

Strong Municipalities – Europe’s driving force

**The Austrian Association of
Municipalities
in Austria and in Europe**

Publisher:
Austrian Association of Communities

Publisher, Editor, Lay-out:
Austrian Association of Municipalities
1010 Wien, Loewelstrasse 6 (July 2003)

Photos:
Photo library of the Austrian Association of Municipalities

Printing:
PSP gerichte communicatie bvba, Jos Biesmansstraat 7, 1560
Hoeilaart, Belgium

Cover picture: Headquarters of the Committee of the Regions,
Brussels (Cover Picture and flags: European Commission
Audiovisual Library)

Table of Contents

Strong Municipalities – Europe’s driving force (Robert Hink, Helmut Mödlhammer)	1
Together for strong municipalities in a unified Europe (<i>Jeremy Smith</i>)	3
<i>I THE AUSTRIAN ASSOCIATION OF MUNICIPALITIES INTRODUCES ITSELF</i>	5
<i>Organization chart</i>	9
<i>Overview of the Austrian Association of Municipalities and its Regional Federations</i>	10
II THE AUSTRIAN MUNICIPALITIES IN EUROPE	11
II.1 The Austrian Federation of Municipalities and Europe	11
II.2 The Part assigned to Municipalities in an expanded Europe (<i>Benita Ferrero-Waldner</i>)	17
III THE AUSTRIAN LOCAL AUTHORITIES AND THEIR POSITION IN THE FEDERAL CONSTITUTION	22
III.1 Milestones	22

(Herbert Waldhauser)

III.2 The Austrian Municipalities and their
Status in the Federal Constitution (*Martin* 33
Huber)

III.3 Fiscal Equilization in Austria (*Anton* 50
Matzinger)

III.4 The Consultation Mechanism – Austria's
new way of regulation Cost Bearing in the 60
Federal State (*Anton Matzinger*)

**The General Secretariat of the Austrian 71
Association of Municipalities**



H. Mödlhammer
President



R. Hink
General Secretary

Strong Municipalities – Europe’s driving force

The Austrian Association of Municipalities is the Austrian representation of interests at local government level to which 99 percent of all Austrian local governments belong as voluntary members by way of the associations of its Länder. A strong and united representation of local authorities has grown in the last five decades from the relatively modest beginnings which are also exemplary for Europe’s municipalities and institutions.

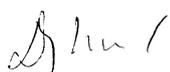
The Austrian municipalities have, not least by work, engagement and assertion of the Austrian federation of municipalities attained, legally and factually, a position in the state structure that is unique throughout Europe. In the municipalities, i.e. there where the citizens live and experience “home” immediately below the skin, is where the future of Europe and of the EU will be decided. A friendly Europe for the people can only be realized in these municipalities – only strong municipalities are able to bear the foundation for a joint

Europe. The federation of municipalities accepts it as a great task to represent its citizens with input and emphatically in the days of expansion and radical change as at the EU Convent and in drawing up a EU constitution.

Success achieved in the work of the last decades has turned this brochure into an informative handbook - particularly for other institutions with municipal connections at European or international level.

With this issue, the federation of municipalities is reporting on the continuation of the tried and tested way that is illustrated by achieving significant objectives – such as the milestones of the consultation mechanism and the stability pact.

The organization, fields of action and the objectives of the federation of municipalities are introduced in the first chapter. The second chapter is devoted to the standing and fields of action of the municipalities and of the federation of municipalities, while the third chapter is devoted to the milestones of history and to Austrian peculiarities such as fiscal equalization and the constitutional standing of the municipalities. These central topics of local government politics are a wonderful occasion for us to present the extensive field of local government politics with its peculiarities and success factors in Austria to an interested public.



wHR Dr. Robert Hink



Bgm. Helmut Mödlhammer

General Secretary

President

J. Smith
General Secretary



Together for strong municipalities in a unified Europe

As Secretary General of the Council of European Municipalities and Regions (CEMR), I am always particularly pleased to have the opportunity to contribute to projects which help to promote the local and regional level. The Austrian municipalities are among the most dynamic in the CEMR. The Austrian Association of Municipalities was one of the first members of the Council of European Municipalities (1952), and the commitment of Mayor Luggner and Secretary General Hammer was exemplary.

The Austrian Association of Municipalities is intensively involved in the work of the Council, as we have again seen at the 22nd General Assembly of the CEMR in Poznan. The commitment of the Austrian Association of Municipalities to the CEMR is inextricably tied to the strength of the Austrian municipalities, which occupy a position which is unique in Europe thanks to the Austrian Constitution.

The CEMR was founded in 1951, as an initiative by mayors from several European countries, their goal being that it should bring

together the cities and municipalities in a continent which had been torn apart by two successive world wars. Today, 46 regional and national associations among the current and applicant Member States of the European Union are members of the CEMR.

The reinforcement of local autonomy in Europe and the promotion of local and regional authorities in the European integration process are among the most important priorities of the CEMR today. Another major challenge lies in the drafting of a European Constitution which must take into consideration the importance of the regions and municipalities and their economic, social and cultural value.

Over the course of more than 50 years the CEMR has become an important focal point for the exchange of information among cities, municipalities and regions from all over Europe. As more than two thirds of European legislation has a direct impact at the local and regional level, the CEMR has never ceased striving to influence this legislative process. Its goal is to represent the municipalities, cities and regions of Europe vis-à-vis the European institutions, which are responsible for the drafting of this legislation. By working together, we shall be able to continue in the future to ensure the quality of life of our municipalities and therefore of Europe.



Jeremy SMITH

Secretary General of the CEMR

I THE AUSTRIAN ASSOCIATION OF MUNICIPALITIES INTRODUCES ITSELF

The Austrian Association of Municipalities is the legal representation of the interests of smaller and medium-sized municipalities in Austria. With its ten Länder/state governments it comprises 2,346 local governments – for historical reasons there are two each in the two federal states Lower Austria and Burgenland, borne by the large parties ÖVP /Austrian People's Party and SPÖ/Social Democratic Party of Austria. They total 99 per cent of the Austrian local governments and some 70 percent of the total population

The federation of municipalities is just as integrated in the fiscal equalization negotiations as in the examination of all laws and directives than in any way whatsoever touch on the interests and matters of the local authorities. Furthermore, the federation of municipalities is active in various organisations on both a national and an international level. The intensity and volume of the tasks are emphasized by the fact that at least 600 dates have to be scheduled annually by the General Secretary's office.

This is remarkable in that the federation of municipalities – contrary to the other legal representations of interests such as for instance the chambers – is, from the purely legal aspect, only an association with voluntary membership. It is indeed, and without doubt, a unique example of democratic politics and it underlines: In the

federalism of the Federal State of Austria, the municipalities and their representations of interests – apart from the association of municipalities of the Austrian urban federation – have attained a legal and factual position that is unique in Europe and even throughout the world. This position was not least achieved by the federation of municipalities founded in 1947. The “Milestones” on the way will be drawn up in more detail later.

The history of institutions is finally the history of the people who bore and characterized them. The President, the mayor of many years of the municipality Hallwang near Salzburg, Helmut Moedlhammer, has headed the Austrian federation of municipalities since March 1999. His predecessor presidents were four most different personalities:

- Minister rtd. Florian Foedermayr, Upper Austria -
The pioneer of local government collaboration in Austria - from October 1948 to December 1957
- Member of the Federal Parliament, Ernst Grundemann-Falkenberg, Upper Austria – from December 1957 to January 1971
- President of the Provincial Parliament, Ferdinand Reiter, Lower Austria -from January - from 1971 to February 1987
- President of the Provincial Parliament Mag. Franz Romeder, Lower Austria - from February 1987 to March 1999

The President represents the federation of municipalities to the outside, his tasks involve the enforcement of resolutions of the

committees and the supervision of federal municipality management. He presides over the board of which his five deputies and the General Secretary are also members. Further institutions are the national executive committee and the delegates conference with 29 and 49 members who, due to the large number of members, are appointed by the national associations. The administrative tasks are handled by the General Secretary's office seated in the federal capital (1010 Vienna, Loewelstrasse 6). So far the respective presidents have been assisted by four General Secretaries:

- Senior civil servant Alfred Sponner (1948 until 1952)
- Hofrat/Senior civil servant Dr. Albert Hammer (1952 until 1979)
- Hofrat/Senior civil servant Dr. Otto Maier (1979 until 1988)
- Hofrat/Senior civil servant Dr. Robert Hink (since 1st July 1988)

The Austrian Association of Municipalities has entertained offices abroad, in Brussels (Avenue de Cortenbergh 30) in the direct vicinity of important EU facilities and under the same roof with a series of representations of Austrian institutions since October 1996.

Setting up this office was the natural consequence of Austria's accession to the EU, which the federation of municipalities always vehemently supported.

Their tasks comprise:

- collecting information necessary to draw up Austrian domestic demands and objectives
- fostering contacts to other central organizations of local governments in the "European Capital" to jointly pursue local government concerns before the institutions of the European Union and
- caring for Austrian local government representatives attending meetings in Brussels.

A highlight is the annual Austrian Day of Municipalities, organized in a different federal state each year – the largest local government event in Austria: celebrated for the 50th time in 2003. The position of the municipalities in the larger Europe ("Strong Municipalities – the Power for Europe!") has become a central theme in the past years. Thus the anniversary of the Day of Municipalities 2003 is absolutely in line with the EU expansion – as a dialogue with the municipalities from the neighbouring accession countries.



Burgenland

Salzburg

Carinthia

Styria

Upper Austria

Tyrol

Lower Austria

Vorarlberg

2,346 municipalities are members of
the Austrian Association
of Municipalities

Austrian Association of Municipalities in Austria and Europe

General Secretariat:

President Bgm. Helmut Mödlhammer
General Secretary: wHR Dr. R. Hink

Loewelstrasse 6, 1010 Vienna
Tel.: 01/5121480;
Fax: 01/5121480-72;
Mail: oesterreichischer.gemeindebund.gv.at
Internet: www.gemeindebund.at

Permanent Representation to the European Union

Mag. Michaela Petz
Avenue de Cortenbergh 30, 1040 Brussels

Tel.: 00322-2820680;
Fax: 003322-2820688
E-Mail: 106162.3302@compuserve.com

Regional Federations of Austrian Municipalities

Burgenland Federation of Municipalities

LObm. Präsident Bgm. Leo Radakovits
Ing. Julius-Raab-Str.7/1, 7001 Eisenstadt

Tel.: 02682/799-34 or 35;
Fax: 02682/799-627
E-Mail: bgld.gemeindebund@netway.at

Association of Social-democratic Representatives of Burgenland Municipalities

LObm: Präs. LAbg. Bgm. Ernst Schmid
Permayerstrasse 5, 7000 Eisenstadt
Tel.: 02682/ 775-255; Fax: 02682/68105;
E-Mail: gvvbgld@spoe.at

Carinthian Federation of Municipalities

LObm: Präs. LAbg. Bgm. Hans Ferlitsch
LGf: Bgm.a.D. Dir. Helmut Lackner

Alter Platz 28; 9020 Klagenfurt
Tel: 0463/55 111; Fax: 0463/55 111/22
E-Mail: gemeindebund@ktn.gde.at

Association of ÖVP Representatives of Lower Austrian Municipalities

LObm: Präs. LAbg. Bgm. Mag. Alfred Riedl
LGf: Mag. Christian Schneider

Ferstlergasse 4; 3109 St. Pölten
Tel.: 02742/9020 – 800
Fax: 02742/9020 – 880; E-Mail: office@noegvvoevp.at

Association of Social-democratic Representatives of Lower Austrian Municipalities

LObm. Präsident Bgm. Bernd Vögerle
LGf: Dir. Mag. Ewald Buschenreiter
Bahnhofplatz 10 ; Postfach 73; 3100 St. Pölten

Tel.: 02742/ 313054 –0; Fax: DW – 20
E- Mail: office@gvvnoe.at

Upper Austrian Federation of Municipalities

LObm: Präs. Bgm. Franz Steinger
LGf: Dr. Hans Gargitter

Coulinstrasse 1; 4920 Linz
Tel.: 0732/656516;
Fax: 0732/651151
E-Mail: ooegemeindebund@ooegemeindebund.at

Federation of Municipalities of Land Salzburg

LObm: Präs. Bgm. Helmut Mödlhammer
LGf: Dir. Dr. Franz Hocker
Alpenstrasse 47; 5020 Salzburg
Tel.: 0662/622325 – 0; Fax: DW -16
E-Mail: sbg-gem-verband@salzburg.at

Styrian Federation of Municipalities

LObm: Präs. NR-Abg.a.D. Bgm.Hermann Kröll
LGf: Dr. Klaus Wenger

Burgring 18; 8010 Graz
Tel: 0316/ 82 20 79; Fax: 0316/ 81 05 96
E-Mail: post@gemeindebund.steiermark.at

Tyrolean Federation of Municipalities

LObm: Präs. LAbg. Bgm. Dipl.Vw. H. Rauch
LGf: Dr. Helmut Ludwig

Adamgasse 7a; 6020 Innsbruck

Tel.: 0512/587130; Fax: 0512/573350-14
E-Mail: tiroler@gemeindeverband.tirol.gv.at

Vorarlberg Federation of Municipalities

LObm: Präs. Bgm. Mag. Wilfried Berchtold
LGf: Dr. Otmar Müller; Peter Jäger

Marktstraße 51; 6850 Dornbirn
Tel.: 05572/55451; Fax: DW 93; E-Mail:
vbg.gemeindeverband@gemeindehaus.at

II THE AUSTRIAN MUNICIPALITIES IN EUROPE

II.1 The Austrian Association of Municipalities and Europe

"Europeans do not live in the offices of the ministries for foreign affairs, but in villages and towns!" The Austrian Association has felt committed from its very roots to this principle that was formulated by President Ferdinand Reiter at the 11th European Council meeting in 1975 in Vienna. It was particularly the later two-time "Olympics Mayor" of Innsbruck, DDr. Alois Lugger, who - with the support of General Secretary Dr. Albert Hammer, became "Mr Europe" of the federation of municipalities in the early 50s. Even though Austria was still an occupied territory with restricted sovereignty, cross-border contacts between municipalities and to international institutions were already being established.

The Austrian Association of Municipalities is deeply anchored in the CEMR

Already as early as in January 1952 Austria's federation of municipalities joined the Council of European Municipalities - today the Council of European Municipalities and Regions

(CEMR), founded in Geneva in January 1951. Austria is thus one of the oldest members of this international association. The prior president of France, Valery Giscard d'Estaing, has been presiding over the CEMR since October 2001. Austria places one of the elected vice-presidents with their Prof. Walter Zimper.

The association of municipalities was already decisively represented at the 1st municipality day in Paris-Versailles in October 1953 and at which the "European Charter on Municipal Liberties" was resolved.

The suggestion of the council of municipalities to twin local governments beyond state borders - a so-called jumelage - to bring the peoples closer together, to contribute to a peaceful development in Europe was also fruitful with the federation of municipalities and its Länder governments. As far as can be determined today, Bad Schallerbach must have been the first Austrian municipality to follow the call: It twinned with the Belgium coastal municipality of Koksijde. In the following years and decades innumerable municipalities in all the federal states followed this example.

CALRE: an upgrading for municipalities and regions

The association of municipalities was also the host of the 6th European Municipality Day in April 1962, the first in Austria with

some 3,600 participants. It was particularly proven in The Hague in 1979 that it did not play and still does not play an important role merely as an organizer, but is also a trigger at the European municipality days. The necessity to strengthen the rural regions was recorded in the final resolution upon the application of Austria. As from that day on, the topic has never disappeared from the agenda. In 1986 the European Council finally officially initiated the "European Campaign for the Redevelopment of Rural Areas".

In the scope of the European Council the "Permanent Conference of the Municipalities and Regions in Europe" was set up as panel of experts in 1957. In 1994 the Congress of Local and Regional Authorities of Europe (CLRAE) was founded as successor organization, a counselling body in which both the municipalities and the regions of the member states of the European Council are represented with a seat and a vote. Today the CLRAE is, apart from the Parliamentary Meeting, the Committee of Ministers and of the Human Rights Commission, the fourth column of the European Council - upon constitution the municipalities and regions experienced a significant reevaluation. Austria's municipalities are represented in the congress by three members and deputy members each, whereby an agreement between the municipalities and rural authorities guarantees for well- balanced nominations.

The Austrian Association of Municipalities in the Committee of Regions

The youngest - but certainly very important - European institution in which the Austrian federation of municipalities is active - is the Committee of the Regions (COR), an assistance body in the scope of the European Union, the objective of which is to counsel both the Commission and the Council. According to the Agreement of Amsterdam, the Committee of the Regions may now also be heard by the European Parliament.

The Committee is currently made up of 222 members and just as many representatives. Austria is entitled to delegate twelve members and their representatives; three members and three representatives come from the federation of municipalities. The Austrian federation of municipalities is currently represented in three of the seven specialist committees (for sustained development, for constitutional matters and governing in Europe and for foreign relations).

In the sense of politics for people "Europe of Regions and Municipalities" and of its motto "Strong Municipalities - the power for Europe" the Austrian association of municipalities vehemently supports a strengthening of the committee - significant demands are, for instance, far-reaching independence of the committee with regard to organization matters and a right to bring forward a suit before the European

Court of Justice, particularly to maintain the principle of subsidiarity.

Enlargement – Austrian Municipalities take up the challenge

The imminent EU expansion represents a particular challenge for Austria and its municipalities, alone due to its geo-political location. It may have seemed a rather bold vision to many when, at the occasion of the European Municipality day 1975 - in the shadow cast by the iron curtain and in the cold war - the President of the Association of Municipalities at that time, Ferdinand Reiter, declared: *"The municipalities of Austria, located where differing ideologies meet, may, however, not forget that Europe does not end at the borders of Austria or of the Federal Republic of Germany. An inclusion of the East European States into the European Union is currently not possible. But just as the antagonisms in the West were initially settled by the municipalities, the municipalities in the East - could, by most varying relations at municipality level - build bridges to the East European towns and municipalities and thus help to create the prerequisites for understanding and for the reconciliation of all European peoples."*

The Austrian Association of Municipalities initiated the International Communal Network (ICNW)

Austria's municipalities did not close their gates to this objective and can now, on the eve of the expansion with its great opportunities, and yet not without insignificant risks, build up on their foundation. The association of municipalities has called on all local governments to get into contact with the municipalities of the candidate countries of the current and following wave of accession, to intensify existing connections and direct contact, i.e. from person to person, to reduce existing fears towards the expansion and to offer concrete information and advice.

The association of municipalities has already triggered a series of concrete initiatives that are to contribute towards the historical step of expansion becoming a success for the municipalities - and thus for the citizens of both the current and the future EU states. Three examples for the above are drawn up below:

The association of municipalities has participated in a public tender to work out a strategy for the development of municipal economy in Croatia and has been awarded the tender as best bidder.

An EU project has been launched, jointly with the Austrian Society for European Policy, that promotes the implementation of cross-border activities and the exchange of experience among municipalities. The core of the concept is the development of a project partnership between the local

associations in Austria, Italy and Germany and in Poland, the Czech Republic and Slovakia, Hungary and Slovenia. These institutions offer to organize small cross-border (people-to-people) events for the local authorities within the project. The regions at the current outer EU border are to be given priority.

The development of a cross-state inter-community network (ICNW) within the EU and the current and future accession countries is a particularly ambitious initiative of the federation of municipalities. A "Pool" is has been planned, to make quick and direct access to relevant information, experiences, structures and potential co-operation partners at local authority level possible and to access experts. In the large Europe the following should also apply:

Strong Municipalities - The Power for Europe!

II. 2 The Part assigned to Municipalities in an expanded Europe

The Peace Network Europe

The desire for peace is the dominant theme of the European Union. The emergence of the European Union, seen from the historical point of view, was a result of World War II. On 9th May 1950 a father of the European Union, Robert Schuman, proposed to found a union in the services of peace to prevent war and destruction ever striking Europe again. Looking back on 50 years of European Union history, the said European Union proves to be a success story. The EU member states today have, despite their varying structure and development, a common currency and common institutions.

Unified Europe drew and draws its strength from the values of democracy and human rights, a common factor for the peoples of Europe. At the same time, the cultural and linguistic diversity and the varying traditional treasures have been preserved.

Unified Europe has developed into an attraction for neighbouring countries and even for those lying farther away. These countries see an opportunity to consolidate their democratic structures and to align their economy to the new challenges of the European Union. The Europe of the citizens is

a reference point and sustains hope for the peoples whose intention is to maintain peace and observe human rights.

The expansion – an investment for Europe

The expansion of the European Union is one of the greatest challenges in European history and is part of the European stability and peace policy. The merging of Europe into a place of peace, safety and stability is the prime objective of the European Union. Therefore the European Union considered it morally desirable and politically inevitable to support the new democracies in Central and East Europe by holding out the prospect of membership.

After years of intensive negotiations Estonia, Latvia, Lithuania, Poland, the Czech Republic, Slovakia, Hungary, Slovenia, Malta and Cyprus signed the Accession Treaty on April 16th 2003. They will be the new members of the European Union as from May 1st 2004 and will be able to collaborate in its decisions.

The expansion, however, also means responsibility of the old and also the new member states towards local and regional governments. The municipal level forms the basis of European diversity as it is the closest to the people. Strong municipalities, with their self-administration and municipal services form the

foundation of a democratic, peaceful Europe which reflects the interests of the general public. In the past years, the European Union has become ever more aware of the important part of the regional and municipal governments. Municipalities contribute significantly towards the European integration process, as they pave the way for Europe to reach the interest of the general public.

The Part assigned to Austrian Municipalities in the Expansion and Peace Process

Representatives of the Austrian Association of Municipalities recognized the importance of Europe as peace network from the very beginning and worked intensively on establishing it. Already at the beginning of the fifties, at a time when Austria was not yet able to exercise its sovereignty to the full, the Austrian Association of Municipalities recognized the importance of cross-border and international collaboration as a means of implementing peace in Europe and in the world.

Municipal partnerships were and are a significant tool to bring about peace, that contributes towards the unification of Europe. Since the iron curtain was lifted, the Austrian Association of Municipalities has made great efforts to promote the previous Central, East and South European countries on their way into the European Union. As a result of its history, the Republic of

Austria is deeply committed, particularly to the Central and East European states (CENS) and has taken it absolutely for granted to help its eastern neighbours in every possible way. The Austrian federation of municipalities has supported local governments in the new democracies from the very start, particularly by intensifying municipal partnerships, by regularly holding conferences on specific municipal topics and by close cross-boarder collaboration with the municipalities.

In October 2002 the Association of Municipalities, jointly with the Austrian Society for European Policies, brought the ambitious project of cross-border collaboration and local initiatives with the Central and East European countries into being. This international network of municipalities is absolutely in line with the European integration process.

The core concept is formed by the development of project partnerships between municipalities in Austria and other EU countries and comparable institutions in the accession countries of the first and second wave. Intensifying and consolidating the cross-border collaboration between local and regional administration authorities, deploying of a pool of experts and involving the people living in the communities to prepare such municipalities as are most hard hit by the expansion are important objectives of this concept.

This intensive cooperation between the Austrian Association of Municipalities and the communities and local authorities of the Central and East European countries not only pave the way to an intensified transfer of know-how, but also increase cultural and economic interaction. The connection of these activities at local level calls for the citizens of both sides to come closer. Thus many an example at local level displays European integration, the determination to fully overcome the previous separation of Europe is made clear to the citizens.

Europe can only be built on a sturdy foundation. In the sense of the classical guiding principle according to which a free community is the foundation for a free state, the Austrian Association of Municipalities is fully aware of the responsibility involved in the work that, with this contribution, paves the way to bring about the European idea.

III THE AUSTRIAN LOCAL AUTHORITIES AND THEIR POSITION IN THE FEDERAL CONSTITUTION

Milestones

While the Association of Austrian Cities and towns (Österreichischer Städtebund) has already existed since 1915, the idea to create an effective representative body for the small and medium-sized municipalities could only be realized after World War II. It was the time of economic recovery and reconstructing the democratic and federalist structures in Austria. However, one must bear in mind that Austria was still a state of fourfold occupation until 1955, with greatly restricted sovereignty. This was of particular impact on municipal level and even more so in the zone of Soviet occupation in eastern Austria.

After a series of preliminary talks, the "Austrian Landgemeindenbund rural federation of municipalities was constituted on November 16th 1947, it soon changed its name to "Austrian Association of Municipalities ". At the same time the national associations were set up and as early as in 1949 it could be noted that *"the municipalities not yet included were only a negligible minority"*.

Some milestones and great moments are to be mentioned here as reason for the exemplary legal standing of the Austrian municipalities. They are excerpts from the "Chronik eines Erfolges/Chronic of success" – the title of the commemorative volume issued on the occasion of the 50th anniversary of the association of municipalities in 1997.

1962: Gemeindegesetznovelle / Municipal Book of Statutes- Positioning Municipal Autonomy

12th July 1962 was such an auspicious hour. On this day, which was, without any doubt, a historical day for Austria's municipalities, the Federal Parliament resolved the *Gemeindegesetznovelle*/Municipal Book of Statutes, with which municipal self-administration was anchored and positioned in the constitution and which paved the way for the municipalities to intensify their autonomy and to develop their self-administration more effectively.

The texts of the statutes were, to a large extent, aligned to a joint draft of the federation of municipalities and urban federation. The debate in parliament was relatively short with its five speakers, however, had been preceded by years of difficult negotiations. The demands of the local government representation of interests for more federalism and subsidiarity

encountered considerable resistance - particularly from some federal states that feared a restriction of their own sovereignty. What some critics still doubted in 1962 is indisputable today - The President of the Austrian Association of Municipalities, Helmut Moedlhammer, summarized it in but a few words before parliament on November 20th 2002 in the ceremony "40 years of the Municipal Book of Statutes": *"The Municipalities have proven their ability to manage their tasks autonomously a thousand times over!"*

Austria has made an impact well beyond the state borders by anchoring and positioning municipal autonomy in the federal constitution. The then President of the Council of European Municipalities, Dr. Henry Cravatte of Luxembourg, made this very clear: *"With this act, the Republic of Austria has decisively placed itself well at the forefront of all the European countries that are making efforts to develop a modern constitutional order on the ancient principle of autonomous municipal administration. Let us not omit to mention our satisfaction with this pioneering work. All the states of western Europe may use it as an example. It is all about - and no one may deny it - safeguarding the principles of true democratic life."*

By the way: The cornerstones of the Austrian Municipal Book of Statutes 1962 also found their way, much later, in the 80s, into the "European Charter of local Administration" of the European

Council. Representatives of the Austrian Association of Municipalities were notably involved in bringing the latter into being. Austria, on the initiative of the association of municipalities, was the second state - after Luxembourg - that agreed by a resolution of the Nationalrat/ the first chamber of the federal parliament in September 1987 to be bound to the Charter. The principle of municipal self-administration gained international law status for the first time with this charter.

1988: Anchored and positioned in the Federal Constitution!

The Federal Chancellery already appealed to all ministries, the court of auditors and the general directorships of the Post and of the Austrian Federal Railways in a circular in 1954 to "*inform the Austrian federation of municipalities and the Austrian urban federation about important legal drafts and regulations that concern the interests of the municipalities and to give them, and not only the authorities of the state governments that are municipal supervisory bodies, an opportunity to bring the interests of the municipalities to bear*". It was, however, still a long way before a legally anchored entitlement to control was granted. The municipal representation of interests was only the mouthpiece and translator for municipal questions, problems and concerns.

In the second half of the 70s, the demand of the municipal lobby to increase and strengthen its right to have a say and to

collaborate, and particularly to also have this demand laid down in the Federal Constitution, became ever more vehement. The topic was the central point in several municipal meetings; even a parliamentary meeting was involved in the matter. In 1981 a corresponding demand catalogue of the association of municipalities was also one of the topics on the agenda at the meeting of the Council of European of Municipalities in Madrid. In innumerable negotiations and talks, it was particularly the representatives of the federal states who had to be convinced to dare a little more federalisation. Their worries were certainly understandable, after all, according to the constitution they had the right to represent the municipalities and feared a loss and weakening of their influence.

The auspicious hour for the representation of interests, the lobby of the Austrian municipalities tolled on November 29th 1988. The Nationalrat/the first chamber of the federal parliament passed a resolution on the municipal book of statutes that was also passed by the second chamber of the Austrian parliament. The crucial passage for which the federation of municipalities had fought for so long is found in Article 115, Section 3:

"The Austrian Association of Municipalities and the Association of Austrian Cities and Towns are called upon to represent the interests of the municipalities"

The municipal representation of interests was thus constitutionally positioned! Austria's municipalities had obtained a legal status that was, and still is, quite rightly considered to be unique and exemplary in Europe and throughout the world. This position was subsequently expanded and strengthened, not least in connection with the EU accession negotiations.

1995: Austria's Accession to the EU - Consultation Mechanism and Stability pact.

At the beginning of the 90s Austria found itself in an entirely new European environment. The lifting of the iron curtain, the collapse of communism and the liberalization and democratization in the northern and eastern neighbouring states and the progressing West integration, the concrete wish for Austria's accession to the EU also meant a great challenge for the municipalities.

The accession request of Austria, that had already been expressed in 1989, was welcomed without any restrictions by the local governments and the federation of municipalities, at the same time, however, it was unmistakably clearly determined: *"European integration only with the municipalities!"* A corresponding collaboration of the municipal representation of interests in the integration negotiations was demanded with reference to the far-reaching effects for the local governments -

two thirds of all the EU laws directly or indirectly concern the municipalities - but also with reference to the contribution towards the emergence and evolvement of the European Idea that had been made by the municipalities for decades.

For sure, the association of municipalities was included in the negotiations from the very first day with the "*Council for matters of Austrian integration policies*", that was constituted in January 1990. A guarantee was given to the Austrian municipalities with the municipal book of statutes 1992, that they would be informed about all the projects in the scope of European integration, and that they could also voice their opinion. The latter was made abundant use of.

Information was also guaranteed by the participation of the Austrian Association of Municipalities in the regular preparatory meetings for the committees of the permanent representatives in Brussels (COREPER). The association of municipalities also made use of the opportunity to voice their opinions, for instance on the draft for the guidelines "*Local government election rights for citizens of the Union*".

One may thus note, without exaggerating and as success of the federation of municipalities: In no other EU country had the municipalities been so effectively involved in the integration talks as in Austria!

This also applies for the representation in the committee of the regions that was constituted based on the Maastricht contract in March 1994 and which represents an important step towards realizing a subsidiarity principle in a Europe of regions and municipalities. Of the twelve Austrian members and just as many deputy members, three members and three deputy members are elected by the Austrian Association of Municipalities and the Association of Austrian Cities and Towns.

This means a quarter - this is a share of which the municipalities of the other EU states of federative configuration can only dream of.

The EU accession and membership to the Economic and Monetary Union however, at the same time meant a new challenge and commitment for the financial equalization partners Federation, Länder and municipalities:

The convergence objective of the Maastricht criteria - the public deficit may not exceed three per cent of the gross national product - applies for all the regional governments together. This called for new ideas and new ways of collaboration between the financial equalization partners. The result of the respective negotiations was:

Consultation Mechanism and Austrian Stability Pact

From the viewpoint of the municipalities it was particularly the **consultation mechanism** that represented a historical and true political democratic breakthrough. It is a tool that prevents a regional authority by means of laws or directives from financially burdening the other without the latter's approval. This was initiated by the Maastricht criteria; however, irrespective thereof, the municipalities and their representation of interests had already demanded such a mechanism due to the many painful experiences they had made over the years. The federal government and the Länder had repeatedly and successfully changed the fiscal equalization laws by legislative measures – new tasks were assigned to the municipalities without placing sufficient funds at their disposal. A “grey fiscal equalization” was quite rightly spoken of.

The installation of the consultation mechanism meant a great enhancement of the status of the local government representations and thus for the municipalities. This was also expressed by the signature to the agreement on December 10th 1996 in the Federal Chancellery. It was far more than an outward symbol that an agreement pursuant to Para. 15a of the Federal Constitution was signed, not only by the representatives of the Federal and Länder governments, but

also by the president of the Austrian Association of Municipalities and the Association of Austrian Cities and Towns.

The President of the Federation of Austrian Municipalities at the time, Mag. Franz Romeder, described the consultation mechanism as “ *an effective stop to further excessive indebtedness and a significant contribution to fulfilling the Maastricht criteria. However, we have to be aware: For this system to function in practice, the goodwill of all parties to the contract is called for. The consultation mechanism may not be a lever, among others using the pretext of saving, to block off important and necessary measures and development. Of course the municipalities don't want this either.*”

The Austrian local government politicians have sufficiently proven their sense of responsibility towards the state as a whole since the consultation mechanism has been enforced.

The “Austrian Stability Pact”, i.e. “*Agreement between the Federal Government, the Länder and the Municipalities regarding the co-ordination between financial management of the Federal Government, the Länder and Municipalities,*” is in close connection with the consultation mechanism. The objective is clear: Consolidation of public funds and fulfilment of the Maastricht criteria.

The **Stability Pact** is structured in four large sectors: Budgetary co-ordination, medium-term orientation of financial

management, stability programmes and – this point, in keeping with its importance, was discussed most –deficit quota and sanction distribution between the Federal Government, the Länder and the Municipalities.

The stability pact demands even greater budgetary discipline from the municipalities.

The local governments have contributed towards stability despite great financial difficulties.

III. 2 The Austrian Municipalities and their Status in the Federal Constitution

The fundamentals of Austrian municipality law are ruled in Article 115 to 120 B-VG (federal constitutional law). Provided the jurisdiction of the Federal Government has not been laid down, state legislation shall implement municipal law in accordance with these principles (Art. 115 Sec. 2 B-VG); solely with regard to individual constitutional provisions (Art. 118 Sec. 6, 118 Sec. 7 and 119a Sec. 5 B-VG) it is assumed that they represent directly applicable constitutional law that requires no further implementing act.

No municipality law in the actual sense, but of great importance for the municipalities, is the fiscal constitutional law of 1948, described in more detail in the following and on the basis of which the so-called fiscal equalization law, the taxation and allocation of rates received, is ruled at intervals of several years between the federal government, the Länder and the municipalities.

The most important fundamentals of Austrian municipal law are drawn up in the following:

- What does the Austrian legislation understand under the term "Municipality"?
- What are its fields of action?

- What institutions are recognized by municipal law?
- How can citizens participate in the decisions of their municipality?
- How is state supervision of the activities in the municipalities carried out?
- How is cooperation beyond municipal borders effected?

A Characteristics and Definition of the Term “Municipality”

To answer the question as to what Austrian legislation understands under the term “Municipality” is effected by examining a whole series of characteristics that result from court decisions, the prevailing jurisprudence, but also directly from the constitutional text of B-VG.

a) Communities

Pursuant to Art. 116 Sec. 1 first clause, all Austrian federal Länder are organized in communities. Communities are therefore the lowest level of a territorial state structure that the federal constitution knows. Art 115 Sec 1 B-VG determines that under the term municipality in this sense the local community is concerned. A differentiation is to be made regarding the model of regional municipalities in the sense of Art 120 B-VG, a collection of several local communities subject to federal

constitutional legislation, that however, has never become constitutional reality.

b) *The term uniform municipalities, towns with their own statutes*

The term uniform municipality on which particularly the B-VG book of statutes dated 1962 is based, is of great importance to understand Austrian municipality law. The principle of uniform municipality assumes that the constitutional legislative fundamentals of Austrian municipal law apply to all municipalities, irrespective of their definition (local government, regional or urban government), irrespective of their expansion, number of inhabitants or economic performance, provided not otherwise expressly determined in constitutional legislation. Even simple federal or Land legislation is bound to constitutional legislative principles of unified municipalities when ruling municipal law.

Towns with their own statutes are governed by exceptional constitutional law (Eisenstadt, Rust, Klagenfurt, Villach, Wiener Neustadt, St. Pölten, Krems, Waidhofen/Ybbs, Linz Steyr, Wels, Salzburg, Graz and Innsbruck) which, apart from municipal tasks, have to cope with the affairs of district administration authorities. A further special status is attached to the federal capital, Vienna, that is both urban and federal state.

c) A guarantee of continuity for municipalities

Art. 116 Sec. 1 first clause B-VG lays down that every Land (with the exception of Vienna) is organized in municipalities. B-VG only contains a continuity guarantee as institution for the municipality, however, it has no individual rights covering “undisrupted existence”. But even if the municipality has no absolute right to undisrupted existence, the standard for the decree of a federal Land to break up a municipality must be lawful, i.e. it may particularly not be passed without objectivity and thus contrary to the principles of equality.

d) The Municipalities' ability to act on their own account

The municipality is a legal person under public law and as such also endowed with legal capacities. It is appointed to fulfil administration tasks in accordance with the directives of the legal system, it may possess assets of all kinds, acquire and dispose of and operate economic businesses (comp. Art. 116 Sec. 2 B-VG). It is the holder of private and public rights and duties, can conclude contracts, acquire official authorizations etc. The municipalities are also bearers of rights protected by constitutional law, particularly with regard to their self-administration rights, as for instance, the protection of property, of equality before the law or the freedom of association.

e) Characteristic terminology “Municipality” in Art. 116 Sec. 2 and 3 B-VG

This directive of the federal constitution defines the municipality as a regional government with the right to self-administration and at the same time as rural community. Furthermore, its standing as autonomous economic authority and its right, in the scope of fiscal constitution, to manage its budget autonomously and to make out rates is laid down by law. These most important legal constitutional characteristics shall be briefly described in the following:

Regional Authorities (federation, Länder, municipalities) are legal persons of public law, that participate in the sovereignty of the state by dealing with administration tasks and by registering persons with a local relation to a certain region.

The municipality is endowed with constitutional rights of self-administration. Self-administration is, according to the prevailing theory of decentralized administration in Austria, administration by relatively independent public authorities, which, as a rule, are private figures. The nature of municipal self-administration is particularly expressed by the democratic appointment of municipality citizens in the institutions, the autonomy and own responsibility for the field of action under state supervision.

As *rural community*, the municipality also manages the field of action assigned by the federal and Land government in which the municipalities are to act according to federation and Land laws on behalf of, and in compliance with the directives of the federation and the Land (Art. 119 Sec. 2 B-VG).

The municipality, as an *autonomous economic corporation* is entitled, within the limits of general federal and Land laws, to possess assets of any kind, to acquire and dispose thereof and to operate economic businesses. Any intervention going beyond the constitutionally provided supervision is incompatible with the right of the municipalities to self-administration.

Acc. to Art. 116 Sec. 2 B-VG the municipality is entitled, in the scope of fiscal constitutional law, to manage its budget autonomously and to make out rates. Budget management includes drawing up and implementing the budgets of the municipality and is not bound by directives in its management according to the principles of economizing, economic viability and expediency under state supervision. Municipalities may only make out rates based on federal and Land laws and based on free resolutions passed by municipality representation that are based on the legal authorization of the federal (§ 7 Sec 5 F-VG 1948) or Land legislation (§ 8 Sec. 5 F-VG 1948). Within the limits of this right to pass resolutions, the municipalities are not bound to any directives, they are autonomous.

B Own and transferred Field of Action of the Municipality

The Austrian federal constitution, when assigning the field of action of a municipality, differentiates between the own field of action that the municipality fulfils as autonomous administrative institution and the *transferred field of action* where it is active as administrative community.

a) Own field of action

The self-administration of the own field of action is a right guaranteed by constitutional law. Apart from all the matters of private economic administration, budget management and making out rates (Art. 116 Sec. 2 B-VG), the own field of action includes all matters *"that exclusively or overwhelmingly deal with interests of the local community and are suited for management by the community within its local borders"* (subsidiarity principle, Art. 118 Sec. 2 B-VG). The constitutional legislator assumed that the municipality had to fulfil all such tasks that it, as lowest collection of citizens on a territorial basis in view of the local character of this task, was best and most easily able to carry out.

Art. 118 Sec. 3 B-VG contains a demonstrative enumeration of the official affairs in a further supplement and which are, *under*

all circumstances to be attributed to the own field of action. All other matters are to be assigned to the respective field of action by the federal or state legislator (Art. 118 Sec. 4 B-VG) according to the general criteria of Art. 118 Sec. 2 B-VG. The own field of action also comprises the right to pass directives independently representing the law according to Art. 118 Sec. 6 B-VG (local police directives).

The municipality manages the matters within its own field of action in the scope of the laws and directives of the federal government and of the Land at its own authority, not bound by directives and – subject to the directives of Art 119a Sec 5 B-VG on representation – with the exclusion of the right to appeal to administrative authorities outside the municipality (Art. 118 Sec. 4 first clause B-VG).

From the constitutional legislation on *acting on own authority* it can be seen that the municipality is principally free where the question arises as to whether it wants to fulfil one or the other task; this however, does not apply when a law commits the municipality to cope with a certain task which at least has to be accepted according to the official tasks as provided in Art 118 Sec 3 B-VG. If the municipality does not fulfil the legally imposed tasks, it may be forced to do so by a supervisory authority (compare municipal supervision) and be obliged, by means of a complaint of omission, to exercise its

responsibilities with regard to official matters under the premises laid out in Art 132 B-VG.

Freedom to issue directives means, in connection with handling matters within their own field of action in the municipality, that state administration authorities may not issue any directives to the municipal authorities except where matters of a transferred field of action are concerned.

Right of appeal is excluded to administration authorities outside the municipality against final instances of the municipality in matters of its own field of action. The various stages of appeal in connection with its own field of action therefore, and as a rule, ends before the municipal council, in exceptions before the municipal board. The (extraordinary) right of appeal granted to the representation, the purpose of which is the supervision and examination of the municipal administration's conformity to law, constitutes the exception.

The description of the field of action, that is the same for all municipalities, does not mention the actual volume of tasks to be handled. As the official tasks legally assigned to the municipalities may be too many for a small municipality, the constitutional legislator has provided the possibility to transfer individual matters, upon application of the municipality, to another state authority (Art. 118 Sec. 7 B-VG).

b) A transferred field of action

The municipality is not only a regional institution with a right to self-administration, but also an administrative community (Art. 116 Sec. 1 second clause B-VG). An administrative community is the municipality with regard to the field of action transferred by the federal government and the Land. It becomes active for this area in the function of an official channel under the federal or Land authorities.

The municipality is committed to manage this state administration by order of the federal government, of the Land respectively. A right of the municipality to be entrusted by the federal government or the Land with certain matters in the transferred field of action does, however, not exist. When managing these tasks the municipality is subject to all the principles applicable for state administration (legality principle, bind to directives etc.).

The mayor is entrusted with managing these matters. He may transfer individual groups of activities within the field of action transferred to him – without suffering damage to his responsibility – for reason of their factual connection to the activities of his own municipality - to other municipal authorities to manage them in his name. With regard to these activities, the authorities concerned or the members involved are bound to

the directives of the mayor and bear the responsibility acc. to Art. 119 Sec. 4 B-VG (Art 119 Sec- 3 B-VG).

C The Municipal Institutions

The federal constitutional legislation has not only laid down a minimum of municipal institutions to be established, but also that these municipal institutions be set up and established along the principles of democracy. In line with the political constitutional decree, the constitution sees

- the local councillor as a general representative authority to be elected by the municipality;
- the local council as an authoritative board set up according to the relative power in the municipal representation and
- the mayor as a monocratic authority directly elected from the midst of municipal representation as local councillor, or (so far as national constitution provides for such designation) by those entitled to vote

Furthermore, all town/urban rights and municipal directives in Austria provide particularly for the formation of committees as further municipal institutions. A particular position is taken by the *Controlling Committee* as internal municipal controlling authority in the own field of action. The self-control of municipal budget controlling by own, internal examiners, in addition to

budget controlling by municipal supervision and (in a restricted scope) the audit office, represents a particular development of the principle of municipal autonomy.

The municipal institutions have an administrative assistance apparatus, managed by a head of department or a municipal secretary at disposal and provided by the *local authorities* to manage their tasks.

a) Municipal council (Municipality representation)

The municipality council is the supreme authority of the municipality which makes the most important decisions in the municipality. The mayor, the members of the board of the municipality (Town Council) and if necessary, other authorities appointed (committees) of the municipality to fulfil the tasks appertaining to their own field of action.

The municipal council is a general representative institution to be elected by those entitled to vote in the municipality. The elections for the municipal council are carried out on the basis of the same, immediate, secret and personal proportional representation voting system. B-VG provides the general principles for the local council elections of the municipality, particularly the prerequisites for active and passive election rights and leaves fixing more detailed provisions concerning the election rights to simple legislation.

b) Municipal council (Municipal councillor, city council)

In addition to municipal representation and the mayor, a municipal council (Councillor, town councillor) is to be provided as local authority according to the laws of federal constitution, for towns with their own statutes the town senate. The election parties (parliamentary parties) represented in the municipal council have a right to representation which is relative to their size (Art. 117 Sec. 5 B-VG). The tasks are determined by the legislator in charge of ruling municipal organization law.

c) Mayor

The mayor is the only monocratic (= "single") administrative body of the municipality and just as the municipal representative and councillor, must be provided according to the legislation of the Land. According to the federal constitution he is particularly in charge of the transferred field of action (Art 119 Sec 2 B-VG). By own authorization under constitutional legislation, the state legislator of constitutional standing can provide direct election of the mayor by those entitled to vote, otherwise the mayor has to be elected from the midst of municipal representation.

The duties of the mayor, apart from practising official competences of first authority, particularly comprise the representation of the municipalities to the outside, holding the chair in municipality representations and in the municipal

council and being in charge of official operations in the municipal offices.

D Tools of direct democracy in the Municipality

The Austrian Federal constitution (Art 117 Abs 8 B-VG) and the corresponding executive directives of the Länder provide for a series of possibilities for the citizens of the municipality to participate in the decisions of their communities and even for them to participate directly. The previously legally disputed direct participation of the population in the municipality's fulfilment of the tasks in their own field of action was constitutionally laid down in 1984.

The *participation* is effected in the form of a people's or citizens' vote, instead of by the local municipality in charge, and makes a direct decision on a certain matter possible by people's referendum. The term *involvement* includes all forms of direct democracy (referendums, petitions). Further important political democratic rights of the citizens are, of course, the active and passive right to participate in elections within the municipality.

E Supervision of the Municipality

The municipality is subject to supervision by the federation, and furthermore by the Land when dealing with the tasks

concerning matters of the municipality's own field of action in the sector of national implementation. The objective of municipality supervision is to ensure the lawfulness of municipal self-administration and to control fulfilment of the tasks under the responsibility of the municipality. The supervisory authorities are furthermore entitled to examine the entire scope of own activities with regard to the municipality's control in matters of economizing, economic viability and expediency. Municipal supervision shall always act in favour of the well-being of the municipality and shall take care that the municipalities are protected against disadvantages. When exercising municipality supervision the acquired rights of third parties are to be spared to such an extent that may seem necessary to achieve the objective of supervision.

The ruling of supervisory law, if not under the federal government, (BundesgemeindeaufsichtsG/Federal supervisory law governing local governments) is assigned to the Länder. Particularly the following are to be named as means of supervision under constitutional law

- Information and controlling rights
- Budget controlling
- Approval reservation for individual measures to be passed by the municipality in its own field of action

which also effect measures beyond their field of action, particularly measures of fiscal importance

- Intervention in case of a contravention of law, or an examination regarding the legality of resolutions passed by the municipality institutions.
- The examination of directives passed in the own field of action
- Replacement measures should the municipality not pursue its legal tasks.
- Dissolution of municipality representation as most extreme means of state supervision, particularly cases of continued inability to operate and pass resolutions.

Furthermore, it has been laid down by constitutional law that the extraordinary appeal of lodging a complaint to the supervisory authorities may be imposed against the decree of a final order of the municipality in matters concerning the own field of action. In accordance with the principle of municipal autonomy, the supervisory authorities may, however, not make decisions regarding contents of the matter, but, provided unlawfulness or a violence of the rights of the plaintiff have been determined, can refer the matter to the municipality for reconsideration.

When a complaint has been lodged – as is the case in general for supervisory authority proceedings – the municipality is endowed with party rights.

F Inter-community collaboration

As a rule the municipal directives and town rights provide for two legally institutionalized forms of collaboration between municipalities: *Municipal Associations* in the sense of Art 116a B-VG and *Administration Communities*. In addition, however, forms of collaboration governed by private law (associated, limited company, corporation etc.) or informal forms (work groups etc.) may be agreed on.

The municipalities of Austria have representations of interests that are anchored and positioned in federal constitutional law (Art 115 Abs 3 B-VG) that, together with Austrian Association of Municipalities and the Association of Austrian Cities and Towns, jointly with the respective associations at Land level, represent the interests of the municipalities and towns before the federal government, the Länder and the EU.

III.3 Fiscal Equalization in Austria

The general government sector in Austria comprises four sub-sectors: federal government, 9 state governments, 2.359 local governments and social security institutions.

According to constitutional law, the federal and the nine *Länder* governments are autonomous with respect to administration and legislation. The constitution distributes the different tasks associated with administration and legislation as follows:

Most legislative functions are assigned to the federal level. The first chamber of the Federal Parliament, the *Nationalrat*, assembles 183 representatives, elected in a free and secret vote by Austrian citizens. The second chamber, the *Bundesrat* consists of 62 representatives elected by state parliaments (*Landtag*). They are free in their vote, but usually only empowered to a suspensory veto.

As opposed to the federal level, the emphasis of the *Länder* lies in the administration (Austrian administrative federalism). They administer their own laws as well as most laws of the federation (indirect administration). In the latter case the governor of each *Land* (*Landeshauptmann*) has to follow the directives of the respective federal minister.

An important exception to the administration by *Länder* authorities is the fiscal administration: Austria's revenue offices are managed by the federal level.

Legislative and administrative matters not explicitly mentioned in the Constitution remain at the *Länder* level. Jurisdiction is confined to the federal level.

The 2.359 Austrian municipalities (*Gemeinden*) are the third level of government, are autonomous and have the right to self-government (supervised by the *Länder*, e.g. local budgets). . The Austrian municipalities have associated voluntarily in two institutions to represent them: the *Österreichische Städtebund* represents larger cities, while the *Österreichische Gemeindebund* represents smaller ones, esp. rural communities.

A Fiscal Equalization

The constitutional background of intragovernment fiscal relations is given by the Fiscal Constitutional Law

(*Finanz-Verfassungsgesetz 1948, F-VG 1948*). The *F-VG* is a framework law which needs a "simple" law (i.e. a law which is not at constitutional level) for the working out of details. The simple law in this case is the Fiscal Equalization Law (*Finanzausgleichsgesetz*, henceforth *FAG*).

The *FAG* details the rules of tax sharing, intragovernment transfers and cost bearing between the federation, the *Länder* and the municipalities. There is no horizontal equalization regulated by federal government, nevertheless the vertical

equalization system contains built-in elements with horizontal effects.

The *FAG* is an example of a "sunset-law", so called because it is in force for only a few years after which it has to be replaced by a new regulation. The present *FAG* came into force in 2001 (*FAG* 2001).

Although the federation could push an *FAG* through parliament, negotiations between the federal minister of finance, the respective finance ministers of the *Länder*, and representatives of the local governments usually take place before the federal government submits the draft of a new *FAG* to the parliament. As a general rule, consensus is found. Additionally, *Länder* and municipalities are protected from any discrimination or unfair treatment by the right to sue at the Constitutional Court. Given the law is unconstitutional the Court declares it to be null and void.

Other entities of the public sector, esp. the self-governing social security authorities, are not included in the system of fiscal equalization. They are regulated by the federal parliament in the way of other laws.

B Tax Sharing

The first step toward fiscal equalization in the respective *FAG* is tax sharing.

In Austria the Federation can legislate for a certain tax if it is at least partially entitled to the tax revenue. If there is no federal share of revenue, legislation remains with the *Länder*. Municipalities are not empowered to legislate for taxes. However, they can regulate local taxes if they are entitled to it by either federal or *Länder* law. Tax administration in Austria is principally a task of the federal government. 95 % of all revenue is levied by federal revenue offices. Municipalities levy more than 4 % and *Länder* less than 1 % of all revenue.

Table 1: Tax sharing in Austria (2001)

Tax	Revenue (bio €)		% of	
			Länder	Municipalities
Exclusive Federal taxes				
WBF- Contributions to Housing Development ¹	614	100	-	-
Customs Tax	225	100 (EU 75)		
Tobacco Tax	1.234	100		
Administrative Fees	798	100		
Insurance Tax	814	100		

Employer Contributions to Family Allowance Fund	3.262	100 (Fund)		
Other Exclusive Federal Taxes	2.441	100	-	-
Shared Taxes				
Corporate Tax	6.235	71.891	14.941	13.168
Income Tax	3.814	71.891	14.941	13.168
Wage Tax (withheld)	15.154	71.891	14.941	13.168
Tax on Interests (withheld)	1.615	53.000	27.000	20.000
VAT	16.148	67.437	18.341	14.222
Advertising Tax	87	4.000	9.083	86.917
Mineral Oil Tax	2.880	91.291	6.575	2.134
Other Shared Taxes	4.697			
<i>Vorweganteile/ deduction at source</i>	-3.718			
Local Taxes				
Property Tax	479	-	-	100
Payroll Tax	1.797	-	-	100
Charges	1.668	--		100
Other Local Taxes	734	-		

State Taxes				
Fire Protection Tax	45	-	100.0 -	
Hunting,	9	- 100.0	-	
Fishing Licenses				
Tax on Tourism	53	d.s.*)	d.s.*)	
Entertainment Taxes	73	d.s.*)	d.s.*)	
Other State Taxes	237	-		
Total	63.265	73.3	26.7	

1 Contributions to Housing Development, fixed percent of payroll

**) different shares in the respective states;*

Source: STATÖ, Government Finance Statistics, own comp., FAG 2001;

C Distribution of Revenue

The revenue of shared taxes is allocated as follows:

- First, deductions are made at source to finance some common tasks of all levels of governments (*Vorwegabzüge*).
- Next, *FAG* determines the tax revenue distributed to federal and respective state governments and to local governments statewise.
- Again deductions for common tasks take place.
- Distribution to the nine *Länder* follows:

Revenue for both the *Länder* and municipalities (grouped together by *Land*) are distributed by the federal government to

the individual *Länder*. This procedure is guided by two main criteria:

- Tax revenue criteria: allocation is based on regional or local revenue of a tax.
- Demographic criteria: allocation is based on the number of inhabitants of a *Land* or municipality.

Länder now allocate the local share of revenues to the individual municipalities as follows:

- 87.3 % according to criteria such as financial requirements, demographic criteria, and a special demographic criteria referred to as the "scaled population multiplier". This index multiplies the simple population figure by a scale factor, the latter being based on population categories: The scaled population multiplier favours larger municipalities. The idea underlying the positive bias is the assumption that larger municipalities have disproportionately larger financial requirements (Brecht's Law).
- 12.7 % are allocated according to criteria decided on by the distributing *Land*.

D Intragovernment Transfers

A second step of fiscal equalization follows: intragovernment transfers. They exist as special cost bearing rules, as quota allocation of funds or as grants to cover special needs or purposes.

Of special interest are:

- Transfers to equalize the average revenue: The federation subsidizes both needy *Länder* and municipalities to guarantee them financial means close to the respective national revenue average per capita. The necessary amounts are paid out of the federal budget, not from *Länder* or municipalities ranking above the national average.
- Transfers to cover the needs of municipalities which are no longer able to carry out their legal duties.
- Transfers from the federal level to the *Länder* for housing development, environmental purposes and infrastructure, for theatres and for stable budgets of subnational governments.
- Transfers from the federal natural disasters fund to support subnational governments in case of own losses or aid to the private sector.

Länder are additionally entitled to organize a horizontal equalization for municipalities via transfers from local government revenues for purposes such as financing *Länder* budgets (max. 7.8 %) or for financing specific tasks of *Länder* or municipalities.

E Cost Bearing

Constitutional law also regulates cost bearing obligations of governments: each territorial unit (federation, each *Land*, each municipality) has to bear its own costs. This sounds simple in

principle, but is tricky in detail, esp. as far as indirect administration is concerned:

The Constitutional Court decided that wages of Länder employees working in indirect administration (i.e. to fulfill tasks of the federation) have to be borne by the *Länder*. In addition, the *Länder* have to pay all expenses necessary to create proper working conditions for these employees (i.e. buildings, furniture, paper, telephone costs, and other variable expenses.)

The Federation pays costs connected with specific tasks of that administration (e.g. construction costs of a highway).

F Allocation of Financial Means after Fiscal Equalization

After all these tax sharing, transfers and cost bearings the various governments can dispose of the following means:

Table 2: Allocation of Financial Means after Fiscal Equalization

	Mio €	%
Fed.	38.602	59:4
Länder *)	12.705	19:5
Vienna	5.509	8:5
Municipalities *)	8.207	12:6
Total	65.023	100:0

*)without Vienna.

Source: STATÖ, Government Finance Statistics, own comp., FAG 2001;

G Outlook

Austria's fiscal equalization system has developed to be quite complex. The reason for this is mainly the negotiatory approach which is consensus oriented. Nevertheless, there is an efficient horizontal outcome: Broad acceptance of the system gives a hint that the balance between regional equalization and remaining performance incentives could be maintained.

Despite this success reforms have to be implemented:

- It has to be reconsidered whether vertical equalizing is still appropriate when there are budgetary surpluses of the Länder governments financed by federal deficits.
- The meagre competences of Länder governments to legislate for taxes are not appropriate to the federal character of Austria.

- Local governments discuss very eagerly whether the system of revenue allocation among themselves is still appropriate and if it should not be reformed towards a more specific task oriented approach.

III. 4 The Consultation Mechanism - Austria's new way of regulation Cost Bearing in the Federal State

Austria is a federal state. The fiscal constitution (Fiscal constitutional law 1948 - F-VG1948) (*Finanzverfassungsgesetz* - henceforth F-VG) rules the manifold fiscal relations of the federal government, the nine Länder and the 2359 municipalities.

A Ruling - Cost Bearing

The ruling of cost bearing is an important aspect:

The regional and local governments, federal government, Länder and municipalities bear the expenses arising from the management of their respective tasks (principle of connection). Exceptions are only possible by particular legal directives. Thus the common fulfilment of laws is carried out by institution of a subordinate government level:

The case of federal administration, where the institutions of a state fulfil the laws for the federal government is significant. In this case the Land bears personnel and government operating expenses (buildings, equipment and facilities, computers etc.) the federal government the other expenses (Exception: The federal government refunds the majority of the costs for state teachers including expenses for pensions).

The municipalities, too fulfil their tasks in their own and a transferred field of action (Art. 118 B-VG). In the transferred field of action the municipality acts by order of the Land or of the federal government and is bound to their instructions.

The sub-national regional and local governments were possibly unintentionally burdened with expenses by new laws of higher-levels in this system. Furthermore, it was possible to commit them by law to absorb the expenses for tasks of other government levels.

To avoid such unwanted expense burdening by other levels and for a better coordination when preparing laws and directives a consultation mechanism was concluded (Art. 118 B-VG) by an inter-government contract.

B Contents of the Consultation Agreement

The Consultation Agreement contains:

- commutative information obligations with the opportunity of a statement with regard to all measures of issuing laws
- the entitlement to demand negotiations in a consultation committee within the appraisal period. Representatives of all government levels are members of this committee

- submission of unanimous cost bearing recommendations of the consultation committee to the legislator
- rulings of cost bearing, particularly automatic cost compensation obligations when the minimum appraisal obligations are not adhered to or when the decisions of the consultation committee are not taken into account

The federal parliaments are not bound by these obligations (Nationalrat (first chamber of the Federal Parliament) and the Länder (state parliaments)). Appraisal and possible consultation sessions in the consultation committee are not obligatory for bills put forward by members of parliament (initiative bills and parliamentary amendment bills). The local and regional governments receive automatic cost compensation for such laws - if they generate expenses.

C Legal Protection

The consultation agreement contains the possibility to bring an action before the Austrian constitutional court against a regional government issuing a law if the agreement is violated. This particularly also concerns additional unintended financial burdening beyond negligible limits.

Financial transfers for reason of the consultation mechanism are to be borne for the entire fiscal equalization period. The new ruling of all fiscal relations between the regional and local governments applies for the following fiscal equalization period. Expenses to be settled are to be included conjointly as existing obligations in the negotiations for the next fiscal equalization period.

D In Practice

The consultation mechanism has proven to be an important tool in practical administration, particularly of the sub-national regional and local governments. It has, so far, only been necessary to convene the committee once. In many of the cases negotiations were continued at expert level after an application for consultation and either the bill was modified to take account of the interests of the other regional or local governments involved or was completely rejected

E Evaluation

The development of the consultation mechanism was a significant step towards a new ruling of cost bearing in the Austrian Federation. Intensive exchange of information and the communication between the Federal Government, Länder and municipalities have become matters of common interest. The

reliability of budgeting has improved significantly where the budgets of sub-national regional and local governments are concerned.

III.5 Austria's Internal Stability Pact 2001

The Federal Government of Austria is committed to a lasting consolidation of public budgets in order to reduce the tax burden on households and businesses and the obligations of future generations. The main emphasis lies on strategic and forward-looking budgetary policy to strengthen Austria as a business location.

This stability-oriented budgetary policy fulfils the obligations of the European Stability and Growth Pact. Being a federal republic Austria has to solve the problem of integrating the budgetary policies of autonomous sub-national authorities into the national consolidation scheme. Therefore an Austrian Internal Stability Pact 2001 - AISP 2001 containing clear obligations for national, regional and local authorities was implemented after negotiations between the federal and the sub-national governments: the *Österreichischer Stabilitätspakt 2001 - ÖStP 2001*.

This Austrian Stability Pact 2001 - AISP 2001 is a new and effective instrument for budget coordination and sustainable budgetary policy. It applies to the period of 2001 - 2004.

A The Aim of the Pact

The AISP 2001 aims to achieve a balanced general government budget. All levels of government pledge to achieve pre-established budgetary goals. Failure to achieve these goals can lead to the application of fixed penalties.

There is, however, significantly more to the AISP 2001 than the penalties on which public attention has focused. The AISP 2001 creates the preconditions for substantial improvement of budgetary coordination between the three levels of government. In fact, the aim of the AISP is not to punish, but to arrive at a balanced general government budget by means of cooperation between all levels of authority.

B Stability contributions

In the AISP 2001 the *Länder* pledge to deliver budgetary surpluses totalling +0.75% of GDP, while the local authorities or municipalities pledge to produce balanced budgets. This, in combination with the reduction of the federal deficit to -0,75% of GDP, produces the required balanced national budget. These agreed budgetary thresholds may only be exceeded slightly, on an exceptional and temporary basis, without the imposition of penalties. The deficits must be recovered in subsequent years.

Surpluses, on the other hand, can be transferred to other authorities party to the pact.

If the agreed stability contributions are not delivered, penalties can be imposed by a "conciliation committee" (*Schlichtungsgremium*). Two members of this committee are appointed by the Minister of Finance and two by *Länder* governments or local authorities.

Länder governments/local authorities that fail to deliver are not entitled to nominate members. The committee makes its decisions unanimously, drawing on the expert opinion of the President of the Austrian Audit Office (*Österreichischer Rechnungshof*). In some special cases, e.g. if the general government budget is balanced despite the negative performance of a specific party, no penalty is applied.

The fine is set at 8% of the applicable stability contribution plus 15% of the deficit, but may not exceed the actual deficit. Payments are deposited at the Austrian Central Bank - *Oesterreichische Nationalbank OeNB*. If the pact's requirements are met the following year the money is returned, otherwise it is apportioned to all other authorities that have met their commitments.

C Budgetary Coordination

To improve budgetary coordination a national coordination committee¹ representing all levels of government has been appointed.² Eight regional or Land³ and coordination committees facilitate coordination between their Land and its local authorities.

These committees not only serve as information channels but also bear broad-ranging responsibilities such as coordination, guidance and the monitoring of budgetary planning and implementation. They make their decisions unanimously. Nevertheless, final responsibility for the outcomes still lies with the individual authorities.

D The European System of Accounts - ESA

It was agreed that the ESA95 should be used to evaluate budget outcomes, since the same method is used at EU level

¹ *Österreichisches Koordinationskomitee*

² *Gemeinden (local authorities/municipalities) are represented as usual by their two associations, the Österreichischer Gemeindebund and the Österreichischer Städtebund.*

³ *Länder-Koordinationskomitees. Vienna is the only Land without such a committee, as it is its own municipality and no other municipalities exist in the Land of Vienna.*

(Maastricht - deficit.) The AISP 2001 therefore required a deviation from the cash-oriented method used for financial statistics in Austria.

However, the ESA95 is not a definitive and stable set of rules. It is continually evolving subject to changes in interpretation by the EC (EUROSTAT.) This had serious implications for the parties to the AISP 2001 – it meant that changes in interpretation might result in penalties if measures deemed appropriate at the time of implementation became inadmissible under new rules.

The AISP 2001 therefore uses the 2000 interpretation of the ESA, based on the definitions and methods then applicable for budget notification, as described in a publication by the Austrian statistics office *Statistik Austria (STATÖ.)* Of course, this is a strictly national arrangement and has no effect on EUROSTAT. The results according to AISP 2001 may therefore differ from those of EUROSTAT, but the advantage is greater security for planning.

Austria's statistics office *Statistik Austria (STATÖ)* delivers the budgetary results of all levels of government by August each year.

For 2001 the agreed targets (as % GDP) were exceeded:

Federal deficit	- 0.13
<i>Länder</i> surpluses	+0,76
Local government outcome	+0,10
Austria, general government	+0,72

Definitive data is not yet available for 2002. However, the ESA results suggest that budget consolidation targets might be met in 2002 too, despite stagnating revenues.

E Outlook

The AISP 2001 was an important step towards the coordination of public budgets in Austria. Once it has run its course a new pact will have to be developed, building on experience. It will then be necessary to consider whether the present targets – *Länder* surpluses and financing through federal deficits - are appropriate in the long term.

The General Secretariat of the Austrian Association of Municipalities

The administrative work for the bodies and committees of the Austrian Association of Municipalities is carried out by the General Secretariat of the Association of Municipalities in accordance with the association's statutes. The association's head office is located in the seat of the national government. Since 1988, the General Secretariat has been led by its Secretary General, Dr. Robert Hink. Under the supervision of the President, Dr. Hink conducts the affairs of the Austrian Association of Municipalities and is also senior among the employees of the Association. The Brussels office of the Association has been operational since the summer of 1996.

General Secretariat Staff/ Vienna:

- Mag. Sabine Blecha
- GS-Stv. RR Mag. Nicolaus Drimmel
- Josefina Gruber
- Iris Houra
- Mag. Petra Schröder
- Dr. Erich Sieder
- Petra Stossier



General Secretary
wHR Dr.
Robert Hink

Adress / Vienna:

Loewelstraße 6, 1010
Vienna

Tel.: 0043-1-5121480;
Fax: 0043-1-5121480-
72;

Mail: oesterreichischer@gemeindebund.gv.at
Internet:
www.gemeindebund.at

General Secretariat Staff/ Brussels:

- Sybille Schwarz



Head of Office
Mag. MAS
Michaela Petz

Adress / Brussels:

Avenue de Cortenberg
30, 1040 Brussels

Tel.: 00322-2820680;
Fax: 00322-2820688

E-Mail:
oegemeindebund@compuserve.com



The representative body for 2.346 Municipalities in
Austria

www.gemeindebund.at