between the *Länder*. Vorarlberg has a particularly strong tradition of popular participation. In 2013, it entrenched participatory democracy in article 1(4) of the *Land* constitution and set up a dedicated *Land* Office for Voluntary Work and Participation. Vorarlberg also pioneered the establishment of citizen councils (*Bürgerräte*) for the deliberation of policy options.⁶⁷ Meanwhile, at the other end of Austria, Vienna launched an Open Data Portal in 2001. This was integrated into an Open Government Implementation Model with four stages: data transparency through public discussion of datasets; participation through the availability of an online platform; collaboration through co-production processes; and, finally, commitment to the comprehensive involvement of stakeholders.⁶⁸

5 FINANCING LOCAL GOVERNMENT

The Constitution of 1920 deferred the question of intergovernmental financial relations due to a lack of consensus, but referred in its article 13 to the future adoption of a special Financial Constitutional Act (*Finanz-Verfassungsgesetz*). Indeed, this act was not passed until 1948. It stipulates that municipalities have to cover all expenses resulting from the performance of their functions, both autonomous and delegated, unless specific federal or *Land* legislation provides otherwise. Any such legislation must, however, respect the principle of fiscal equality which insists on the efficiency of each government level and of the distribution of functions.

The Financial Constitutional Act identifies in section 6 five broad categories of taxation: exclusive levies of each of the three levels of

⁶⁶ Razin and Hazan (n 48).

⁶⁷ Kriemhild Büchel Kapeller, 'People's Participation in Vorarlberg: Bürgerräte and Gemeindeentwicklungsprojekte Götzis/Langenegg', in Alexandra Schantl, Dalilah Pichler, and Thomas Prorok (eds) *Local Government in Austria Responses to Urban-Rural Challenges* (Eurac Research, 2021) 93–99, <https://zenodo.org/record/5711026#.Yi7-TjXSI2x>.

⁶⁸ Bernhard Krabina, 'Open Government Initiative Vienna' in Alexandra Schantl, Dalilah Pichler, and Thomas Prorok (eds) *Local Government in Austria Responses to Urban-Rural Challenges* (Eurac Research, 2021) 89–92, <https://zenodo.org/record/5711026#.Yi7-TjXSI2x>.

government; taxes shared between the federal, *Länder*, and municipal governments; and those shared between the *Länder* and the municipalities. Ordinary federal and *Land* legislation may each regulate shared taxes, identify exclusive local taxes, and authorise municipal councils to raise certain taxes themselves. *Land* legislation may even oblige the councils to raise taxes when their financial situation makes it necessary to do so. Another key provision in the Financial Constitutional Act is to be found in section 3, which gives (ordinary) federal legislation the extraordinary power to regulate the distribution of taxation rights and revenue shares to all government levels.

On this constitutional basis, the Financial Equalisation Act (*Finanzausgleichsgesetz*) determines for each tax the distribution of the revenue portions between the national government, the *Länder*, and the municipalities. It is re-negotiated every three to eight years. The legislation does not require consent from the *Länder*, the municipalities, or the second parliamentary chamber (as the presumed representative of the *Länder*), though its enactment is preceded by three-level talks that involve local government associations. In practice, however, both the *Länder* and municipalities ‘really have no legal alternative but to accept the determination of fiscal relations by the federal government’.⁶⁹ Moreover, the Constitutional Court traditionally acts with judicial restraint in this regard and presumes that all parties have been treated fairly if a so-called pact had been reached in the negotiations held prior to enactment.⁷⁰ The power to control this distribution of revenue gives the federal government enormous strength, as this system constitutes 84 per cent of the total revenue raised in Austria. It includes all the most lucrative taxes, that is, value-added tax as well as personal and corporate income tax.

As for the revenue sources of local governments, federal tax revenue-sharing (as described above) accounts for 31 per cent of their total revenue. Other federal government transfers make up 2 per cent, with a further 10 per cent coming through transfers from the *Länder*, making a total of 43 per cent for revenue from other government levels. Revenues accruing from their own taxes and fees amount to 38 per cent, with a

⁶⁹ Peter Bußjäger, ‘Reforms on Fiscal Federalism in Austria’, in Gerhard Robbers (ed) *Reforming Federalism—Foreign Experiences for a Reform in Germany* (Peter Lang, 2005) 59–67.

⁷⁰ For example, VfSlG 12505/1990; 16849/2003.

further 19 per cent coming from other sources (notably from economic activities).⁷¹

Among the self-generated revenues, fees for municipal services (such as water, sewage, and waste management, parking, or pre-school education) are of less importance. These account for just 10 per cent of the total municipal income, while taxes make up 28 per cent (the municipality tax—12 per cent—and the real estate tax—3 per cent—are the most significant forms). The municipality tax was introduced in 1993 by federal legislation. It is a business tax which is payable by employers and is calculated on the gross salaries of their employees at a rate of 3 per cent set by the federal government. The rate of the real estate tax payable by individuals owning property is fixed by the municipalities, but only within the limits set by a legal tax cap. However, the amounts currently levied do not reflect the true current value of property because the assessment base has not been adjusted since the last reform of 1973. Overall, local fiscal autonomy has suffered from the abolition of the beverage tax in 2001⁷² and from the general lack of discretion regarding existing taxes.⁷³

Borrowing is another source of own revenue, and here a distinction between long-term and short-term loans should be observed. Short-term loans are handled rather strictly: they may not exceed certain limits, and usually have to be repaid within the same financial year. Long-term loans are allowed only for capital investment spending, while current operational expenditures must be covered by taxes and fees. Local borrowing is subject to certain restrictions that differ from one *Land* to another. In Burgenland and Carinthia, all such loans must be approved by the *Land* government as the supervisory authority, but in other *Länder* this restriction applies only when a specific financial threshold is exceeded.⁷⁴

Revenues from other government levels come for the most part (31 per cent of a total of 43 per cent) from the federal tax revenue-sharing system described above. The portion of taxes which accrues to the *Länder* and

⁷¹ Karoline Mitterer and Marion Seisenbacher, *Gemeindefinanzdaten 2021—Entwicklungen 2009 bis 2022* (Österreichischer Städtebund, 2021) 13.

⁷² René Geißler and Falk Ebinger, 'Austria', in René Geißler, Gerhard Hammerschmid and Christian Raffer (eds) *Local Public Finance in Europe* (Bertelsmann Stiftung, 2019) 10.

⁷³ Council of Europe Congress of Local and Regional Authorities, 'Monitoring of the European Charter of Local Self-Government in Austria', (2020) at para 169.

⁷⁴ *Ibid.*, para 199.

municipalities within this system is calculated according to two formulae, both of which mainly rely on the number of inhabitants. This means that larger municipalities (especially those with 10,000 inhabitants or more) receive greater revenue through the tiered population-size scheme, which is supposed to compensate them for the provision of infrastructure and services to the benefit of smaller surrounding municipalities. In addition, since larger local governments usually have higher employment, they benefit disproportionately from the municipality tax.

It may seem, then, that the smaller municipalities are short-changed. However, a look at the system of additional transfers from the federal and *Land* governments changes this picture. The ‘real grants’ that complement federal tax revenue-sharing come mostly from the *Länder* (five times more than from the federal government) and have the effect of rebalancing financial capacity per capita.⁷⁵ On average, the latter capacity increases by 42 per cent for municipalities of up to 500 inhabitants and by 13 per cent for those with up to 1,000 inhabitants, while it decreases for all other classes of larger local governments.⁷⁶ Similarly, municipalities with low financial capacity receive not only the regular grants available to all (for the support of local investments, especially in infrastructure, and local public services such as child care), but also a variety of non-conditional subsidies to bolster their resources. How much local governments can spend for current expenses and investments varies considerably (per capita investments, for instance, are three times higher in Vorarlberg than in Burgenland and Kärnten).⁷⁷ At the same time, transfers also exist from the municipalities to their *Land*, as the latter determines mandatory local levies, above all those to co-finance social services and the hospitals run by the *Land*. In fact, on average, Austrian municipalities transfer more funds to their *Land* than they receive.⁷⁸

As for local government expenditure, most of it goes towards the provision of services such as water and waste management or the maintenance of sports and cultural facilities (30 per cent); health care (8 per cent) and social services (13 per cent); and education (19 per cent). Spending

⁷⁵ Geißler and Ebinger (n 72) 11.

⁷⁶ For an excellent overview of the financial capacity of larger and smaller local government before and after revenue-sharing, see Mitterer and Seisenbacher (n 71) 9.

⁷⁷ *Ibid.*, 22.

⁷⁸ Geißler and Ebinger (n 72) 11.

over the last decade has been most dynamic in the latter three areas, having increased by about 50 per cent.⁷⁹ All spending has to follow the budget; deviations are admissible only if based on a revised budget submitted to and approved by the municipal council. Local governments have an obligation to report their budgets to their respective *Länder*, though these have no power of approval, save with respect to certain loans, as mentioned above. The *Länder* delivers these reports to the National Statistics Office for the aggregation of data and a quality check. To enhance transparency, a remarkable 56 per cent of Austria's local governments agreed to have their budget data published on the website *Open Spending Austria*, though a number of smaller rural municipalities and those in the southern and western parts of the country have been reluctant to participate in this initiative.⁸⁰

Two intergovernmental agreements concluded on the basis of article 15a of the Constitution are significant with regard to local spending and its relation to revenue. While this provision was initially understood as authorising national–subnational accords, a specific constitutional law in 1998 empowered Austria's two local government associations to be parties to these agreements. The one regarding a consultation mechanism foresees that national or subnational governments must provide information about the administrative and financial impact on other government levels of planned laws or by-laws. A party to the agreement may then refer the matter to a tripartite consultation committee. In the absence of reaching consensus in this body, costs must be covered by the party considering the act. Overall, this mechanism has strengthened intergovernmental talks and increased awareness of the cost issue. At the same time, certain procedural problems remain, notably the problems of inaccurate assessments of the financial impact and of granting insufficient time for review of what are sometimes very comprehensive legislative acts.⁸¹ Moreover, while the consultation mechanism has led to either the adaptation or abandonment of some initiatives, it has not entirely solved the problem of un(der)funded mandates; as such, devolving functions to

⁷⁹ Mitterer and Seisenbacher (n 71) 19.

⁸⁰ Krabina (n 68).

⁸¹ Kiefer and Schausberger (n 15) 58.

municipalities without adequate funding remains a concern (especially in the case of health care and social services).⁸²

The second three-level accord established the Austrian Stability Pact. In line with EU criteria, this requires all government levels to achieve differentiated budget goals, either by limiting their deficit or even closing with a surplus. Although a *Land* is not formally obliged to bail out failing municipalities, the possibility of bankruptcy seems more a matter of theory than practice: the last municipal bankruptcy dates back to the 1930s.⁸³ In recent years, local governments have been faced with two significant budgetary challenges. The first is the doubling of the municipal debt since the global financial crisis of 2007–2008, and the second the negative impact of the Covid-19 pandemic (which is still difficult to assess). The Austrian Stability Pact of 2012 attempted to respond to the first crisis by regulating intergovernmental budgetary coordination and putting in place debt brakes in line with EU commitments. The pact is widely regarded as another step towards centralised fiscal policy.⁸⁴

6 SUPERVISING LOCAL GOVERNMENT

When it comes to the supervision of local governments, it is again crucial to differentiate between their autonomous and delegated functions. With regard to the performance of autonomous tasks, the lack of explicit direction is compensated for by the granting of powers of oversight. Importantly, such supervision may only concern the question of lawfulness, and particularly whether a municipality has gone beyond the scope of its autonomous functions.⁸⁵ The supervisory authorities may rely on several constitutionally defined instruments, as provided by articles 119a (4–8). These instruments range from the right to information to much broader and more intrusive measures such as the reservation to approve certain local ordinances; the annulment of unlawful ordinances; execution by substitution if absolutely necessary; and even the dissolution of the municipal council, when this measure is envisaged as a last resort in

⁸² Sanja Korac, ‘Building Capacities or Resting on Laurels’, in Ileana Steccolini, Martin Jones, and Iris Saliterer (eds) *Governmental Financial Resilience* (Emerald, 2017) 17–34.

⁸³ Geißler and Ebinger (n 72) 15.

⁸⁴ *Ibid.*, 9.

⁸⁵ Article 119a(1).

the federal and *Land* legislation on supervision. These powers of supervision are exercised in the first instance by the district commissions and, at second instance, either by the *Land* governor for the federal government or by the subnational government for the respective *Land*.

In addition to such legal supervision, the respective *Land* is also authorised to carry out financial supervision with a view to economy, efficiency, and expediency.⁸⁶ The mayor has to report within three months on the measures taken to comply with the non-public recommendations. Moreover, *ex post* audits with public reports are carried out by two sets of independent bodies. First, there are courts of auditors in all *Länder*, but only in several *Länder* do these check municipal budgets. Secondly, financial controls are performed by the Austrian Court of Auditors, but only on local governments with at least 10,000 inhabitants (before 2011 at least 20,000) plus two additional municipalities per year upon a substantiated request by the respective *Land*, as provided by Article 127a.

In practice, supervision is interpreted quite differently from *Land* to *Land*, such that, for example, the hiring of staff or granting of loans is closely scrutinised in some while almost rubber-stamped in others.⁸⁷ Although the actual degree of supervision varies, excessive control is not generally considered as one of the main problems of local governments, especially when contrasted with the much more critical offloading of tasks by other government levels and the problem of scarce financial resources.⁸⁸

7 INTERGOVERNMENTAL RELATIONS

To function well, Austria's system of cooperative federalism, with its closely intertwined government levels, has a clear need for efficient inter-governmental relations. Local governments are not formally involved in the federal legislative process, and a proposal at Austria's constitutional convention (2003–2005) to give a certain number of municipalities the right to introduce bills failed. The country's two local government associations do, however, play at least a consultative role in the legislative process.

⁸⁶ Article 119a(2).

⁸⁷ See also section 5.

⁸⁸ Kiefer and Schausberger (n 15) 55–56.

The Austrian Association of Cities and Towns (*Österreichischer Städtebund*) was founded in 1915 and has 257 members, while the Austrian Association of (formerly Rural) Municipalities (*Österreichischer [Land]Gemeindebund*) has been active since 1947 and currently represents 2084 of the country's 2095 local governments. Although the former is typically associated with the Social Democrats and the latter with the People's Party, the importance of this party divide is decreasing. While an urban–rural divide is clear from the (former) names of both organisations, there is no strict separation, as double membership is possible. Both associations are private legal entities acting on a voluntary basis and funded exclusively by member contributions, even though, since 1988, they have been acknowledged in article 115(3) of the Constitution as representative institutions. Their real influence is due not to their administrative capacity (both associations are relatively short-staffed) but rather to the fact of the united front they present in advocating for local interests, as well as in the case of the Association of Cities and Towns to the fact that it is led by the powerful figure of the mayor of Vienna.

The role of both organisations received a boost during the late 1980s with their constitutional entrenchment and enlistment by the national government as allies in the process of Austria's accession to the EU.⁸⁹ Both the subsequent need to comply with EU requirements concerning public deficits and the pressure from the municipalities to change unsatisfactory financial relations later gave rise to the consultation mechanism and the Stability Pact mentioned above. Beyond finances, the local government associations are regularly consulted regarding draft federal and *Länder* legislation. Since the 1950s, Austria's emerging tradition of consensual politics had led to the practice of informal consultation.⁹⁰

A particularly important area for intergovernmental relations is spatial planning. This involves all government levels, with municipalities responsible for local development plans and permits.⁹¹ The Austrian Spatial Planning Conference (*Österreichische Raumordnungskonferenz*) thus brings together federal government members, the *Länder* governors,

⁸⁹ Fallend, Mühlböck and Wolfgruber (n 27) 57.

⁹⁰ Kiefer and Schausberger (n 15) 57.

⁹¹ Nikola Hochholdinger, 'Austrian Conference of Spatial Planning: ÖROK' in Alexandra Schantl, Dalilah Pichler, and Thomas Prorok (eds) *Local Government in Austria Responses to Urban-Rural Challenges* (2021) 80–84, <https://zenodo.org/record/5711026#.Yi7-TjXSI2x>.

and the presidents of the two local government associations, and decides on the basis of unanimity. The forum adopts guidelines which—though not legally binding—become a key political reference point.

A remarkable development in intergovernmental relations between municipalities and *Länder* took place in 2011 when it became possible for them to conclude public law agreements as long as the respective *Land* legislation foresees them. With this innovation, what had been an instrument traditionally limited under article 15a of the Constitution to national–subnational relations was now opened to subnational–local relations. The uptake of this instrument has been complicated, however, by the fact that it is entirely at the discretion of the *Länder* legislatures whether they authorise their municipalities to conclude such agreements. In fact, they began to do so only several years after the constitutional amendment (for example, Styria and Vorarlberg).

8 POLITICAL CULTURE OF LOCAL GOVERNANCE

Austria's local party system is well-known for being dominated by the national parties. A recent study does not contradict this, but makes the case for a more nuanced view by pointing to considerable variation in regard to this dominance depending on the organisational density of the national parties in different parts of the country. This density is lower in rural areas, thus leaving more space for local (that is, non-partisan) proportional representation (PR) lists in elections.⁹² The diffusion of such lists varies across the country, being particularly common in the most western *Länder* of Tyrol and Vorarlberg.

Local elections are usually held separately from the *Land* and national elections, and are also scheduled at different dates in each *Land*. Voter turnout is generally lower than in federal elections, where participation since 1990 has ranged between 74 and 84 per cent. The 2017 elections of municipal councils in Burgenland saw an exceptionally high turnout of 81 per cent, but voter participation has been generally about 65 per cent in most of the *Länder*, even dropping to 53 per cent in Vorarlberg.

With regard to gender representation, data show that local politics remains a male-dominated domain. While the number of female mayors

⁹² Laurenz Ennser-Jedenastik and Martin Ejnar Hansen, 'The Contingent Nature of Local Party System Nationalisation: The Case of Austria 1985–2009' (2013) 39(6) *Local Government Studies* 777–791.

increased quite considerably from 45 in 2003 to 160 in 2017, the latter figure still represents less than 8 per cent of all Austrian mayors.⁹³

Recruitment for municipal office is intertwined with political activity at other government levels, which is due in large part to the dominance of national parties in local politics. Members of the federal and *Land* parliaments often have a background in local politics and tend to retain their offices as local councillors or mayors. Even so, the experience of inter-governmental relations shows that these dual mandates have done little in actuality to safeguard the interests of municipalities vis-à-vis the other government levels.⁹⁴

9 COVID-19'S IMPACT ON THE ROLE OF LOCAL GOVERNMENT

In general, Austrian municipalities have played a greater role in regard to the socioeconomic impact of the Covid-19 pandemic than in the direct health emergency response.⁹⁵ This is largely because the public health response was the prerogative of the district health departments: these were responsible for quarantining infected people and the closure of businesses. While municipal authorities were involved in directing certain public health measures (by providing information, or co-ordinating the work of local stakeholders such as volunteers), the socioeconomic impact of the pandemic was their main concern. The municipalities, as the main providers of basic services, had to adapt to radically changed circumstances, particularly so with regard to public transportation and child care, and enable a significant move to digital communication. In addition, they often came proactively to the rescue of local companies by granting them financial assistance or by deferring the payment of fees in view of companies' considerable income losses.

The pandemic produced major budgetary challenges. New pandemic-related tasks combined with the lack of cost-cutting margins in relation to basic services resulted in increased spending, while revenue decreased

⁹³ Genderatlas, 'Frauen als Ortschefinnen immer noch unterrepräsentiert', <https://genderatlas.at/articles/buergermeisterinnen.html> (accessed 10 June 2021).

⁹⁴ Fallend, Mühlböck and Wolfgruber (n 27) 56.

⁹⁵ Karl Kössler, 'Managing the Coronavirus Pandemic in Austria: From National Unity to a De Facto Unitary State?', in Nico Steytler (ed) *Comparative Federalism and Covid-19: Combatting the Pandemic* (Routledge, 2021) 70–87.

significantly with the loss of shared taxes, especially reduced income tax receipts, and of certain exclusive local taxes.⁹⁶ The fact of economic downturn and rising unemployment seriously affected the income arising from the municipality tax, which alone was expected to shrink by 20 per cent to 40 per cent. In addition, incoming revenue deteriorated due to the decline in certain fee payments (such as those for child care) and—of great importance to many Austrian municipalities—the reduction in tourist taxes. While municipalities have been promised EUR 1 billion for local investments, it is feared that this sum will only help make up the EUR 1.1 billion of revenue losses accruing from a tax reform intended to relaunch the economy.⁹⁷ In these circumstances, it is hardly surprising that Covid-19 has revived discussion of, first, overdue reforms to the real estate tax as a relatively crisis-proof income source and, secondly, the extremely complex Financial Equalisation Act.

While it remains to be seen whether these reforms will occur, the pandemic did not essentially change the mechanisms of intergovernmental relations, and the existing structures have remained firmly in place. Indeed, when new specialised mechanisms were introduced, local governments were not granted a prominent role in them. Take, for example, the Corona Commission, created in September 2020. Its task was to prepare a weekly assessment of the Covid-19 risk and to issue appropriate recommendations. The Commission was made up of five experts nominated by the national government; five civil servants selected from national ministries; and one representative from each of the nine *Länder*—but no representative of the municipalities. Here we can see how intergovernmental relations concerning the pandemic response contrast with the three-level mechanisms previously discussed, particularly mechanisms to do with financial relations and spatial planning.

⁹⁶ For an illustration of how Covid-19 has affected the various components of municipal income, see Peter Biwald and Karoline Mitterer, ‘Städte und Gemeinden in der Corona-Krise—Ist ein Rettungspaket notwendig?’, www.kdz.eu/de/aktuelles/blog/staedte-und-gemeinden-der-corona-krise-ist-ein-rettungspaket-notwendig (accessed 10 June 2021).

⁹⁷ Karoline Mitterer, ‘Corona-Krise trifft Gemeinden auch 2021 stark: Weitere Unterstützungsmaßnahmen sind erforderlich’, www.kdz.eu/de/presse/corona-krise-trifft-gemeinden-auch-2021-stark (accessed 10 June 2021).

10 EMERGING ISSUES AND TRENDS

This chapter has examined the status and role played by municipalities in Austria's system of federal and *Länder* governments. It seems fair to conclude that their status and role is that of the junior player in a system of 'two and a half partners'. In this regard, Austrian local governments resemble those of many other federal countries.⁹⁸ Three-level federalism remains limited for the most part to financial relations, as we have seen with the consultation mechanism, the Stability Pact and the negotiations around the Financial Equalization Act. Moreover, as this chapter has pointed out, even in the area of finances, municipalities are not entirely on an equal footing with the *Länder* governments. It therefore comes as no surprise that both local government associations continue to push for a stronger constitutional voice. They did this at Austria's constitutional convention (2003–2005) where they proposed—to no avail—that there should be municipal representation alongside the *Länder* in the second chamber of the federal parliament. They continue to argue today for constitutional amendments that would give them a say in intergovernmental relations with regard to all matters that concern them.⁹⁹ As for the role of municipalities vis-à-vis subnational governments, the scenario known from other countries, of an 'hourglass federalism'¹⁰⁰—in which subnational governments are squeezed in the middle between the national and local levels—does not apply in Austria. The country's system of local government has only nine municipalities with more than 50,000 inhabitants, as a result of which subnational governments do not feel threatened by large and influential metropolitan cities. So, for instance, the city government of Vienna is not in a contest for power with a *Land* because it is, through the above-mentioned double role, itself a *Land* government. Similarly, Graz, as the second-largest Austrian city, accounts only for 23 per cent of the population of Styria. This is a far cry from the demographic, economic, and political weight that (to take a Canadian example) the city of Winnipeg has within Manitoba, with its 55 per cent of the provincial population.

⁹⁸ Francesco Palermo and Karl Kössler, *Comparative Federalism: Constitutional Arrangements and Case Law* (Hart Publishing, 2017) 315.

⁹⁹ Council of Europe Congress of Local and Regional Authorities (n 74) at paras 110–111.

¹⁰⁰ Thomas Courchene, 'Hourglass Federalism', (2004) *Policy Options* 12.

When it comes to the role of Austria's municipalities in the international arena, there are differences between the smaller rural municipalities and the larger urban local governments. Unsurprisingly, it is the latter that are more active in international associations: Vienna is, for instance, a key member of the United Cities and Local Governments (UCLG). This gives it a platform to shape and coordinate policies concerning globally relevant issues such as environmental protection and migration. Although an EU regulation issued in 2006 on European Groupings of Territorial Cooperation (EGTC) created the possibility for municipalities to be part of public bodies for cross-border cooperation under European and domestic law, this so far has remained a domain of *Länder* governments.¹⁰¹ Indeed, most of the international activities of local governments (such as town-twinning) continue to be based on private contracts under article 116(2) of the Constitution. Regarding their place in EU decision-making, it is important to note that article 23d(1) obliges the federal government to inform municipalities about all EU projects which affect either their autonomous functions or other important interests. However, the federal government must only consider comments on such projects. Municipalities do not enjoy the same right as the *Länder* parliaments to issue a formal statement as to whether they regard an EU project as violating the principle of subsidiarity.¹⁰²

Crises have played a major role in many of the current developments and reforms, either those recently implemented or now under discussion. To be sure, the fact that smaller local governments have struggled to keep up with an increasing range of public services has long been recognised as a structural problem, one compounded by the constitutional principle of the 'abstract uniform municipality'. It was the budget constraints and cost-reduction imperatives that emerged in the wake of the global financial crisis of 2007–2008 that accelerated the push for reform and led to the constitutional amendments of 2011 which reinforced inter-municipal cooperation. Similarly, public law agreements under the new article 116b would lend themselves to application in many areas such as spatial planning or even policing.¹⁰³ Even though there is some uncertainty as to

¹⁰¹ Sonntag (n 21) 328.

¹⁰² Article 23g(3).

¹⁰³ Harald Eberhard, 'Die öffentlich-rechtliche Vereinbarung zwischen Gemeinden', in Peter Bußjäger and Niklas Sonntag (eds) *Gemeindekooperationen* (Braumüller, 2012) 44–46.

how well this possibility will be used, the case of agreements under article 15a of the Constitution should be borne in mind which initially were met with such hesitancy and still have today become (as emphasised in this chapter) a key feature in intergovernmental relations. Similarly, the possibility (since 2011) of establishing municipal associations for more than a single task may yet prove to have far-reaching implications. Despite the above-mentioned constitutional limits, which exclude a transfer to multi-purpose associations of either too many or too essential tasks, this arguably provides an opportunity to create second-tier local governments structurally similar to counties in other countries.¹⁰⁴ Roughly a decade after this last significant local government reform, another crisis, the Covid-19 pandemic, has once more ignited discussion about some difficult but necessary changes, especially with regard to the municipal real estate tax and the Financial Equalization Act. Of course, it remains to be seen whether the radically altered economic and political context will act as a catalyst for much-needed reform or, on the contrary, only worsen the situation of Austria's local governments.

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¹⁰⁴ Bußjäger (n 16) 60.