

Chapter 8

The interface between subnational and national levels of government

Multilevel regulatory governance – that is to say, taking into account the rule-making and rule-enforcement activities of all the different levels of government, not just the national level – is another core element of effective regulatory management. The OECD’s 2005 Guiding Principles for Regulatory Quality and Performance “encourage Better Regulation at all levels of government, improved co-ordination, and the avoidance of overlapping responsibilities among regulatory authorities and levels of government”. It is relevant to all countries that are seeking to improve their regulatory management, whether they are federations, unitary states or somewhere in between.

In many countries local governments are entrusted with a large number of complex tasks, covering important parts of the welfare system and public services such as social services, health care and education, as well as housing, planning and building issues, and environmental protection. Licensing can be a key activity at this level. These issues have a direct impact on the welfare of businesses and citizens. Local governments within the boundaries of a state need increasing flexibility to meet economic, social and environmental goals in their particular geographical and cultural setting. At the same time, they may be taking on a growing responsibility for the implementation of EC regulations. All of this requires a pro active consideration of:

- The allocation/sharing of regulatory responsibilities at the different levels of government (which can be primary rule-making responsibilities; secondary rule-making responsibilities based on primary legislation, or the transposition of EC regulations; responsibilities for supervision/enforcement of national or subnational regulations; or responsibilities for service delivery).
- The capacities of these different levels to produce quality regulation.
- The co-ordination mechanisms between the different levels, and across the same levels.

Assessment and recommendations

*The Austrian Constitution contains the basic rules relating to the allocation of legislative powers. The Constitution identifies where the Federation has the exclusive responsibility for legislation and execution, where the execution of federal legislation is left to the *Länder*, and where the *Länder* have their own legislative and executive powers. However, not all provisions concerning the allocation of legislative powers between the Federation and the *Länder* are integrated into the Constitution, leading to some apparent difficulty in delimitating the legislative powers of the Federation from those of the *Länder*.*

The Länder have a critical role in regulatory management in the federation as they are responsible for the execution of most federal law. In Austria the execution of federal legislation is in many fields left to the *Länder*, and in the fields where the legislative powers of the Federation are limited to the principles, the *Länder* are also responsible for the enactment of secondary regulations as well as the application and enforcement of federal laws. More broadly, two thirds of public employment is at the *Länder* and municipal level, and the *Länder* are responsible for delivering significant programme activities including the delivery of health and education services. The OECD Economic Survey of Austria identified that assuring the efficient functioning of the *Länder* is critical to the development of the credible fiscal consolidation measures that are required in Austria (OECD 2009:12). It also noted the potential for differences in *Länder* regulation to reduce market competition, with reference to the effects of regional planning rules restricting retail trading arrangements (OECD 2009:45). Given their size and influence, further investment in efforts to improve the development and delivery of regulation by the *Länder* are therefore warranted.

The implementation of federal legislation by the Länder can involve the enactment of secondary legislation by the Länder. This creates an institutional distance between the preparation of legislation and its execution. This distance is possibly one of the reasons why Austrian legislation is quite detailed: in order to achieve a more or less uniform interpretation and application by the *Länder* authorities, the federal legislator tends to be rather precise. On the other hand, this distance makes it more difficult for the federal authorities to know what happens once legislation is enacted. In other words, they lack the information necessary to know if federal legislation proves to be implementable and achieves its goals or if it needs to be adapted.

Their significant regulatory responsibilities mean that the Länder should in practice be closely associated with the preparation of new legislation at the federal level. The participation of the *Länder* in the legislative process at the federal level fulfils two important functions: it contributes to the quality of legislation and it strengthens the *Länder* as constituent element of the Federation. In addition, the consultation of the *Länder* permits them to better co-ordinate their own legislative activities (in fields falling within their residual powers) with the legislative activities at the federal level. In this sense it may also contribute to the overall coherence of national legislation. The *Länder* are consulted before legislative decisions are taken in policy fields where they are responsible for the implementation (in a broad sense) or for the execution (in a narrow sense) of legislation, because federal legislation must take into account problems of practicability which are best assessed by the authorities at the level of the *Länder* or even the municipalities.

However, in spite of its practical and institutional importance, the participation of the Länder in the legislative process at the federal level is not regulated in a comprehensive way. There are some fragmentary provisions, partly in the Constitution (for example, Article 14b, Para. 4), partly in primary legislation (especially in the context of Austria's membership in the EU), partly in administrative instructions, but the modalities are essentially governed by administrative practice and may vary from case to case and from ministry to ministry. Various inter-governmental bodies set up to facilitate the horizontal (among the *Länder*) and vertical (between the *Länder* and the Federation) co-operation play a major role in this context.

Recommendation 8.1. Set up clear legal rules concerning the participation of the *Länder* in the legislative process at the federal level in order to determine which organs participate, when in the process and how the results are communicated.

Legal and administrative arrangements that guarantee a minimum level of reporting about implementation and effects should also be strengthened. They are particularly important in federalist countries to ensure the quality of legislation. This may be done in various ways (setting up of organs with

special monitoring or reporting tasks, introducing evaluation clauses in federal legislation, using the existing inter-governmental bodies in order to get more reliable and relevant information about the implementation of federal legislation, etc.). Monitoring implementation and evaluation of the effects are the necessary complements to regulatory impact assessments (RIA) or prospective evaluations undertaken in the preparatory stage of the legislative process. At the moment, a clear institutional responsibility is missing and the resources are insufficient.

Recommendation 8.2. Improve monitoring of the implementation of federal legislation by the *Länder* and the evaluation of the effects of legislation.

*There has been a change in culture over that last decade to improve the quality of customer services that the *Länder* governments provide.* This review has not had the benefit of a comprehensive survey of Better Regulation Initiatives at the *Länder* level, but officials report a change in culture, and a sample of activities shows evidence of a focus on administrative efficiency and improving the delivery of services to citizens. There appear to be examples of good practice; programme responses vary across the *Länder* and some have developed impact assessment requirements and administrative burden reduction programmes. Overall, however, these are not comprehensively applied. The *Länder* are not linked to the federal administrative burden reduction programme and implementation of impact assessment, for example, has tended to follow from the initiative of individual civil servants. The relatively few resources specifically dedicated to RIA in a few *Länder* is considered to be one of the underlying reasons why it has been difficult to sustain efforts to introduce the tool. While the impacts of regulatory proposals on administrative costs are often assessed, broader cost benefit analysis is not routinely undertaken.

*Austria needs to ensure that the effect of different administrative and regulatory arrangements within *Länder* does not impose barriers to entry or high transaction costs impeding the efficient operation of businesses across the federation.* In principle, this suggests the need for an assessment of the areas of regulatory responsibility of the *Länder* that may be of concern to businesses operating across different parts of the federation, and an analysis of the number of such businesses. This could be best performed by the national statistical agency.

Recommendation 8.3. Undertake an assessment of the areas of regulatory responsibility of the *Länder* that may be of concern to businesses operating across different parts of the federation, either because of unnecessary transaction costs or possible barriers to entry.

*The vertical and horizontal co-ordination arrangements between the federal government and the *Länder* appear to be a notable strength of the Austrian federation.* Co-ordination mechanisms are usually a particular challenge for multilevel governance. In Austria's case, conferences are regularly convened between representatives of the nine *Länder*. These conferences (*Landeshauptleutekonferenzen*) are informal meetings of the nine state governors and have important political impact. The nine state governors discuss common positions and develop common strategies – the chair alternates. They are supported by a permanent liaison office of the *Länder*. Besides the *Landeshauptleutekonferenzen* there are also informal preparatory meetings at technical level: the *Landesamtsdirektorenkonferenz*. Representatives of the federal government are regularly invited to both of these conferences (political and expert level respectively).

Austria should use its sophisticated co-ordination mechanisms to promote a common strategy for Better Regulation at the sub-federal level. This should include the incorporation of impact assessment principles for improving enforcement and compliance and sharing of good practices among the *Länder*. The *Länder* Courts of Audit already play an important role in assessing the efficiency of *Länder* programmes. There appears to be considerable potential for expanding this role to include the sharing of good practices among the *Länder* and promoting improved regulatory performance. This could be done for

example, through the various *Länder* Courts of Audit jointly developing a principle-based framework for assessing the quality of enforcement practices, particularly risk-based approaches, and drafting guidance for regulatory agencies, such as has been done by the audit offices of a number of OECD governments (see for example, Australia and the United Kingdom).

Recommendation 8.4. Use co-ordination mechanisms with the *Länder* to encourage a Better Regulation strategy for the *Länder* governments, including a focus on developing and sharing best practice to improve enforcement and compliance strategies. Encourage the *Länder* courts of audit to develop a principles based framework to assess enforcement practices.

A special feature of Austrian legislation is its rather detailed content, which makes normative density of primary federal legislation rather high. This may be due to legal requirements (quite a strict conception of the principle of legality); the specifically Austrian legal drafting culture or style, and; the endeavour of the Federation to guarantee a uniform or at least a largely harmonised implementation (secondary legislation enacted by the *Länder* and execution) at the subnational levels by leaving only quite a small margin to the implementing authorities. This may favour legal security and make state action more easily foreseeable, but it can also make legislation more rigid and more difficult to understand. If legislation is too detailed, the need grows to change it frequently, potentially compromising its stability. In addition, the very detailed character of many pieces of Austrian legislation contributes to the overall quantity of norms. Reducing normative density would have positive qualitative and quantitative effects.

Recommendation 8.5. To reduce the overall normative density of federal legislation in Austria, make efforts to avoid unnecessary details and to limit provisions to the essential normative content in primary federal legislation.

Background

Structure, responsibilities and funding of local governments

Structure of local governments

Alongside the central level, the Austrian federal structure comprises nine federal states (*Länder*)¹ and 2 359 municipalities. Vienna enjoys a special status in the Constitution as it appears as a state and a municipality. The system includes also a network of 99 administrative districts, which are not independent territorial authorities but are rather organisationally integrated in the federal state administration (as district authorities) or within the larger cities.

The *Land* level

Each *Land* has its own constitution, parliament and government. Unlike the federal administration, the administrative apparatus of the nine *Länder* is not organised according to the branch system. Instead of ministries there is a common State Government Office (*Amt der Landesregierung*). The statute of the State Government determines which matters are reserved to the panel and which are assigned to individual members, each of whom, is entitled to give orders to the competent units of the Office. Unlike the federal government, decisions in the state governments do not have to be taken unanimously. The internal affairs of the Office are led by the State Governor (*Landeshauptmann*), who is the head of the State Executive (politically) and the chair of the State Government Office (administratively).

The state government is elected by the state parliament (*Landtag*). There are differences in the formation of state governments. While in some *Länder* the majority principle applies, in others

governments of state unity are formed, representing proportionally all the parties represented in the *Landtag*. Members of the state parliament are elected according to the same principles as members of the National Council.

The district level

Most of the 99 district administrations are also part of the state administration. Beside the fifteen larger cities, which act as administrative districts (cities with their own statutes, *Statutarstädte*), there are 84 district authorities established as administrative districts throughout Austria, and which play a leading role especially in implementing national administration. There are no elected political representatives. District authorities are led by one of the persons nominated as district governor by the state government (*Bezirkshauptmann*).

The municipal level

The municipality *landscape* is characterised by small entities. Only 50 towns have more than 10 000 inhabitants and 85% of all municipalities have less than 3 000 inhabitants.² The legislative power lies with a council which acts as a deliberating body with supreme decision-making power and supervisory functions. Decisions to be made are prepared by committees (*e.g.* finance, and social and cultural affairs), formed by members of the council. An executive committee (*Gemeindevorstand*) is elected from the local council or, in bigger municipalities, from the *Stadtsenat*.

The elected mayor is the political head of the local authority administration. Each state has different arrangements for electing the mayor, either by the local council or directly by the citizens. The local administration is led by a municipal secretary or city office director (or chief magistrate in the cities with their own statute). The number of members depends on the number of inhabitants.

Responsibilities and powers of local governments

The *Land* level

Even though the Federal Constitution contains a general clause in favour of the *Länder*, the areas of exclusive legislative competences for the *Länder* are rather minor.³ Within the fields for which they are responsible, they have the power to adopt – under specific conditions – the necessary provisions also in the field of criminal and civil law. The *Länder* have the right to challenge a federal law in the Constitutional Court, if they believe that it infringes their competence and is in breach of the constitution.

The *Land* government exercises executive power in fields of specific *Land* responsibilities, and on behalf of the Federation when no relevant federal authorities exist at the *Land* level. Some special provisions in the Federal Constitution considerably weaken the organisational authority of the *Länder*. Under the system of “indirect federal administration”, mandatory instructions (*Erlässe*) can be issued by the federal minister in charge. These directives have to be followed and significantly affect the opportunities of the lower-level authority to act independently. The Governor (*Landeshauptmann*) is the sole recipient of directives from the federal government or from individual federal ministries concerning matters of indirect federal administration.

The existence of an indirect federal administration in the *Länder* contributes to the considerable influence of the federal government on their administrative organisation. Restrictions such as these are unusual in federal systems. They are mainly due to Austria’s transition from a decentralised unitary State (the Austro-Hungarian monarchy) to a federal State. Indirect federal administration nevertheless enables the *Länder* to exert administrative influence in some areas of federal administration and thus to increase their political weight, since as a rule the Governor and the *Land* authorities are subordinate to him/her – *i.e.*

especially the district authorities (*Bezirkshauptmannschaften*) and the offices of the State Government – execute power for the Federation.⁴

Some two-thirds of all civil servants are employed by the federal states and municipalities, and one third by the Federation.⁵

The local level

The districts are administrative units for the enforcement of federal or provincial duties (*e.g.* trade law, passports, highway code, fines, social matters, veterinary matters).

Self-determination of the local administration is one of the key principles enshrined in the Austrian Constitution. In general, *i.e.* as long as not explicitly delegated to the Federation, the *Länder* are responsible for legislation on municipalities.⁶ Both levels of government though exercise the right of supervision over the municipalities in the area of the municipalities' own sphere of competence.⁷ The *Länder* are responsible for controlling the financial management of the municipal level.

In 1962, an amendment to the Municipal Act (*Gemeindeverfassungsvolle* 1962) was passed by the National Council which constitutionally laid down municipal self-administration. Municipalities have no power to pass legislation. They nonetheless can regulate “local affairs” within the legal framework established by the higher levels of government and the Federal Constitution. Local authorities perform traditional public tasks such as health inspection, local planning, policing and various infrastructure provision functions such as water, sewerage, waste disposal, electric power generation, and roads. In addition, most local authorities run various social and health care services, primary education, culture and leisure activities.

The Federal Constitution grants local authorities the right to undertake commercial activities – *i.e.* they may own assets of any kind, operate enterprises or participate in them – but this is disputed. Some *Länder* restrict such activities to areas which cannot be operated equally well by private business enterprises, but the constitutionality of such limitations is disputed.

The amendment to the Municipal Act also implied an increased scope of tasks. Municipalities were *inter alia* made responsible for local spatial planning (housing), environmental protection and the townscape. Many municipal responsibilities fall under the provision of subsistence⁸ and concern the creation of educational, social, environmental and cultural infrastructure. In some matters, municipalities are responsible for delegated spheres of operation:

- enforcement of federal and *Land* law (bounded by orders);
- realisation of federal and provincial elections;
- registering and marital status (federal law); and
- welfare for young people as far as it is not according to the respective provincial law competence of the district administration.

The wider range of competences resulting from the amended Municipal Act constituted a difficulty for small municipalities so that in the 1960s nearly half were merged into bigger administrative units. Many of the smaller local authorities co-operate for the provision of basic infrastructure services such as sewerage and water purification plants, and to do so they form joint authorities. This form of inter-municipal co-operation is generally subsidised by federal and *Länder* governments.

The Austrian Association of Municipalities and the Association of Towns have been particularly instrumental in the organisation of the local interests (see Box 8.2 below).

In 1992, municipalities were constitutionally granted the right to be informed on matters of European integration and to give their opinion. In 1996, a liaison office in Brussels was established. In the same year, an agreement on a consultation mechanism was reached. According to Article 23d the Federal government not only has to inform the *Länder* on EU matters but as well the municipalities as soon as their area of responsibility or other significant interests are touched.

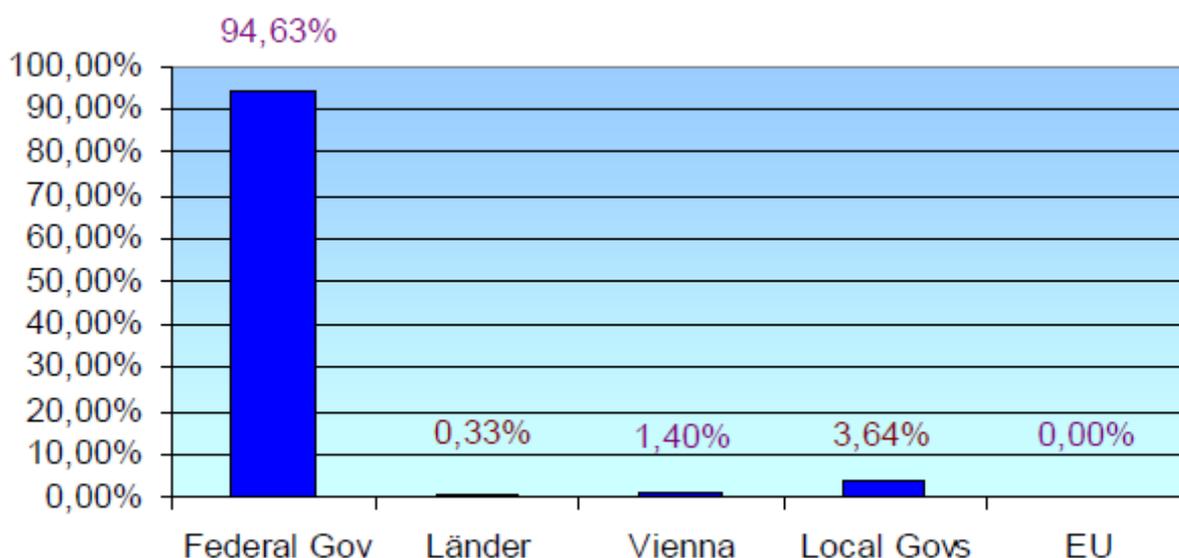
A distinct structure of co-operation has developed amongst Austria's municipalities. As such, many municipal associations have emerged in relation to promoting high investment and employment opportunities, with the aim of making management more efficient.

Funding of local governments

Austria federalist structure relies on the principle of budgetary autonomy of all governments, and budget co-ordination is governed by an internal stability pact, whose main goal is fiscal equity.

The collection of taxes is almost entirely a federal competence. The *Länder* do not have their own tax raising powers. In 2007, the Federation accounted for more than 94% of the tax collection (see Figure 8.1).

Figure 8.1. Collection of taxes in Austria (%)



Source: Federal Ministry of Finance, October 2009.

In 2008, a reform of the Federal Inter-governmental Fiscal Relations Act (*Finanzausgleichsgesetz*, FAG) revised the structure of the tax raising powers. The reform converted federal grants to the lower level into tax shares, which are not earmarked. The *Länder* can spend these tax shares autonomously, on condition that the capacity of the territorial authorities is ensured. The rationale behind the reform was to bring about more accountability of the local level and to share risks.⁹

To finance those tasks assigned to them and the local authorities, a mechanism for financial equalisation (*Finanzausgleich*) is provided by the Fiscal Constitutional Law (*Finanz-Verfassungsgesetz*) of

1948. This settlement is negotiated every four years between the federation, the federal states and local authorities and regards the distribution of federal revenue. The Federal Budget Law (*Bundeshaushaltsgesetz*, BHG) is the legal basis of the budget and lays down the basic principles. As such, it is the binding source of budgetary conduct. The BHG regulates who covers different costs, who has the right to levy taxes and how much money the territorial authorities get from the whole country. The overall coverage (*Gesamtbedeckung*) principle applies, according to which any revenues are being used to cover any expenditures of the federal state. Exceptions are earmarked areas, and reserves.

The *Bundesfinanzrahmengesetz* (BFRG) regulates the procedure and annual budget finance laws which have to be in line with the aforementioned law. The BFRG focuses on expenditure exclusively, setting expenditure ceilings. It therefore also might have an impact on legislative forward planning. Before the decision of the parliament there are negotiations of the representatives of the three territorial authorities which end with a “pact”. The so-called *Finanzausgleich* between the three territorial authorities is considered a “gentlemen’s agreement”. It is binding for the federal level, leading to a special federal law at the end, the so called “*Finanzausgleichsgesetz*”. Accordingly, the final decision lies with the Federation.

The Federal Finance Act (*Bundesfinanzgesetz*, BFG) annually plans revenues and entitles to expenditures in a specific year within the scope of the Medium Term Expenditure Framework (MTEF). The Federal Ministry of Finance can allow certain excess expenditures.

The municipalities have various sources of revenue including payroll (*Kommunalsteuer*), commercial, real estate, beverage and entertainment taxes. Other sources are dog licenses; fees and charges for local infrastructure and other services; and the participation in “fiscal liaison”. Through the latter, local authorities receive a share of the most important federal taxes.¹⁰

To date, the system of revenue distribution to the municipalities relies on a “scaled population multiplier” (*abgestufter Bevölkerungsschlüssel*). Most of the smaller municipalities have nonetheless challenged the current system, favouring instead an output-based approach (*aufgabenorientierter Finanzausgleich*), managing to enforce some amendments of the population indicator. In general, each *Land* government supervises the budgetary regimes of the municipalities.

Some policy fields are excluded from the strict regime of top-down budgeting, for instance social security, EU funding and transfers to the municipalities. A reform of the fiscal relations system is under way. A first part of the budget reform was implemented in 2009, and the second phase will be concluded in 2013. Eventually, the reform will introduce a system of performance management by objectives, with a direct involvement of the Court of Audit. The reform is based on an “impact-oriented” approach (*Wirkungsorientierung*).

Approximately 28% of all public financial resources flow to *Länder* and municipalities. The consultation mechanism embodied in the Constitution is an important element that protects the municipalities from financial overcharge. A consultation mechanism agreement was signed in 1999¹¹ in order to improve the co-ordination between the partners participating in the financial equalisation system. The agreement refers to the preparation of both legislation and secondary regulations. It contains a variety of provisions, including on the mutual obligation to exchange information, with the possibility to take position on all legal measures; the right to call for negotiations in the consultation forum (*Konsultationsgremium*); and the submission to the legislature of the joint recommendations by the consultation forum on the allocation of the costs (*Kostentragung*); and how to settle the allocation of costs if this is not according to what recommended by the forum.¹²

Better Regulation policies deployed at local level

Institutional framework

The function and role of the constitutional services (*Verfassungsdienste*) in the government of the *Länder* is particularly prominent. They range from verifying standards of legal quality and constitutionality checks to proper drafting tasks. The *Verfassungsdienste* may be an independent body within the government's organisation (as is the case in Salzburg).

In Upper Austria, Styria and Carinthia the role of the Constitutional Service encompasses the direct drafting of primary law. This is done on the basis of the regulatory guidelines, and by consulting the specialised departments within the government. By contrast, in the case of the Carinthian government secondary law is drafted by the competent department and then sent to the Constitutional Service to scrutinise the draft.

Also in Salzburg, regulations are drafted generally by the Constitutional Service, but also by competent departments of the regional ministry. The Constitutional Service takes the central function in securing regulatory quality.

Resources and training

Anecdotal evidence from the federal states suggests that the number of staff directly or indirectly involved in Better Regulation co-ordination and management is relatively limited. Generally, there is no one working exclusively on Better Regulation policies.

With regard to training, practices vary from one state to the other. In some cases, courses on preparing regulatory drafts are open to the members of the Constitutional Service. They are organised by the *Verwaltungsakademie* and/or the state government annually. An example is the so-called *Legistikgespräche – Klagenfurt Legistik* talks, with the publication of the related *Bildungsprotokolle* about this workshop. In some other states, it is considered that officials in the Constitutional Service provide fundamental theoretical and practical training. Additional annual regulatory training is therefore not foreseen. The participation in special courses or seminars depends on special topics.

There is no evidence that officials other than legal experts receive further training on Better Regulation at the state level.

Public consultation

Legal provisions and practices for public consultation at the state level broadly reflect what is described for the federal government in Chapter 3. *Land* draft regulations are usually circulated among relevant official and private stakeholders. States often complement this channel through a second, wider “citizens’ consultation”, if the proposed legislation bears elements of general interest. Box 8.1 provides indications on some consultation practices in selected federal states. Its purpose is to illustrate various experiences and it is not exhaustive.

Box 8.1. Public consultation practices in some federal states

The State of Upper Austria distinguishes between the so-called “examination procedure” (*Begutachtungsverfahren*), and a “citizen’s consultation” (*Bürgerbegutachtungsverfahren*). The first is mandatory on all draft bills but those initiated by parliament, and addresses chambers of commerce and trade unions as well as the bodies responsible for competition, trade and consumer policy. The latter by

contrast may be launched if a primary law is of general importance. In this case, every citizen is explicitly invited to comment the draft regulation as published on the Internet. However all draft regulations can be found in the Internet and be commented by the public, even if the citizens are not officially invited to do so.

In the State of Salzburg public consultation follows the same two-fold approach. Generally all laws and decrees are submitted to the “examination procedure”, but the regional parliament can decide, on the basis of the “Citizen’s Consultation Act” (*Salzburger Volksabstimmungs- und Volksbegehrensgesetz*) that a citizen’s consultation has to be carried out, or to decree a law after the result of a referendum.

In Carinthia proposals for primary and secondary law are sent to official and private bodies who are concerned by this regulation for the examination procedure. Some institutions are contacted obligatorily because of specific law. These draft regulation is also published in the internet and every citizen has the possibility to comment on the draft. The Constitutional Service analyses all statements done in the examination procedure and revises the regulatory proposal.

In Styria, there are two forms of public consultation: the standard consultation usually performed as laid down in Chapter A of the Regulatory Manual. Draft regulations with additional explanations are sent out to all bodies and organisations that may be concerned. The time to reply depends on the size and complexity of the draft; it is at least four weeks. Moreover all draft bills can be found on the website of the Styrian Diet, all draft ordinances on the website of the Styrian government, both with additional explanations and with the possibility for everybody to comment on them. The second kind of consultation is the “General consultation procedure” (*allgemeines Begutachtungsverfahren*) for draft regulations of significant importance. In this case, citizens and institutions have the right to give a written comment within a term of six weeks.

The use of public consultation is regulated also in Lower Austria.

Source: Responses of the Austrian Government to the OECD questionnaire.

The review team understood that government feedback practices at the *Länder* level are relatively advanced. The Carinthian government for instance reports the results of consultation to the state parliament before these votes on a draft regulation. Although the participation of stakeholders after a consultation is not mandatory and varies, in some cases working groups are set up after consultation to find compromises with the stakeholders. All regulatory drafts are completed with explanations before sending out for examination procedure. The results of public consultations are reported in the explanations also in Salzburg, where explanations are considered as an essential part of legal drafts and the basis for decision – finding of responsible bodies. In Styria, the results of consultation on draft bills are free accessible on the website of the Diet, and sometimes the following legislative proposal submitted by the government to the Diet contains a report on the results of the consultation. According to the “General consultation procedure”, the government is legally obligated to give a report to the Diet, and to make the results of the consultation accessible.

Communication of regulation

Various aspects of e-Government are also quite developed at the subnational level, notably in support of enhanced transparency and accessibility of regulation. The majority of the *Länder* have wide communication policies in place with regards to existing regulations, and the state official gazette is posted on line. Access to draft regulations is also possible on line, sometimes on the website of the Diet and the government, or on the Constitutional Service website.¹³ There is also the possibility to subscribe to *Landesrechts-newsletters* to be informed about examination procedures.

Also with regard the communication of new regulations, the *Länder* are relatively advanced. Since 2004, the Styrian *Land* government for instance publishes all draft *Land* bills and draft *Land* ordinances on

the Internet in order to improve the transparency in the rule-making process. Those drafts can be accessed freely and are open to public comments. Since 2008, all comments given in the consultation procedure and concerning bill drafts are published on the Internet. More generally, the Styrian Law Information System (RIS) guarantees free access to the Styrian legislation, including consolidated texts. This is an obligation imposed by *Land* law. The project “paperless diet” made the Styrian *Landtag* the first Diet in Europe to organise its processes completely electronically since October 2005. Also the legislative process unfolds on an electronic interface.¹⁴

Another example is the Viennese legal information system (*Wiener Rechtsinformationssystem*, WRI). This electronic database containing all Viennese legislation, the regulations of the City of Vienna as well as the regulations of the Mayor. The latest draft law and links to background materials can also be accessed. The database includes also decisions of the tax commission and the appeal of the Senate, among others. Since March 2009, a multi-criteria search engine is available for the WRI.

Forward planning

All state governments issue a general programme outlining the areas of action in the oncoming legislature. The programmes are usually published on the website of each state government. In certain cases, more precise internal programmes of the intended legislative activity are developed.

Administrative procedures

Sectoral or tailored internal guidelines for administrative procedures exist at the subnational level, not always with a binding status. Examples include instruments for regulatory quality improvement (Upper Austria) and regulatory guidelines (Lower Austria). The regulatory manual (*Legistisches Handbuch*) of the Styrian government was issued in 2005 and updated every year since. It is publicly available,¹⁵ covers the drafting of all *Land* regulations (draft bills and draft ordinances), and is binding for all government officials.

Legal quality

Like at the federal level, the Constitutional Services of some *Länder* take over the scrutiny of legal quality as well as the constitutionality and consistency of regional draft law.

Ex ante assessment of regulation

The state governments are formally required to perform an assessment of the regulatory impacts on the basis of an “agreement about a consultation-mechanism between the federal and regional governments” (*Konsultationsmechanismus*).¹⁶ The agreement does not require a comprehensive RIA, but only with regard to potential additional expenditure of the respective federal or regional community concerned. Assessments are not required in the case of parliamentary initiative bills (*Initiativanträge*). The consultation-mechanism also includes a threshold test, determining when the procedure has to be initiated.

Most of the impact assessment carried out at the *Länder* level refer to financial aspects. The impact assessment regarding the financial effects of a proposal is usually done by a specialised department and sent to the respective department for financial affairs and the Constitutional Service to scrutinise. In Styria, the responsibility for the financial RIA is allocated in the department of the government’s office concerned with the preparation of the respective regulatory proposal. In Carinthia, guidelines exist on how to perform impact assessments on the basis of the agreement about a consultation-mechanism. The guidelines regulate the collaboration between the competent departments, the department of finance, and the Constitutional Service. They also indicate the procedure for the calculation of the costs. In Salzburg, the benefits and costs of regulatory drafts (both laws and decrees) should be assessed and the results presented in the

accompanying explanations, in accordance with that state's Budgetary Law. The state's Constitutional Service is the responsible unit for execution.

The communication policy of the *Länder* is similar to what happens at the federal level. The results of impact assessments are normally enclosed with the explanations accompanying every draft bill. As such, they are subject to public consultation and published on the Internet.

Alternatives to regulations

Consideration of alternatives to regulation varies across the *Länder*. It may be a formal requirement to be systematically reported in the *Vorblatt*, or occur only for the most important legislative proposals. There is usually a note explaining the necessity for the option chosen in the explanations accompanying the proposal.

Simplification of regulations

The main responsibility for legislative simplification in the *Länder* lays usually with the Constitutional Services of each regional government. "Deregulation acts" (*Rechtsbereinigungsgesetze*) and "re-notification acts" (*Wiederverlautbarungen*) are common instruments across the *Länder* to simplify the legislative stock. Their use since the mid-1990s has been irregular but not infrequent. There usually is no limitation of the scope of legislative simplification within targeted policies. The approach is holistic. In some cases, *ad hoc* deregulation groups were established to overview existing laws and regulations and report on the room for improvement to the government.

Practice with review and sunset clauses varies from one *Land* to the other, and are normally not systematic but have been applied on an *ad hoc* basis.

Administrative burden reduction programmes and administrative simplification

Pilot projects on measuring and reducing administrative burdens have been launched at the *Länder* level. Separate reduction targets have been established, and there is no aggregate target for all the *Länder* (see also Chapter 5). The pilot measurements of state legislation in three *Länder* (Upper Austria, Tyrol and Styria) did not include a baseline measurement similar to the one undertaken at the national level. Rather, so-called "quick scans" were used.

According to the federal government, initial evidence suggests that only few burdens arise from *Länder* regulations, and where relevant they tend to originate from the environment, subsidies and construction sectors. A higher amount of burden would be caused by joint *Länder*-federal level legislation, and by the implementation of federal laws.

Some states are also active in administrative simplification inside government. In Upper Austria, for instance, the programme "efficient administration" (*wirkungsorientierte Verwaltung*) has been in place since 1997. Vienna established the electronic file processing system ELAK (*elektronischer Akt*) at the end of the 1990s, which is now used by all municipal departments. In Carinthia, groups of experts work on a simplification of administrative burdens inside government, while the Salzburg government decided to install the electronic act-programme for managing internal administrative business.

Co-ordination mechanisms

In 1974, a provision¹⁷ was introduced to the Federal Constitution concerning agreements between the Federation and the *Länder* or among the *Länder*.

Vertical co-ordination

There is mutual influence between the federal and the *Länder* levels in their respective decision-making processes. The states participate in the Federation's legislative process through the Federal Council, while the Federation has access to the state law-making via the federal government. All state parliament enactments shall be notified to the Federal Chancellery before publication. Within a period of eight weeks, the federal government has the right to submit a justified objection to a state parliament enactment, if it deems that it would threaten federal interests. Any such objection only represents a suspensive veto. The state parliament may repeat its vote in the presence of at least half its members. If the bill passes again, it becomes law and the federal government may only challenge it in the Constitutional Court if it feels that it is unconstitutional. Only if the execution of the law depends on co-operation with federal authorities, is the approval of the federal government required.

There is a binding agreement about a consultation mechanism between the federal and regional government. The Federal Chancellery and the respective federal ministry are timely notified and consulted. Consultation between the subnational and the federal levels is relatively intense, although not necessarily formalised. This "vertical" consultation usually lasts a few weeks. The consultation on financial impacts lasts 4 weeks, and runs normally in parallel to the usual consultation.

The Federation and the *Länder* may conclude agreements among themselves about matters within their respective sphere of competence. The conclusion of such agreements in the name of the Federation is, depending on the subject, incumbent on the federal government or a federal minister. Agreements which are to be binding also on the authorities of the federal legislature can be concluded by the federal government only with the approval of the National Council.¹⁸

The institutional setting for vertical co-ordination is relatively complex in Austria. Some 40 conferences regularly convene between the federal and the *Länder* level. These conferences are an opportunity for the *Länder* to state their problems with the implementation of federal laws. They may also give impetus to legislative initiatives at the federal level. Some believe that the conferences may have more of an impact than the Federal Council. The chair is always held by a representative of a state, and it is rotating.

The so called "consultation-mechanism" is an agreement between different territorial entities, namely the federal level (*Bund*), the states (*Länder*) and the two major associations of municipalities (*Gemeinden*). The mechanism is based on Art. 15a B-VG and, when it involves the municipality level, a special constitutional law. The agreement stipulates mutual information obligations on new draft regulations, the establishment of a consultation committee and the cover of costs when a piece of legislation burdens the other territorial entities with costs without having offered the possibility to comment on the new regulation. It therefore allows the Federation, the *Länder* and municipalities to raise concern about drafts of state or federal laws and decrees on the ground of financial burdens. If one of the members of this mechanism (federal authority, regions and union of local government units) makes recourse to this mechanism, negotiations will be obligatory.

The Liaison Office of the *Länder* (*Verbindungsstelle der BundesLänder*) in Vienna is a shared institution of the nine federal states. Set up on the initiative of the state governments in 1951,¹⁹ it was officially recognised by the federal government fifteen years later and some federal laws mention it explicitly. The Liaison Office does not have a legal personality, though. The main responsibility of the Office is to create a permanent link among the *Länder*, and between these and the federal government, in order to co-ordinate the *Länder* positions. The Office serves *inter alia* also as the secretariat for all the *Länder* conferences such as the *Landeshauptleutekonferenz* and the conferences of the heads of the *Länder*

government offices (*Landesamtsdirektoren*). Staff members come from the different *Länder*, and the costs are shared between the *Länder*.

The local level is also represented actively at the federal level, notably through two voluntary associations (see Box 8.2).

Box 8.2. Co-ordination and advocacy of local-level interests in Austria

Austrian Association of Municipalities

The origins of the Austrian Association of Municipalities (*Österreichischer Gemeindebund*) date back to 1947-48. The Association, which consists of *Länder* sub-associations, represents the interests of small communes at federal level. About 99% of Austrian local governments are organised with the association by voluntary membership. One main goal of the association as stated in a 1957 declaration was a constitutional guarantee for municipal self-government.

Austrian Association of Towns

The Austrian Association of Towns (*Österreichischer Städtebund*) was founded in 1915. Membership is voluntary, is targeted to larger municipalities, and covers more than half of Austria's population. The Association provides legal advice, facilitates exchange of information and best practices (via 36 working groups), promotes public relation activities, and maintains international contacts. One of the main areas of activity is representing the interests of the towns and municipalities as part of the negotiations on the federal budget and the corresponding financial equalisation. The Association is also incorporated in the legislative process; it gives about 100 opinions per year on federal laws. The Association has got one liaison office in Brussels.

In 1988, a constitutional amendment was passed which fixed the status of the Austrian Association of Municipalities and the Austrian Association of Towns as representatives of municipal interests at the federal level but also internationally.

Source: Responses of the Austrian Government to the OECD questionnaire; and mentioned websites.

Horizontal co-ordination

As a rule, the Constitution does not empower subnational authorities to sign agreements at the local level. Horizontal agreements among the *Länder* and among the municipalities (so-called inter-communal co-operation, through *Gemeindeverband*) can only be made on matters pertaining to their respective autonomous sphere of competence and the federal government must be informed without delay.²⁰

The main co-ordination mechanism between the *Länder* consists in the *Land* Governors' Conference (*Landeshauptleutekonferenz*). This political forum aims at harmonising the interests of the *Länder vis-à-vis* the Federation. The co-ordination is reflected in unanimity required to adopt decisions. Through the Conference the individual *Land* governments organise and voice their demands. The meetings of the Conference are prepared by its administrative counterpart, the Directors-General of the *Land* Governments (*Landesamtsdirektorenkonferenz*). Items for the agenda are suggested by individual participants. The conference makes recommendations for the decisions of the *Land* Governors' Conference. The Federation is usually represented in both conferences. There are also various "Conferences of Experts" at both the political and administrative level.

In addition to these instruments there is the Austrian Conference of Regional Planning (ÖROK), which helps co-ordinate regionally-relevant planning projects and policies among the corporate territorial authorities. More generally, *Länder* Conferences are primarily "informal", political bodies; their most

prominent role is to prepare and to adopt joint positions of the *Länder* and to horizontally co-ordinate certain issues. Legal mandates are rare. Conferences do primarily have a horizontal character, but very often representatives of the Federal government participate.²¹

Notes

1. The federal states are Burgenland, Carinthia, Lower Austria, Upper Austria, Salzburg, Styria, Tyrol, Vorarlberg and Vienna.
2. Cfr. Federal Chancellery, *Administration in Brief. Services and Data*, May 2006, p.7.
3. See: Art. 15 of the Constitution. A great number of the important powers are listed in Art.10, which refers to the competences of the Federation.
4. See: Art. 102 Para. 1 Federal Constitutional Law. The “political weight” mentioned refers to the authority of the Governor, who is *primus inter pares* within the *Land* Government (and is therefore primarily responsible for the executive power in each *Land*), represents the *Land* and carries additional powers in the areas of indirect federal administration.
5. Cfr. Federal Chancellery, *Administration in Brief. Services and Data*, May 2006, p.10.
6. See: Art. 115 (2) B-VG.
7. See: Art. 119a of the Constitution.
8. This refers to the provisions of Services of General Interests, *i.e.* services considered to be in the general public interest and accordingly subjected to specific public-service obligations. They include non-market services (*e.g.* compulsory education, social protection), federal services (*e.g.* security and justice) and services of general economic interest (*e.g.* energy and communications). In Austria, such provision is the responsibility of the communities, according to the subsidiarity principle.
9. Further administrative reforms concern the abolishment of a public administration tax privilege concerning family assistance payments; and the introduction of a Standardised Fiscal Code.
10. For instance, wage and income tax: tax on investment income turnover (VAT), beer, wine, real property acquisition and mineral oil; and levies on gambling establishments.
11. See: *Vereinbarung zwischen dem Bund, den Ländern und den Gemeinden über einen Konsultationsmechanismus und einen künftigen Stabilitätspakt der Gebietskörperschaften*, in BGB of 14 January 1999, Nr.35.
12. See: www.bmf.gv.at/Budget/Finanzbeziehungenzu_658/Konsultationsmechanismus/_start.htm (last accessed on 8 February 2010).

13. See the cases of Styria: (www.landtag.steiermark.at/cms/ziel/30636372/DE/, www.verwaltung.steiermark.at/cms/ziel/30638189/DE/, and www.verwaltung.steiermark.at/cms/ziel/2890458/DE/), and of Carinthia (www.landesrecht.ktn.gv.at), respectively (last accessed 18 November 2009).
14. See: www.landtag.steiermark.at/cms/beitrag/10256628/9151669 (last accessed 8 December 2009).
15. See: www.verwaltung.steiermark.at/cms/dokumente/10165551_4530957/a1e85c09/A_Verfahren.pdf (last accessed 19 November 2009). The manual replaced the Styrian regulatory guidelines of 1990, offering not only new and more contents but also new instruments as *e.g.* process modelling.
16. See: XX Legislative Period, RV 1210 AB 1254 S.130; BR: AB 5692 S.642 – StF: Federal Gazette 1 Nr.35/1999.
17. Art. 15a of the Federal Constitutional Law.
18. See: Art. 15a Para. 1 Federal Constitutional Law.
19. In accordance with Article 107 B-VG.
20. See: Art. 15a Para. 2 Federal Constitutional Law.
21. On the conference system in Austria, see A. Rosner/R. Gmeier (2019), “Die Länderkonferenzen als Instrumente der Selbstkoordination der Länder und des kooperativen Bundes”, in P. Bussjäger (Ed.), *Kooperativer Föderalismus in Österreich. Beiträge zur Verflechtung von Bund und Ländern*, Schriftenreihe des Instituts für Föderalismus, Band 111, Wien, p.49-63.