



## **BenchPA Project IT/AT - ID 4906**

**Development of a benchmarking and benchlearning process  
among local public administrations in Carinthia and Italy**

# **TRANSNATIONAL BENCHMARKING AND BENCHLEARNING GUIDE**

## **ANNEX I - ADMINISTRATIVE AND LEGISLATIVE SYSTEM**

**October 2013**

## MATRIX FOR AN ANALYSIS AND COMPARISON OF ADMINISTRATIVE SYSTEMS (Friuli Venezia Giulia – Kärnten – Veneto)

### FRIULI VENEZIA GIULIA AND VENETO

#### 1. The State – Region relations

##### 1.1. Constitutional framework / structure

Point 1 outlines the framework of the territorial organisation of State government. That is, whether it is defined a “federal”, “regional” or “centralised” State. It’s clear that one is aware of the fact that similar labels cannot be attached to more complex and structured governments.

In these cases, it is the ruling of Constitutional Court (of Italy, or the Supreme Court in other countries) that plays a decisive role in defining the balance of power and the responsibilities between the Region and the centre.

For the purpose of this document one can define “federal” a State which is made up of different pre-existing states and that have yielded most of their power (sovereignty) to the federal State.

Regional can be defined as being a unitary State made up of many self-governments that have legislative power recognized by Constitutional laws. Clearly, there are differences in both categories. For example, both Austria and the USA are considered federal states, but cannot be compared. Another example, is the case between Spain and Italy. Even though they are both regional states there are many differences.

The following headings outline:

- a) how to “describe” the type of State
- b) what the fundamental law is
- c) what territorial bodies is it made up of
- d) if a judicial review is foreseen (and which body carries it out)
- e) the key processes of the organization of the Judiciary

a) Type of State	The Italian Republic is a “regional State”
b) Fundamental law	The fundamental law is the Constitution and came into force on January 1, 1948. Some articles have been amended since. Significant amendments were made in 2001 to Part II, Title V which regards autonomy.
c) Constituent elements	The Republic is composed of the Municipalities, the Provinces, the Metropolitan Cities, the Regions and the State. (art. 114 Cost.).
d) Audit for compliance with the Constitution	The laws undergo an Audit for compliance with the Constitution, in some cases and under certain conditions, by the Constitutional Court

e) Organization of the Judiciary	<p>The Judiciary body constitutes an autonomous and independent branch of the State. Regional courts do not exist.</p> <p>The Judiciary body is divided into Ordinary (civil and criminal), Administrative and Accounts.</p>
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**NOTES:**

The laws approved by the Region may be appealed by the Government within 30 days, if it violates the Constitution or exceeds the jurisdiction of the Region. The law of the State may be appealed by the Region if it infringes upon its jurisdiction, when a judge, who during the course of hearing, considers that the law of the State or the Region to be applied to an actual case is of dubious constitutional consistency, an application for judicial review to the Constitutional Court may be made.

Every Region has a local section of the *Corte dei conti* that audits the legality of Government acts. These are also State bodies.

**1.2. Constitutional bodies of the State**

In addition to constitutional law regarding the relation between centre and periphery, it is also interesting to consider the framework as well as the relations between constitutional bodies in order to draw a clearer picture of what constitutes an “autonomy State” – a category in which both Austria and Italy can be placed, despite variations.

This section will therefore outline the role, function and legislative power of the constitutional bodies.

For this purpose, the following table is divided into three columns:

- **Body:** this heading refers to the constitutional body (at State level)
- **Election / nomination:** this refers to how the body is created. This aspect is important because a typical feature of a federal State is that it includes a representative assembly of the states of the federation. Whereas in other states (including regional) even the upper house represents the national community (even if its formation is different to the lower house’s)
- **Powers:** in this section main powers are outlined. Firstly, highlighting if there are differences between the two houses, and where responsibilities fall (there are no differences between the two houses in the regional State). In addition, if the upper house can make a confidence / no confidence vote to the government \*, as it happens in a regional State (where the rule is the complete/equal balance of power between the two houses) or if a vote of confidence to the government is a privilege that only belongs to the “federal house” (representing the national electoral body) but not to the “house of federated states” (representing the states).

Body	Election/nomination	Powers
Head of State	the President of the Republic is elected by Parliament in joint session and maximum consensus (majority required is stated in the Constitution)	<p>in relation to legislative functions:</p> <ul style="list-style-type: none"> <li>• promulgating the laws approved in Parliament or /and in some cases review to the Houses</li> <li>• dissolution of the Houses</li> </ul>

		<p>in relation to the Government:</p> <ul style="list-style-type: none"> <li>• appointing the President of the Council (Prime minister) after elections, and on proposal of the latter, the ministers</li> <li>• emanating laws by decree</li> </ul>
Chamber of Deputies	proportional representation system with a 'prize' for the coalition securing the largest number of votes with thresholds applied on <i>national</i> basis	<p>Legislative power (along with the Senate)</p> <p>Power of constitutional amendment (along with the Senate)</p> <p>Confidence / no confidence to the Government</p>
Senate	proportional representation system with a 'prize' for the coalition securing the largest number of votes with thresholds applied on <i>regional</i> basis	<p>Legislative power (along with the Chamber)</p> <p>Power of constitutional amendment (along with the Chamber)</p> <p>Confidence / no confidence to the Government</p>
Parliament in joint session		<p>Election of President of the Republic</p> <p>Impeachment against President of the Republic</p>
Government	<p>President of the Republic appoints the President of the Council</p> <p>Ministers appointed by President of the Republic on advice of the President of the Council</p>	<p>Government policy and Political responsibility</p> <p>Acts having the force of law</p> <p>Regulations</p>

## NOTES

\* In “parliamentary” systems the Government’s term of office begins when it has been granted a vote of confidence by the representative Assembly after elections. The Assembly can withdraw confidence during the mandate and thus entailing the obligation to resign. This system is different to the “presidential” system where the Head of State is also the head of Government and is elected directly by the people (e.g. USA).

The Government is a “complex” body in that it is composed of many bodies that each have distinct functions. These bodies are the President of the Council of Ministers, the individual Ministers and the Council of Ministers. For example, the President of the Council of Ministers may resign before the President of the Republic and this leads to the termination / ”fall” of the whole Government (which does not necessarily entail new elections) but cannot appoint Ministers. The President of the Council of Ministers may only propose the nomination of Ministers to the President of the Republic who has the power to appoint ministers.

The Ministers are collectively responsible for the acts of the Council of Ministers; they are personally responsible for the acts of their own Ministries.

The Council of Minister’s function is to adopt laws of decree (acts having the force of law and approved in case of urgency), delegated legislative decrees (acts having the force of law and approved on the basis of a previous law delegated by Parliament) and regulations (acts not having the force of law). The Council of Ministers also, for example, approves bills to present to the Houses (provided authorization from the President of the Republic has been given) and decide to appeal regional laws before the Constitutional Court.

Legislative power belongs to both Houses. Bills must be approved by both Houses before they become law.

### 1.3. Ordinary regions and special regions (relations with the State)

In the following sections it is important to point out if a “level 2 government” exists. That is an intermediate level between the State and municipalities (defined as “ground level” government). Other important aspects to consider are, if this level 2 has legislative power, what functions the level 2 has and what are the limits foreseen in the Constitution to exercise these functions.

In some States nut 2 can be regulated in a different way. Some nuts 2 have more power in relation to what is foreseen by the Constitution. This case is identified by the addition of the adjective “autonomous” to the nut 2.

The headings refer to

- if a level 2 government (nut 2) exists and what it is;
- what are the main regulations that apply to the framework that defines the relations between State and level 2;
- how is legislative power structured;
- and e) what are the limits of this level 2 legislative power;

a) nut 2		Regions with ordinary statutes (RO 15) Regions with special statutes (RS 5) Autonomous Provinces (Aut.Pr. 2) *
b) legislative references	RO	Constitution
	RS and Aut.Pr..	Autonomous Statute (constitutional law) and Constitution (Art. 116 Cost.)
c) general legislative power (“type”)	State	exclusive – concurrent (art. 117, c. 1 e 2, Cost.)
	RO	concurrent – residual (art. 117, c. 2 e 4, Cost.)
	RS and Aut.Pr.	exclusive – concurrent – executive – residual (Autonomous Statutes; art. 117, c. 2 and 4, Cost.)
Limits of legislative power		
d) Concurrent legislative power (RO – RS – Aut.Pr): limits		Constitution General principles of status International and EU obligations and regulation Principles set by State acts

e) Exclusive regional legislative power (RS – Aut.Pr): limits	Constitution General principles of status International and EU obligations and regulation
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**NOTES:**

The subject matters/functions that the Regions can regulate are not clearly stated in the Constitution or the Special (autonomous) Statutes. It means that the Regions are responsible for all matters NOT included in the concurring responsibility (and exclusive to RS). Their identification and limits to which they are subjected are not clear.

A branch of constitutional legislation, which is difficult to analyse, has been developed on these topics. In any case, the Constitutional Court tends to refer to Art. 117 comma 2 and 3 of the Constitution when an interpretation of where legislative responsibility falls is required.

\* The Autonomous Provinces of Trento and Bolzano together form the Autonomous Region of Trentino – Alto Adige Südtirol

#### 1.4. Rules on Local Government

This part describes how the relationship between the centre and periphery are structured by focussing attention on municipalities, which are “closest” institutions to the citizen.

In particular it will provide information regarding the institutional framework / structure of the municipality in terms of responsibilities .

In particular, the individual sections refer to:

1. what the constitutional sources for local administrations are;
2. who approves the laws regarding the main bodies of the municipality;
3. who approves the laws regarding the allocation of functions / responsibilities to municipalities.

a) Constitutional articles		Art. 118 Constitution
b) Municipal bodies and electoral laws	RO	State law (art. 117, c. 2, lett. p), Cost.)
	RS – Aut Pr..	Special (Autonomous) Statute
c) Municipal functions	State	“Fundamental” functions Other functions that fall within State responsibility
	RO	Matters that fall within regional responsibility
	RS – Aut Pr..	“Fundamental” functions Matters that fall within regional responsibility Other functions that fall within State responsibility

**NOTES:**

Regions with Special Status and Autonomous Provinces have “full” legislative responsibility in terms of local autonomy. Ordinary Regions have the power to regulate local authority’s functions by taking into account those that have been allocated, because considered

“fundamental functions”, to local authorities (municipalities and provinces) by the State. This issue is further complicated by the difficulty in the interpretation of Art. 118 of the Constitution, especially where it states that municipalities carry out functions of their own as well as those assigned to them by the State and Region according to their respective competences.

It is not easy to understand the difference between what the municipality’s OWN functions are and what those assigned by State or Regional legislation are, given that according to Art. 97 Cost., all administrative functions are carried out and organized only according to the pre existing provisions of law.

## 2. The structure of local government

### 2.1. Local government bodies, the electoral system and “type of government”

This section will illustrate how a municipality is organized. In particular it deals with examining the relations between the political bodies, which are different to those bureaucratic, in terms of their representative character.

The following items must be considered:

- a) what kind of electoral system is in place;
- b) what the governing bodies are;
- c) how each body is elected / appointed;
- d) which are the bodies with political responsibility

a) electoral system		proportional representation system with a 'prize' / bonus for the coalition securing the largest number of votes
b) governing bodies		Municipal council (assembly) Mayor Executive committee (“Giunta comunale”)
c) election / nomination	Municipal council	Directly by the people (associated to Mayor)
	Mayor	Directly by the people (associated with party lists of candidates)
	Executive committee	Members appointed by Mayor
d) political responsibility	Municipal council	Resignation of mayor: term *
	Mayor	No-confidence vote in the Council or resignation of 50% +1 of the members: term*
	Executive committee	Justified “removal” of a member by the Mayor

#### NOTES:

\* early resignation of the Mayor or 50 per cent +1 of the members of the Council, or approval of the no-confidence vote from the Council leads to early termination of the legislature and mandate of the Mayor, Council and Executive committee and early elections are called.

The relationship between majority and minority in the Council is directly a result of the election of the successful mayoral candidate. One may say that the election of the mayor generates a sort of “bonus” which therefore guarantees a majority.

## 2.2. Legal framework and responsibilities of Municipal Council and Executive Committee

This point makes specific reference to what the acts approved by the municipality are and, in this sector, where responsibility falls.

Source (Act)	Subject matter	Responsibility
Municipal Statute	Fundamental rules regarding organisation Allocation of bodies’ duties and competences Guarantee and participation of minorities Collaboration between local authorities Decentralization Legal representation of the municipality active citizenship	Municipal Council maximum consensus (majority required is stated in the Constitution)
Regulations	Matters and functions assigned to municipality	Municipal Council
Organization Regulations	Organization of offices / departments	Executive Committee( based on strategic framework of Municipal Council)

## 2.3. Administrative functions of the municipality

This section attempts to simplify what, in fact, is quite complex. It deals with providing a summary of the source and legal status the municipality bases its functions, considering that these are assigned by legislation with respect to the principle of rule of law, by the State or regions, according to the respective functions in the different matters.

a) Municipalities “own” functions	Administrative functions belong to the municipalities, regardless of size and density of population
b) “assigned” functions (by the State or Region)	Those functions assigned to them by the law of the State or the Region according to their respective domains.
c) “delegated” functions (by the State or Region)	Functions delegated to them by the law of the State or the Region
d) State functions	Functions carried out by the municipality, which represents a State body *

### NOTES:

As mentioned, the implementation of Art. 118 Cons. is quite complex. This is therefore a very simplified outline.



Based on the State law in force, the main functions of the municipalities are all those regarding its population and the municipal area it covers especially in the sectors regarding services provided to citizens, urban planning and economic development except when it is not specifically attributed to other bodies by State or regional legislation, according to their respective responsibilities (See art. 13 d.lgs. 267/2000 “Law on Local Government Regulations” (“Testo unico delle leggi sull’ordinamento locale”).

For example, it deals with the functions exercised by the Mayor as Representative of a “Civil Registry”. In this case he represents the Government at local level.

### 3. Local finances

This section refers to the financial relations between the “centre”(State – Region) and municipality. It deals with providing an outline of the type of system that governs public financial flows and in particular if there is “room to move” in terms of financial autonomy of municipalities.

The table shows:

- if the local authority has revenue and expenditure autonomy. That is, if it can set taxes and levies; therefore to point out if the municipality
  - does not exercise this power or if it can, in certain cases, act as an agent to collect taxes set by the State or Region regardless if revenue is allocated to the municipality;
  - can decide whether or not to collect taxes set by the State or Region where the revenue is redistributed either partially or in total to the municipality;
  - can decide to increase or decrease a tax levy introduced by the State or Region and where the revenue is redistributed either partially or in total to the municipality;
  - has the power to introduce / set its own taxes, prior to State or regional legislative “authorisation” (N.B. taxes can be introduced only by law). In this case and within the limits foreseen in legislation the municipality can decide *what* and *how much* to tax;
- if financial flows depend on transfers allocated by the “centre” (State or Region); in this sector a distinction must be made between resources that have been allocated to a specific area by the centre and those where the municipality is free to choose where to allocate them;
- if the sum that is transferred / allocated is associated, to a certain degree, to a tax revenue raised by the municipality itself or depend on transfers set by the centre(State or Region).

In the second column, the terms “State” and “Region” refer to the source of funding or who established the rules of taxation proportionally shared with the Municipality.

In addition and where possible a description of the relation between the different items is useful.

a) Autonomous power to introduce / set taxes *	NO	No decision making power in this matter. In some cases, only collect revenues set by a State or regional law	<input type="checkbox"/>
	YES	Power to decide whether or not to collect	<input type="checkbox"/>

		revenues set by State or regional law	
		Power to vary tax rates set by State or regional law	<input type="checkbox"/>
		Power to set and levy taxes of their own	<input type="checkbox"/>
b) derivative finances *	State	Freedom of transfers / allocation of funds	.. %
		Restricted transfers / allocation of funds (both capital for investments and floating capital)	.. %
	Region	Freedom of transfers/allocation of funds	.. %
		Restricted transfers / llocation of funds (both capital for investments and floating capital)	.. %
• share/distribution of tax revenues	State	Subject matter .....	
	Region	Subject matter .....	

NOTES:

\*choose the sector which applies

In Italy the situation is quite complex. Currently the implementation of Art. 119 of the Constitution (amended by the reform in 2001) has proven to be very difficult. Therefore the situation is still in a State of “evolution” and difficult to understand the direction it will take. To highlight however is that allocation of local funds in FVG is a function of the Region with respect to what is foreseen in the regulations and allocation and transfer of financial resources. If the Region does not exercise its legal power the State law is applied. This is what is currently occurring in the local government system.

Art. 119 Cost.

Municipalities, provinces, metropolitan cities and regions shall have revenue and expenditure autonomy.

Municipalities, provinces, metropolitan cities and regions shall have independent financial resources. They set and levy taxes and collect revenues of their own, in compliance with the Constitution and according to the principles of co-ordination of State finances and the tax system. They share in the tax revenues related to their respective territories.

State legislation shall provide for an equalisation fund - with no allocation constraints - for the territories having lower per-capita taxable capacity.

Revenues raised from the above-mentioned sources shall enable municipalities, provinces, metropolitan cities and regions to fully finance the public functions attributed to them.

The State shall allocate supplementary resources and adopt special measures in favour of specific municipalities, provinces, metropolitan cities and regions to promote economic development along with social cohesion and solidarity, to reduce economic and social imbalances, to foster the exercise of the rights of the person or to achieve goals other than those pursued in the ordinary implementation of their functions.

Municipalities, provinces, metropolitan cities and regions have their own properties, which are allocated to them pursuant to general principles laid down in State legislation. They may resort to indebtedness only as a means of funding investments. State guarantees on loans contracted for this purpose are not admissible.

## 4. Organizational framework

### 4.1. Relations between politics and administration

This section refers to whether the local authority foresees a distinction between the role played by the administrator (politician) and civil servant (staff of the municipality). The general outline foresees that it is the responsibility of the politician to define the objectives to achieve, while the bureaucratic system has the task of carrying out activities in order to achieve them.

This framework has important repercussions on powers and the measures used to exercise them. First and foremost is the power to adopt administrative acts that fall within the responsibilities of the municipality. If the organization has been structured on the basis of a separation of powers, the responsibility to adopt the act – which is always attributed to the municipality – is a task of the civil servant and not the politician.

Obviously this model is normally found in medium sized to large municipalities, whereas these two functions overlap in smaller municipalities.

The following items provide information regarding:

- who has the responsibility to adopt administrative measures of the municipality (e.g. building permits, grant of a benefit, authorization to open a bar, etc)
- if there is an institutional role of “legal-technical advisor” foreseen in the municipality,
- if there is an institutional role of administrative management of the municipal departments
- what the bureaucratic-administrative organizational model of the municipality is
- which are the rules on Civil Service (municipality employee)

a) administrative measures	Service Director – PO *
b) legal- technical advice	General secretary : chosen by mayor from a regional register
c) administrative management of municipal departments	Managing director (appointed by mayor and often has a second post) **
d) organizational model	Subdivided into “services” – a Director (or PO) head the department (service)
e) job in the CS	Public work through contracts – in FVG there is “one stop shop” regional and local government employees.

#### NOTES:

\* The so called OP (Organizational Position) are employees of the municipality who carry out the coordination tasks of the departments, but do not carry the status of Director. OPs are commonly found in smaller municipalities.

\*\* The managing director can be hired from “outside” the administration, with a temporary contract based on non-public (civil) law. Generally speaking, the positions of secretary and director are assumed by one person in small municipalities.

#### 4.2. Organization of services

This section provides general information on the different procedures used by municipalities to organize public services delivered.

In particular it will deal with making a distinction between whether the service is delivered “directly” by the municipality (by its offices or by delegated bodies) or if the service is outsourced (following a comparative procedure) or if the service is delivered by public – private organizations (PPP: public – private partnership). You can also distinguish between a “contractual” PPP (outsourcing made by a public procurement ) and an “institutional” PPP, which means a more structured way of sharing public duties, e.g., making up a public – private corporation.

In the two main columns a distinction is made between services delivered by the municipality itself (internal) and those delegated (external).

In the two sub-columns, the one on the left refers to the organizational model used and the one on the right to the type of service or subject matter / sector / field, and includes the cases that are considered most widespread.

Internal		External	
Model	Service	Model	Service
Municipal department	library	Outsourcing agreement	
Institution		“mixed” Joint Stock Corporation Public company(private and public shareholders)	
Special Agency			
<i>in house</i> Joint Stock Corporation company financed by municipality			

In addition, information related to the types of collaboration between municipalities should be provided.

This refers to information regarding whether the State or regional legislation foresees collective forms of management of services.

The Italian case is summarized in the following table.

Type of collaboration	Description
Agreement (Convenzione)	An agreement where two or more municipalities decide to share the carrying out of one or more services or functions.
Association among Municipalities (Associazione intercomunale)	An agreement between several municipalities to carry out several functions or services. It does not have legal status and is governed by an agreement / contract.

Agency (Consorzio)	A “stable” association between several municipalities to carry out several functions or service. It has legal status, a president, a director a board and financial autonomy. *
“Work Plan Agreement” (Accordo di programma)	Agreement where some administrations regulate the implementation of respective competences and financial transfers for a specific task (e.g. public works) or some tasks linked together (a work plan).

NOTES:

The FVG act 1/2006 prohibits the constitution of agencies made up only of municipalities.

## **Matrix for an Analysis and Comparison of Administrative Systems** (Friuli Venezia Giulia – Kärnten – Veneto)

### **KÄRNTEN**

#### **5. State – Region relations**

##### **5.1. Constitutional framework/structure**

Point 1 outlines the framework of the territorial organisation of state government. That is, whether the State is defined as a “federal”, “regional” or “centralised” State. Clearly, generalized labels cannot be attached to complex and elaborately structured governments. In such cases, it is the ruling of the Constitutional Court (of Italy, or the Supreme Court in other countries) that plays a decisive role in defining the balance of power and the responsibilities between the region and the centre.

For the purpose of this document, a Federal State can be defined as a State that is made up of different pre-existing smaller state or provincial units, which have yielded most of their power (sovereignty) to the Federal State.

The regional level is composed of unitary states made up of many local self-governments which have legislative power conferred by constitutional laws. Clearly, there are differences based on the complex nature of the specific State concerned. For example, both Austria and the USA are considered Federal States, but cannot be compared to one another in terms of their legal make up. This is also the case for Spain and Italy. Even though they are both Regional States there are many differences between the two.

The following will be outlined below:

- a) An explanation of the type of State in question
- b) The fundamental law underpinning the State
- c) The territorial bodies which exist as part of the State
- d) Whether or not a judicial review is foreseen (and which body is responsible for carrying it out)
- e) The key processes in the organization of the judiciary

a) Type of State	Austria is a democratic republic, whose law emanates from the people (Art. 1 B-VG*). Austria is organised as a Federal State.
b) Fundamental law	The fundamental law in Austria is the Constitutional Law or <i>Bundes-Verfassungsgesetz</i> , which was enacted on 1 October 1920. Major amendments were made in 1925 and 1929. In 1925 the articles regulating the allocation of competences ( <i>Kompetenzverteilung</i> ) were enacted and the indirect federal administration ( <i>mittelbare Bundesverwaltung</i> ) was established. With the second amendment in 1929 the position and competences of the Federal President were consolidated (Stolzlechner 2004, pp. 78-79).
c) Constituent elements of the State	Austria is a Federal State (Art. 1 B-VG) composed of nine autonomous member states ( <i>Bundesländer**</i> ) (Art. 2 (2) B-VG) – Burgenland, Carinthia, Lower Austria, Upper Austria, Salzburg, Styria, Tirol, Vorarlberg and Vienna (Hausmaninger, 2003, p.23). There are 2,357 municipalities in Austria (according to the Austrian Association of Municipalities)
d) Audit for compliance with the Constitution	
e) Organization of the Judiciary	All courts in Austria are federal institutions (Art. 82 (1) B-VG) and judges, in exercising judicial authority, are independent (Art. 87 (1) B-VG). Organization and jurisdiction of courts is established by federal law (Art. 83 (1) B-VG). A special <i>Bundesländer</i> judiciary is debarred by the Constitutional Law (Stolzlechner 2004, p.117). Judges are appointed by the Federal President or the Federal President may delegate this task to the responsible Federal Minister of Justice, following the proposal of the Federal Government - which may also delegate this task to the Minister of Justice - (Art. 86 (1) B-VG). The highest level of jurisdiction in civil and criminal law is the <i>Oberster Gerichtshof (OGH)</i> or Supreme Court (Art. 92 (1) B-VG). The Constitution states that judicial and administrative powers shall be separated (Const. Art. 94). The highest instance in civil and penal-law cases in Austria is the Supreme Court. The Supreme Court along with the Constitutional Court <i>Verfassungsgerichtshof (VfGH)</i> and the Administrative Court <i>Verwaltungsgerichtshof (VwGH)</i> is the highest court.

NOTES:

\* Please note that in ‘Art. 1 B-VG’ the ‘B-VG’ refers to the *Bundes-Verfassungsgesetz*, which is the Austrian Constitutional Law.

\*\* *Bundesland/Land* and *Bundesländer/Länder* are used throughout to indicate the state level.

## 5.2. Constitutional bodies of the State

In addition to constitutional law regarding the relation between centre and periphery, it is also interesting to consider the framework as well as the relations between constitutional bodies in order to draw a clearer picture of what constitutes an “autonomous state” – a category in which both Austria and Italy can be placed, despite variations.

This section will therefore outline the role, function and legislative power of the constitutional bodies of the State.

For this purpose, the following table is divided into three columns:

- a) Body: this heading refers to the constitutional body (at State level)
- b) Election/nomination: this refers to how the body is created. This aspect is important because a typical feature of a Federal State is that it includes a representative assembly of the states of the Federation. Whereas in other states (including Regional States) even the upper house represents the national community (even if its formation is different to that of the lower house)
- c) Powers: in this section the main powers are outlined. Firstly, highlighting whether there are differences between the two houses, and where responsibilities fall (there are no differences between the two houses in a Regional State). In addition, it is also interesting to note whether the upper house can take a vote of confidence/ no confidence in the government \*, as is possible in a Regional State (where the rule is the complete balance of power between the two houses) or whether a vote of confidence in the government is a privilege that is restricted to the “federal house” (representing the national electoral body), but not to the “house of federated states” (representing the states).



Body	Election/nomination	Powers
<p>“Head of State” Federal President</p>	<p>The <i>Bundespräsident</i> or Federal President is the head of state in Austria, but not the head of the executive. He/she is elected directly by the people in accordance with the Austrian election principles (Art. 60 (1) B-VG). If there is only one candidate, the election shall take place by means of a referendum. The candidate with more than half of all valid votes is elected. If there is no majority, a second ballot is held. In this run-off ballot votes can only be cast for either of the two candidates with the most votes in the first ballot (Art. 60 (2) B-VG).</p> <p>To candidate for the Federal Presidency, it is necessary to have <i>Nationalrat</i> suffrage and to have a minimum age of 35 (Art. 60 (3) B-VG).</p> <p>The period of office lasts six years (Art. 60 (5) B-VG) and the Federal President can only be re-elected for one consecutive period (Art. 60 (5) B-VG).</p>	<p>The responsibilities and powers of the Federal President are stated in the Constitution (Art. 65 (1-3); Art. 67 (1); and several other articles). Acts of the President must, in general, be based on proposals made by either the Federal Government or a Federal Minister (who has been delegated responsibility by the Federal Government). While the Federal President may not deviate from these proposals, he/she is not obliged to act (Hausmaninger 2003, p. 59). There are a number of exceptions in which the President may act without proposal. (See for example the first two points below under legislative functions)</p> <p>Powers in relation to legislative functions include:</p> <ul style="list-style-type: none"> <li>• Appointment and dismissal of the Federal Government, Federal Chancellor and of Federal Ministers (Art. 70 (1) B-VG)</li> <li>• Dissolution of the <i>Nationalrat</i> (National Council) The President may only avail of this means once for the same reason (Art. 29 (1) B-VG).</li> <li>• Dissolution of a <i>Land</i> parliament upon request of the Federal Government and with the approval of the <i>Bundesrat</i> (Federal Council) (Art. 100 (1) B-VG). Dissolution can only be decreed once for the same reason.</li> <li>• Appointment of federal public officials, officers, judges and other federal functionaries (Art. 65 (2) B-VG).</li> <li>• Authentication of Federal Laws (Art. 47 (1) B-VG)</li> <li>• Right to issue emergency regulations upon request of the Federal Government to “avert an obvious and irreparable danger to the public” (Art. 18 (3) B-VG) (Hausmaninger 2003, p.60)</li> </ul> <p>Powers with regard to foreign affairs</p>

		<p>include:</p> <ul style="list-style-type: none"> <li>• The Federal President represents the Republic of Austria internationally and carries out other activities related to this responsibility, e.g. the reception of foreign diplomatic and consular representatives; appointment of consular representatives of the Republic abroad and conclusion of treaties (Art. 65 (1) B-VG).</li> </ul> <p>Other powers in relation to the government include:</p> <ul style="list-style-type: none"> <li>• Awarding of titles (Art. 65 (2a,b) B-VG)</li> <li>• Granting of individual pardons (Art. 65 (2c) B-VG)</li> <li>• Declaration of illegitimate children as legitimate, upon request of the parents (Art. 65 (2d) B-VG)</li> <li>• Supreme command over the Federal Armed Forces (Art. 80 (1) B-VG)             <ul style="list-style-type: none"> <li>• Granting of honorary privileges</li> <li>• Ordering the execution of judgements of the Constitutional Court upon the Court's request (Hausmaninger 2003, p. 60)</li> <li>• Ordering referendums</li> <li>• Calling sessions of the <i>Nationalrat</i></li> </ul> </li> </ul>
<p>“House 1” Parliament / <i>Nationalrat</i> (National Council)</p>	<p>The <i>Nationalrat</i> is elected by the citizens in accordance with the principles of proportional representation (Art. 26 (1) B-VG). The election is based on the Austrian election principles of universal, equal, direct, secret and personal suffrage. All citizens who have reached the age of 16 on or before election day may cast their votes (Art. 26 (1) B-VG). The mandate lasts five years, from the day of its first meeting until the day on which the new <i>Nationalrat</i> meets (Art. 27 (1) B-VG).</p> <p>Seats are allocated to the parties running for election on the basis of their percentage share of the votes cast. In Austria, each party needs a minimum of 4% of votes to be represented in the parliament, or has a direct or basic mandate in one constituency (Stolzlechner 2004, p.</p>	<p>The <i>Nationalrat</i> is the centre of State authority (Stelzer 2009, p. 11). The <i>Nationalrat</i> exercises legislative powers in conjunction with the <i>Bundesrat</i>.</p>

	139).	
“House 2” <i>Bundesrat</i> (Federal Council)	<p>The members of the <i>Bundesrat</i> are elected by the Länder Parliaments (Landtage) based on the principal of proportional representation (Landtage). The duration of the mandate depends on the duration of the Länder Government’s legislative period (Art. 35 (1) B-VG): members are elected after every state general election. The Federal Council as such is never dissolved, but partially renewed. (Stelzer 2009, p. 21)</p> <p>The number of members which the <i>Bundesländer</i> can delegate to the <i>Bundesrat</i> depends on the number of inhabitants of the respective <i>Bundesland</i> (proportionality). The number is fixed by the Federal President in an ordinance and is based on the results of the last census (Art. 34 (1) B-VG) (Stelzer 2009, p. 20).</p>	<p>The main function of the <i>Bundesrat</i> is not to develop the content of the law, but rather to represent the interests of the <i>Bundesländer</i> in the legislative process (Stolzlechner 2004, p. 143).</p> <p>The <i>Bundesrat</i> exercises legislative power jointly with the <i>Nationalrat</i>, participates in the administration of the Federation and has control functions.</p> <p>The most important competence of the <i>Bundesrat</i> is the right to invoke a suspensive veto against legislation by the <i>Nationalrat</i> (Öhlinger 2009, p. 140).</p> <p>The <i>Bundesrat</i> has an absolute veto of power in cases where the constitutional laws or constitutional provisions contained in simple laws restrict the jurisdiction of the <i>Länder</i> (Art. 44 (2) B-VG) (Hausmaninger, p. 55). The <i>Bundesrat</i> also has an absolute veto in legal provisions affecting the <i>Bundesrat</i> itself.</p> <p>The <i>Bundesrat</i> has the right to legislative initiative (Art. 41(1) B-VG). Approval of the <i>Bundesrat</i> is also necessary for State treaties that regulate matters falling within the autonomous sphere of competence of the <i>Länder</i> (Art. 50 (4) B-VG) (Stolzlechner 2004, p. 144).</p> <p>In addition, any partial revision of the Constitution can be subject to a referendum, if 1/3 of the members of the <i>Bundesrat</i> (or <i>Nationalrat</i>) so demand (Art. 44 (3) B-VG). 1/3 of the members of the <i>Bundesrat</i> can also request that the Constitutional Court assesses whether a Federal Law is unconstitutional (Art. 44 (1) B-VG). Furthermore, the <i>Bundesrat</i> has some rights of scrutiny over the Federal Government (Öhlinger 2009, p. 140).</p>
Parliament in joint session		Legislative power
Government	The Federal Chancellor, and on his or her proposal the Federal Ministers, are	Matters reserved for the Federal Government:

	<p>appointed by the Federal President (Art. 70 (1) B-VG).</p> <p>The National Council may pass a motion of no-confidence in the Federal Government (Art. 74 B-VG) (Öhlinger 2009, p. 170).</p>	<ul style="list-style-type: none"> <li>• Shall arrange for the newly elected <i>Nationalrat</i> to meet on the day after the expiry of the fourth year of the legislative period (Art. 27 (2) B-VG)</li> <li>• Submission of the draft of the new budget (Art. 51 (1-2)B-VG)</li> <li>• Right of veto in legislative enactments of the <i>Länder</i> (Art. 98 (2) B-VG)</li> <li>• Right to take petitions against <i>Länder</i> laws and acts to the Constitutional Court (Art. 140 and 139 (1) B-VG)</li> <li>• Right to submit legislative proposals as government bills to the <i>Nationalrat</i> (Art. 41 (1) B-VG)</li> </ul>
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## NOTES

\* In “parliamentary” systems the government’s term of office begins when it has been granted a vote of confidence by the representative assembly after elections. The assembly can withdraw confidence during the mandate; resulting in the obligation to resign. This system is different to the “presidential” system where the Head of State is also the head of government and is elected directly by the people (e.g. USA).

In Austria legislative power is shared by the *Nationalrat* and the *Bundesrat* (bicameral system) (Const. Art. 24). The Federal Government is composed of the Federal Chancellor, the Vice Federal Chancellor and the Federal Ministers. The Federal Chancellor chairs the Federal Government as first among equals (Hausmaninger, p.65).

### 5.3. Länder (relations with the State)

In the following sections it is important to point out whether a “level 2 government” exists. That is, an intermediate level between the State and municipalities (defined here as “ground level” government). Other important aspects to consider are: whether this level 2 has legislative power, what functions the level 2 government has and what limits are foreseen in the Constitution as regards exercise of these functions.

NUTS 2 areas are regulated differently in some States. Some NUTS 2 areas have more power in relation to what is foreseen by the Constitution. Such cases are identified by the addition of the adjective “autonomous” to the NUTS 2 area.

The following points will be outlined below:

- f) Does a level 2 government (NUTS 2) exist and what form does it take?
- g) What are the main laws that apply to the framework that defines the relations between State and level 2?
- h) How is legislative power structured?

i) and e) What are the limits of this level 2 legislative power?

a) NUTS2	<i>Bundesländer</i> (9)
b) Legislative references	<p>Articles 10 to 15 of the Austrian Constitution contain provisions regarding the competence of legislation and execution.</p> <p>The Constitution only allocates legislative and executive power between the Federal State and the <i>Länder</i>. However, “Jurisdiction” in a formal sense is assigned to the Federation (Stelzer 2009, p.43).</p>
c) General legislative power (“type”)	<p>The Constitution distinguishes between four types of legislative authority (Stelzer 2009, p.42, Hausmaninger 2003, p.72):</p> <ul style="list-style-type: none"> <li>- Legislation and execution are the responsibility of the Federation (Art. 10 B-VG)</li> <li>- Legislation is the responsibility of the Federation, execution the responsibility of the <i>Länder</i> (Art. 11 B-VG)</li> <li>- The Federation is responsible for the basic legislation, the <i>Länder</i> for translating the legislative principles into laws and executing them (Art. 12 B-VG)</li> <li>- Legislation and execution is the responsibility of the <i>Länder</i> (Art. 15 B-VG)</li> </ul> <p>Art. 11 B-VG states the areas of power in which the <i>Land</i> is responsible for the execution of the legislation. This includes areas such as citizenship and traffic police.</p> <p>Art. 12 and 14 B-VG state the areas of power in which the <i>Land</i> obtains the competence to enable and implement legislation. This includes areas such as land reform, matters of electrical power and agricultural labour law.</p> <p>Art. 15 B-VG states that all matters which are not explicitly allocated to the Federation are within the sphere of competence of the <i>Länder</i>. Few powers actually remain with the <i>Länder</i>. Important powers are assigned to the Federation and are listed in Article 10 of the Constitution (see appendix for details). Matters assigned exclusively to the <i>Länder</i> include land use, construction codes, laws on hunting and municipal laws (See Stelzer 2009 and Hausmaninger 2003).</p> <p>The <i>Länder</i> have autonomous legislative power for</p>

	those matters among their competences. The Federal Chancellor must be informed of a new law. If this is against interests of the state, the Federal Government has the right of veto (Art. 98 (1-2) B-VG).
Limits of legislative power	
d) Concurrent legislative power: Limits (type A)	Defined in Art. 10 – 15 B-VG(Please see appendix for details)
e) Exclusive regional legislative power (type B)	Defined in Art. 10 – 15 B-VG (Please see appendix for details)

#### NOTES:

Despite the Federal State and the *Länder* sharing legislative authority, in practice the Federal State has much more power. In comparison to other countries the legal position and competences of the *Länder* are rather modest. In contrast, the local level (municipalities) has a comparably strong position. (Öhlinger 2009, pp. 239-240)

#### 5.4. Local Government

This part describes how the relationship between the centre and periphery are structured by focussing attention on municipalities, which are the “closest” institutions to the citizen.

In particular it will provide information regarding the institutional framework/structure of the municipality in terms of responsibilities.

The individual sections focus on:

- a) The relevant constitutional articles for local administrations;
- b) Who approves the laws regarding the main bodies of the municipality?
- c) Who approves the laws regarding the allocation of functions/responsibilities to municipalities?

a) Constitutional articles	<p><i>Gemeinden</i> (Municipalities) have a somewhat limited sphere of autonomous self-government in Austria, which is protected by the Constitution. Articles 116 to 118 of the Austrian Constitution lay down the basis for the organization of local self-government.</p> <p>Art. 116 (1) B-VG states that every <i>Land</i> is divided into municipalities and municipalities are territorial corporate bodies which are entitled to self-administration while also being an administrative local district.</p> <p>The municipality is a legal person (Art. 116 (2) B-VG).</p>
b) Municipal bodies and electoral laws	<p>Municipalities consist of the <i>Gemeinderat</i> (Municipal Council), which as the decision-making organ is a representative body elected by qualified voters; the <i>Gemeindevorstand</i> (Local Administrative Board) – in towns with their own charter, the <i>Stadtrat</i> (Town Senate); and the mayor. The <i>Gemeinderat</i> has numerous specialized</p>

	<p>committees. The number of members on each <i>Gemeinderat</i> depends on the number of inhabitants in the municipality and on the legislation governing its organization (Commission of Europe 2000).</p> <p>The principles governing local elections are laid down in Art. 117 (2) B-VG. Elections take place on the basis of proportional representation by equal, direct, secret and personal suffrage of all citizens who have their principal domicile in the municipality. The seats in the <i>Gemeinderat</i> and its committees are allocated to parties according to the d'Hondt system. <i>Land</i> laws may also entitle nationals who have a domicile, but not principal domicile, to vote. The <i>Länder</i> establish the conditions for entitlement to suffrage and also electoral eligibility for nationals of other European member states.</p>
c) Municipal functions	<p>Municipalities do not have legislative powers, but administrative functions. A municipality has its own sphere of competence and one assigned to it by the Federal State or the <i>Länder</i> (Art. 118 (1) B-VG). Municipalities are autonomous in their own sphere of competence, which means that the municipality is independent from orders of the Land or the Federal Government. The Federal State and the <i>Land</i> have the right to ensure that a municipality does not overstep its sphere of competence (Art. 119a (1) B-VG). Powers within the sphere of competence of the municipality include matters of local interest such as construction, fire, market inspection, policing, ambulance services etc. (Hausmaninger 2003, p. 75). Municipalities have the right to contest illegal interference with their powers from the Federal State or <i>Land</i> in the Constitutional Court (Art. 119a (9) B-VG). The <i>Land</i> is entitled to examine the financial administration of a municipality with respect to its thrift, efficiency and expediency (Art. 119a (2) B-VG). The Federal State and <i>Länder</i> have the right of supervision in matters which derive from their sphere of competence.</p>

## 6. The structure of local government

### 6.1. Local government bodies, the electoral system and “type of government”

This section will illustrate how a municipality is organized. In particular it examines the relations between the political bodies, which are different to the administrative bodies, in terms of their representative character.

The following points are considered:

- a) What kind of electoral system is in place?

- b) What the governing bodies are?
- c) How each body is elected/appointed?
- d) Which are the bodies with political responsibility?

Electoral system	System of proportional representation						
<p>b) Governing bodies</p>	<p>Governing bodies of municipalities (Art. 117 (1) B-VG):</p> <ul style="list-style-type: none"> <li>• <i>Gemeinderat</i> highest instance in the municipality and as the decision-making organ is a representative body elected by qualified voters</li> <li>• <i>Gemeindevorstand, Stadtrat</i> (Town Council); in cities with their own statutes, the <i>Stadtsenat</i></li> <li>• Mayor</li> </ul> <p>Municipal councils have numerous specialized committees. The number of members on each council depends on the number of inhabitants in the municipality and on the legislation governing its organization (Council of Europe 2000).</p>						
<p>c) Election / nomination</p>	<table border="1"> <tbody> <tr> <td data-bbox="507 1021 783 1509"> <p><i>Gemeinderat</i></p> </td> <td data-bbox="783 1021 1393 1509"> <p>The principles governing local elections are laid down in Art. 117 (2) B-VG. Elections take place on the basis of proportional representation by equal, direct, secret and personal suffrage of all citizens who have their principal domicile in the municipality (See also § 19 K-AGO*). The seats in the <i>Gemeinderat</i> and its committees are allocated to parties according to the d'Hondt system. <i>Land</i> laws may also entitle nationals who have a domicile, but not principal domicile, to vote. The <i>Länder</i> establish the conditions for entitlement to suffrage and also electoral eligibility for nationals of other European member states.</p> </td> </tr> <tr> <td data-bbox="507 1509 783 1827"> <p>Mayor</p> </td> <td data-bbox="783 1509 1393 1827"> <p>The mayor is elected by the members of the <i>Gemeinderat</i>. In some Austrian <i>Länder</i> (Burgenland, Carinthia, Upper Austria, Salzburg, Tirol and Vorarlberg) the mayor is elected directly by the citizens who have their principal domicile in the municipality. The <i>Land</i> has the possibility to regulate this in the <i>Landesverfassung</i> (state constitution) (Art. 117 (6) B-VG) (See also § 23 K-AGO).</p> </td> </tr> <tr> <td data-bbox="507 1827 783 1975"> <p><i>Gemeindevorstand</i></p> </td> <td data-bbox="783 1827 1393 1975"> <p>The <i>Gemeindevorstand</i> is elected by the members of the Municipal Council (based on a proportional representation election system, representing the strength of membership of a</p> </td> </tr> </tbody> </table>	<p><i>Gemeinderat</i></p>	<p>The principles governing local elections are laid down in Art. 117 (2) B-VG. Elections take place on the basis of proportional representation by equal, direct, secret and personal suffrage of all citizens who have their principal domicile in the municipality (See also § 19 K-AGO*). The seats in the <i>Gemeinderat</i> and its committees are allocated to parties according to the d'Hondt system. <i>Land</i> laws may also entitle nationals who have a domicile, but not principal domicile, to vote. The <i>Länder</i> establish the conditions for entitlement to suffrage and also electoral eligibility for nationals of other European member states.</p>	<p>Mayor</p>	<p>The mayor is elected by the members of the <i>Gemeinderat</i>. In some Austrian <i>Länder</i> (Burgenland, Carinthia, Upper Austria, Salzburg, Tirol and Vorarlberg) the mayor is elected directly by the citizens who have their principal domicile in the municipality. The <i>Land</i> has the possibility to regulate this in the <i>Landesverfassung</i> (state constitution) (Art. 117 (6) B-VG) (See also § 23 K-AGO).</p>	<p><i>Gemeindevorstand</i></p>	<p>The <i>Gemeindevorstand</i> is elected by the members of the Municipal Council (based on a proportional representation election system, representing the strength of membership of a</p>
<p><i>Gemeinderat</i></p>	<p>The principles governing local elections are laid down in Art. 117 (2) B-VG. Elections take place on the basis of proportional representation by equal, direct, secret and personal suffrage of all citizens who have their principal domicile in the municipality (See also § 19 K-AGO*). The seats in the <i>Gemeinderat</i> and its committees are allocated to parties according to the d'Hondt system. <i>Land</i> laws may also entitle nationals who have a domicile, but not principal domicile, to vote. The <i>Länder</i> establish the conditions for entitlement to suffrage and also electoral eligibility for nationals of other European member states.</p>						
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<p><i>Gemeindevorstand</i></p>	<p>The <i>Gemeindevorstand</i> is elected by the members of the Municipal Council (based on a proportional representation election system, representing the strength of membership of a</p>						



		fraction) (Öhlinger 2009, pp. 245-246).
d) Political responsibility	<i>Gemeinderat</i>	<p>The <i>Land</i> government (<i>Landesregierung</i>) has the power to dissolve the <i>Gemeinderat</i> (Art. 119a B-VG ), if the <i>Gemeinderat</i></p> <ul style="list-style-type: none"> <li>• does not fulfil the duties incumbent upon them within a given period of time(after no other milder act of the <i>Landesregierung</i> has helped)</li> <li>• in cases of repeated breach of law</li> <li>• has not prepared a budget for the current year and in that year does not prepare a budget to be enacted at the beginning of the coming year</li> <li>• is permanently incapable of work or lacks a quorum.</li> </ul> <p>Dismissal of the <i>Gemeinderat</i> also results in an end to the term of office of the mayor and the <i>Gemeindevorstand</i> (§ 103 (2) K-AGO).</p> <p>In addition, members of the <i>Gemeinderat</i> can lose their seat, when, for example, they remain absent from sittings of the <i>Gemeinderat</i> or its Committees on which they sit without good cause over a continual period of two months; (§ 31 K-AGO).</p>
	Mayor	<p>The mayor is responsible to the <i>Gemeinderat</i> for the fulfilment of duties relating to the municipality's own sphere of action (Art. 118 (5) B-VG).</p> <p>The mayor, on account of breach of law as well as non-compliance with an ordinance or instruction, can be declared to have forfeited their office by the Governor, if they were acting in a sphere of competence of the Federal State or by the <i>Landesregierung</i>, if they were acting in a sphere of competence of the <i>Land</i> (Art. 119(4) B-VG; § 74 (3) K-AGO).</p> <p>The mayor may also be removed from office by means of a referendum (§ 66 (1) K-AGO).</p>
	<i>Gemeindevorstand</i>	<p>The <i>Gemeindevorstand</i> is responsible to the <i>Gemeinderat</i> for the fulfilment of duties relating to the municipality's own sphere of competence (Art. 118 (5) B-VG). The possibility of a no-confidence vote by the Municipal Council exists.</p> <p>Regarding the fulfilment of duties in the assigned sphere of competence of the <i>Gemeindevorstand</i>,</p>

		if the <i>Gemeindevorstand</i> acts on behalf of the mayor it is responsible to the Governor, or if it acts on behalf of the <i>Land</i> then it is responsible to the <i>Landesregierung</i> . Both the governor and the <i>Land</i> Government have the possibility to end the term of office of the <i>Gemeindevorstand</i> (Art. 119 (4) B-VG; § 74 (3) K-AGO).
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NOTES:

\*Please note that in ‘§ 19 K-AGO’, ‘K-AGO’ refers to *Kärntner Allgemeine Gemeindeordnung*, which is understood to be the Carinthian Municipal Code/Carinthian Local Government Law.

The regulations can be different to each *Land*.

## 6.2. Legal framework and responsibilities of the Municipal Council and Executive Committee

This point refers specifically to the acts which are approved by the municipality and, in this sector, where responsibility falls.

Source (Act)	Subject matter	Responsibility
Municipal Statute	<p><i>Kärntner Allgemeine Gemeindeordnung</i> K-AGO</p> <p>This contains provisions regarding, for example:</p> <ul style="list-style-type: none"> <li>• Municipal territory</li> <li>• Sphere of competence of the municipality</li> <li>• Municipal competences</li> <li>• Election and forming of municipal bodies</li> <li>• Appointing members of <i>Gemeinderat</i> duties and internal organization of the municipal associations</li> <li>• Referendum</li> <li>• Municipal referendum and petition for a referendum (<i>Gemeindevolksbefragung und Gemeindevolksbegehren</i>)</li> <li>• Citizens’ meetings</li> <li>• Execution of duties and executive management of the <i>Gemeindevorstand</i></li> <li>• Mayor’s duties</li> <li>• Looking after the affairs of the businesses of the municipality</li> </ul>	<i>Land</i>

	<ul style="list-style-type: none"> <li>• Associations of the municipality</li> <li>• Municipal budget</li> <li>• Supervision and auditing of the budget</li> <li>• Stages of appeal (<i>Instanzenzug</i>)</li> <li>• Supervision of the <i>Land</i> over the municipality</li> <li>• Protection of self-administration</li> </ul>	
<p>Regulations (Municipal laws)</p>	<p>The municipality has:</p> <ul style="list-style-type: none"> <li>• The possibility to pass local police ordinances (<i>Ortspolizeiliche Verordnungen</i>) within their own sphere of competence (§ 12 (1) K-AGO)</li> <li>• Autonomous power to introduce or set taxes, if this is permitted by the Federal Law or <i>Länder</i> law (§ 13 (1) K-AGO)</li> <li>• The right to implement regulations within its own sphere of competence (<i>Durchführungsverordnung</i>) (§ 14 K-AGO)</li> </ul>	<ul style="list-style-type: none"> <li>• Local police ordinances are adopted by the Municipal Council; in cases when these are to prevent immediate expected grievance, they can be enacted by the mayor (§ 12 (2) K-AGO)</li> <li>• The <i>Gemeinderat</i> is responsible for the introduction of, or setting of taxes (§ 13 (2) K-AGO)</li> <li>• The introduction of ordinances <ul style="list-style-type: none"> <li>- Regarding matters within the own sphere of competence: <i>Gemeinderat</i> (§ 14 (1) K-AGO)</li> <li>- regarding matters within the delegated sphere of competence: mayor (§ 14 (2) K-AGO)</li> <li>- regarding instructions of the civil servants (<i>Dienstanweisung</i>): mayor (§ 14 (3) K-AGO)</li> </ul> </li> </ul>
<p>Organization Regulations</p>	<p>Examples:</p> <ul style="list-style-type: none"> <li>• Regulations regarding the substitution of members in meetings of the <i>Gemeindevorstand</i> (§ 68 K-AGO)</li> <li>• Duties and management of committees (§ 76 and § 77 K-AGO)</li> <li>• Removal from office of members of the <i>Gemeindevorstand</i> (§ 67 K-AGO)</li> <li>• Organisation of the sittings of the <i>Gemeindevorstand</i> (§ 64 K-AGO)</li> <li>• Duties and internal organization of the <i>Gemeindevorstand</i> (§ 62 K-AGO)</li> </ul>	<p>The <i>Gemeinderat</i> has to regulate the individual clauses in more detail in the standing orders/rules of procedure (<i>Geschäftsordnung</i>) (§ 50 K-AGO).</p>

	<ul style="list-style-type: none"> <li>• Recording of the minutes of the <i>Gemeinderat</i> meetings (§ 45 K-AGO)</li> <li>• Organization and rules of procedure of <i>Gemeinderat</i> meetings (§ 44 K-AGO)</li> <li>• Quorum at <i>Gemeinderat</i> meetings (§ 37 K-AGO)</li> <li>• Adoption of resolutions at <i>Gemeinderat</i> meetings (§ 39 K-AGO)</li> <li>• The making public of <i>Gemeinderat</i> meetings (§ 36 K-AGO)</li> <li>• Rights (§ 27 K-AGO) and responsibilities (§ 28 K-AGO) of members of the <i>Gemeinderat</i></li> </ul>	
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## NOTES

Each *Land* has a municipal statute.

Constitutional articles which apply to the municipality include: Art. 115–120 B-VG; Art. 3–4 K-LVG *Kärntner Landesverfassung vom 11.7.1996 idFv 17.02.2011*, *LGBl Nr 85/1996* (Carinthian Constitution) and *Kärntner Allgemeine Gemeindeordnung K-AGO* (Carinthian Municipal Code/Carinthian Local Government Law).

Municipalities execute the matters of their own sphere of competence autonomously and free of directives and instructions from the Federal State or the *Land*. Nevertheless, they are under the supervision of the Federal State and *Land* (Öhlinger 2009, p. 238). Municipalities have no power of legislation and jurisdiction (Öhlinger 2009, p. 240).

Regardless of geographical size and number of inhabitants all municipalities have the same legal position (principle of “*Einheitsgemeinde*”) (Stolzlechner 2004, p. 288).

The Carinthian Constitution applies to all municipalities in Carinthia, except to the cities with their own statute. The only cities in Carinthia with their own statute are Klagenfurt and Villach.

In Austria generally, municipalities with more than 20,000 inhabitants have the possibility to apply for an own statute (Art. 116(3) B-VG). Cities with their own statute have to execute matters of the local administration and matters of the *Bezirksverwaltung* (Administrative District Authority) (Art. 116 (3) B-VG). In Austria, a municipality with at least 20,000 inhabitants shall, at its own request be awarded its own statute through *Land* legislation, only if the interests of the *Land* are not thereby jeopardized.

### 6.3. Administrative functions of the municipality

This section attempts to simplify what, in fact, is quite complex. It provides a summary of the source of and legal status for the functions of the municipality, considering that these are

guaranteed by legislation with respect to the principle of rule of law, by the State or Länder, according to the respective functions in the different matters.

<p>a) Municipalities “own” functions (functions according to their sphere of competence)</p>	<p>The own sphere of competence of the municipalities, in addition to those matters mentioned in Art. 118 (2) B-VG, comprises all matters which are solely or predominantly of interest to the local community embodied by the municipality. These matters have to be suitable for execution by the municipality. Matters within the sphere of competence of the municipality are named in Art. 118 (3) B-VG:</p> <ul style="list-style-type: none"> <li>• Appointment of municipal bodies</li> <li>• Appointment of municipal staff</li> <li>• Local public security police and local events control (<i>Veranstaltungspolizei</i>)</li> <li>• Administration of municipal traffic areas; local traffic police</li> <li>• Crops protection police (<i>Flurschutz</i>)</li> <li>• Local market police (<i>Marktpolizei</i>)</li> <li>• Local sanitary police, especially in the field of emergency and first aid services, and matters pertaining to deaths and burials (<i>Gesundheitspolizei</i>)</li> <li>• Public decency control (<i>Sittlichkeitspolizei</i>)</li> <li>• Local building police; local fire control (<i>Feuerpolizei</i>)</li> <li>• Local development planning (<i>Raumplanung</i>)</li> <li>• Public institutions to deal with extrajudicial settlement of disputes</li> <li>• Debtors sale of goods (<i>Feilbietung</i>)</li> </ul>
<p>b) “Assigned” functions (by the Federal State or Region)</p>	<p>The assigned sphere of competence of a municipality comprises those matters which they have to take in accordance with the Federal Laws or on the instruction of the Federal State, or those matters which they have to take in accordance with <i>Land</i> laws or on the instruction of the <i>Land</i> (Art. 119 (1) B-VG).</p> <p>In most cases the municipalities execute matters which they have been assigned by the Federal State or the <i>Land</i>. Examples of assigned matters are (Neuhofer 1998, pp. 318-319):</p> <ul style="list-style-type: none"> <li>• Matters relating to the system of registration</li> <li>• Keeping electoral registers</li> <li>• Assistance in carrying out elections</li> <li>• Protection of water and waterways (<i>Wasserrecht</i>)</li> </ul>

	<ul style="list-style-type: none"> <li>• Schools (primary and secondary schools: mainly matters within the own sphere of competence; vocational, agricultural and forestry schools: delegated sphere of competence)</li> <li>• Social welfare, work with the elderly</li> </ul>
c) “Delegated” functions(by the State or Region)	
d) State functions *	<p>Mayor’s functions: Examples</p> <ul style="list-style-type: none"> <li>• Representation of the municipality (§ 69 K-AGO)</li> <li>• Administration of matters within the municipality’s own sphere of competence and tasks which are assigned to municipalities by law (§ 69 (2) K-AGO)</li> <li>• Conferring directives on members of the <i>Gemeindevorstand</i> (if the <i>Gemeindevorstand</i> is slow in making decisions) (§ 69 (10) K-AGO)</li> <li>• Ensuring the prompt execution of decisions by the <i>Gemeinderat</i> and <i>Gemeindevorstand</i> (§ 70 K-AGO)</li> <li>• Private law declarations of the municipality require the signature of the mayor to come into legal effect (§ 71 (1) K-AGO)</li> <li>• Suspension of the execution of decisions of the <i>Gemeinderat</i>, if there is concern about the legality of the decisions or if the decision has drawbacks for the municipality (§ 72 (1) K-AGO)</li> <li>• Right to pass a resolution, which requires a decision of the <i>Gemeinderat</i> or <i>Gemeindevorstand</i>, if the body in question cannot pass the decision without it having drawbacks for the municipality (§ 73 (1) K-AGO)</li> </ul>

NOTES:

\*For example, this deals with the functions exercised by the mayor, such as “Civil Registry”. In this case the mayor represents the Government in a local office.

Austrian municipalities have to execute actions within their own sphere of competencies (*eigener Wirkungsbereich*) and assigned (*übertragener Wirkungsbereich*) sphere of competencies (Const. Art. 118 (1)).

The “own sphere” of competence only relates to the execution of Federal laws and *Länder* laws. Municipalities have no law-making competence.

**7. Local finances**

This section refers to the financial relations between the “centre” (State – Region) and the municipality. It provides an outline of the type of system that governs public financial flows

and in particular discusses whether the municipalities have “room to move” in terms of their financial autonomy.

The table shows:

- a) whether the local authority has revenue and expenditure autonomy. That is, if the local authority can set taxes and levies; hence indicating whether the municipality:
  - does not exercise this power, or if it can, in certain cases, act as an agent to collect taxes set by the State or Region regardless of whether or not revenue is allocated to the municipality;
  - can decide whether or not to collect taxes set by the State or Region where the revenue is redistributed either partially or in total to the municipality;
  - can decide to increase or decrease a tax levy introduced by the State or Region and where the revenue is redistributed either partially or in total to the municipality;
  - has the power to introduce/set its own taxes, prior to State or regional legislative “authorisation” (N.B. taxes can be introduced only by law). In this case and within the limits foreseen by legislation the municipality can decide *what* and *how much* to tax;
- b) if financial flows depend on transfers allocated by the “centre” (State or Region); in this sector a distinction must be made between resources that have been allocated to a specific area by the centre and those where the municipality is free to choose where to allocate them;
- c) if the sum that is transferred/allocated is associated, to a certain degree, with a tax revenue raised by the municipality itself or if it depends on transfers set by the centre (State or Region).

In the second column, the terms “State” and “Region” refer to the source of funding or who established the rules of taxation proportionally shared with the Municipality. In addition and where possible a description of the relationship between the different items is useful.

a) Autonomous power to introduce / set taxes *	NO	No decision making power in this matter. In some cases, only levy/raise charges/taxes set by State or regional law	<input type="checkbox"/>
	YES	Power to decide whether or not to levy/raise charges/taxes set by State or regional law	<input type="checkbox"/>
		Power to vary tax rates set by State or regional law	<input type="checkbox"/>
		Power to set and levy taxes of their own	<input type="checkbox"/>
b) Derivative finances	State	Freedom of transfers/allocation of funds	.. %
		Restricted transfers/allocation of funds (both capital for investments and floating capital)	.. %
	Region	Freedom of transfers/allocation of funds	.. %
		Restricted transfers/allocation of funds (both capital for investments and floating capital)	.. %

		capital)	
c) Division / sharing of tax revenues**	State	67,765%	
	Region	20,524 %	
	Municipality	11,711 %	
d) Allocation of funds ( <i>Finanzzuweisungen</i> )		Funds, distributed to the <i>Länder</i> and municipalities (e.g. for the management of theatres and hospitals) by the State.	

NOTES:

\* Choose the sector which applies

\*\* Most of the shared taxes, like income tax, value added tax or corporate tax (for further details see § 8 (1) F-VG), are divided between the State, the *Länder* and the municipalities in the stated relation.

The *Finanz-Verfassungsgesetz* (F-VG) (Fiscal Constitutional Law) provides the constitutional framework for intragovernmental fiscal relations in Austria. It stipulates that the federal government and the other territorial authorities are responsible for meeting the costs incurred in performing their duties unless legislation has ruled otherwise. Article 6 of the F-VG 1948 is particularly important as it defines different categories of taxes, such as those which exclusively go to one territorial authority (federal government alone, *Länder* alone or municipality) and those whose revenue is shared among different territorial authorities (Stolzlechner 2004, p. 131).

The *Finanzausgleichsgesetz* (FAG) (Fiscal Equalization Law) is the Federal Law which regulates fiscal equalization. The FAG “details the rules of tax sharing, intragovernmental transfers and cost bearing between the Federation, the *Länder* and the municipalities” (Federal Ministry of Finance 2006, p. 1). The *Finanzausgleichsgesetz 2008*, for example, regulated fiscal equalization for the period 2008-2013.

The revenue gained from the exclusive taxes (those specific taxes declared to be exclusive Federation taxes, exclusive *Länder* taxes, or exclusive municipal taxes) goes to the respective territorial authority alone. The most important form of shared taxes are the shared/joint Federation and *Land* taxes. The shared Federation taxes are levied by the State; these are distributed to the State, and *Länder* (municipalities) (Stolzlechner 2004, p. 132).

§ 15 (3) F-VG stipulates municipalities may levy exclusive local taxes (*Abgaben*) (e.g. entertainment tax, charges for the use of municipal localities) according to a decision of the *Gemeindevertretung*. In addition, municipalities can be authorized by *Land* law to levy further local taxes.

Pursuant to § 8 (1) F-VG 2008 the following are among the **Federal State and *Länder* (municipalities)** shared taxes:

- Income tax
- Corporation tax



- Value added tax
- Capital transfertax
- Tobacco tax
- Electricity tax
- Natural gas tax
- Coaltax
- Beer tax
- Winetax
- Sparkling winetax
- Salestax on intermediate goods
- Alcoholtax
- Mineral oil tax
- Inheritance and gift tax
- Real estate transfer tax
- Land value tax
- Motor vehicle tax
- Insurance tax
- Comsumption tax
- Engine-related insurance tax
- Advertisement tax
- Licence tax

Some 85% of all taxes are shared taxes. The State decides upon these taxes and these taxes are levied by the State. Part of these taxes are distributed to the *Länder* and municipalities via fiscal equalization.

**Pursuant to § 14 (1) F-VG 2008** the following are among the **exclusive *Länder* (municipalities) taxes**:

- Real estate tax
- Local tax
- Second place of domicile tax
- Fire protection tax
- Tourist tax
- Hunting and fishing tax (tax on the ownership and leasing of hunting and fishing rights) as well as taxes on hunting and fishing licenses
- Taxes on toll charges for the use of high mountain streets which are of particular importance and are not primarily the connection to the regular transport network for settlements inhabited all year round, but rather, in overcoming major differences in height, serve to provide access to areas of natural beauty
- Amusement taxes (entertainment taxes) where the revenue is not specifically earmarked
- Amusement taxes where the revenue is earmarked for specific purposes, especially taxes for the erecting and running of broadcasting reception equipment

- War victim taxes and sport funding taxes
- Taxes for the husbandry of animals
- Taxes on offerings of sale (voluntary offering for sale of movable goods such as agricultural products or livestock, or putting these up for auction (see Council of Europe 2000, p.26)
- Taxes for the use of public space in the municipality and its airspace
- The for notifications of land owners and local residents
- Fees for the use of municipal facilities and installations and administrative *Land* and municipal taxes
- Taxes for the parking of multilane vehicles in short-term parking zones pursuant to § 25 der *Straßenverkehrsordnung* (Road traffic regulations) 1960 – StVO 1960, BGBl. Nr. 159/1960 (Parking fees).

Most taxes (about 94.5%) are levied by the State (Statistik Austria 2010).

### **Distribution of tax revenue between State, *Länder*, and municipalities:**

Fiscal equalization consists of three 3 “stages” (primary, secondary and, tertiary fiscal equalization).

1. Primary fiscal equalization: Firstly, all the shared taxes are distributed to the State, the *Länder*, and the municipalities following a specific distribution key. That part of tax revenues for the municipalities goes to the *Länder* first and is then distributed to the municipalities in a second step.

Secondly, that part of tax revenues for the *Länder* is distributed to each *Land* and the *Land* then distributes these to the municipalities according to a distribution key outlined in the FAG (§ 9 (7) FAG). The horizontal tax distribution between the *Länder* and between the municipalities of a *Land* is primarily based on the population, the distribution key based on the population of the municipality (*abgestufter Bevölkerungsschlüssel*), and a fixed distribution key.

The tax distribution to the *Länder* and the municipalities is based on the population of the *Land* and the municipalities as one influencing factor.

2. Secondary fiscal equalization: At the second stage, for example, subsidies, allocation of funds or cost compensations (e.g. for the management of theaters and hospitals) are distributed to the *Länder* and municipalities (e.g. *Gemeindebedarfszuweisungen*) by the State.

The Federal State and the *Länder* can issue grants to the local authorities for specific purposes (§ 23 F-VG) (Neuhofer 1999, p. 466). If the municipality, for example, is the maintainer of the school or runs the theatre, then the Federal State can award the municipality grants for specific purposes (§ 23 (1) and (3) F-VG 2008). Grants from the Federal state and *Länder* amount to 12% of the total local financial resources and the grant system is regulated by law. In practical terms, all grants are dependent upon

financial contributions from the local authorities themselves (Council of Europe 2000, p. 26).

3. Tertiary fiscal equalization: The remaining intragovernmental transfer payments are distributed to legal entities of the State, the *Länder*, and the municipalities.

In total, municipalities receive the following tax revenues (Neuhofer 1999, S. 437):

- A proportion of the revenue from the shared Federation and *Land* taxes
- Exclusive municipal taxes whose revenue goes to the municipality alone
- Additional taxes to the regular taxes of the Federal State or the *Land*
- Taxes from the same taxable item of similar Federal State or *Land*

The proportion of *Land* shared taxes revenue allocated to the municipality is not of significant importance to the municipality. The municipal tax revenue is allocated to the territorial authorities according to the fiscal equalization regulations (Neuhofer 1999, p. 438). In 2010, the allocation of the total revenue receipts was as follows (see Austrian Federal Ministry of Finance 2010):

Federal State: ca. 66.0%

*Länder* (excluding Vienna): ca. 21.2%

Municipality (excluding Vienna): ca. 12.8%

Within the framework of the revenue sharing system the proportion of shared Federal State tax revenue allocated to the municipalities is of significant importance, in particular for small and medium sized municipalities in country areas.

In addition to defining the various categories of taxes, the Fiscal Constitutional Law also has a number of special regulations which aim at a certain degree of financial equalization of territorial authorities' resources. It stipulates, for example, the amounts to be allocated to the various funds, (e.g. family benefit, the environment, the water management fund). Before revenues are shared out amongst the three levels of territorial authorities, a percentage is allocated to these funds (Council of Europe 2000, p. 26).

Apportionment of the revenues allocated to the *Länder* and the municipalities varies depending on the type of tax: its sources, the percentage of participation or a population indicator, or it can be a mixture of forms. The aim is to ensure fair distribution (See Council of Europe 2000, p. 26). "The intercommunal revenue sharing system is also aimed at reducing the discrepancy between the financial power of the municipalities and their actual financial requirements. Thus, before each municipality's share of the collective federal taxes is apportioned, 13.5% of the total municipal share is subtracted and given to the *Länder* for forwarding to the municipalities as a contingency payment. This money is earmarked and is forwarded to the municipalities by the *Länder* on the basis of specially predetermined guidelines, for example, to balance the budget or to carry out large-scale projects, and therefore has an equalization role" (Council of Europe 2000, pp.26-27)

## 8. Organizational framework

### 8.1. Relations between politics and administration

This section refers to whether the local authority foresees a distinction between the role played by the administrator (politician) and civil servant (staff of the municipality). The general outline foresees that it is the responsibility of the politician to define the objectives to achieve, while the bureaucratic system has the task of carrying out activities in order to achieve them.

This framework has important repercussions on powers and the measures used to exercise them. First and foremost it is of interest to determine whether the power to adopt administrative acts falls within the responsibilities of the municipality. If the organization has been structured on the basis of a separation of powers, the responsibility to adopt the act – which is always attributed to the municipality – is a task of the civil servant and not the politician.

Obviously this model is normally found in medium sized to large municipalities, whereas these two functions overlap in smaller municipalities.

The following items provide information regarding:

- a) who has the responsibility to adopt administrative measures of the municipality (e.g. building permits, granting of benefits, authorization to open a bar, etc)?
- b) whether there is an institutional role of “legal-technical advisor” foreseen in the municipality,
- c) whether there is an institutional role of administrative management of the municipal departments
- d) what the bureaucratic-administrative organizational model of the municipality is?
- e) which are the rules on Civil Service (municipality employees)?

a) administrative measures	Service Director (head of department) in medium and large sized municipalities; chief administrative officer in small sized municipalities.
b) legal- technical advice	The chief administrative officer is the head of the local public administration. He/she needs to be qualified for this position (§ 78 (2) K-AGO). In municipalities with more than 10,000 inhabitants the chief administrative officer needs to be legally qualified (§ 78 (2) K-AGO).
c) administrative management of municipal departments	Chief officer
d) organizational model	Medium and large sized municipalities: Divided into departments, led by the head of the department; there is often a one-stop-shop as a first point of contact for citizens;  Small sized municipalities: Most duties are carried out by the chief administrative officer
e) job in the CS	Contract staff, employees under civil law (this is now the case)

- Registered assembly
- Capital companies
- Business partnerships



**NOTES:**

All civil staff is subordinated to politicians.

**8.2. Organization of services**

This section provides general information on the different procedures used by municipalities to organize the delivery of public services.

In particular this section deals with distinguishing between whether the service is delivered “directly” by the municipality (by its offices or by delegated bodies) or if the service is outsourced (following a comparative procedure), or if the service is delivered by public – private organizations (PPP: public – private partnership). You can also distinguish between a “contractual” PPP (outsourcing carried out via public procurement) and an “institutional” PPP, which refers to a more structured sharing public duties, e.g., establishment of a public – private corporation.

In the two main columns a distinction is made between services delivered by the municipality itself (internal) and those delegated (external).

In the two sub-columns, the one on the left refers to the organizational model used and the one on the right to the type of service or subject matter/sector/field, and includes the cases that are considered most widespread.

In addition, information related to the types of collaboration between municipalities should be provided.

This refers to information regarding whether the State or regional legislation foresees collective forms of management of services.

The Italian case is summarized in the following table.

In Austria, collaboration among municipalities is a very important instrument for providing public goods or operating in a more effective and less-cost intensive way. Therefore, there is a sum of different kinds of collaboration forms. In order to illustrate the complexity, the following graph is provided:

Informal collaboration	Formal collaboration (juridical)	
	Contractual collaboration	Juridical institutional collaboration
<ul style="list-style-type: none"> <li>- Exchange</li> <li>- Exchange of experts</li> <li>- “Round table”</li> <li>- “interest grouping”</li> <li>- Mayer conferences</li> </ul>	<ul style="list-style-type: none"> <li>- Cooperation contract</li> <li>- Special contract for a single service/work</li> </ul>	

**Table: collaborationforms in Austria**  
(Source: Matschek 2011, p. 28)

The most utilized and therefore most relevant forms of local collaboration are municipal association, administration community and informal collaboration forms (Matschek 2011, p. 80). The following table shows the most important cooperation forms in Carinthia:

Type of collaboration	Description
Municipal association (Gemeindeverband)	The institution “municipal association” is determined by law and can be established by law or by a voluntarily agreement among municipalities. Within that agreement attending municipalities decide which services or functions will conduct the municipal association in the future. The association is an autonomous entity with its own rights (financial autonomy) and own primary agents (chairman, executive boards and assembly) (§§ 83 and 84 K-AGO).
Administration community (Verwaltungsgemeinschaft)	An “administration community” can be established by a voluntarily agreement among municipalities. This institution has also own primary agents (chairman, executive boards and assembly), but it acts in the name of the municipalities and not on their own (§ 81 K-AGO).
Informal collaboration	Informal collaboration means “no institutional cooperation”, mainly in terms of exchange of know-how and experiences.