

OPAL Country Reports

The Austrian Parliament and EU Affairs

Eric Miklin, Ass. Prof. University of Salzburg

To cite this report: E. Miklin (2012), *OPAL Country Reports: The Austrian Parliament and EU Affairs*, weblink



September 2012



University of Cologne

OPAL Country Report on the Austrian Parliament¹

Eric Miklin, Ass. Prof. University of Salzburg

I. General Position of Parliament in the Constitutional Balance of the Member State: Constitutional and institutional factors	
This section looks at the role of Parliament in the political system, to help us understand the relative power position of the legislature.	
1.1	What is the type of government in the political system of your member state? (i.e. parliamentary or semi-presidential)
	De jure, Austria can be described as semi-presidential system as it has a directly elected president who appoints (and can dismiss) the government and also can dissolve the parliament (on the government's proposal). De facto, the role of the president is very limited (virtually non-existent in EU-politics) and Austria is generally conceived as a parliamentary system in scholarly literature. ²
1.2	Is it a uni- or bicameral Parliament? If bicameral, is one house dominant or are both equally strong? Please briefly explain.
	The parliament is bicameral, but the second chamber (<i>Bundesrat</i>) is very weak. Except for legislation that would affect its own or the federal states' competences, it cannot prevent but only delay legislation (<i>suspensive veto</i>). As a result, the <i>Bundesrat</i> plays hardly any role in the legislative process and there is an ongoing discussion to either abolish it completely or to reform the chamber significantly. ³
1.3	Is the state federal, decentralized or unitary? If applicable, is it a form of asymmetrical federalism?
	Austria is a system of (symmetric) federalism
1.4	Briefly describe the electoral system, if applicable, for each chamber.
	1 st chamber (Nationalrat): The electoral system for the Nationalrat is a (rather complex) system of proportional representation. The 183 mandates are allocated via a three-tier districting system comprising 43 regional-, nine federal state-, and one national district. Voters have one vote each and all valid votes go through all tiers. In the first two tiers (regional and federal state), parties receive one mandate for each time they reach a certain quota (<i>Wahlzahl</i>). Mandates won on the regional level are deducted from mandates won on the federal state level. In the third (national) tier, all parties participate that have won at least one seat at the regional electoral district level or that have received at least 4% of the valid votes nationwide. Votes on the national tier are

¹ This country report provides some basic data that has been collected in the context of the research for a chapter to be published in C. Heffler, C. Neuhold, O. Rozenberg, J. Smith & W. Wessels (Eds.). (forthcoming in 2014). *The Palgrave Handbook of National Parliaments and the European Union*. London: Palgrave, Macmillan.

² Müller, Wolfgang C., 1999: Austria. In: Robert Elgie (ed.): *The Politics of Semi-Presidentialism*. Oxford: Oxford University Press, 22-47.

³ Fallend, Franz, 2006: Bund-Länder-Beziehungen. In: Herbert Dachs et al. (eds): *Politik in Österreich. Das Handbuch*. Vienna: Manz, 1024-1050

	<p>distributed according to T'Hondt and again mandates won on the regional and federal state level are deducted.⁴</p> <p>There are party lists but the order of candidates can be changed via 'preference votes' on the regional and the federal state level. This, however, happens rarely.</p> <p>2nd chamber: The (currently) 62 members of the Bundesrat are not elected directly but delegated by the nine state parliaments (<i>Landtage</i>) in proportion to the parties' relative strength (the second-largest party must receive at least one seat). Numbers of delegates go from three for the least, to twelve for the most populous state. Elections to the state parliaments take place every five (and in one case every six) years.</p>
1.5	<p>What (f)actors can prevent the parliament agreeing on EU legislation and/or treaty reform? (e.g. a constitutional court, or public referenda on questions of EU integration)</p>
	<p>The Constitutional Court of Austria cannot prevent the parliament to agree ex ante, but it can ex post assess the constitutionality of all legislation passed by the parliament either on its own initiative or on request (Art. 139 B-VG). It also has the power to (ex post) review the lawfulness of international/EU treaties on request (Art. 140 B-VG).</p> <p>According to Art. 44 (3) B-VG, a public referendum is foreseen/necessary in case of a 'total revision' of the constitution, i.e. whenever a law affects one of its five 'building principles'. With regard to the EU, such a referendum took place only once (1994), in the context of Austria's EU accession.</p>

2. General Position of Parliament in the Constitutional Balance of the Member State: Political Factors

This section is about the basic political factors which might influence parliament's strength in relation to the government.

2.1	<p>What is the type of government after the most recent elections e.g. single party, minority, coalition, oversized coalition government?</p>		
	<p>Austria is currently governed by a coalition of the Austrian Social Democrats (SPÖ) and the Austrian Peoples Party (ÖVP).</p> <p>Since 1945, coalition governments have been in office except for the period between 1966 and 1983. The current SPÖ-ÖVP coalition has been in office since 1986, except for the years from 2000 to 2007.</p>		
2.2	<p>When were the most recent general elections and what were the results? Could you please give a short list of the parliamentary groups, their no. of seats in parliament and ideological position?</p>		
	<p>Latest election in the LOWER HOUSE:</p>	<p>September 28, 2008</p>	
	<p>Name of the party</p>	<p>No. and percentage of seats in parliament</p>	<p>Ideological position (e.g. Communist, left liberal, socialist, liberal, right liberal, conservative, christian democrat, extreme right, ethnic minority or regionalist party)</p>

⁴ Müller, Wolfgang C., 2008: Austria: A Complex Electoral System with Subtle Effects. In: Michael Gallagher und Paul Mitchell (eds.): The Politics of Electoral Systems. Oxford: Oxford University Press, 397-416.

	Social Democratic Party (SPÖ)	57 (31.1%) ⁵	Social democrat, centre-left
	Austrian People's Party (ÖVP)	51 (27.9%)	Christian democrat, centre-right
	Austrian Freedom Party (FPÖ)	34 (18.6%)	Right-wing populist
	Alliance for the Future of Austria (BZÖ)	21 (11.5%)	Right-wing populist
	Green Party	20 (10.9%)	Green (left liberal)
	Latest election in the UPPER HOUSE:	The Bundesrat does not have a legislative term. Composition changes according to regional elections. The most recent Länder election took place on October 10, 2010 in Vienna. The numbers below hence refer to the Bundesrat's current composition	
	Name of the party	No. and percentage of seats in parliament (if applicable)	Ideological position (if not mentioned above)
	OEVP	27 (43.5%)	Christian democrat, centre-right
	SPOE	22 (35.5%)	Social democrat, centre-left
	FPOE	9 (14.5%)	Right-wing populist
	Green Party	3 (4.8%)	Green (left liberal)
	Liste Fritz	1 (1.6%)	regional party
2.3	How polarized was parliamentary debate over ratification of the Lisbon Treaty? Which parliamentary party groups supported and which opposed ratification?		
	<p>The Lisbon Treaty in both chambers was supported by the two governing parties (SPÖ and ÖVP) and by the oppositional Green Party. The two right-wing populist parties (FPÖ and BZÖ) voted against the treaty and demanded a public referendum on the treaty, which was voted down with the votes of the other three parties.⁶</p> <p>After ratification, the FPÖ filed a lawsuit to the constitutional court – arguing that adoption of the treaty would have required a public referendum. The lawsuit was rejected in June 2010 as the court argued that the formal requirements for it were not met.⁷</p>		

3. New Provisions of the Lisbon Treaty on Direct Contact with EU Institutions

The Lisbon Treaty provides national parliaments with new opportunities for direct contact with the EU institutions. This section addresses the incorporation of the new Lisbon provisions into national law and concrete procedures. Questions 6.3 to 6.5 investigate in how far these procedures have been used.

3.1	Have there been any regulations adopted by your member state to incorporate the new powers
-----	--

⁵ All numbers in this table reflect the results of the last elections. There have been some minor changes in the distribution of seats since then due to MPs leaving their party group (and partly joining another).

⁶ Austrian Parliament, 2008: Parlamentskorrespondenz No. 305 (09.04.2008) and Parlamentskorrespondenz No. 365 (24.4.2008).

⁷ http://www.vfgh.gv.at/cms/vfgh-site/attachments/1/7/5/CH004/CMS1278578637561/vertrag_von_lissabon_-_fpoe_-_presseinformation_-_sv_1-10.pdf (last retrieved: September 12th 2012).

	<p>that are entrusted to the national parliaments by the Treaty of Lisbon? If so, please list the regulations in their appropriate categories:</p> <p>a. Constitutional provisions</p> <p>b. Legal provisions - Statutory provisions</p> <p>c. Parliamentary Standing Orders</p> <p>d. Other (please specify)</p> <p>Is this process complete or ongoing?</p>
Lower house	<p>To incorporate the new powers</p> <ul style="list-style-type: none"> - a constitutional reform took place⁸ (a) - the rules of procedure were amended in both chambers⁹ (b) - a new EU-Information law (EU-InfoG) was passed¹⁰ (b) <p>This process of adaptation was completed with January 2012, when the EU-Information Law came into effect.</p>
Upper house	See above
3.2	What exactly are the rules (i.e. parliamentary bodies involved, procedure, regional parliament 's involvement, cooperation in bicameral systems) for...
3.2 i	The "Political Dialogue" with the Commission
Lower house	<p>The constitution establishes the right to submit opinions to EU institution and states that this is the right of the Main committee which may delegate its right to the Standing Sub-Committee (Art. 23f (4) and Art 23k (2) B-VG). Opinions can be adopted with single majority.</p> <p>There is no formal requirement to coordinate with the 2nd chamber. However, since there is only one administration serving both chamber and the party groups in both chambers are organised in one <i>Klub</i>, coordination is taking place.</p> <p>There is no requirement to involve regional parliaments.</p>
Upper house	<p>Constitutionally, it is the right of the plenary to submit an opinion but the Bundesrat may delegate its powers to its EU Committee (Art 23f (4) and Art. 23k (3) B-VG). Indeed, opinions are de facto adopted by the EAC.¹¹</p> <p>For the rest: see above.</p>
3.2 ii	The Early Warning Mechanism (EWM)
Lower house	<p>Again, the right to submit a reasoned opinion constitutionally lies with the two EACs (Art. 23g and Art 23k (2) B-VG). The parliament may demand the government to submit a report about whether or not a measure is in line with the principle of Subsidiarity. Decisions are taken with simple majority.</p> <p>The EWM is the only area, for which a comprehensive pre-screening by the parliamentary administration is taking place. This is done in cooperation with the parliament's permanent representation in Brussels who again cooperates with other permanent representatives on a</p>

⁸ http://www.ris.bka.gv.at/Dokumente/BgblAuth/BGBLA_2010_I_57/BGBLA_2010_I_57.pdf (last retrieved September 12th 2012).

⁹ http://www.ris.bka.gv.at/Dokumente/BgblAuth/BGBLA_2011_I_114/BGBLA_2011_I_114.html and

http://www.ris.bka.gv.at/Dokumente/BgblAuth/BGBLA_2011_I_141/BGBLA_2011_I_141.pdf (last retrieved September 12th 2012).

¹⁰ http://www.ris.bka.gv.at/Dokumente/BgblAuth/BGBLA_2011_I_113/BGBLA_2011_I_113.pdf (last retrieved September 12th 2012).

¹¹ Interviews with two party-group representatives on September 10th 2012.

	<p>weekly basis.¹²</p> <p>There is no formal requirement to coordinate with regional parliaments or the second chamber (but see 6.2 i).</p>
Upper house	<p>Again, reasoned opinions might be submitted by the Bundesrat itself or by its EAC (Art. 23g and Art. 23k (3) B-VG). In practice, they are adopted by the EAC.</p> <p>For reasoned opinions the constitution demands that regional parliaments are to be informed and may submit an opinion to the Bundesrat which the latter has to take into consideration. In case the Bundesrat indeed submits a reasoned opinion, regional parliaments have to be informed again.</p> <p>For the rest: see above.</p>
3.2 iii	The "Passarelle clause"
Lower house	<p>The government has to inform the chamber in a timely fashion about all respective proposals on the EU level (Art 23e (2) B-VG). It may agree on them only after the explicit authorization of the Nationalrat, which again has to be supported by the Bundesrat (Art. 23i B-VG). In both bodies, proposals are to be discussed in the respective EAC but the decisions are to be taken by the plenary. Agreement requires a majority of two thirds of the votes and a quorum of 50 percent.</p>
Upper house	See above
3.2 iv	<p>The action of annulment before ECJ on breach with the subsidiarity principle</p> <p>(What quota of MPs is needed to enforce the action of annulment?)</p>
Lower house	<p>Motions on filing a suit to the ECJ may be brought by every MP and need the support of four additional MPs. They then are referred to, and discussed in, the EAC. The final decision (vote) is taken in the plenary with simple majority. If the motion is successful, the Nationalrat has to inform the Bundesrat and the chancellery. The latter then forwards the suit to the ECJ and is obliged to keep the parliament updated on the process (Art 23h B-VG and §26 GOG-NR).</p>
Upper house	The procedure in the <i>Bundesrat</i> is similar to the procedure in the <i>Nationalrat</i> .
3.2 v	Accession of new member states to the EU
Lower house	<p>As with all EU projects (Vorhaben), the government has to inform the parliament about discussions on the accession of new member states on the EU level. During this process, the parliament may adopt binding opinions that prescribe the position of the government in these negotiations¹³</p> <p>Once negotiations are completed, both chambers have to agree on the Accession treaty with a two third majority.</p>
Upper house	See above
3.3	How actively does the parliament engage in the political dialogue and "early warning mechanism" with the Commission?
Lower house	The number of reasoned opinions submitted is very low. So far, there have been only two – one in 2010 and one in 2012. Numbers are higher for the political dialogue. Here, since 2010 16

¹² Interviews with two clerks of the Austrian Parliament, July 13th 2012.

¹³ Interviews with a party-group representative on September 10th 2012.

	<p>opinions were adopted and sent to the Commission.¹⁴</p> <p>According to several interviewees the two new instruments significantly changed the way the <i>Nationalrat</i> is dealing with EU-issues. First, the permanent sub-committee is meeting more often and more regularly than before Lisbon. Second, because of the political dialogue, the committee today engages much earlier in the process than before. Finally, while the Subsidiarity-check hardly ever results in a reasoned opinion, it often indirectly triggers political discussions about the content of proposals beyond the issue of subsidiarity – which now end then results in the parliament engaging in the Political Dialogue on that issue</p>
Upper house	<p>Since 2010, the Bundesrat submitted six reasoned opinions and 16 opinions.¹⁵ Again, the EWS and the political dialogue strengthened the overall engagement in EU politics of the chamber. This also, as especially the EWS involved a quite significant increase of power for an otherwise almost ‘powerless’ body.</p>
3-4	<p>Has parliament ever threatened to bring a legislative act to the ECJ because of subsidiarity concerns?</p>
Lower house	<p>No</p>
Upper house	<p>No</p>
3-5	<p>If applicable to your member state, how does parliament proceed on the ratification of:</p> <p>a. Treaty Establishing the European Stability Mechanism, signed 2 Feb 2012</p> <p>b. Treaty on Stability, Coordination and Governance in the Economic and Monetary Union, signed 2 March 2012</p>
Lower house	<p>Both treaties (and their accompanying legislation) passed the Nationalrat on July 4 and the Bundesrat on July 6. With the signature of the Austrian president on July 17, both treaties became officially ratified.¹⁶</p> <p>It was common sense that the Treaty Establishing the European Stability Mechanism affected constitutional law and therefore a 2/3 majority in both chambers was necessary. As a result, the government needed the votes of at least one opposition party in the Nationalrat (while holding a 2/3 majority in the Bundesrat). After intense negotiations, the governing parties managed to secure the support of the Green party – mainly by securing the Parliament comprehensive participatory rights related to the ESM.</p> <p>The other two opposition parties (FPÖ and the BZÖ) opposed the ESM and voted against it in both chambers. After being outvoted, the FPÖ announced to file a lawsuit before the Austrian Constitutional Court arguing that, even when adopted with a 2/3 majority, the treaty is in breach with fundamental principles of the constitution.</p> <p>The Treaty on Stability, Coordination and Governance in the Economic and Monetary Union was adopted with a 2/3 majority in the second chamber but with only a single majority in the first chamber. It received the votes of the two governing parties, while the opposition voted against it.</p> <p>Arguing that this treaty would not affect constitutional law, the government this time did not try to build a larger majority in the Nationalrat. However, the view that no 2/3 majority were needed was rejected by the three opposition parties. As a result, there are now discussions amongst all three opposition parties to file a joint lawsuit to the constitutional court.</p>

¹⁴ http://www.parlament.gv.at/PAKT/VHG/XXIV/SA-EU/SA-EU_00001_00279/index.shtml#tab-Berichte and http://www.parlament.gv.at/PAKT/VHG/XXIV/A-HA/A-HA_00001_00277/index.shtml#tab-Berichte (last retrieved on September 13th 2012).

¹⁵ http://www.parlament.gv.at/PAKT/VHG/BR/A-EU-BR/A-EU-BR_00001_00037/index.shtml#tab-Berichte (last retrieved on September 13th 2012).

¹⁶ Austrian Parliament, 2012: *Parlamentskorrespondenz* and No. 587 (4.7.2012) and No. 600 (6.7.2012).

Upper house	See above
-------------	-----------