

## Republic of Austria

(Republik Österreich)



**Capital:** Vienna

**Inhabitants:** 8.316.487 (2007)

**Area:** 83.872 km<sup>2</sup>

### 1. Introduction



Austria (Österreich), in normative terms (Art 1 B-VG)<sup>1</sup>: the democratic Republic of Austria (German: *Republik Österreich*), is a landlocked country in Central Europe. The origins of modern Austria are to find in the ninth century, when the territory of Upper and Lower Austria became increasingly populated. The name "Ostarrichi" is first mentioned in an official document from 996. Since then this word has developed into the Modern German word *Österreich* meaning – freely translated – Eastern Realm or Eastern Empire.

Austria borders both Germany and the Czech Republic to the north, Slovakia and Hungary to the east, Slovenia and Italy to the south, and Switzerland and

Liechtenstein to the west. About 60% of the country is mountainous. The mountainous regions are situated in the west part of the country. The big plains are situated along the Danube in the East of the country. Austria has an area of 83.871,75 km<sup>2</sup>. Only about a quarter of the total area can be considered low lying, and only 32% of the country is below 500 meters (1,640 ft).

The capital of Austria is the city of Vienna, with 1,664.146 inhabitants. All together Austria has 8.298.923 inhabitants. Vienna it is by far the largest city in Austria as well as its cultural, economic and political center.

98% of the present Austrian population is German speaking. Small communities of ethnic Hungarians and Croats live in Burgenland, Slovenians live in southern Carinthia. According to international law Austria is obliged to guarantee Slovenian and Croatian minorities specific rights (Treaty of Vienna, BGBl 1955/152).<sup>2</sup>

Austria is member of the United Nations since 1955 and joined the European Union in 1995. It is also member of the Organization for Security and Cooperation in Europe (OSCE).

<sup>1</sup> B-VG = Bundes-Verfassungsgesetz = Federal Constitution.

<sup>2</sup> BGBl = Bundesgesetzblatt = Federal law gazette.



Austria is a parliamentary representative democracy comprising nine States. It is one of six European countries that have declared permanent neutrality, which is fixed in its constitution.

As a federal republic, Austria is divided into nine States (*Bundesländer*). These States are further divided into 99 districts (*Bezirke*). Districts are subdivided into municipalities (*Gemeinden*). There are 2,357 municipalities without Vienna.

The Federal Parliament of Austria is located in Vienna. Austria became a federal, parliamentary, democratic republic through the Federal Constitution of 1920. It was reintroduced in 1945 to the nine States of the Federal Republic. The parliamentary system of Austria is characterized by two chambers: the National Council (*Nationalrat*) and the Federal Council (*Bundesrat*). One of which represents citizens directly, the other the member States of the Federation. However the Austrian Constitution is not speaking of two chambers or houses, rather it refers to the different representative functions. While the National Council is elected by the citizens, the Federal Council represents delegates of the States. In the legislative process the Federal Council plays the institutional role in favor of the States. To avoid misunderstandings it is to clarify that members of Federal Council enjoy - as well as the members of National Council - free mandate (Art 56 par 1 B-VG).

The composition of the National Council is determined every five years (till 2007 every 4 years – Art 27 par 1 B-VG)<sup>3</sup> by a general election in which every citizen over 16 years (since 2007)<sup>4</sup> is allowed to vote (Art 26 Par 1 B-VG). The constitution doesn't determine the number of seats, but § 1 NRWO (= *Nationalratswahlordnung* =

Federal Election Law) fixes a number of 183 seats.

Austria has proportional representation system. Generally there is a threshold of 4 percent for all parties at federal elections but there remains the possibility to gain a direct seat (*Direktmandat*), in one of the 43 regional electoral districts.

The National Council is the authoritative chamber in the formation of legislation in Austria, however the Federal Council has a limited right of veto. Nevertheless the National Council can in most cases ultimately pass the respective bill by voting a second time. This is called vote of persistence (*Beharrungsbeschluss*) under Art 42 par 4 B-VG and § 82 par 2 Z 3 GOG-NR, which requires the presence of half of the members of parliament.

The election system of the States is very similar. On the whole and a little oversubscribed one can say Austria has an election-homogeneity-system.

In every of the nine States, Regional Parliaments are established (*Landtag*). They have separate legislative powers and their size depends on respective constitution. The Regional Parliament of Lower Austria has for example 56 seats (Art 8 par 1 nö L-VG 1979 = State Constitution of Lower Austria), the one of the State of Vorarlberg consists of 36 members (Art 15 par 2 vlbG L-VG = State Constitution of Vorarlberg).

As a result of the election-homogeneity-system, elections to Municipal Councils (*Gemeinderat*) also follow the system of proportional representation. By contrast to National Council and Regional Parliaments, Municipal Councils are no legislative assemblies.<sup>5</sup> Municipal Councils are

<sup>3</sup> B-VG-Novelle 2007, BGBl I 27/2007.

<sup>4</sup> B-VG-Novelle 2007, BGBl I 27/2007.

<sup>5</sup> In technical terms all three are called "public representation bodies" (*Allgemeine Vertretungskörper*).



executive bodies, with the constitutionally granted right of self-government (*Selbstverwaltung*). In most of States mayors of municipalities and towns are elected directly. In June 1994 the Federal Constitution was amended to allow direct election of mayors subject to the provision of State Constitutions.<sup>6</sup>

The concept of local-self-government has a close relationship to the aims of the 1848 revolution. At the beginning of the democratic development the postulated right of co-determination was easier to reach in towns and bigger municipalities, where the bourgeoisie was good organized. So the municipality was the starting point of democratic structures in the whole state. Although the so called "*Oktroierte Märzverfassung*" was much influenced by an "appeased" ideology, the "provisional local code" started with the solemn words: "The base of a free state are free municipalities".<sup>7</sup> The Municipal Law of 1862 (*Reichsgemeindengesetz*) was inspired by these thoughts.<sup>8</sup> Until the constitutional reform of 1962 this law was the leading framework for municipalities. With the constitutional reform of 1962 - the so called municipality-constitutional-reform - was created the currently applicable legal basis for municipalities and towns.<sup>9</sup> They have the constitutional guaranteed right of self-government. In 1988 the lobby of municipalities and towns got a constitutional recognition.<sup>10</sup> This was a result of demands from the Federation of Austrian Municipalities (*Österreichischer Gemeindebund*) and the Federation of Austrian Cities (*Österreichischer Städtebund*). In the course of the accession to the European Union those associations got constitutional rights of

participation and information in European matters belonging interests of municipalities and cities.<sup>11</sup>

In a historic view the most important notions of local government is local democracy and in close contact to this basic pillar in some extent the thought of subsidiarity. Under terms of Art 118 par 2 B-VG the own sphere of competence comprises all matters exclusively or preponderantly concerning the local community as personified by a municipality, and suited to performance by the community within its local boundaries.

## 2. Territorial organisation

The federation, federal states and municipalities (= municipalities or cities) are territorial-administrative units. As territorial-administrative units they are equal, although they are responsible for different matters, as well as they have different budget resources at their disposal. Austria consists of nine federal states. Art 116 par 1 B-VG decrees that every federal state is divided into municipalities. The constitution is lead by the principle of the "abstrakte Einheitsgemeinde" (principle of abstract municipal unit). That means that every municipality has the same rights, so it does not depend on their size or cultural and economic relevancy. Small municipalities and large cities enjoy the same rights. Some of the cities are "statutory cities" (*Statutarstädte*), they have both the competencies granted to municipalities and to districts. Districts are not local government units. Districts are administrative territorial units with only executive functions under the central government (*Land* and Federal). Hence ordinary cities and municipalities have only local responsibilities, but no district tasks.

<sup>6</sup> B-VG Novelle 1994, BGBl 504/1994.

<sup>7</sup> RGBI 1849/170: „I. Die Grundfeste des freien Staates ist die freie Gemeinde“

<sup>8</sup> Law of 5 March 1862 (RGBI 1862/18).

<sup>9</sup> BGBl 1962/205.

<sup>10</sup> BGBl 1988/685.

<sup>11</sup> Art 23c par 4 and 23d par 1 B-VG, BGBl 1994/1013.



A specific municipality has no guarantee of existence, however municipalities as a whole enjoy institutional guarantee by the Federal Constitution. As an exception, statutory cities which already existed before the municipality-constitutional-reform 1962 and Vienna (§ 4 B-VG Nov 1962 and Art 108 – 112 B-VG) have a guarantee of existence, but alterations of their area are allowed. Vienna is the capital city of Austria (Art 108 B-VG) it holds jointly different functions. It is a state and in this capacity the District Council has the additional function of a Regional Parliament, the City Senate the function of a State Government, the Mayor the function of the State Governor, the Magistrate the function of the State Government Office, and the Magistrate Director the function of the State Administrative Director (Art 108 B-VG).

The local public expenditure per inhabitant amounts € 3,400.50 compared to € 19,575.42 total public expenditure per inhabitant (2006). The ratio of local public expenditure (municipalities, joint authorities, Vienna) on GDP is 10.94 %. The ratio of local public expenditure to total public expenditure is 17.37 %. The following table summarises the distribution of expenditure among government levels.

Government level	Amount (2006) in billion Euros	% of total public expenditure
Federation	109.7	67.5
Länder (without Vienna)	24.6	15.1
Vienna (Land + Municipality)	10.2	6.3
Municipalities (without Vienna)	15.2	9.4
Joint authorities of municipalities	2.8	1.7
Total	162.5	100

### 3. Local democracy

#### 3.1. Local political system

Art 117 par 1 of the Federal Constitution prescribes: The authorities of the municipality shall include:

- the Municipal Council, being a popular representative body to be elected by those entitled to vote in the municipality
- the Municipality Board (*Gemeindevorstand*), also known as the City Board (*Stadtrat*) or in statutory cities the City Senate (*Stadtsebat*), and
- the Mayor.

The Federal Constitution further predefines the terms of quorums (Art 117 par 3 B-VG), the entitlement of party fractions in the Municipal Council to representation in the Municipality Board in accordance with their strength (Art 117 par 5 B-VG). Within the frame of the Federal Constitution the states are allowed to stipulate detailed organisational rules.

Political parties play in the exercise of all state functions and on every level, exceptionally the independent judiciary, a crucial role. Parties are structured along the state organisation, beginning on the local level through the state level right up to the federal level. The leaders compete in elections and as consequence of the interplay of the executive and the legislative powers the executive de facto dominates the legislative assembly. Mostly two parties configure a coalition. The two major Parties (SPÖ = *Sozialistische Partei Österreichs* and ÖVP = *Österreichische Volkspartei*) became so deeply embedded in all fibre of public life that Austria sometimes is remarked caustically as a party state (*Parteienstaat*). The two major parties also dominate the most powerful economic and social organizations, the Economic Chamber of Austria (*Österreichische Wirtschaftskammer*) and



the Austrian Labour Union Federation (*Arbeiterkammer Österreich*) as well as the Austrian Federation of Trade Unions (*Österreichischer Gewerkschaftsbund* - ÖGB). The Federal Constitution states for all government levels a pluralistic democratic system, but in fact Austria has a distinctive party culture.

According to these circumstances, political parties are involved in the majority of local elections with the system of proportional representation.<sup>12</sup> Due to the above mentioned constitutional permission of direct election of mayors some exceptions are possible, whereby it is to point out that not in all states this possibility is implemented.<sup>13</sup> Since that change the constituents have the possibility to distinguish between political parties and personalities. At large, independent candidates (candidates who are not members of a political party) have on a local level the best chance to gain an official function. If such a candidate gets the function of a mayor he has to arrange with the main parties in the Municipal Council, because mayors are the executive arm of the council. Moreover they depend on the cooperation with it, because the local council is the higher instance in administrative matters. Lastly the mayor depends on the confidence of the Municipal Council. No matter the lion's share of the democratic system is overpowered by political parties; only the head of state, the Federal President, is also elected directly,

but the political career of the candidates running for this position is usually over. For example the actual Federal President, Mr. Heinz Fischer, was a leading figure of the SPÖ.

The Federal Constitution decrees the organisation of municipalities in its main features. The detailed regulation falls within the competency of the states. For this reason in Austria exist nine different municipal codes, which are similar in their main features, but differ in details. Furthermore, every statutory city has an own organisational code with the same characteristics. Altogether Austria has 24 municipal codes (one for every state and 15 for every statutory city).

Mayor and Municipal Council have the executive functions in the municipality and they are elected by all federal nationals who have their residence in the municipality,<sup>14</sup> so there is a direct conjunction between democracy and executive functions.

### 3.2. Citizen participation

The election turnout on a local level in general differs between urban and landlocked areas and in addition from municipality to municipality. For example in the city of Salzburg the turnout was 1999: 60,46% and 2004: 64,8% in small municipalities it ranges from 45% to 90%<sup>15</sup> Art 117 par 8 of the Federal Constitution allows the implementation of direct democratic forms. The various municipality codes include different rules of citizen participation. In the following the broad rules of these different laws will be described. Due to the election-homogeneity-system, the same institutions of direct participation are to be found at the local level as at the state and federal

<sup>12</sup> Art 117 par 2 B-VG states: Elections to the Local Government take place on the basis of proportional representation by equal, direct, secret, and personal suffrage of all Federal nationals who have their domicile in the Municipality. Citizens of the European Union who have their residence in the Municipality also enjoy this right.

<sup>13</sup> The Federal Constitution prohibits the direct election of the mayor of Vienna (Art 112 B-VG). This is to explain with the dual function of the mayor, which also is State Governor.

<sup>14</sup> The mayor could be elected directly or indirectly.

<sup>15</sup> Data refer to Lower Austria: Government of Lower Austria.



levels. Thus, there exist three different ways of direct democratic participation:

1. plebiscite (*Volksabstimmung*),
2. referendum (*Volksbegehren*), and
3. people's consultation (*Volksbefragung*).

Citizens have the most effective power if a plebiscite is conducted. In principle they have no right of plebiscite; the initiative comes exclusively from the Municipal Council. Object of a plebiscite could be every decision of the Municipal Council. In general the absolute majority of the validly cast votes is necessary for a referendum to be valid. If the majority votes "No" the decision is rejected.

Unlike a plebiscite the citizens with a referendum have the possibility to put a specific theme on the agenda. Of course it has to be a theme which comes within the power of the municipality. It depends on the different regulations in the various municipality codes how many votes a referendum must gain to oblige the Municipal Board (City Board or City Senate) to act. With referendum it is not possible to compel a certain outcome, only the consideration of the theme can be achieved.

Finally the Local Government has the possibility to conduct a people's consultation. With this instrument it could gather a non-binding opinion of the citizens.

Whether these direct democratic instruments are ever accessible and how they are formed depends on the 24 various municipality codes.

In practice direct democratic instruments play a minor part. More often specific local themes are pushed from citizens by the help of medias to provoke public pressure. Beyond the sphere of municipalities, democratic forms of representation are granted in professional associations, like

the bar association, medical association, associations of other professions and in the powerful economic and social organizations, the Economic Chamber of Austria and the Austrian Labour Union Federation and the Austrian Federation of Trade Unions. These organizations play a vital role in economic and social life. For example they are authorised to carry out wage agreements in their sector.

#### 4. Central-local relationships

##### 4.1. General issues

Laws in different matters, which fall within the right of local self-government/administration, for example trade law, planning and building laws, are adopted by the Federal State or the States, according to their competencies as assigned by the Federal Constitution. So the Federal State and the States refer to the municipalities with their laws. The laws have to regulate the content of local self-government on an abstract level. The concrete execution comes within the competence of the municipalities. If these laws breach the constitutional guaranteed right of self-government, because of predefining the local radius of operation to much, the municipalities have the right to apply to the Constitutional Court.

Municipalities have the position of an independent economic entity. They are entitled, within the limits of the laws of the Federal State and the States, to possess assets of all kinds, to acquire and to dispose of such at will, to operate economic enterprises as well as to manage its budget independently within the framework of the constitutional finance provisions and to levy taxes (Art 116 par 2 B-VG). The ruling doctrine understands this clause in the way that municipalities benefit of everybody's rights and special restrictions are not allowed. So municipalities have a wide range of





economic activity that even could extend beyond the municipality territory.

#### *4.2. Supervision of local government*

The supervision of local-government is a legality control. Art 119a par 1 B-VG includes the following rules: The Federation and the State exercise the right of supervision over a Municipality to the purpose that it does not infringe laws and ordinances in dealing with its own sphere of competence, in particular does not overstep its sphere of competence, and fulfils the duties legally devolved upon it. Furthermore the State has the right to examine the financial administration of a Municipality with respect to economy, efficiency, and expediency (Art 119a par 2 B-VG). In so far, as a Municipality's own sphere of competence comprises matters deriving from the sphere of Federal execution, the right of supervision and its legislative regulation corresponds to the Federation, in other respects to the States (Art 119a par 3 B-VG). The supervisory authority is entitled to inform itself about every kind of municipal business. The Municipality is bound to give the information demanded in individual cases by the supervisory authority and to allow examination to be conducted on location (Art 119a par 4 B-VG).

Whoever alleges infringement of his rights through the decision of a local authority in matters belonging to its own sphere of competence can, after exhausting all instances of appeal, within two weeks after the decision has been issued, make appeal against it to the supervisory authority. The latter shall rescind the ruling if the right of the appellant has been infringed and remand the matter to the Municipality. For cities with their own charter, the competent legislature (municipality code) can expel that appeal to the supervisory authority (Art 119a par 5 B-VG).

The Municipality shall without delay inform the supervisory authority of ordinances issued in its own sphere of competence. The supervisory authority shall, after a hearing of the Municipality, repeal ordinances which are contrary to law and inform immediately the Council of the reasons (Art 119a par 6 B-VG).

In exceptional cases the municipality codes contemplates the dissolution of the Councils, as well as the admissibility of effecting a substitution is restricted to cases of absolute necessity.

Specific measures by a Municipality in its own sphere of competence, which to a certain degree affect extra-local interests, (like particularly financial bearing) can be bounded to an authorisation by the supervisory authority. Only a state of affairs which unequivocally justifies the preference of extra-local interests may come into consideration as a reason for withholding the authorisation (Art 119a par 8 B-VG). For example planning ordinances/zoning plans (*Flächenwidmungspläne*) are submitted to an authorisation.

The Court of Accounts (*Rechnungshof*) shall examine the financial administration of Municipalities with at least 20,000 inhabitants as well as the financial administration of endowments, funds, and public bodies administered by the authorities of a Municipality or persons or groups of persons appointed for the purpose by the authorities of a Municipality (Art 127a par 1 B-VG).

#### *4.3. Protection of local self-government rights and interests*

The Municipality has the status of a party in supervisory procedures; it is entitled to lodge complaints with the Administrative Court and with the Constitutional Court against the supervisory authority (Art 119a par 9 B-VG).



This provisions analogously apply to supervision of Municipal Joint Authorities in so far as these perform matters pertaining to a Municipality's own sphere of competence (Art 119a par 10 B-VG), whereby a essential possibility of self-government is mentioned. Small municipalities do not have the economic capacity to handle all matters of self-government, but they have the Constitutional right to fulfil certain tasks through municipal joint authorities (Art 116a par 1 B-VG). Municipalities could join in a Municipal Joint Authority with authorisation of the supervisory authority. Another facility to outsource certain matters of own sphere of competence is the devolution of powers to a state authority (Art 118 par 7 B-VG). Because of the principle of abstract municipality unit, such institutions are indispensable, otherwise small municipalities could not fulfil their constitutional rights of self-government.

With the Austrian Federation of Municipalities and the Austrian Federation of Cities the municipalities have a very good lobby which enjoys constitutional rights. These associations have rights of participation and information in European matters affecting interests of municipalities and cities (Art 23c par 4 and 23d par 1 B-VG). Furthermore they play an important role in all fields of municipality's interests. Most notably they are partners of the "Consultation Mechanism" (*Konsultationsmechanismus*). This is a form political mediation agreement. In broad terms the "Consultation Mechanism" enables the Austrian Federation of Municipalities and the Austrian Federation of Cities to start separate budget negotiations, if a new regulation causes additional costs to the municipalities. The agreement between the Federal State, States and Municipalities regulates in detail the procedure. The basic body is the Consultation Board, which inter alia consists of the Austrian Federation of

Municipalities and the Austrian Federation of Cities. The highlight of the "Consultation Mechanism" is the non-agreement clause. If the Consultation Board does not reach an agreement the Federation or the State have to compensate to municipalities the costs (including personnel costs) resulting from their regulations (Art 4 Consultation Mechanism code).<sup>16</sup>

### 5. Local responsibilities (functions)

The main function of municipalities in budget terms are services of general interest, like: playschools, primary schools, secondary schools, special schools, water supply, sewerage, waste disposal, municipal streets, street lighting, public swimming pools, sport areas, playgrounds, fire and rescue service, retirement homes, support of local clubs, tourism. About 90% of municipality expenditures account for services of general interest (see following charts). Municipalities put the emphasis on services of general interest, rather than administration.

The most important legal powers are planning and building powers. Zoning plans are the basis for every land use. For example zoning plans determine which areas could be used for industry, agriculture or as residential areas. The value of premises is closely connected with the prescribed land use, for that reason municipalities have got economic power and exercise a key responsibility for structural policy.<sup>17</sup>

<sup>16</sup> Vereinbarung zwischen dem Bund, den Ländern und den Gemeinden über einen Konsultationsmechanismus und einen künftigen Stabilitätspakt der Gebietskörperschaften, BGBl I 1999/35.

<sup>17</sup> Infrastructure planning of railways, harbours, airports and highways are not in the competence of municipalities.





Additionally municipalities are responsible for (Art 118 par 3 B-VG):

1. appointment of the local authorities
2. appointment of the staff and exercise of the official responsibility over them
3. local public security, supervision on local events;
4. administration of Municipal traffic areas, local traffic police;
5. rural police;
6. local market police;
7. local sanitary police, especially in the field of emergency and first aid services as well as matters of deaths and interment;
8. public decency;
9. local building police; local fire control; local land use planning;
10. public services for extra-judicial settlement of disputes; and
11. debtors' sale of goods.

These competences have a historic tradition and in practice their fulfilling is hard to imagine without municipalities.

All local tasks are rather decentralised, only due to technical, organisational and more often economic necessities the centralised exercise of tasks prevails. In this respect small municipalities are often compelled to found companies or joint authorities (Art 116a par 1 B-VG) with other municipalities.

## 6. Local finance and management

### 6.1. Local government incomes

Basis for the budget allocation are the constitutional finance provisions (*Finanz-Verfassungsgesetz* [F-VG]). The finance equalization law (*Finanzausgleichsgesetz*) is based on this constitutional statements. Actually the finance equalization law 2005 is in force (FAG 2005). Municipalities obtain tax incomes from:

- joint federal taxes (§ 8 FAG 2005)
- own municipal taxes (§ 14 par 2 FAG 2005)
- municipal taxes due to the blank right of resolution (§ 15 FAG 2005)
- financial assignments and grants (§§ 20 – 24 FAG 2005)

For municipalities without Vienna, the revenue structure is the following in 2006 (from *Statistik Austria 2007*).

Revenue sources	Amount (billion Euros)	% of total revenues
Own tax revenues and duties	2.5	16.3
User charges	1.4	9.2
Tax shares	4.4	28.8
New debt taking	1.0	6.5
Others (grants, subsidies...)	6.0	39.2
Total	15.3	100

Own municipality taxes, which entirely accrue to the municipalities, are for example: land tax, local tax, secondary residence tax, amusement tax, charges for the usage of municipal facilities, administration tax.<sup>18</sup>

Only the Federal state and the states have legislative power in budget affairs; merely by raising municipal taxes due to the blank right of resolution municipalities enjoy a broader discretionary scope. No matter if special finance investments are necessary for municipalities or other institutions; they are usually covered by a special budget.

<sup>18</sup> About 75% are covered by land tax and local tax, see *Maurer, Die steigende Bedeutung des Finanzausgleichs für kommunale Haushalte*, ÖGZ 2008, 9 (10).



Also in municipal budgets particular expenditures are declared in a special budget.

#### *6.2. Local government personnel and management*

Appointment of the staff and exercise of the official responsibility over them falls within the scope of local self-government. Depending on the job characteristics, different trainings and capabilities are necessary. The selection of the personnel can be done by an assessment center or simply by connection.

The legal regime of the personnel is the municipality public service code (*Gemeindebedienstetengesetz*), which is remitted by the state.

On a local level elected officials and municipality personnel are well considered. Austria is listed on place 4 of the Bribe Payers Index 2006 (Transparency International analysis report 4.10.2006).

The management culture has developed to a modern public management with the aspiration to improve quality and efficiency at all levels of municipal administration.

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