



## COUNTRY REPORT: AUSTRIA

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### **I. How has parliamentary law-making practice changed during the pandemic in the state you are studying?**

- **Briefly describe the new practices.**
- **Evaluate these practices. In your opinion, do these practices empower, disempower or not change anything regarding parliamentary law-making powers and practice**

Examining Austrian responses to the pandemic within a broader context, one needs to highlight the key factors which differentiate the country from other cases. Firstly, since the beginning of the Covid-pandemic, the Austrian Parliament has not moved to online meetings or remote work. Secondly, there was no state of emergency introduced. Here it should be noted that the Austrian constitution does not envisage such an option (Butković, 2021). Regarding law-making, the most common practice was to introduce bills without a debate (Lachmayer, 2020a). Beyond that, with the Covid-19 Measures Act (approved in mid-March 2020) the role of Parliament became marginalised by granting the government the power to issue ordinances (Butković, 2021; Ehs, 2020). These two changes contradict previous law-making practice in Austria and were met with criticism for the same reason.

The law-making practice of introducing bills without a debate is controversial. This kind of practice clearly disempowers Parliament in its law-making capacity. It also contradicts the basic premises of representative democracy, meaning that MPs and political parties voice and represent citizens' viewpoints on different topics and then, after debating, take a decision that is an outcome of that public deliberation process. This can be considered as the ideal concept of a representative democracy, but in this case study we need to consider the

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whole situation and, in this sense, we need to acknowledge the specificity of the pandemic period. A virus, causing disease with such high prevalence may revise former practices, also in law-making.

The Covid-19 Measures Act has also played an important role in the Austrian context. This Act is official confirmation of the marginalization of Parliament and at the same time it empowers the government in the law-making process (Gstöttner & Lachmayer, 2020). In September 2020, the Austrian Parliament enacted an amendment of the core statutory acts [Änderung des Epidemiegesetzes 1950, des Tuberkulosegesetzes und des COVID-19-Maßnahmengesetzes (NR: GP XXVII IA 826/A AB 370 S. 51. BR: AB 10408 S. 912.)]. The bill aimed to provide an adequate response to the pandemic. This resulted in a new dimension in empowering the Austrian government –absolutely unprecedented in the Austrian context. It is important to note, however, that these measures had a sunset clause until the end of June 2021; allowing for a one-time prolongation of these measures until the end of 2021 (Gstöttner & Lachmayer, 2020).

Another new practice employed by the governing parties during the pandemic was the so called “carrier rocket” (“Trägerrakete”). In this setting, political actors start the parliamentary process with a bill of a minimum content – called the “carrier rocket”(Stöger, 2021). Relevant content gets added only after the process has started. The original bill is amended in the relevant parliamentary committee during the process. This method was able to shorten the assessment process. One “carrier rocket legislation” was for example started on 24 February 2021, when MPs from the governing party initiated an amendment to the Epidemic Act and the Covid-19 Measures Act (Forgo, 2021).

Practices which were used during the pandemic period highlight the increasing role of the government in the legislative process. Some of the distortions in the law-making process were also criticised by the opposition in Austria. All these actions led to the disempowerment of the parliamentary law-making powers and practice.

We can examine the case of Austria from three different aspects. Starting from a *quantitative-qualitative approach*, we can observe that over a timespan of 3 months (from 15 March 2020 until 17 June 2020), the Austrian Parliament passed 20 Covid-19 Acts. These decisions were considered controversial by the public (given the irregular mode of approval); however, the criticism did not influence the government, which led to no change in the quality of the introduced bills. The second key aspect is the *issue of transparency*. Based on

previous research, we can assume that Austrian law-making process lacked transparency from the beginning of the pandemic, for example regarding advising experts. For the public, the persons and the recruitment process remained unknown. Last, but not least, we have the aspect of *accountability*. The Austrian opposition demanded different investigatory committees, among them one dedicated to evaluating governmental decisions. Due to rules in operation, the opposition – the minority in Parliament – have not succeeded in getting this demand fulfilled because an investigatory committee already exists in Austrian legislation, which had been formed to investigate the 2019 Ibiza Scandal (Lachmayer, 2020b).

**II. Looking at formal changes and the practice of law-making in the state you are studying, has respect for the rule of law increased, decreased or not changed at all during the pandemic? Please elaborate on the question.**

Based on the World Justice Project's results, in the case of Austria, the overall rule of law score decreased by less than 1% in the 2021 index (Austria Ranked 9 out of 139 Countries on Rule of Law, 2021). If we take a look at the more detailed data, we can see that the country has a stable, constant performance with regard to the rule of law (WJP Rule of Law Index, n.d.). These results made it possible for Austria to get in the top 10 countries in the EU regarding the rule of law.

- 2015: 0.82
- 2016: 0.83
- 2017-2018: 0.81
- 2019: 0.82
- 2020: 0.82
- 2021: 0.81

During the pandemic Austria followed a different path than many other European countries. The Austrian government did not opt for ruling by decree. Instead, they decided to put time constraints on the legislative process. Beyond that, we have seen omnibus laws being passed during the pandemic. However, this cannot be regarded as an Austrian characteristic.

Drawing on academic work on the topic, another aspect needs to be highlighted. The Austrian government has not prioritized the rule of law while handling the pandemic (Lachmayer, 2020a). Against this background, it is not the case that the rule of law

deteriorated in Austria during the pandemic even though the government neglected it during that period. The finding demonstrates that in this respect the pandemic posed a significant challenge also to consolidated democracies.

Table 1: Formal changes

| Country_Name | Reference: Name_legal act changing formal rules of law-making (in original language)         | Name_Chamber concerned | Short description of the content of the reform  | Year |                  |
|--------------|--|------------------------|---|------|------------------|
| Austria      |  |                        |   |      |                  |
| Austria      | 12. Bundesgesetz: COVID-19 Gesetz (NR: GP XXVII IA 396/A AB 102 S. 16. BR: AB 10287 S. 903.) | Nationalrat, Bundesrat | The government extending its power, while the opposition misses on taking a more active role in the crisis management   | 2020 | Changed 15 times |
|              | 4. COVID-19-Gesetz (NR: GP XXVII IA 403/A AB 116 S. 22. BR: AB 10292 S. 905.)                | Nationalrat, Bundesrat | Times of crisis do not stop at "gates" of the B-VG either. The Federal Government was allowed to pass resolutions by circular resolutions (Beschlussfassung im Umlaufweg). Now also municipal councils may pass resolutions by circular resolution or in a video conference (usually by simple majority) for the duration of the crisis. <b>36 amendments and 3 new federal laws in this rule</b> | 2020 | Changed 15 times |
|              | 2. COVID-19-Gesetz (NR: GP XXVII IA 397/A AB 112 S. 19. BR: AB 10288 S. 904.)                | Nationalrat, Bundesrat | The legal extension of all judicial and official time limits, with the possibility of setting individual time limits in each case after a proportionality test has been carried out. The (constitutional) statutory authorisation to adopt decisions by way of circular decisions and video conferences of the Federal Government and other bodies  | 2020 |                  |

Source: Own

Table 2: Law-making practice

| Country_Name | Chamber_Name                           | Year |             | Number of ALL legislative bills | Number of resolutions (EntschlieÙung)/decisions (Entscheidung/Beschluss)/statements (Erklärung) (various non-legislative measures) | Number of fast-tracked legislation (debate limited and/or shortened legislative process, including omnibus laws)  | Most common forms of fast-track measures  | Number of decree laws/gov decisions (no parliamentary consent) | Number of working days (parliamentary plenary sessions) | Number of oral questions to the government | Number of written questions |
|--------------|--|------|-------------|---------------------------------|--|---|---|--|---|--|-----------------------------|
| Austria      | Bundesrat (Federal Council - upper)    | 2019 | 26th period | 33                              | 66 BeschlÙsse; 10 EntschlieÙungen  |   |   | 1  | 9   | -  | 124                         |
|              |  |      | 27th period | 1                               | 35 BeschlÙsse; 2 EntschlieÙungen   |   |   | 0  | 2   | -  | 5                           |
|              |  | 2020 |             | 81                              | 176 BeschlÙsse; 62 EntschlieÙungen   |   | Time limits for the whole procedure   | 2  | 19  | -  | 94                          |
|              |  |      | 2021        |                                 | 84   | 226 BeschlÙsse; 22 EntschlieÙungen  | <a href="https://oxcon.ouplaw.com/view/10.1093/law-occ19/law-occ19-e28#law-occ19-e28-note-25">https://oxcon.ouplaw.com/view/10.1093/law-occ19/law-occ19-e28#law-occ19-e28-note-25</a> | 4  | 18  | 20   | 129                         |
|              |  |      |             |                                 | Between March and August 2020, 22 omnibus at least   |   |   |  |   |  |                             |
| Austria      | Nationalrat (National Council - lower) | 2019 | 26th period | 252                             | 99 BeschlÙsse; 102 EntschlieÙungen   | Mid-March 2020 and end of June 2021: around 250 statutes (including amendments) were passed, most of which had some connection with Covid-19-related measures | Time limits for the whole procedure   | 2  | 31  | 39   | 12                          |
|              |  |      | 27th period | 21                              | 5 BeschlÙsse; 5 EntschlieÙungen  |   |   | 1  | 7   | -  | 1                           |
|              |  | 2020 |             | 311 (2 Bundesrat bills)         | 201 BeschlÙsse; 126 EntschlieÙungen  |   |   | 11   | 73  | 39   | 24                          |
|              |  |      | 2021        |                                 | 329  |   |   | 249 BeschlÙsse; 101 EntschlieÙungen                            | 5   | 65   | 91                          |

Source: Own

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