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Vienna, June 2014

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PREFACE ................................................................................................................................. 4
ACKNOWLEDGMENTS .............................................................................................................. 4
EXECUTIVE SUMMARY ........................................................................................................... 5
INTRODUCTION ....................................................................................................................... 8
I. CIVIL SOCIETY INDEX PROJEKT & APPROACH ................................................................. 9
   1. PROJECT BACKGROUND ................................................................................................. 9
   2. APPROACH AND CSI IMPLEMENTATION ..................................................................... 9
   3. SCOPE OF THE SURVEY ............................................................................................... 11
II. CIVIL SOCIETY IN AUSTRIA ............................................................................................. 12
   1. THE CONCEPT OF CIVIL SOCIETY ............................................................................. 12
   2. HISTORICAL DEVELOPMENTS ................................................................................... 16
   3. A DEPICTION OF CIVIL SOCIETY – AUSTRIA’S NPO SECTOR ................................. 17
III. ANALYSIS OF CIVIL SOCIETY ...................................................................................... 23
    1. DEMOCRACY IN AUSTRIA ............................................................................................. 23
    2. FREEDOM OF ASSOCIATION ..................................................................................... 30
    3. FREEDOM OF ASSEMBLY ............................................................................................ 35
    4. ACCESS TO FINANCIAL RESOURCES ...................................................................... 46
    5. TAX LAW ....................................................................................................................... 51
    6. EMPLOYMENT AND VOLUNTEERING ....................................................................... 59
    7. PROVISION OF SERVICES (SERVICE AGREEMENTS / FUNDING) ............................ 64
    8. TRANSPARENCY IN THE CONTEXT OF SERVICE AGREEMENTS AND FUNDING... 72
    9. VISIBILITY OF THE IMPACT OF CIVIC ENGAGEMENT ............................................ 77
IV. FRAMEWORK CONDITIONS FOR CIVIL SOCIETY IN AUSTRIA – STRENGTHS AND WEAKNESSES 81
V. RECOMMENDATIONS FOR ACTION ................................................................................. 84
BIBLIOGRAPHY .......................................................................................................................... 87
**PREFACE**

A vibrant civil society contributes significantly to a living democracy, social cohesion and social innovation. Civil society organizations (CSOs) provide important services. Especially in times of crisis, they can help to improve living conditions for many people.

Appropriate framework conditions are a prerequisite if the potentials of civil society are to be developed and exploited in an effective way. While this has been known to scholars and experts for some time, politicians are now becoming increasingly aware of the opportunities which may arise from creating favorable conditions for civil society.

The Civil Society Index – Rapid Assessment (CSI–RA), therefore, examines the general climate and framework conditions for civil society initiatives and organizations in Austria. Using the internationally tested CSI–RA tool, supporting as well as limiting factors were identified and assessed from the point of view of experts and social stakeholders. The ultimate aim of this report is to provide a basis for the creation of a beneficial environment for Austrian civil society.

**ACKNOWLEDGMENTS**

This report is the result of a co-operation between the Interest Group of Public Benefit Organizations (IGO) and the Competence Center for Nonprofit Organizations and Social Entrepreneurship (NPO cc) at the Vienna University of Economics and Business. The method applied was developed by the CIVICUS World Alliance for Citizen Participation.

The Civil Society Index – Rapid Assessment was realized with the participation of a great number of people whom we would like to thank at this point. We are grateful to the members of the National Advisory Group, Karin Abram, Robert Dempfer, Nikolaus Dimmel, Gerald Fitz, Gabriele Gerbasits, Katharina Meichenitsch, Filip Radunovic, Hanna Simons, Philipp Sonderegger, Barbara Weber and Wilhelm Zwirner, who helped with the development of the thematic priorities and the interpretation of the study’s results.

We are indebted to our interviewees, who shared their expertise and, thus, provided profound insights into the legal and practical framework conditions under which civil society organizations operate in Austria.

We would also like to thank Katrin Hora, Žana Simić and Sabine Klinghofer for their assistance in conducting and transcribing the interviews. Gottfried Sulz, Andreas Lummerstorfer and Philipp Hense kindly helped us finalize this report by contributing theoretical and practical expertise.

Last but not least, we are indebted to the following institutions: RD Foundation, Erste Foundation, Erste Bank and Allianz Gruppe in Austria. It is their support which made the implementation of this project possible.

Eva More-Hollerweger, Romy Grasgruber-Kerl, Franz Neunteufl und Ruth Simsa

(National Implementation Coalition)
EXECUTIVE SUMMARY

The Interest Group of Public Benefit Organizations (IGO) and the Competence Center for Nonprofit Organizations and Social Entrepreneurship at the Vienna University of Economics and Business have, in cooperation with CIVICUS, conducted a study on the framework conditions for civil society in Austria. In conducting the study, The Civil Society Index – Rapid Assessment (CSI-RA), developed by CIVICUS, was used.

The analysis focuses on six topics including nine subtopics which, in cooperation with the National Advisory Group (NAG), consisting of 11 representatives of civil society organizations, have been evaluated as particularly important to this field of research. Indicators assembled from different sources (CIVICUS and ECNL) and complemented by the NAG form the basis of this analysis. Methodologically, the analysis is based on desk research (analysis of literature and documents) and 24 interviews which were conducted with legal experts and CSO representatives. One central aspect of the CSI-RA is its participatory approach, which meant that the NAG was able to give feedback on the methodological approach, the main topics and the preliminary results at various stages throughout the process.

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<th>Topic</th>
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<td>4. Access to financial resources</td>
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<td>Employment/social security</td>
<td>6. Employment and volunteering</td>
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<td>Procurement law and funding</td>
<td>7. Provision of services</td>
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<td>8. Transparency in the allocation of service level agreements and promotions</td>
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<td>Visibility</td>
<td>9. Public perception of civic work</td>
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Preceding the analysis, this report includes an account of characteristics of as well as historical developments in Austrian civil society. A description of the non-profit sector based on selected secondary data will also be given.

Democracy in Austria is the first topic chosen in the analysis. The democratic quality is depicted by means of the Democracy Barometer which compares 30 established democracies based on the three main aspects of freedom, equality and control, with every aspect divided up into three further sub-aspects. The strength of Austrian democracy lies in its guarantee and actual realization of individual freedom and the rule of law. The level of participation, on the other hand, is only average. Austria also fares comparatively poorly with regard to the public sphere, the main reason for this being a particularly high concentration of media.
Civil and Human rights include three subtopics: freedom of association, freedom of assembly and CSOs’ access to financial resources. Freedom of association is well anchored in Austrian law and frequently implemented. In the recent past, trouble arose in connection with criminal convictions issues, when animal rights activists were accused of having participated in founding a criminal organization as referred to in article §278 of the Austrian criminal code (StGB). Austrian law also provides a good basis for freedom of assembly. Assemblies are not subject to approval in Austria. They do, however, require non-prohibition. Criticism has mainly focused on the implementation of legal regulations in the prohibition of assemblies and on the behavior of the executive during assemblies. CSO access to financial resources is mostly guaranteed in Austria. CSOs have to accept limitations when seeking to achieve the status of a charitable/non-profit organization since this status entitles them to tax relief. Private foundation law constitutes an Austrian peculiarity which is, so far, not directed at charitable organizations but, rather, promotes non-charitable/commercial private foundations.

The third part of the analysis addresses issues of tax law. The main focus here is on the application of existing legal regulations in the context of beneficiary CSOs. Austria boasts a number of exceptions and tax benefits for charitable and church organizations, but there is only limited legal certainty in case of their application. Criticism in this context focuses on several aspects. On the one hand, one encounters legal ambiguity and interpretations of tax authorities which are, to some extent, arbitrary. On the other hand, formal requirements are rigorously applied, and failure, in the eyes of the authority, to fulfill requirements, may lead to a retroactive loss of tax relief and threaten the CSOs’ existence.

The fourth topic addressed in this analysis is that of employment and volunteering. One of the major characteristics of CSOs is the variety of ways in which people may be active in a CSO. Apart from employed workers, most people involved in a CSO are volunteers. In Austria, voluntary work has been regulated by a volunteering law since 2012. A grey area in which there is only limited legal certainty, however, remains. This is, for example, the case with voluntary engagements in other countries which last several months. With regard to the promotion of voluntary engagement, a wide range of suggestions for improvement has been offered, e.g. concerning insurance coverage (liability and accident insurance in particular).

The fifth topic focuses on the relationship between the authorities and CSOs regarding the provision of services. CSOs in Austria offer a wide range of services, the reason being that services originally provided and paid for by the state are progressively being outsourced to private organizations. The state often provides funding, but the conditions under which financial support may be granted are highly diverse. Basically, funding may be provided through service level agreements or via promotions. The boundaries between these two financing models, however, are fuzzy. Crucially, in the case of service level agreements, public procurement law applies. This law is aimed at increasing competition, and the fact that CSOs have to compete with profit-oriented providers whose production methods and aims are very different from those of CSOs, is problematic. CSOs, due to their very mission, often generate a variety of positive external effects, but these are not considered in award procedures. Such effects are generated, for example, through the commitment of volunteers or when an organization acts as advocate for the target group at which its services are aimed. Attempts are currently made to integrate common public interest in public procurement law in order to assign higher value to social aims. Frame conditions for the access to subsidies of CSOs are complex as well. Missing index adjustment, limitations in overheads financing, a lack of planning reliability as a result of one-year-contracts and slow decision making processes on the side of the government, as well as delayed payments pose major challenges. As a consequence, CSOs are exposed to high financial risks which, especially for smaller CSOs, are barely manageable.

Apart from looking at the form which the relationship between authorities and CSOs takes, this report devotes an extra chapter to the issue of transparency. Efforts were made in the recent past to increase transparency in the procurement of service agreements and CSO promotion. The gradual – and ongoing – compilation of a transparency gateway meant to provide a consistent account of all nationally available promotion programs, supply information on eligible future
programs and support the process of submission, exemplifies these efforts. Interviewees also demanded a higher degree of transparency regarding the rejection of applications and offers respectively.

The final chapter focuses on the public perception of civic engagement. In order to tackle this question, knowledge, perception and appraisal of charitable/ non-profit organizations in Austria were investigated in a telephone survey. 70% of the Austrian population judge themselves to be well informed with regard to these issues. 9 out of 10 informants attach high value to such organizations, and more than 50% believe that the importance of NPOs will increase in the future. 85% of Austrians have had some form of personal contact with NPOs and more than 50%, again, argue for stronger support of charitable organizations through direct promotion or tax relief measures.
INTRODUCTION

Taking into account the opinions of experienced civil society players, the present study focuses on the legal framework conditions for civic engagement in Austria as well as on the visibility of the impact of civil society-related activities. The different topics discussed in the study relate to a large variety of organizations and initiatives which, at various levels, play their role in civil society. A number of terms exist by now under which these organizations can be subsumed.

Terminology:

It is the actual definition which is used that determines which **civil society organizations** are actually referred to (for more information, see chapter II). Terms like **CSO** (civil society organization), **NPO** (non-profit organization) or **NGO** (non-governmental organization) are often used synonymously, but neither term designates an actual legal form. Rather, these terms refer to a highly heterogeneous group of organizations which take diverse legal forms. In official statistics, there is now a tendency towards recording NPOs as a distinct category. This is why the term **NPO** is used in chapter II, where the quantitative dimensions of organized civil society are examined. In chapter III, however, following CIVICUS, the term **CSO** is used.

Structure of the report

**Chapter I** examines the background of the project and describes the methodological approach which was chosen and implemented within the framework of the Civil Society Index – Rapid Assessment (CSI-RA). The chapter also includes a short note on the limits of this approach.

**Chapter II** provides an overview of civil society in Austria. The first part contains a description of the institutional framework and specific features of Austrian civil society. In the second part, historical developments are briefly summarized. The third part focuses on the quantitative dimensions of the NPO sector. As the available data presented in this section show, non-profit organizations, along with other players, constitute an essential element of civil society. The chapter closes with a description of the developments which NPOs currently face, and this description takes us directly into the next chapter.

**Chapter III** constitutes the core of the empirical enquiry and consists of nine sections (sub-chapters). At first, the Austrian democratic system is examined by taking a closer look at its various dimensions. Other sections discuss the following topics: freedom of association, freedom of assembly, access to financial resources, tax law, employment and volunteering, provision of services and transparency in the context of service agreements and funding. With regard to these topics, the focus of the analysis is on legal framework conditions and their practical implementation. The last section of chapter III examines the public profile of civil society-related activities.

**Chapter IV** once again summarizes the strengths and weaknesses of civil society in Austria which were discussed in other chapters. **Chapter V** features relevant recommendations for action which were derived from the results of the empirical enquiry in cooperation with the National Advisory Group (NAG).
I. CIVIL SOCIETY INDEX PROJEKT & APPROACH

1. PROJECT BACKGROUND

Civil society organizations contribute indispensably to the building of a more caring and sustainable society in Austria and all over the world. In 2012, the Interest Group of Public Benefit Organizations (Interessenvertretung Gemeinnütziger Organisationen, IGO) began to investigate systematically the impact of civil society initiatives and organizations in a report called “Civil society moves” (“Zivilgesellschaft bewegt”). Working on the 2012 report, it became clear that civic engagement and the general conditions under which it takes place in Austria have not been sufficiently examined.

It was thus decided to examine more closely the political and economic environment of civic participation – in cooperation with CIVICUS – World Alliance of Citizen Participation and the Competence Center for Nonprofit Organizations and Social Entrepreneurship at the Vienna University of Economics and Business, and by using the Civil Society Index – Rapid Assessment (CSI-RA).

Rapid Assessment (CSI-RA)

- The CSI-RA was developed by CIVICUS based on long lasting experience in 70 countries. The research process is participatory, which leads to a collectivization of cognitive interest, research process and research results. The action phase, which concludes the project, is a specific characteristic of the CSI. It involves a dialogue on the report with representatives from politics, the media and, therefore, major parts of the general public. The CSI is a flexible tool for assessing the “state” of civil society in Austria.

- The CSI-RA facilitates an investigation of factors relevant to civil society such as political and economic framework conditions.

- The CSI-RA is a tool which increases the strength and sustainability of civil society, intensifying its contribution to positive social change.

- Participation and reflection are central features of the CSI-RA process.

- In the CSI-RA, great importance is placed on strengthening the partners’ ability to cooperate, to do collective research and to understand their individual work reality and challenges.

The legal framework or legal security and the perceptibility of the impact of civic engagement are the main focus of research presented in this report.

2. APPROACH AND CSI IMPLEMENTATION

The CSI – approach combines scientific investigation with reflection and collective action. This approach is an important point of reference for the whole paper. The aim of this report is not to produce knowledge for its own sake, but to achieve immediate improvement of the basic conditions for civic action.

On October 14, 2013, members of the advisory group attended a one-day workshop at the Vienna University of Economics and Business, along with Ulla Ebner (a journalist with the Austrian radio station Ö1), Klaus Unterberger (Public Value Director with the Austrian broadcasting agency, ORF) and Christian Reder (RD Foundation).
The workshop served to identify possible fields for research. “Economic and legal framework conditions” and “the depiction of achievements of civil society organizations” were identified as topics particularly relevant to the situation in Austria.

In the following weeks, six relevant topics were decided on. These included democracy, civil and human rights, tax law, employment and social security, public procurement law and funding as well as perceptibility of the impact of civic engagement. The focus in this study is on the legal framework and related practical aspects. The main fields of research are divided up into subtopics, each of which forms a subchapter in chapter III. (see also figure 1).

As a basis for the assessment of framework conditions, certain indicators, by the means of which the different fields could be investigated, were established. A list of indicators for compiling legal frame conditions developed by the European Center for Non-Profit Law (ECNL) for the Monitoring Matrix on Enabling Environment turned out to be highly suitable for assessing the situation in Austria and was partially adopted. Based on CIVICUS’ indicators concerning the topic of democracy as well as ECNL indicators and indicators which had been compiled individually, a first set was defined. Six main topics, including ten subtopics emerged as a result of this process. As a next step, this set of indicators was completed and agreed upon by members of the National Advisory Group. Indicators are presented in the respective chapter and differentiate between legal provisions and their practical implementation.

Figure 1: Main topics of the survey

<table>
<thead>
<tr>
<th>Topic</th>
<th>Subtopics</th>
<th>Sources</th>
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<tbody>
<tr>
<td>Democracy</td>
<td>1. Democracy</td>
<td>desk research</td>
</tr>
<tr>
<td>Civil and human rights</td>
<td>2. Freedom of association</td>
<td>desk research; 6 Interviews</td>
</tr>
<tr>
<td></td>
<td>3. Freedom of assembly</td>
<td>desk research; 6 interviews</td>
</tr>
<tr>
<td></td>
<td>4. Access to financial resources</td>
<td>desk research; 2 interviews</td>
</tr>
<tr>
<td>Tax law</td>
<td>5. Tax law</td>
<td>desk research; 7 interviews</td>
</tr>
<tr>
<td>Employment and social security</td>
<td>6. Employment and volunteering</td>
<td>desk research; 7 interviews</td>
</tr>
<tr>
<td>Public procurement law and funding</td>
<td>7. Provision of services</td>
<td>desk research; 8 interviews</td>
</tr>
<tr>
<td></td>
<td>8. Transparency in the allocation of service agreements and funding</td>
<td>desk research; 8 interviews</td>
</tr>
<tr>
<td>Visibility</td>
<td>9. Visibility of the impact of civic action</td>
<td>Quantitative survey</td>
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</tbody>
</table>

Due to the expertise necessary for answering the questions but also to the possibility of objectification through the source of law, the chosen methodical approach was to focus on desk research and a total of about 20 interviews conducted with law experts and CSO representatives. The indicators formed the basis for the choice of interviewees and the compilation of the respective interview guidelines. As a result of the heterogeneity of the topics covered, interviewees had to be assigned respectively, with some interviewees (especially CSO representatives) covering several topics.

From February to April 2014, 24 interviews were conducted with 11 legal experts and 13 CSO representatives. Preliminary results of the survey were discussed at a NAG meeting at the end of March. Additionally, feedback was obtained from members of the NAG who were unable to attend the meeting, either in written form or in personal meetings.

3. SCOPE OF THE SURVEY

The survey is based on a summary of secondary literature and secondary data on the one hand, and on the evaluation of 24 interviews on the other. The chosen indicators served as points of reference during research and the development of interview guidelines. Because the chosen topics are highly heterogeneous and the list of indicators is quite extensive, indicators were not covered to the same extent in all interviews. Rather, different aspects were prioritized in individual interviews. Also, conditions vary considerably depending on the actual field in which the respective CSOs are active. This is especially true when it comes to funding and calls for proposals, and it means that statements cannot be generalized for all CSOs. Although interviews were conducted with representatives of the sports and arts sectors, the main focus was on representatives of the social and healthcare sectors. This means, that the assessment of framework conditions is not based on a survey which is representative in the quantitative sense. The survey, however, reveals areas which are problematic in various ways for many CSOs and which have also been confirmed by members of the NAG.
II. CIVIL SOCIETY IN AUSTRIA

1. THE CONCEPT OF CIVIL SOCIETY

Civil society refers to a sphere in between the state, the economy and private persons, where people fight for their concerns and attempt to shape the world they live in. Activities in this context are often associated with ideas such as participation, democracy and social justice (Zimmer & Priller, 2007). Also, civil society is often associated with NPOs (non-profit organizations) and NGOs (non-governmental organizations) respectively (which are, in this context, often referred to as CSOs (civil society organizations)), and, thus, with private, non-profit, formal organizations which require a minimum of voluntary engagement. It is a matter of controversy in how far demands on plurality, tolerance and discursivity belong among civil society's constitutive elements. Nationalist and fundamentalist, even radical right-wing players – called “bad civil society”, in this case – also operate in this sphere (Chambers/Kopstein 2001).

The boundaries between civil society and the NPO sector are often blurred. Sociology uses a vague concept (Klein & Rohde, 2003), using “civil society”, “third sector” or “NPO sector” synonymously (Simsa, 2013a), and research focusing on civil society is often reduced to a mere recording of NPOs. Although voluntary associations are often and justifiably characterized as the organizational heart or infrastructure of civil society (Adloff 2005; Birkhölzer et al. 2005), and although, historically, the NPO sector overlaps with networks of social movements, this approach cannot do justice to the diversity of civil society.

In reference to internationally established definitions, NPOs are defined in this paper as organizations which:

- are characterized by a minimum of *formal organization*;
- are private, *non-governmental* organizations;
- do not distribute *profit* among members or proprietors;
- are characterized by a minimum of *self-administration or autonomy*;
- are characterized by a minimum of *voluntariness*.

Here, civil society will be defined as the sum of players and activities which are characterized by a minimum of autonomy in their relationship to the state and the market; which aim at shaping political processes and/or conditions of social life; and which take place within a framework of collective action. In other words: “Civil Society is an open arena of participation, located beyond the fuzzy boundaries of state and market, in which different types of individuals, groups, and organizations cooperate or compete for visibility and relevance, in the pursuit of collective (though not necessarily shared) political and social goals and animated by a variety of values and interests” (Fioramonti & Thümler, 2013). Social movements which focus on specific issues, trying to bring about social change through protest, may be regarded as a special type of civic engagement, characterized by a high degree of interconnectedness and a high density of activity and interaction.

Civil society in Austria – peculiarities and background

The institutional framework and distinctive features of Austrian civil society will be analyzed in more detail later in this report. At this point, some general background information will be given.

A large part of empirical research into Austria’s civil society focuses on the NPO sector, meaning that a large percentage of available data are also on this particular field. NPOs, however, do form a large part of Austrian civil society. Social movements, from the workers’ movement to the women’s movement and newly established movements such as the ecological movement have a longstanding tradition, and this tradition soon led to the establishment of specific NPOs.

In Austria, NPOs are of great importance to political culture and economic development, and they affect many peoples’ lives. Their contributions to everyday life are often overlooked. A few select
numbers will be given here to illustrate the diversity of activities of and services provided by NPOs. In 2010, more than 15.5 million hours of service were rendered in mobile services, in the course of which 127.891 people were cared for. 894 jobs were created for the permanently unemployed in 73 employment ventures organized by the “Caritas”. In 2011, “SOS Children’s Villages” attended to 6.400 people in Austria, created a home for approximately 80.000 children and adolescents all over the world and reached out to more than 2 Million people with its programs. “Light for the world” restored eyesight to 41.000 people in 2011. Emergency ambulances of the “Arbeitersamariterbund” cover more than 18 million kilometers per year (which corresponds to 450 rides around the world). On average, 2.700 requests for their emergency medical services are made every day.

The sector thus contributes to the welfare of society on many levels. It renders social services and facilitates diversity, participation and innovation. However, many of the effects which the sector's activities have on society cannot be directly measured – they do not appear in official statistics. The economic impact of the social sector in particular is being underestimated systematically. Managers of social organizations have repeatedly complained about the fact that their trade is regarded as a "bottomless pit" or a "mere expense factor”.

**Legal framework**

Compared to other countries, the legal framework conditions are rather NPO-friendly in Austria – civil rights and democracy are relatively well developed. There are, of course, certain constraints, and there is room for improvement in certain areas, but these will be examined in chapter III/1-4.

NPOs do not constitute a distinct category in Austrian jurisdiction. They are not recognized as a distinct form of organization in the legal sense. However, a number of tax laws - especially those concerning common public interest – apply. Possible legal forms for NPOs are: association (club or society), foundation, non-profit cooperative, public limited company and limited company.

A non-profit organization could theoretically choose any legal form for incorporation, except those that require profit making [i.e., general partnership (OHG) or limited partnership (KG)]. However, most Austrian NPOs, including culture and sports organizations, interest groups, political parties and self-help groups, are incorporated as associations. This is mainly because, until recently (see below), this form did not require much administrative effort with regard to its incorporation, nor did it entail strict requirements with regard to annual reporting or accounting. Indeed, the associational movement is an important foundation of the Austrian nonprofit sector. In 1867, the constitutional right to gather in associations was granted and has been used widely since. Currently, more than 110,000 associations exist in Austria – and almost all of them qualify as nonprofit organizations. In July 2002, however, the law on associations was revised for the first time since 1952, leading to tighter regulations for large associations, e.g., concerning stricter accounting rules and enhanced liability of members of the association.

In addition to associations, NPOs are sometimes incorporated as foundations, e.g., operating or grant-making organizations in the fields of social services, health, education, and research. However, the legal form of foundation has not been very popular in Austria, at least in part because private foundations could be established only since 1993, after the introduction of the Private Foundation Act (see below).

NPOs could also be established as cooperatives. However, the role of cooperatives has changed over time, with many of them pursuing profit-making purposes nowadays – and thus not being nonprofit anymore. However, parts of the cooperative sector (e.g., housing cooperatives) could still be justified as belonging to the non-profit sector. Other legal forms, such as the corporation with limited liabilities (GmbH) or the public limited company (AG), are more seldom used by non-profit organizations.
Social determining factors for the NPO sector

Not only is Austria's NPO sector relatively large, it is also highly heterogeneous. NPOs differ with regard to size, legal form, field of activity, financial situation, structure and other parameters. The following principles and characteristics determine the sector’s actual make-up:

a) Federalism and autonomy

Austria’s federal structure, that is, its division into 9 states, is reflected in the structure of the NPO sector. Many NPOs operate on the level of federal states. They negotiate with the regional government authorities and are subject to federal state law and regional financing modes. Compared to state-level NPOs, nationwide often occupy a weaker position. State-level NPOs may differ significantly from associate organizations of the same name in other states. The federalist mentality, which expresses itself in a desire for autonomy and self-government, is a constitutive element of Austria’s non-profit sector (Pennerstorfer et al. 2013).

b) Corporatism

Professional interest groups are highly influential and sometimes have legal status (e.g. the Austrian Chambers of Commerce, Chamber of Agriculture, Chamber of Labor), meaning that membership is compulsory. To some extent, interest groups have the status of free associations as is the case with the Federation of Austrian Industries or the Austrian Federation of Trade Unions (ÖGB). The involvement of these interest groups in the political decision making process is referred to as corporatism (Pennerstorfer, Schneider & Badelt, 2013), a phenomenon which is quite prominent in Austria.

Due to corporatism, the political impact of NPOs in Austria is considerable compared to other countries. The corporate structures make it difficult for NPOs operating outside these structures to define their position in society and to gain influence. Also, professional interest groups are increasing their influence in fields traditionally occupied by NPOs, either by offering services and support themselves (e.g. cultural promotions provided by the Chamber of Labor) or because their lobbying interests directly concern the economic basis of NPOs. Finally, even in the NPO sector, employers and employees tend to increasingly organize themselves in special interest groups.

Furthermore, big, traditional NPOs are often centralized in umbrella organizations. These may be formed within a particular organization (e.g. a national organization integrating several state-level organizations) but also across organizations (e.g. the Federal Sports Association, the National Association of Fire fighters, umbrella organizations for social and health services). In recent times, cross-sector umbrella organizations have also been developed (e.g. the Interest Group of Public Benefit Organizations, IGO), and some of these associations focus on particular tasks (e.g. fundraising or employment etc.). Finally, strong professional associations constitute an implicit point of reference for NPOs since they primarily consider themselves interest groups.

c) Closeness to political parties

Austrian parliamentarianism is characterized by a system of representative democracy. Older parties with a long tradition such as the Social Democrats (SPÖ) and the Austrian People’s Party (ÖVP) dominate the social system.

Many traditional and economically powerful NPOs are directly or indirectly influenced by these two major parties. Parts of the NPO sector are characterized by a political “allocation of customers”, and survival is difficult for independent organizations under these circumstances. As a result, “black” (ÖVP) and “red” (SPÖ) NPOs coexist even today in the welfare system, in associations representing the interests of motorists, in cultural associations and institutions for adult education as well as in the cooperative system. There is, however, a tendency towards dissolution of this dichotomy as existing NPOs become increasingly intent on political independence and as new, independent NPOs emerge.
Generally, a strong interaction between politics and NPOs can be observed. On the one hand, some NPOs exert direct influence on legislation and administration (e.g. with regard to establishing eligibility criteria for public sponsorship). On the other hand, the NPOs’ direct access to policy makers facilitates funding (Pennerstorfer et al. 2013). There is also a vibrant, versatile scene of grassroot support groups and local associations that remain independent of the structures described above as long as they do not claim extensive resources and focus on specific objectively and/or regionally defined tasks. This part of the sector often boasts long-standing traditions (e.g. in the form of cultural associations operating on a local level such as music societies, sports clubs etc.), but it also encompasses emerging social movements such as citizens’ initiatives, support groups etc.

d) The role of the church(es)

Apart from political parties, churches – the Catholic Church, especially – shape major parts of the non-profit sector. To begin with, ecclesiastical institutions themselves, including the religious services and advocacy groups they organize and offer, have to be regarded as part of the non-profit sector. Church-related interest groups focusing on family and social issues also belong to the sector.

Besides religious services, churches provide services in welfare, healthcare and education, where they are, sometimes, the biggest provider of services within the non-profit sector. Major examples of the churches’ activities are their contributions in the field of education (pre-school education, school system, extracurricular activities for teenagers) and all aspects of welfare (for the elderly, for handicapped people or marginalized groups etc.).

When it comes to community services, churches usually operate through affiliated organizations such (e.g. the Caritas or the Diakonie). In addition, there are other church-associated or church-friendly organizations such as the scouts, the Maltese emergency service, and the Kolpingwerk. Some organizations are linked to political parties – especially the ÖVP – as well as churches (e.g. catholic student associations) (Pennerstorfer et al., 2013).

e) Cooperatives and the public sector

Cooperatives were highly influential in the development of the sector but have become less important in recent years. In Austria, as in other countries, the cooperative system as we know it emerged in response to massive economic and social change in the middle of the 19th century. The basic idea of the cooperative as a voluntary union formed for the purpose of economic self-help has gained a foothold in four major fields since the passing of the Austrian Cooperative Societies Act in (1873): agriculture, trade, consumption and the building industry. This distribution is reflected in the four major umbrella organizations of Austria’s cooperative system.

While the identity of traditional cooperatives has been transformed as a result of commercialization, concentration and the increasing number of members, meaning that some of them can no longer be regarded as a part of civil society, the idea of the cooperative has experienced a remarkable revival in recent years. A smooth transition from this cooperative idea to a grassroot-oriented self-help movement can be observed (Pennerstorfer et al., 2013).

f) Clubs and Societies

Clubs and societies play a major role in Austrian society. Historically, the chance to form clubs and societies was an expression of the political system’s liberality. Only with the establishment of the constitution in 1867, freedom of association and freedom of assembly were incorporated into the constitutional fundamental rights charter. Clubs and societies are of great importance to everyday Austrian culture. It is relatively easy to incorporate a club or society, and the incorporation does not require high capital expenditure (see also chapter III/2).
g) Foundations

With regard to foundations, Austria occupies a special position because the law permits non-profit/charitable as well as self-interest foundations. From 1993, it has been possible to establish private foundations which are not obliged to serve charitable purposes. All in all, only 20 percent of Austrian foundations are primarily non-profit (cf. H. Schneider et al., 2010):11). Non-profit foundations mainly promote activities in the fields of education, welfare and culture. In its work program, the SPÖ-ÖVP grand coalition, which was inaugurated in December 2013, mentions plans to create a new legal basis for non-profit foundations and, thus, to make additional funds available for certain areas. The fiscal authorities are to decide whether the requirements for charitable status are met. The requirements for charitable/non-profit status, therefore, will not be recorded in a register accessible to the public.

2. HISTORICAL DEVELOPMENTS

The non-profit sector in Austria has a long historical tradition, with many NPOs having their origins in the 19th century. The Austrian non-profit sector shares common roots and traditions with the non-profit sectors in Central European countries, such as Hungary, Slovakia and the Czech Republic, which were part of the Austro-Hungarian Empire. A number of factors have influenced the development and characteristics of the sector in Austria.

Before the two World Wars, the Austrian bourgeoisie was comparatively weak, while the aristocracy, military and church had an enormous influence on society. As these groups had strong links to the state, their joint interest led to a strong etatism and a dominant role for civil servants in Austria. This background had a strong influence on the size, shape and characteristics of the sector and resulted in close links many NPOs still have with the state.

At the same time, however, many civil society organizations have also been founded in relation to the labor movement. Thus, many forerunners of today’s large and established NPOs such as unions or big NPOs providing social services were originally radical alternatives to the dominant state and church. Many associations were established at the beginning of the 20th century, either by the social-democratic movement, the conservative Christian-Democrats or the church to bind their clients to their ideology in various fields. Various forms of self-help initiatives and private charities emerging from either religious or conservative traditions or the labor movement can be considered forerunners of today’s NPOs. For these ideological groups, it was critical that their members stick to their party or their own institutions – members were protected and served “from the cradle to the grave.” Within these political camps, exchanges hardly took place: members of the Social Democrats, for example, were even forbidden to join sports clubs that were linked to the conservative Christian-Democrats or the church.

In the 1930s the civil society was split in two parts. Many NPOs were proscribed by the Nazi regime and either ceased to exist or had to operate underground. On the other hand, many NPOs were co-opted by the regime to carry out political tasks. Membership in these organizations was partly obligatory, and they contributed significantly to the dissemination of Nazi culture and politics.

After 1945 the old traditions of the sector were taken up again, though slightly modified and democratized. Social partnership, or “Sozialpartnerschaft”, began to play an important role in Austrian society. Furthermore, social partnership, which was built up by the representatives of both the two political Lager and thus institutionalized the neocorporatist policies, helped to bridge the gap between the left and right wings of the NPO sector. The two ideological movements were no longer separated in such a strict way as before World War II. Nonetheless, their power was enormous, and many associations were used as “Vorfeldorganisationen” (affiliated organizations) for one of the political parties or the church. This has led to the widespread opinion that nothing can be achieved in Austria without the support of one of the major political parties. With the exception of labor movement organizations, non-profit institutions have, thus, always been a part of the establishment; nevertheless, they have maintained their potential for inducing social change.
Only much later, beginning in the 1980s and in the wake of new social movements, new NPOs, which were linked neither to established political parties nor to the church, emerged. These organizations have been mainly active in the fields of women’s liberation, ecological or human rights, development aid, and international relations. They have been very important for Austria’s civil society, shaping culture and influencing attitudes, but due to their distance from the establishment, they have not enjoyed much public funding and thus their importance is not reflected in statistical data on the NPO sector. Moreover, this segment of the sector still is very unstable.

3. A DEPICTION OF CIVIL SOCIETY – AUSTRIA’S NPO SECTOR

Reliable data are only available for the NPO sector. There are no statistics on informal civic engagement, that is, activities of protesters, activists and bloggers who want to participate in political discourse and decision processes without becoming part of established movements or institutions such as political parties, unions or even NPOs (Anheier 2013; Simsa 2013b).

The following chapter, thus, focuses on non-profit organizations. To begin with, it has to be mentioned that even available data on NPOs are not quite satisfactory (Schneider/Haider 2009). In the section below, the most recently available date, taken from different studies and statistics, will be cited. Parts of the data refer only to social economy, which, as measured by the number of employees, constitutes a considerable part of the NPO sector, or to NPOs with at least one employee. The following data were taken from Pennerstorfer et al. 2013 unless otherwise indicated.

**Number of organizations**

The preferred legal form for NPOs in Austria is that of a club or society. In 2010, **116,556 clubs and societies** were registered (Statistik Austria 2012). The overall number of clubs and societies in Austria has almost tripled during the past 50 years. In 1960, 42,269 clubs and societies were registered, and Austria has seen a continuous increase since then.

In 2003, sports clubs, savings clubs and cultural societies (music, theatre, singing societies) constituted the largest group in the category of clubs and societies. Since the establishment of a new clubs and societies register, however, their specific field of activity is no longer recorded.

All in all, 3,141 private foundations were evident in 2008, only 210 of which were purely non-profit or, as was the case with 34 “Sparkassenstiftungen” (savings bank foundations), preferentially charitable in their aim. In addition, 246 state and 223 federal foundations with exclusively charitable aims were recorded. Thus, only about **20% of all foundations** are primarily committed to charitable purposes (Schneider et al. 2010).

The number of organizations with other legal forms, such as non-profit public limited companies, cooperatives or limited liability companies cannot be fully cited since only NPOs whose name contains the words “charitable” or “non-profit” are recorded and appear in the commercial register. In the beginning of 2012, 514 such organizations existed altogether – the number of NPOs is, however, estimated to be significantly higher.

With regard to cooperatives, **1,817 cooperatives** were recorded in Austria in 2010, with only 95 of them using the term “charitable” or “non-profit” as a part of their name.
Employees

According to projections, a total of **212.000 contractual relationships** existed in the Austrian non-profit sector in 2010. This number corresponds to a share of 5.2% of all employed persons over more than 15 years. More than one third (36%) of contractual relationships were allotted to welfare, 20% to “special interest groups and church-related or other religious associations”. According to the number of employees, the educational system places third in the NPO sector.

Measured in **full-time equivalents**, 85.570 employees were working in the NPO sector in 2001. In addition, about 2 million people were working in the sector on a voluntary basis. Their work performance in the context of NPOs matches more than 230.000 full-time equivalents.

What is remarkable is the **considerable increase** in the number of contractual relationships, which rose **about 39%** between 2000 and 2010. Growth occurred in the nursery school (93%) and welfare (76%) departments, while the number of contractual relationships decreased in the entertainment sector (-26%).

Most employees work in hospitals, nursing homes, emergency medical services, other homes, in the field of social welfare, or in interest groups, parties, environmental protection agencies and religious associations. A good deal also work in the school and nursery school system.

In this context, too, statistical collection of data is inadequate. Registration of NPOs and their employees according to the International Classification of Non-Profit Organizations – the ICNPO (Meyer et al. 2010) would certainly illustrate the significance of the sector and accomplish comparability. In Austria, however, NPOs’ areas of operation are only recorded according to the ÖNACE, the General Industrial Classification of Economic Activities in the European Communities.

Between 2000 and 2010, the percentage of contractual relationships rose in the area of welfare (+7%) as well as in research, development and education (+1.8%). The percentage decreased in the fields of interest groups and religious associations (-5.2%), healthcare (-2.5%) and culture (-0.13%).

Volunteering

Volunteering contributes significantly to social solidarity, integration and, last but not least, to the cheap provision of a variety of services.

In 2006, 27.9% of all Austrians were volunteering in the context of NPOs, rendering a total of 7.918.682 hours of service per week (data cited in this chapter were taken from: More-Hollerweger/Heimgartner 2009; More-Hollerweger/Rameder 2013).

This roughly equals 230.000 full-time employees or 6% of all employed persons in Austria. Volunteering also creates high monetary value: if volunteers were to be paid average wages for their services, it would cost the public sector 4.727.136.000 euros. With a participation rate of 6-7%, emergency aid, culture, religion and sports dominate the field when it comes to volunteering. The participation rate is 33% for men and 23% for women.

Income and expenditure

Projected **total revenue** of NPOs amounted to about 3.4 billion euros in 2005, with hospitals and schools not included in the calculation. Large amounts of NPO revenues in Austria come from **performance-related payment from public funds** (36%), followed by **sales revenues** (33%) and **subsidies** (17%). **Donations** account for 8% of total revenue (Schneider/Haider 2009).

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2 In comparison, the number of employed persons in Austria increased 7% over the same period (Pennerstorfer et.al. 2013).
Overall, then, public authority contributes 53% percent to the total revenue of NPOs. Market revenues contribute 36%, while sponsorships and donations account for 11% of total revenue.

Donations, which illustrate the importance of NPOs in the eyes of the general public, are an important factor when it comes to NPO revenues. A survey concerning this matter shows that, in 2011, private persons donated 410 million euros while companies donated 150 million euros (Neumayr/Schober 2012).

**Expenditures** of the Austrian non-profit sector amounted to 3.46 million in 2005 according to projections, with staff expenditures of 2.1 billion euros accounting for a large part of this sum (62%).

**Performance of the non-profit sector**

a) **Value added**

In order to determine the economic potential of NPOs, the macroeconomic value added is a useful point of reference. The value added corresponds to the amount to which output exceeds input. In 2010, Austrian NPOs generated 5.9 billion euros in gross value.

This calculation, however, depicts a minimum level, since the value of voluntary service is not included. Within the past ten years, the value added has risen considerably.

A **multiplier for added value** was calculated by Meyer/Neumayr for the social economy sector, which includes health, veterinarian and social services as well as public institutions. It is to be interpreted as follows: *Increased demand for ... worth 1 million euros triggers an added value of ...* In the context of the social and health sectors, this means that *increase in demand for services worth 1 million euros triggers an added value of 873.600 euros*. The **production multiplier** for the health and social services sector indicates that *increased demand for services worth 1 million euros requires 1,676 million euros in domestic and imported goods.*

With this, the social sector is in penultimate place, ranking below public administration and national defence. The social sector is, thus, a particularly sustainable sector: it creates work while using up an exceptionally small amount of resources or input. In contrast, demand worth 1 million euros in the energy sector requires resources and input worth 2,909 million euros, and 3.219 million euros in the automobile sector.

b) **Social impact of the sector**

The sector has a considerable social impact. It provides services and facilitates social diversity, participation and innovation – the majority of innovations in the social sector were originally developed in the context of NPOs, and many issues which eventually made it to the top of the political agenda were first addressed by civil society organizations (Simsa 2001). For the most part, however, this impact cannot be measured directly – it does not appear in official statistics.

Even so, the measuring and evaluation of the impact of non-profit organizations is becoming more important. Thus, analyses of the Social Return on Investment – SROI have gained in importance in recent years. They offer a “new" kind of ratio which incorporates the social impact of investments. The SROI-analysis is, basically, a variant form of the cost-benefit analysis. The basic idea is to measure the **impact**, that is, the sum of effects which can be directly attributed to an NPO. A certain monetary value is then assigned to the impact. Input (meaning investment) is also recorded and assessed. Monetarised impact is then compared to the investment (possibly subtracting return on investment for investors). The SROI concept targets all internal and external stakeholders who might be positively or negatively affected by the activities.

A project’s **SROI**, therefore, is a **number which indicates the monetary and monetarised social return on money invested in a project or organization** (Schober et al. 2013).
Numbers on social return which have been calculated with the help of the SROI ratio cannot be aggregated for the whole sector, but they clearly show that investment in NPOs pays off. According to careful calculations, SROI values e.g. amount to 4.41 euros for the “\textit{Starthilfe Wohnen}” project (Rauscher/Pervan-Al Soqauer 2012), 10.2 euros for the Upper Austrian fire brigade (“oberösterreichische Feuerwehr”; Schober et al. 2012), and 3.47 for the “Casa Abraham” project.

**Current developments**

With regard to informal involvement, the Austrian people cannot be regarded as particularly active. While civic protests are spreading in Southern Europe and self-organization, activism or movements such as Occupy and the Arab Spring are gaining momentum, the situation remains calm in Austria. When it comes to volunteering in the context of NPOs, the situation is different, however. NPOs figure prominently in Austrian society. The following aspects can be regarded as key developments in this respect (Meyer/Simsa 2013):

a) **Economization**

Civil society is increasingly characterized by economization, that is, by an increasing adoption of the logic of economy, which expresses itself on various levels (Zimmer/Simsa 2014). Also, it seems that NPOs are often under general suspicion and increasingly forced to justify themselves and give proof of the efficiency and profitability of their activities (Zimmer/Simsa 2014).

Dorothea Greiling (2014) refers to the transition from a “trust me”- culture to a culture of “prove me”, mentioning an increase in quality and transparency demands on NPOs. The credibility bonus which NPOs were granted traditionally was challenged successively in recent years. In view of the blatant cases of maladministration in the economic sector which have become known to the public recently and which required massive financial support by public funds, it seems odd that public benefit organizations should be forced to prove their eligibility in connection with patterns of legitimation which derive from this economic sector. As a part of economic promotion and consolidation measures, Austrian markets are being severely regulated by the state at the present time. This does not only help to demystify the neoliberal glorification of the market, obsession with short-term efficiency and exclusive focus on economic factors.

In this context, concepts such as social entrepreneurship, impact measurement and philanthro-capitalism are gaining in importance. A blurring of boundaries between state, economy and civil society occurs, because concepts like social entrepreneurship, social business, public-private partnerships and venture philanthropy cannot easily be assigned to one particular sector only. These concepts are more strongly guided by economic principles than NPOs, but, at the same time, they focus more on social benefit than traditional profit-oriented businesses. Private philanthropists, foundations, impact funds or socially responsible companies are the driving forces behind this trend: they prefer to invest in organizations which operate in a more market- and profit-oriented way than traditional NPOs.

The common belief behind this development is that the strategies derived from profit-oriented economy are superior to those of non-profit organizations and civil society. The demand for advanced managerialism, that is, the adoption of tools from business management, in NPOs also relates to this belief. It is certainly possible to increase efficiency in NPOs here and there by adopting this approach. However, in the interest of sustainable economic and social development, orientation – on a social level - towards values which are traditionally attributed to NPOs and civil society would be more helpful than further unilateral economization.

b) **Non-profit organizations and the government – more work for less?**

The public sector is the major employer and sponsor of NPOs in many areas. NPOs are, thus, directly affected by developments in the public sector, especially by public management concepts, which rely on objective and service agreements, but also by the tense situation of government budgets on all levels (in Austria, the situation is particularly tense on the communal level).
Contracting out implies the transfer of a state’s responsibilities to NPOs by contract, that is, based on service agreements made between NPOs and the public authorities. The relationship between the state and NPOs is, thus, characterized by the principle of quid pro quo, which makes it very different from a relationship in which the state supports NPOs through subsidies. This creates problems for the management of an NPO and it also has administrative and political implications. It may imply a change in the execution of tasks, since the NPO’s task is no longer to defend the interests of its members or consumers only – it has become an extension of the state, providing services in its name. The advance of service agreements involves several risks for NPOs. Often, public employers are not in a position to conduct competitive tendering procedures on a professional level in order to identify the supplier who offers best value for money in performing complex services. NPOs offering services are only examined with regard to costs and tender. Output, but not outcome is measured, meaning that low-cost suppliers (as opposed to best bidders) are often favored.

Financial crisis in government budgets was an ongoing challenge for NPOs well before the beginning of the economic crisis in 2008. A distinct development observable with regard to public funding is that increased demand for services is faced with level or declining amounts of funding by the state. Furthermore, payments and completions of contracts are becoming more uncertain, short-term and less predictable (Meyer/Simsa 2013).

These developments have to be seen against the backdrop of a trend towards deregulation and privatization of social tasks. Neoliberal ideology calls for radical deregulation: work, social policy and democracy are subordinated to the dominant logic of the economy. The state is to interfere as little as possible with society. As a result, the social expenditure share, that is, the share of welfare spending in the GDP, has remained level or has slightly declined during the 2000s in spite of higher demand caused by the economic crisis. Austria’s social expenditure share declined from 26.7% in 2000 to 26.4% in 2010 (OECD 2010).

Economic analyses point to a redistribution of wealth from the bottom up, meaning that the gap between the rich and the poor has widened considerably in recent years (Marterbauer 2011). The economic crisis has led to an aggravation of social insecurity, and the development toward casualization – toward a widening gap between rich and poor and increasing exclusion – has not yet come to an end. More than ever, social integration and social justice are pressing issues. Social security provided by the welfare state as well as solidarity are becoming less important, while self-reliance and private commitment are gaining in importance.

c) New challenges, new fields of activity

In recent years, the sector saw the development of new fields of activity and/or of a new scope of duties within a certain task field. Environment and ecology, care and aging, health, social inequality, youth and education – these fields are currently gaining in importance, and will continue to do so. As demographic projections confirm, the care and aging sector will become especially important (European Commission, 2009).

Generally, one may observe two major trends: On the one hand, demands on services provided by NPOs are increasing. Clients and their relatives nowadays are better informed and more demanding, they expect highly professional, customized, modern offers. On the other hand, a new, broader clientele is developing as a result of growing social inequality and, especially, as a result of high structural unemployment. The cutback on public infrastructure is also going to change the fields of action for NPOs.

d) Civic Engagement: more opportunities, more variety – less stability, less loyalty

Qualitative changes to volunteer engagement may also be observed. Volunteer engagement has already become more diverse, more project-related and less stable. These days, it is often associated with personal development and career advancement. New forms such as episodic or virtual volunteering, online volunteering and self-motivated volunteering will probably become
more important in the future. Thus, it is not only the work routine and degree of attachment to a particular organization that is currently changing. New demands on the management of NPOs – and on NPOs in general - are developing as well. The NPOs’ task, therefore, is to offer volunteers opportunities for self-development, infrequent engagement and career advancement. The future, for NPOs, will be also about handling higher flexibility and fluctuation on an organizational level (Rameder/More-Hollerweger 2009).
III. ANALYSIS OF CIVIL SOCIETY

1. DEMOCRACY IN AUSTRIA

Indicators

1. Existence of free and fair elections

2. Existence of representation for target groups (e.g. children’s parliament, district parliament)

3. Existence of forms of direct democracy (popular petition, referendum)

4. Voter turnout – active/passive voting rights

5. Existence of political pluralism, political culture and political participation

6. CSO expertise is used in advisory capacity pertaining to activities of the executive (e.g. Advisory Board for Human Rights)

7. Level of political tolerance or political conflict

8. Extent of separation of powers (executive/legislative/judiciary)

Austria’s political system

The Republic of Austria is a federal republic made up of 9 federal states. It was founded as a republic in 1918. The political system is based on the federal constitution of 1920, which was reinstated in 1945. With regard to the constitution and the directly elected Austrian federal president who has extensive authority in many matters, the Austrian political system would have to be characterized as a semi-presidential. However, the Austrian president traditionally abdicates his/her strong position of power (Helms/Winerother 2012). The government thus consists of a federal chancellor legitimized by parliament and his/her ministers. In constitutional reality, Austria is a parliamentary democracy composed of a directly elected parliamentary board, the National Council, and a second parliamentary board, the Federal Council, whose members are appointed by nine federal state governments. Members of the National Council are elected by all citizens of more than 16 years of age through a proportional representation system. The proportional representation law was personalized in 1992. Since then, it has been possible to award a preferential vote in the context of regional and federal electoral wards and on a national level. A noteworthy constitutional amendment was made in 2007, when Austria was the only European country to lower the voting age to 16 years (Ucakar/Gschiegl 2009). After elections, the parliamentary majority appoints the government which, since the establishment of the second Austrian republic, has mostly been composed of a coalition of the two major parties SPÖ and ÖVP. Formally, the federal chancellor and government officials are appointed by the president. The National Council, however, may depose the government or individual members and, therefore, holds ultimate political control over the government. The Constitutional Court is in control of the judicial review of laws and provisions and, thus, has ultimate legal authority.
Austria’s democratic quality

Well-established democracy measuring instruments like the ‘Freedom of the world’-index by Freedom House or the ‘Polity IV Project’ by Monty G. Mahrshall and Ted Robert Gurr categorize Austria as an established democracy. According to the polity project, which focuses on the constitutional establishment of democracy and the democratic quality of the executive, Austria, since the establishment of the Second Republic, is a full democracy. The index emphasizes formal aspects of democracy such as the monitoring of the executive and competition in the filling of jobs, which are guaranteed under constitutional law in Austria (Marshall/Gurr 2011). The authors thus confirm that the Austrian constitution guarantees all major aspects of democracy. In contrast, the “Freedom in the World” index examines civil and political liberties. Since the start of the ratings in 1972, Austria has always achieved the maximum amount of points in both dimensions, and is, therefore, regarded as free (Freedom House 2014b; c). The “free” status here implies that Austria has a competitive multi-party system and offers the general right to vote to all grown-up citizens; that elections are held regularly and without fraud; that elections representatively reflect public opinion; and that it is possible to address openly the electorate via the media or political campaigns (Campbell/Barth 2009). All in all, it may be said that Austria more than meets the minimal criteria and is, since the establishment of the Second Republic, classified as a stable and established democracy.

The above-mentioned indices give us a general idea of democracy in Austria, but, since they are mainly designed to demarcate democracies and autocracies, they only provide rudimentary information on concrete aspects of Austrian democracy. In the following section, Austria’s democratic quality will be examined more closely by looking at such specific aspects. The description is based on the so-called dimensions of democratic quality by Hans Joachim Lauth: Freedom, Equality and Control (Freiheit, Gleichheit und Kontrolle) (Lauth 2004). Figure 1 illustrates the results of the democratic quality rating by the Democracy Barometer. The Democracy Barometer compares 30 established democracies based on the three dimensions identified by Lauth. These three dimensions are subdivided into three further subdimensions respectively: while individual liberties, rule of law and the public sphere constitute the dimension of freedom, competition, mutual constraints and governmental capability constitute the dimension of control; transparency, participation and representation constitute the dimension of equality. The subdimensions are measured on a scale of 0 to 100, the scale being relative, with 100 as its highest and 0 as its lowest empirical value.

Figure 2: Democracy-Barometer: Austria’s democratic quality

Source: Democracy Barometer 2014
The figure provides a first insight into Austria’s democratic makeup. The strength of Austria’s democracy lies in the guarantee of individual liberties and the rule of law. The level of participation, however, is only average and Austria’s performance in the dimension of public sphere is alarming. Austria’s highly concentrated media system and the low number of daily newspapers are responsible for the low score in this function. The concentration of the media is rated higher-than-average by several authors, and the dominance of the “Neue Kronen Zeitung” in the media landscape is regarded as particularly ominous with regard to democratic quality (Krabb 2011; Freedom House 2014a).

Freedom

As illustrated by the Democracy Barometer, the dimension of freedom is rated higher-than-average, with the exception of Austria’s highly concentrated media system. With regard to the function of rule of law, Austria achieves particularly high ratings. Rule of law implies an effective justice system and society’s faith in this system and in equality before the law. Austria’s citizens have great confidence in judiciary, administration and the police (Plasser/Seeber 2012). The Austrian Ombudsman Board (Volksanwaltschaft) is a special institution which was introduced in 1977 and was established in the constitution in 1982. It has no actual power of decision but it constitutes another legal regulatory body and acts as advocacy for all citizens in dealing with the public administration. Thus, an instrument protecting citizens from despotism of the state, ensuring their liberties, was created outside the regular justice system.

A free public sphere and pluralistic media are crucial in ensuring the functioning of a democracy, for several reasons. The media act as a watchdog of public institutions and as source of information for citizens, facilitating political participation. They thus create the public sphere necessary for exercising political rights. This is why the highly concentrated state of Austrian printed media especially must be regarded as precarious. Nevertheless, Austrian media have fulfilled their function as regulatory body in a satisfactory manner in recent years, especially with regard to uncovering corruption (Krabb 2011). Austria’s public broadcasting agency (ORF) is legally obligated to adhere to the principles of objectivity and impartiality (vgl. ORF 2012, §1(3) & §10(5))3, and, thus, avoids the negative consequences of the highly concentrated media system in Austria. In reality ORF is confronted with accusation that political parties influence the filling of high positions, as it was the case with the filling of the position of the office manager of the Directorate-General. The reaction of the editors, who publicly resisted the political influence, was remarkable in this case and led to the withdrawal of the candidate. The implementation of the independence of the media, which is hindered by concentrated ownership and political influences, is crucial with regard to the democratic quality of the public sphere.

On the whole, Austria achieves high ratings for the function of rule of law, but paragraph 278 of the criminal code (§278 StGB) is ominous when it comes to the legal safeguarding of political liberties and political participation. The broad definition of a criminal organization and its offences leave room for interpretation, and this facilitates investigations against civil society. A number of NPOs, politicians and legal scholars have criticized the virtual interpretation of this paragraph, which led to the indictment of 13 animal rights activists (Reindl-Krauskopf/Salimi 2011). That fact that, in the case of a suspected criminal offence, members of “criminal organizations” may be investigated preemptively led to the extensive surveillance of activists. The criminal organizations paragraph, then, can be used against civil society (Amnesty International 20134). Attempts to introduce further jurisdiction to prevent terrorism generated a similar reaction among civil society. The statutory offence mentioned in the draft law was phrased in a similarly broad manner and left plenty of room for interpretation, which could have led to the prosecution of NGOs and journalists

3 http://kundendienst.orf.at/unternehmen/fakten/gesetze/orfg.pdf, retrieved on 05.05.2014
4 http://www.amnesty.at/service_links/presse/pressemitteilungen/amnesty_international_und_greenpeace_forde rm_reform_des_mafiaparagraphen_278a/, retrieved on 06.05.2014
With regard to democratic quality, the government reduced possible constraints on civil society entailed by § 278a through changes to the criminal code (cf. BGBl. I Nr. 134/2013). However, critical monitoring is required concerning new anti-terror laws which may restrict the public sphere for the benefit of extra security (see also chapter III/2-3).

**Equality and forms of participation**

In the political process, all citizens must have equal rights of participation in order to actually participate in the political system. In Austria, 183 members of the National Council are elected every five years. The right to vote applies from the age of 16, while the additional right to stand as candidate in an election applies from the age of 18. Granting the active right to vote to all citizens from the age of 16, Austria is rather progressive compared to other European countries. The Austrian electoral system enables fair competition for voters and guarantees the civil rights necessary for fair competition (Pelinka 2011). For Austrian citizens, elections may be termed free and fair.

There is, however, the problem that 9 percent of people living in Austria are excluded from elections for the lack of Austrian citizenship (Krabb 2011). A better part of this group does not hold EU-citizenship either and is, therefore, banned from local elections and election of the European parliament. Foreign nationals living in Austria on a legal basis, thus, have the same duties as Austrian nationals, but less political rights. Considering Campbell's (2012) results which showed that it is particularly difficult to acquire Austrian citizenship, the exclusivity of the electoral system must be regarded as disconcerting in terms of democratic quality.

Social partnership, which represents another opportunity to influence politics, has a long-standing tradition with Austria's consociational democracy. Employer and Employee interest groups along with the respective professional associations used to have strong influence over pre-parliamentary decision making processes. This influence declined during the ÖVP/FPÖ/BZÖ coalition government. However, corporatism was revived along with the great coalition in 2006. According to Armingeon (2012), the declining influence of social partners on the political process may be understood as an alignment with European neighboring countries. Austrian corporatism used to be an exception in the international context, whereas today, it is no more than an advocacy. Its decline increases democratic quality, since fewer exchanges are now made in a pre-parliamentary context and the filling of posts has become more transparent (Krabb 2011).

The Austrian constitution guarantees a number of direct democratic tools on a national level and can, thus, be said to be progressive compared to other European countries (Ucakar/Gschiegl 2009). Through popular petitions, citizens are given the right of initiative which, however, does not include the right to an actual decision in the National Council. The majority of popular petitions were initiated by political parties or party-related organizations. Until 2007, only four popular petitions had been initiated by civil society. According to Rosenberger und Seeber (2007), popular petitions are, thus, a tool mainly used by established organizations such as parties or large civil society-related organizations in possession of the necessary resources. Due to the lack of liability for the National Council to actually address a successful petition, only a small number of the 37 petitions filed during the time of the Second Republic were captured in corresponding laws. De facto, therefore, the peoples’ right to initiate legislation is limited. For several years, civil society has demanded reforms of the popular petition system, e.g. by launching a petition called “Democracy Now!” (“Demokratie Jetzt!”)⁶ or in an open letter demanding the establishment of a democracy reform office in the National Council. At the end of 2012⁷, the government took up part of the demands made by civil society and agreed on a democracy package that would enhance popular petitions. However, the reform was postponed after the Constitutional Court issued a

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⁵ [http://www.rog.at/278stgb-untergrabt-demokratische-grundwerte.html](http://www.rog.at/278stgb-untergrabt-demokratische-grundwerte.html), retrieved on 06.05.2014


critical statement in August 2013. By and large, the government displays interest in upgrading the popular petition by making propositions, but the propositions have yet to be put into practice.

The referendum is a more effective tool, by which the legislature may obtain advisory expression of opinion and a declaration of the people’s will. Although this tool has been established in the constitution since 1988, it was first applied in the referendum on compulsory military service in 2013. In contrast to the popular petition and the referendum, the results of a national referendum are legally binding. In Austria, two plebiscites have been conducted until now. One was a voluntary plebiscite on the use of nuclear energy conducted in 1978, the other one was a mandatory plebiscite on accession to the European Union, conducted in 1994. Mandatory plebiscites are laid down for the case of constitutional changes. In this case, they epitomize the people in their role of the ultimate sovereign. There is a long-standing tradition of citizens’ initiatives and petitions in Austria which, until 1988, had to meet strictly regulated criteria. Petitions and citizen’s initiatives may address all topics which fall within federal jurisdiction. They may be submitted by members of the National Council or directly, if they have been signed by 500 Austrian nationals over 19 years of age. Since it became possible to submit a statement of support online, the number of petitions and citizens’ initiatives has risen considerably, as has the average number of statements of support which have been submitted.

Being a federalist democracy, Austria uses its federal structure to test and develop ground-breaking democratic tools (Bußjäger 2012). The Citizens’ Councils established in Vorarlberg, where local people are chosen to discuss issues which directly concern them, constitute one recent example. Results and concepts are then presented publicly and forwarded to policy makers (Büro für Zukunftsfragen Vorarlberg 2010). In 2012, the city of Vienna conducted a low-threshold participation project called “Wiener Charta” (“The Vienna Charter”). Citizens were able to discuss the reshaping of communal life in the city in local rounds of talks, online or offline. The discussions’ results were processed in a Charta-text which exemplifies the participatory development of rules and guidelines for successful social coexistence. In recent years, the importance of the internet in the context of participatory projects, petitions and citizens’ initiatives has increased significantly. Experiences gathered in these alternative forms of representation may also be applied on a national level – they reveal political possibilities in microcosm.

On a national level, structures for promoting the involvement of civil society-related organizations are mainly found in the Federal Ministry of Labor and Social Affairs (BMASK) and in the Federal Ministry of Agriculture, Forestry, Environment and Water Management (BMLFUW). The BMLFUW runs several dialogue boards, regular information sessions and an Advisory Board for Climate Protection, which involves civic organizations in the development of measures and in specific stakeholder dialogues (Oberhuber et al. 2012).

Institutionalized involvement of civil society in the political process occurs in the context of the Human Rights Advisory Council of the Austrian Ombudsman Board. The Advisory Council supports and advises the Ombudsman Board and its committees on their responsibilities in the field of human rights. The Ombudsman Board monitors public and private detention facilities. Due to the guidance it offers in determining the focus of the inspection, the Advisory Council is involved in the whole examination process. As a result of the council’s right to be heard, its further responsibilities include the appointment of members and the running of the commission. The Advisory Council is equally represented by representatives of civic/civil society-related organizations in the human rights sector and representatives from the ministries in question, including federal state delegates. Such projects, however, are not particularly well-known among the public, and in the eyes of civil society, they are still too few in number. In October 2013, 15 NGOs collectively called

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10 https://charta.wien.gv.at/start/charta/, retrieved on 21.05.2014
11 http://volksanwaltschaft.gv.at/menschenrechte/menschenrechtsbeirat, retrieved on 05.05.2014
for stronger involvement of civil society in the political process in order to counteract political apathy. This shows that, despite the ministries’ attempts at involving civil society in their work, there is still ample scope for additional cooperation and, thus, for further enhancement of democratic quality.

A higher degree of cooperation could also enhance transparency, an aspect of which was already strengthened by the government in 2012. Until 2012, parties were obliged only to publish the overall amount of donations but not the names of donors. In 2012, changes were made to the Political Parties Act to increase transparency regarding donations. Nowadays, benefactors whose donations amount to more than 3.500 euros per year have to be reported. Donations of more than 50.000 euros have to be reported to the Austrian audit court immediately. Name and address of the donor will then be published on its website (Political Parties Act/Parteiengesetz 2012, S. §6 (4) (5)). Austria thus increased transparency in the view of possible influence of major donors on politics, and ensured that a higher amount of information is available to help the public monitoring of donations. In an international comparison, Austria is upper mid-table with regard to transparency (cf. Democracy Barometer 2013). Transparency is a prerequisite for the vertical and horizontal accountability of politics and its monitoring by other institutions and the people. Higher transparency, especially when it comes to the funding of parties and political ventures, increases the amount of information available to the public and, therefore, a country’s democratic quality. Through higher transparency, Austria might be able to further integrate its citizens in the political process and counteract their ongoing loss of confidence in the political system.

Examples such as the Windhaag Young Citizens’ Council (JungbürgerInnen-Rat Windhaag) show that participatory projects are not initialized on an institutional level only. Regional authorities and people from civil society cooperated with the municipality on hosting this event, where local youths discussed topics they regarded as important to their life in Windhaag. It is possible, through such ventures, to include the opinion of the local population and particular groups (e.g. adolescents) in decision-making processes and municipal development. There are many projects such as the children’s parliament in Graz, which not only attempt to familiarize children with politics, but, also, politics with the interests of children. Knowledge of the political system and one’s political rights is an important prerequisite for active citizens. The Austrian parliament hosts projects like the Democracy Workshop (DemokratieWERKstatt) or the youth’s parliament (Jugendparlament). In the context of these projects, ninth graders are invited to the National Council twice per year to act as politicians. However, “political education”, which imparts the political knowledge required, is only taught as a separate subject in trade schools. Additional investment in political education and, thus, the political competence of citizens, could strengthen interest in politics and Austria’s democratic quality.

Control

The purpose of the control dimension is to ensure and balance out freedom and equality. Austria has a well-functioning system of checks and balances, notably because the National Council may depose the government. It is alarming, however, that parliamentary investigation committees can, de facto, be curtailed, as was the case with the corruption review board when it came to the interrogation of federal chancellor Werner Faymann (Freedom House 2014b).

12 http://www.amnesty.at/service_links/presse/pressemittelungen/regieren_neu_buergerinnen_einbinden_zivilgesellschaft_staerken/, retrieved on 05.05.2014
14 http://www.partizipation.at/fileadmin/media_data/Downloads/Praxisbeispiele/praxisbeispiel_jugendrat_windhaag_fuer_partizipation_2.pdf, retrieved on 05.05.2014
15 http://www.igpb.at/Positionen_files/Positionspapier_Schulisch_26.2.2010.pdf
Distinctive political competition is necessary to ensure political control. Austria has a long-standing tradition of coalition governments and used to be, effectively, a two party system until the 1980s (Wineroither/Kitschelt 2012). Ever since, the system has developed into a non-concentrated multi-party system including a total of 6 parties present in the National Council.

The change in the party system mirrors a change in political culture. Marked clientilism which used to bind voters to the SPÖ or ÖVP is on the decline, as is identification with major parties (Wineroither/Kitschelt 2012). Voter preferences have changed as well. As the importance of traditional socio-economic dimension declines, the socio-political and socio-cultural dimensions become more important. This is reflected in the estrangement of the SPÖ’s and ÖVP’s core constituencies and in the establishment of new left-wing (e.g. the Green Party) and right-wing parties (e.g. the FPÖ). The next general election will show the extent to which even newer parties such as the NEOS or the Team Stronach have established themselves in the political landscape.

The population’s confidence in political institutions and voter turnout also point to changes in Austria’s political culture. As in other European countries, voter turnout decreased in Austria, although it still remains comparatively high. During the last general election, 74,9% of eligible voters went to the polls in Austria, compared to an average of 67,9% of EU citizens who participated in elections in their own countries in 2013 (IDEA Voter Turnout Database 2014). With regard to faith in political institutions, the situation seems more ambivalent. The judiciary and the administration enjoy a high degree of trust, while competitive institutions are not considered particularly trustworthy (EVS 2011; Plasser/Seeber 2012). People have little confidence in the government, parties and the parliament. However, the degree of confidence is still higher than average as compared to international standards (European Commission 2013). By contrast, high satisfaction with and strong commitment to democracy as ideal political system can be observed in Austria, and citizens have high and steadily increasing confidence in regional and local institutions. Across Austria, two reverse political cultures have developed: a culture of citizens characterized by a strong subjective sense of high political competence and moderate discontent on the one hand, and a subculture characterized by a sense of political impotence and severe disenchantment with politics on the other. This subculture is a breeding ground for populist parties and might explain the surge of votes in favor of the FPÖ (Krabb 2011). The increasing number of people voting for the right-wing populist FPÖ highlights the post-democracy concept by Collin Crouch (2013). While the world has seen a rise in the number of democracies, the quality of these democracies is declining due to the centering on elites in politics and the economy. Populist parties benefit from a loss of confidence in politics and its elite-centeredness. It can be concluded, therefore, that alternative forms of participation are essential to Austria’s democratic quality. The strengthening of direct democratic tools and a stronger involvement of civil society in the political process may reduce post-democratic elite-centeredness and counteract a loss of confidence in the political system.
2. FREEDOM OF ASSOCIATION

Freedom of association provides an important basis for civil society, because it guarantees the right to form associations such as clubs and societies, foundations and other kinds of non-profit or non-governmental organizations. Along with the freedom of assembly, it is laid down in the European Convention on Human Rights (ECHR) article 11 (1): "Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests." In Austria, freedom of association is constitutionally guaranteed.

On an international level, Austria compares favorably with other countries (Freedom House 2013). Austrian non-governmental organizations (NGOs) are considered as fully developed and civil and human rights are protected by many Austrian and international NGOs and authorities (US Department of State 2012). In the following section, peculiarities concerning freedom of association in Austria will be examined.

Legal regulations

**Legal regulations-indicators**

1. There is a legal framework according to which every person may establish societies, foundations and other kinds of non-profit or non-governmental organizations for any purpose.

2. The legal framework enables natural persons and legal entities to exercise this right free of discrimination (age, nationality, legal capacity, gender etc.)

3. Registration is not stringently required. If an organization decides to register with the authorities, the rules for registration are stated plainly and facilitate a straightforward, prompt and inexpensive registration as well as appeal proceedings.

4. The law permits networking between domestic organizations and organizations in foreign countries without prior notice.

The *Austrian constitution’s* legal regulations guarantee the **right to freedom of association**. Freedom of association applies to natural persons and legal entities. A club or society is an association of two or more people with the objective of achieving a common, non-material goal. The registered office of the club or society has to be located inland. According to the Associations Act, a club or society may not be profit-oriented, and the club funds may only be used in pursuit of the club’s original purpose (Vereinsgesetz 2002 - VerG). If a club or society wants to acquire public-benefit status and associated tax benefits for the purpose of the federal tax code (*Bundesabgabenordnung* BAO), the club laws have to make sure that the club funds are used exclusively for non-profit purposes in the event of dissolution of the club (for tax-related treatment of clubs and societies, see chapter III/5).

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As seen from the perspective of Austrian lawyers and CSO representatives, establishing clubs and societies or allying in another legal form is unproblematic in Austria (Interview 7, 12, 15, and 19). There is a bureaucratic legal framework for the establishment of clubs and societies, foundations and other kinds of non-profit (NPO) or non-governmental organizations with social, political, cultural or other aims, but it is neither obstructive nor restrictive (interview 7).

The legal form most commonly chosen by CSOs is that of a club or society. This is due to the fact that requirements for establishing a club are relatively low-threshold. For example, share capital is not required. The Austrian Associations Act ("Vereinsgesetz", VereinsG) dictates clear rules concerning club statutes, its agents and their power of agency. The authority normally permits the club or society to take up activities within six weeks after the club statutes have been received. Permission is either granted through expiry of the deadline or through explicit invitation by notification. Only if the presence of requirements of article 11(2) of the ECHR for the protection of human rights and fundamental freedoms is suspected, authorities may give notice within the same period that establishment of the club is not permitted. This decision may be appealed. If the authorities have reservations concerning the establishment of a club on account of the submitted statutes and consider an adverse decision, they are obliged to let the persons concerned know about the objections and give them an opportunity to amend the statutes. The register of associations is kept by the Federal Ministry of the Interior and is publicly available on the following website: [http://zvr.bmi.gv.at](http://zvr.bmi.gv.at).

Non-profit foundations are relatively underdeveloped by comparison, which led to demands for a reform of foundation law in recent years. Currently, private and charitable foundations are regulated by the Private Foundation Act (PSG). Foundations primarily serve the management of assets. When the Foundations Act was passed in 1993, the idea of retaining capital and attracting new funds was a major incentive. Only 200 out of roughly 3,000 private foundations in Austria primarily serve non-profit purposes (Schneider et al. 2010). The current aim is to create a separate law for non-profit foundations in order to provide better incentives for making money available to charitable purposes. A reform of foundation law to that effect is established in the executive agreement of the Austrian Federal Government for the 2013-2018 period of office.

Concerning the establishment of associations or legal entities, no barriers or instances of discrimination with regard to age, gender or citizenship are reported for the most part (interviews 7, 12 and 19). Recent events in Austria have shown that so-called “Gesinnungsstrafrecht”, that is, penal law pertaining to certain “criminal” convictions or intentions rather than acts, can also be relevant in the context of establishing and leading CSOs. This is the case if a CSO is suspected of being a criminal organization according to §278a of the criminal code (StGB) (Interview 7 und 12).

Registration of civil society associations is not compulsory in Austria. There is no obligation for large groups such as churchgoers or football fans to register with the authorities as a club or society. Generally, registration is mandatory for persons and entities which are active in the field of trade or commerce (§8 UGB). In many cases, registration affords benefits. These include

20 According to article 11 (2) ECHR, “no restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others.”
25 [https://www.ris.bka.gv.at/Dokument.wxe?Abfrage=Bundesnormen&Dokumentnummer=NOR40069780&ResultFunctionToken=8c42e10e-b004-4e4d-80ef-bcb8d5c5bf35&Position=1&Kundmachungsorgan=&Index=&Titel=UGB&Gesetzesnummer=&VonArtikel=&BisArti
liabilities, tax incentives associated with non-profit status and preferential treatment of donations, or financial support through public funds which is often the cause for registration of a society, a limited liability company (LLC), or a private foundation. While clubs and societies have to be recorded in the register of associations, legal entities like the LLC, private foundations or cooperatives are recorded in the commercial register. Registration may afford potential benefits but registered associations also have to meet certain obligations. Clubs and societies are obligated to appoint governing and monitoring bodies, to hold general meetings at regular intervals and to obey certain accounting standards. This applies to all registered associations, regardless of their size, that is, it applies to small societies with few members as well as large associations such as the Austrian Federation of Trade Unions or the Austrian automobile club ÖAMTC who have more than 1 million members each (interview 7). Accounting rules applying to large associations whose earnings or expenditures amount to more than one million euros annually during two consecutive fiscal years are similar to those applying to for-profit business (§ 22 VerG).

Citizens’ initiatives are an exception when it comes to enforcing certain rights, e.g. an environmental impact assessment (EIA) (interviews 7, 19). In accordance with EU Directives and national law, the environmental impact of relevant public and private building projects, e.g. a motorway or an industrial facility, has to be assessed in advance. The EIA Act is a case apart because legal character is ascribed to a citizens’ initiative in the context of such proceedings, meaning that a representative may act on behalf of the group (interview 19). A citizens’ initiative is a group of at least 200 persons who live in the local community where the project is to be realized or in an adjacent community, and who are entitled to vote in either of these communities (interview 7, 19). In order for the citizens’ initiative to obtain legal standing, a written statement including a list of signatures has to be submitted to the EIA authorities within a six-week period for presentation. The initiative is entitled to assert the right to compliance with environmental laws in the proceedings, to resort to legal remedies, and to lodge a complaint with the Administrative and the Constitutional Courts (interviews 7, 19).

Practical Features

Practice – indicators

1. Any natural or legal person may establish associations, (charitable) foundations or other non-profit or non-governmental organizations.

2. Natural and legal persons will not be reprimanded for failing to register their organization.

3. Registration is feasible within the officially required period, and authorities decide on applications in an objective, unpolitical manner.

4. Individual persons and CSOs may establish or participate in networks and coalitions in their home country and beyond.

Legal and CSO representatives who were interviewed for this survey could not think of any cases in which the establishment of CSOs had been prohibited or where failure to register had been

kel=&VonParagraf=8&BisParagraf=&VonAnlage=&BisAnlage=&Typ=&Kundmachungsnummer=&Unterzeichnung
sdg, retrieved 5 May 2014
retrieved 28 Apr. 2014
27 https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10010767
retrieved 28 Apr. 2014
28 http://www.umweltbundesamt.at/umweltsituation/uvpsup/uvpoesterreich1/verfahrensablauf/beteiligung
retrieved 20 Mar. 2014
penalized. It is possible for individuals and CSOs to establish and/or participate in networks and coalitions in Austria and abroad.

However, the application of "Gesinnungsstrafrecht" (that is, criminal law relating to basic (political) convictions, StGB) as it occurred in the trial of animal rights activists is considered problematic. The trial was discussed extensively in the media\(^{29}\). The accusation made in accordance with § 278a StGB\(^{30}\) concerns the establishment of a criminal organization. In March 2010, thirteen animal rights activists stood trial in Wiener Neustadt for establishing a criminal organization. Eight of the thirteen activists were acquitted of the charge, while the other five continued to stand trial for coercion, criminal property damage, obstructing an officer in the performance of his duties, and animal abuse.\(^{31}\) From the point of view of the legal experts among the interviewees, the Austrian animal rights movement is subject to repression through the application of criminal law, because attempts are made to criminalize civic engagement (interviews 7, 12).

There is a danger that this peculiarity in the law may be applied to other CSOs. According to the interviewees (interviews 7, 12, 15, 18, 19), criminal law can be used to proceed against dissidents: "...in Austria, there is a certain set of tools available which, if applied, can be used to silence civil society" (interview 12). In the opinion of legal experts, the legislation is not only directed against CSOs only but against society in general. Abovementioned instruments could be put to use against unpopular persons or groups, and in fighting deviant behavior (interviews 7, 12).

Further peculiarities in the practical implementation of the right to freedom of association are the result of CSO dependency on the state on the one hand, and the lack of possibilities for CSOs to participate in decision making processes of the public authorities on the other. Dependency is largely due to the size of organizations, financing and the involvement of/with certain political parties. Lack of (timely) involvement of CSOs in political decision making processes was also mentioned (interview 19).

The environment sector was referred to as an actual example of political co-determination and involvement. Austria, like the EU, adopted the Aarhus Convention on public participation\(^{32}\) which is meant to provide for transparency and access to information, participation in and access to environmental decision-making as well as legal protection, that is, the right to review procedures e.g. if environmental laws have been violated. In accordance with the convention, environmental organizations have a right of action and a right of appeal in all proceedings relevant to the environment. The treaty also provides for the right of environmental organizations to take legal action against omission on the part of the public authorities in the environment sector. The court will then place the authority under obligation to act. The Aarhus UN Convention on the balance of interests has not yet been implemented in Austria (interview 19).

**Potential for improvement**

Basically, the implementation of the right to freedom of association in Austria is judged to be satisfactory – establishing an association is usually not a problem and certainly possible (interviews 7, 12, 19). Severe criticism, however, was offered regarding the legal consequences provided in case of conviction on the charge of "forming a criminal organization" (§ 278a StGB, i.a.). It is recommended that, instead of just changing the wording, the article on "Gesinnungsstrafrecht" be eliminated in its entirety (interviews 7, 15). "Change or improvement, in this case, cannot be accomplished by changing a few simple words" (interview 7).

Another suggestion for improvement is to transfer the responsibility for keeping the register of associations from the Federal Ministry of Internal Affairs to the courts (where the commercial register is already kept). From a legal point of view, associations constitute corporate


\(^{31}\) [http://tierschutzprozess.at](http://tierschutzprozess.at) retrieved 5 Mar. 2014

bodies. Allowing courts to keep the register could enhance transparency and facilitate a more positive approach towards freedom of association. Thus, a transfer of the associations’ register could be interpreted as an attempt at „ [...] moving away from police and delinquency towards a unification of civil society [...] ” (interview 7).

**Stronger involvement of CSOs in political decision making processes** could be accomplished through the introduction of “green books” (working papers on particular topics, available for public and academic discussion) and “white books” (summaries of the proposals compiled in discussions). This concept is well-known in Anglo-American countries and is also used by the European Commission, among others. The demand for inclusion of all parties aims at increased transparency in decision making processes of the public authorities. On an organizational level, CSOs could form alliances with other CSOs. The implementation of the Aarhus Convention on participation of CSOs in decision making regarding environmental issues is urged specifically (interview 19).

With regard to CSOs, it is suggested that they openly reflect on their existing dependency on the public authorities. **Strong umbrella organizations and common interest groups for CSOs** which speak out against the influence of the state are particularly important in this context (interview 12).
3. FREEDOM OF ASSEMBLY

In Austria, freedom of assembly is established in article 12 of the Austrian constitution ("Staatsgrundgesetz“ StGG) and in article 11 of the European Convention on Human Rights (ECHR). Freedom of assembly permits people to gather for the purpose of pursuing common goals and to announce or organize demonstrations and rallies. In contrast to freedom of association, freedom of assembly is restricted to natural persons. Assemblies are temporary, non-coincidental gatherings of several people in a particular location. The Assembly Act itself does not include a definition of the term "assembly" which it takes for granted. According to settled case law as applied by the Constitutional Court, a gathering of several people is to be regarded as an assembly for the purpose of the Assembly Act if it is organized for the purpose of bringing about common action of the people present (e.g. a debate or manifestation etc.), so that a connection develops between the convening persons.

In accordance with the Assembly Act (VersG), only people’s assemblies and assemblies that are generally accessible are subject to notification. In this section, Austrian peculiarities concerning the freedom of assembly will be examined. In this context, the non-protest zone ("Bannmeile") is particularly noteworthy. It specifies that, during sessions of the National or Federal Councils, the Federal Assembly or the state parliaments, no assembly in the open may take place within a distance of 300 meters of the respective offices (§ 4 und 5 VersG).

Legal regulations

1. The legal framework is based on international standards and guarantees the right to freedom of assembly for everyone, without discrimination.

2. The law recognizes spontaneous, simultaneous counter-assemblies and does not restrict them categorically.

3. The exercise of the right to freedom of assembly is not subject to approval by the authorities but, at the most, to prior notification, which is easy to give.

4. All legal constraints or restrictions of the right imposed by the authorities may be contested by the organizer.

The fundamental right to freedom of assembly is based on international standards in accordance with the European Convention on Human Rights (Art 11 (1) ECHR). Exercise of the right to freedom of assembly was achieved through protracted social conflict. The ECHR has had constitutional status since 1964, and the 1953 Assembly Act (VersG) was only amended a few times. The Assembly Act, which regulates exercise of this right, is rated as essentially unproblematic by legal and CSO representatives (interviews 7, 12, 15, 19).

36 Meetings in confined spaces which are only attended by invited guests are not subject to notification; elections meetings taking place in the open during the time of regular elections; wedding processions, funerals, pilgrimages; processions and other traditional parades.
However, the law imposes restrictions on persons without Austrian citizenship. According to the Assembly Act, the right to announcement, management and regulation of demonstrations and rallies is reserved exclusively for Austrian citizens. Article 12 of the Austrian criminal code (StGG) only mentions the right of Austrian citizens to freedom of assembly. The Assembly Act (§ 8 VersG) states that foreign nationals are not permitted to act as organizers, stewards or leaders in an assembly which serves to negotiate public affairs. The law, however, does not bar them from participating in such an assembly. In this respect, the Assembly Act contradicts the European Court of Human Rights pertaining to articles 11 and 16 (ECHR), according to which non-EU citizens are also entitled to peaceful assembly. Moreover, the restriction to citizens contradicts article 21 of the United Nations International Covenant on Civil and Political Rights ("Internationaler Pakt über bürgerliche und politische Rechte", IPBPR), which grants the right to freedom of assembly to all people. On the occasion of the pact's ratification, however, Austria insisted on a reservation clause, meaning that it cannot be regarded as defaulting with regard to the treaty. An explicit adjustment to the requirements of the ECHR would be necessary to achieve clarification regarding this issue. In addition, the reservation clause concerning the IPBPR ought to be withdrawn and the right to freedom of assembly granted to all people.

The law does not recognize the concept of spontaneous assemblies and simultaneous counter-assemblies. According to legal and CSO representatives, these forms are permissible under Austrian law, as long as they comply with the ECHR-principles which specify that assemblies must take place under "free and peaceful" circumstances (article 11(1) ECHR and interviews 7, 18). Spontaneous assemblies are characterized by the fact that they have not been announced, while a simultaneous assembly is an event which takes place at the same time. The attempt to disturb or break up an assembly may be punished as a criminal offence.

Authorities have to be notified on public assemblies 24 hours prior to commencement at the latest, but assemblies are not subject to approval. According to the Assembly Act, manifestations and demonstrations are considered as approved, so long as they are not prohibited (§ 6 VersG). Organizers merely have to prove that the authorities have been notified. If more than 3 people come together in pursuit of a common political goal, private persons or CSO-representatives are obliged to notify the federal or state police headquarters or the regional district authority (§ 2 para. 1 VersG). However, assemblies which have not been announced may not be prohibited or terminated so long as they are peaceful (Art 11 (2) ECHR; interviews 7, 12). If none of the circumstances mentioned in article 11(2) of the ECHR are on hand, a spontaneous assembly cannot be prohibited (or terminated) (§§ 13, 14 VersG). Failure to notify the authorities, however, constitutes an administrative offence on the part of the ad-hoc organizer (§§ 2, 19 VersG), unless lawful excuses or grounds of justification (iSd VStG) take effect. (Giese 2010: 78). The persons announcing an assembly are not required to be identical with those organizing it. A notification indicating the estimated number of participants, the timeframe, the route (in the case of demonstrations) and the means used (such as megaphones or tents), can be faxed to the authorities (interviews 15,17,18).

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37 Modifications to § 8 VersG are currently being discussed, so that residence status instead of citizenship can be taken into account (interview 7). For persons who are not in possession of a proper residence permit, participation in demonstrations and manifestations is problematic, since it entails a higher risk of identity verification.

38 http://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx retrieved 20. May 2014

39 In Austria, the Assembly Act (VersG) only distinguishes between „announced“ and „unannounced“ or, if necessary, „terminated“ assemblies.

40 Threat of punishment for breaking up a meeting is up to 1 year (§28 StGB) and up to 6 months for hindrance or disruption of a meeting (§285 StGB).

41 The authority may prohibit or terminate an assembly if one of the conditions mentioned in article 11(2) ECHR applies, meaning that termination/prohibition is legitimate provided it happens in the interest of national and public safety, to maintain order and prevent crime, to protect health and morals or the rights and freedoms of others.
All restrictions concerning the right to freedom of assembly may be contested by the organizers, but the possibility to file an appeal is only rarely exploited. "Assemblies which go directly against criminal law in their aim or which threaten public security or public welfare shall be prohibited by the authorities“ (§ 6 VersG). If laws are violated on site or participants defy the ban on wearing face coverings which is established in the Assembly Act, police are authorized to terminate assemblies (§13 VersG). They are, however, required to proceed in a proportionate manner and to adopt the most moderate measures available (§9 para. 2, 3 VersG).

A decision to prohibit an assembly which is announced prior to the event may be appealed by the organizers, but this involves cost risks (legal costs/costs of the proceedings) and is irrelevant, for all practical purposes, due to the long duration of the proceedings (see also practical features).

With demonstrations and rallies taking place on private property, there is a danger of being sued afterwards according to civil law for trespassing (§339 ABGB) (interviews 7, 18). The owner may also claim damages, e.g. in case property is damaged (e.g. the lawn), or in case companies were restricted in their freedom to carry on a business (interview 18).

Practical features:

Practice – indicators

1. No cases of interference with the freedom of assembly have been reported so far. Any group of people may meet in accordance with the law in any place at any time they wish.

2. Restrictions concerning the assembly including explanatory notes on each individual constraint are forwarded promptly and in writing to the organizers in order to give them the opportunity of appeal.

3. Simultaneous counter-assemblies are allowed to take place and the state supports and protects groups which exercise their right against people who want to interfere or prevent them from doing so.

4. In certain cases, CSOs have exercised their right to freedom of assembly without obtaining permission prior to the assembly. If notification is required, it can be submitted quickly. The submission process does not prevent people from organizing their meeting.

5. No disproportionate amount of force is used by law enforcement authorities, including preemptive arrest of organizers and participants.

6. The media have unlimited access to assemblies.

The political culture which constitutes the basis for the exercise of the human right to freedom of assembly has developed over many years in Austria. In many cases, civil society initiatives are able to meet without restrictions. Established and well-known CSOs are not normally faced with difficulties when organizing demonstrations and/or rallies. The situation is more problematic for small initiatives or loose alliances, since liability risks may become a threat to their very

https://www.ris.bka.gv.at/Dokument.wxe?Abfrage=Bundesnormen&Dokumentnummer=NOR12018065&ResultFunctionToken=e397f510-c7a1-4030-a445-049275355a23&Position=1&Kundmachungsorgan=&Index=&Titel=ABGB&Gesetzesnummer=&VonArtikel=&BisArtikel=&VonParagraf=339&BisParagraf=&VonAnlage=&BisAnlage=&Typ=&Kundmachungsnummer=&Unterzeichnungsdatum=&FassungVom=05.05.2014&NormabschnittnummerKombination=Und&ImRisSeit=Undefined&ResultPageSize=100&Suchworte retrieved 5 May 2014
existence. This is why notification on assemblies is often submitted by large organizations such as the Austrian Students’ Union (Österreichische Hochschülerschaft, ÖH), political parties or the Austrian Federation of Trade Unions (interview 18).

Since assemblies are not subject to permit but require non-prohibition, authorities normally confirm receipt of notification on demand and in writing if an assembly is not prohibited (§ 2 para. 2 VersG). Due to the regular working hours of the appropriate police headquarters or the regional district authority (district commission or magistrate), the 24-hour deadline for the announcement of an assembly poses a certain problem, e.g. because notification on assemblies scheduled for Sunday afternoon has to be submitted on Friday.

In recent years, security services were criticized by CSO representatives on several occasions for prohibiting manifestations. The following cases can be cited as examples: „Kein Europa des Rechtsstremsimus“ (January 24, 2014; Jetzt Zeichen Setzen)\textsuperscript{43}, trucks blocking border checkpoint Grametten (October 10, 2013; Verein Neue Thayatalbahn)\textsuperscript{44}, „Rasen am Ring“ (IG Fahrrad; September 22, 2011), Wiener Akademikerball (WKR)-Ball-Demo (January 28, 2011; Antinationales Bündnis Wien).

In the case of „Rasen am Ring“ („Lawn/racing on the ring“), the IG Fahrrad (a biking interest group) lodged a complaint against the interior ministry's decision to restrict freedom of assembly. In its verdict, the Constitutional Court (March 4, 2014)\textsuperscript{45} criticizes the fact that authorities accepted “serious” (traffic) obstruction which was to be expected as sufficient reason for a ban, when it was the very purpose of the organizers to utilize public traffic areas for their rally. The state had to repeal its decision and pay legal costs in the amount of 2.856 Euros (VfGH March 4, 2014, B1008/2013)\textsuperscript{46}. The Austrian students’ union (ÖH) also took legal action against the ban on the manifestation against the WKR-Ball (WKR-Ball-Demo) on January 28, 2011. On March 14, 2014, the constitutional court delivered a judgment\textsuperscript{47}, that the mere risk of a conflict did not justify the prohibition of the proposed assembly. A preventive ban on a public assembly is not permissible. The decision was repealed and the state was obligated to bear the legal costs of 2.400 Euros. Interviewees also reported repression in the form of street bans and prohibition (interviews 7, 17, 19).

Assemblies are terminated if the authorities declare them a threat to public safety (§ 17 VersG and interview 17). Authorities may only prohibit or terminate a meeting for reasons mentioned in article 11 (2) of the ECHR (European Convention on Human Rights). Termination or prohibition, thus, is only legitimate when it happens on behalf of national and public security, the maintenance of order and crime prevention, or when it is in the interest of protecting health, morals and the rights and the freedoms of others. It is at the authorities’ discretion to determine when the aforementioned aspects are under threat. It is regarded as an administrative offence to participate in assemblies that have been prohibited, to participate in public meetings when armed, and to remain in a meeting place after an assembly has been terminated (VersG, interview 17).

The police are obliged to communicate the request for termination of an event in a comprehensible way. Participants who fail to follow the request to terminate the meeting are threatened with administrative penalties and other measures of repression such as kettling. Kettling implies that participants are detained, surrounded by police, and, thus, curtailed in their right to freedom. In such cases, personal data of surrounded persons are often recorded. Because participants were barred from attending to basic human needs (e.g. from drinking water or going to the toilet),

\textsuperscript{43} \url{http://www.jetztzeichensetzen.at/?page_id=797} retrieved 20 May 2014
\textsuperscript{44} \url{http://www.werkstatt.or.at/index.php?option=com_content&task=view&id=952&Itemid=1}
\textsuperscript{45} \url{https://www.ris.bka.gv.at/Dokumente/Vfgh/JFT_20140304_13B01008_00/JFT_20140304_13B01008_00.pdf} retrieved 20 May 2014
\textsuperscript{46} ibid.
\textsuperscript{47} \url{http://www.vfgh.gv.at/cms/vfgh-site/attachments/3/7/0/CH0006/CMS1366099800122/ball_b1037-8.11.pdf} retrieved 30 Apr. 2014
manifestations against the Academics ball in 2010 and 2014 were particularly problematic in this regard (interviews 17, 15).  

Surveillance of assemblies by use of video cameras is not permissible. According to the Security Police Act (“Sicherheitspolizeigesetz”; § 54 para. 4 SPG), video footage is only to be authorized if hazardous attacks on lives, health or property are apprehended (interview 12). Occasionally, the police videotapes during assemblies without drawing on § 54 SPG. This course of action is then justified by saying that the videotaping serves the purpose of documenting the activities of police units (§10 “Richtlinienverordnung des Innenministeriums” (decree of the interior ministry)).

Lack of knowledge concerning freedom of assembly and the handling of discretionary powers on the part of security services were also criticized in interviews (interview 7, 12, 15, 18). Many Austrian cities and municipalities are short on experience when it comes to assemblies. From the point of view of legal and CSO representatives, disparities may be observed in Austria which some consider to be instances of despotism and missing know-how. Lack in expertise is most notably observable in rural regions, where confusion of political events with charged, notifiable events such as parades and prohibition of counter-assemblies has occurred (interviews 15, 18). Ignorance on the part of the authorities often leads inexperienced activists to abandon their purpose of organizing an assembly. One reason for this is that, in rural areas particularly, a certain fear of the authorities exists. Social pressure on activists is also reported, meaning that civic engagement may lead to repercussions, with people being reprimanded for their involvement. Thus, people sometimes do not participate in citizens’ initiatives, e.g. against the building of a motorway, because they are afraid of losing jobs, concessions or commissions (interviews 15, 19).

Interviewees also noticed a certain amount of ignorance in CSOs and recommend that they catch up on their rights and possibilities and that governmental institutions brief CSOs in more detail. At the Action Academy (“Aktionsakademie”) which is mounted annually by Greenpeace, Attac and Südwind, for example, activists’ knowhow for getting political messages across is passed on to the wider public (interview 15). Another way of spreading knowledge concerning the freedom of assembly is to publish guides which, among other things, inform readers about the standard operating procedure for issuing notifications on assemblies.

Participation or notification of an assembly may lead to legal repercussions. Organizers of assemblies are obliged to see to a peaceful order of events by making arrangements, e.g. by providing stewards (§11 VersG). Persons who submit notification of an assembly may be held accountable for any trouble caused during the event. Liability risks are seen as particularly problematic in this context (interview 18). Organizers, like participants, may also be affected by severe threats of punishment, as for instance “breach of the peace” (“Landfriedensbruch”, § 274 StGB). Currently, the prosecution is investigating “roughly 500 persons yet unknown” in accordance with paragraph 274 StGB on breach of the peace. This means that persons who participated peacefully in a demonstration may be prosecuted for attending a “riotous assembly of a crowd for the purpose of committing murder (§75), manslaughter (§76), assault (§§ 83 to 87) or severe criminal property damage (§ 126), "if such an act of violence did occur".

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48 http://fm4.orf.at/stories/1637944/?page=2 retrieved 05 May 2014  
50 http://papiertiger.noblogs.org/files/2013/04/auskunft-bpd-%C3%BCberwachung.png retrieved 16 May 2014  
51 https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10005857 retrieved 16 May 2014  
52 Fairs and celebrations organized, e.g. by the local fire brigade, have to be announced to the municipal administration or the area authorities. Announcement of such events is subject to a charge, and they do not come within the scope of the Associations Act (interview 15). Basically, meetings conducted on the streets or in public places also have to be announced according to road traffic regulations (“Straßenverkehrsordnung”, StVO § 86).  
In 2002, during the ÖVP-FPÖ government, a ban on wearing face coverings ("Vermummungsverbot") was introduced and laid down in law (§ 9 para. 1 VersG). In accordance with this law, the veiling and disguising of facial features or the carrying along of items which, "by their nature, are designed to prevent identity verification" (VersG § 9) is punishable by imprisonment of up to 6 weeks or fine. The ban was also discussed in the context of the Academics’ Ball ("Akademikerball") in 2014, because a ban on veiling e.g. using caps and scarfs during the winter months and extending across 9 Viennese districts, was regarded as excessive. In the opinion of CSO representatives, the aforementioned threats of punishment also serve to severely intimidate people (interviews 17, 18).

In Austria, if a public assembly is prohibited after notification, the decision is forwarded to the organizers along with explanatory notes. As mentioned earlier, Austrian law enables organizers to appeal against a prohibition. Most people, however, do not make use of their right due to the long duration of the proceedings (more than 2 years, in most cases) and the huge effort required in connection with such a procedure. Even if the court case is won and the decision is subsequently reversed, the reversal is irrelevant for the organizers because the occasion for the rally has passed long before (interviews 7, 15, 19). Thus, there is, effectively, no possibility of a timely appeal against a ban. The only possibility to avoid prohibition is to move the assembly to another venue, to another date or to modify the form of the event (interviews 7, 18). In Germany, one may bring summary proceedings in order to come into one’s own before the start of the event (Gaßner, 2012).

In Austria, the authorities normally protect groups exercising their right to freedom of assembly from people who want to disturb or prevent them from doing so. Simultaneous, spontaneous counter-assemblies, which are not illegal, are allowed to take place. In connection with the Academics’ Ball ("Akademikerball", formerly "WKR-Ball") at the Wiener Hofburg, however, a number of assemblies and counter-assemblies recently took place, in the context of which bans were imposed. In 2014, 3 demonstrations were announced on this occasion. One interviewee criticized the police’s recommendation to hold two meetings on the same square (Maria-Theresia-Platz) – a commemoration of Holocaust victims and a demonstration organized by the right wing party FPÖ – because the square in front of the Hofburg had been closed to the public (street ban) (interview 15).

"Thursdays demonstrations" ("Donnerstagsdemonstrationen") against the ÖVP-FPÖ government starting in 2000 constitute examples of unannounced demonstrations in Austria. Another example to be mentioned is a monthly event called "Critical Mass", during which a large numbers of cyclists are under way in the streets of Vienna. During such assemblies, police try to block and divert the traffic spontaneously. Unannounced assemblies may be terminated by the police. In this context, people are fined for administrative offences, e.g. if participants refuse to vacate the venue of rally (interview 17). Flash mobs as a very recent form of unannounced assembly do not, in most cases, have a political agenda. Since such assemblies are finished rather quickly, the police do not normally intervene (interview 15, 17). With announced assemblies, police protection can be advantageous, e.g. if large-scale traffic diversion is required. Interviewees did not notice a consistent approach to non-prohibition of counter-assemblies. Such inconsistency may become disproportionate when events have been scheduled and advertised for some time and are, then, prohibited on short notice for inexplicable reasons (interviews 7, 15, 17, 18).

Police violence against people attending an assembly does occur in Austria. Most of the time, Austrian citizens are able to exercise their right to freedom of assembly under police

55 For participation in unannounced demonstrations, authorities may inflict an administrative penalty (§ 19a VersG).
56 http://www.bverfg.de/entscheidungen/qk20010712_1bvq002801.html or http://www.bverfg.de/entscheidungen/rs20090217_1bvr249208.html retrieved 30 Apr. 2014
Several interviewees, however, criticized the use of violence by the enforcement authority (interviews 12, 15, 17, 18). The subject matter of police treatment and control of people attending demonstrations and rallies is referred to as the “Policing of protest” in literature. In accordance with the proportionality principle (§ 29 Security Police Act or “Sicherheitspolizeigesetz”), criminal offences should be prevented while offences already committed should be punished.\textsuperscript{58}

In recent years, use of violence against protesters could be observed at annual demonstrations against the Academics’ Ball (“Akademikerball”, formerly “WKR-Ball”) or demonstrations against the “Heroes commemoration” (“Heldengedenken”) organized by the German-national fraternity Olympia, at student protests (“unibrennt”) or, until a few years ago, at counter-demonstrations against the Vienna Opera Ball. In the event of violence, protesters are faced with the use of truncheons and pepper spray, being pinned on the ground, kettling, or the use of water guns.\textsuperscript{59} CSO representatives also mentioned excessive behavior on the part of police who enforced identity checks and arrests (interviews 15, 17, 18).

The likelihood of the use of violence against protesters is particularly high if the police suspect that persons willing to resort to violence are attending an assembly. Such assumptions might prove to be wrong, but still lead to excessive conduct on the part of the authorities. The fact that peaceful protesters could also be affected by police violence is regarded as particularly problematic. In recent years, the interior ministry took measures to avoid this violation of human rights. In 1999, the Human Rights Advisory Council was established. At the end of 2009, a program called POLICE.POWER/MAKES.HUMAN RIGHTS (POLIZEI.MACHT.MENSCHENRECHTE)\textsuperscript{60}, which attempts to incorporate human rights education (especially with regard to behavior in concrete situations) in the training of police.

It is recommended to avoid threats of violence in communication prior to and during demonstrations, so as not to convey the impression that public security is in any way threatened (interview 7).

In the event of excessive use of violence or other disproportionate measures by the police, protesters concerned may file a measures complaint (“Maßnahmenbeschwerde”; Art. 130 para. 2 (2), federal constitutional law (“Bundesverfassungsgesetz”), also §§ 88 Security Police Act (“Sicherheitspolizeigesetz”)). However, this procedure involves high financial risks. Until 2013, a lump sum of 830 euros\textsuperscript{61} was collected if the court case was lost. In the meantime, more ambiguous regulations have been introduced, but the costs which are to be expected in case the court case is lost remain roughly the same.\textsuperscript{62}

Protesters need to be able to identify acting policemen so that misconduct on their part may be punished. However, it has been reported that police sometimes refuse to disclose their badge number. It is, therefore, recommended that, in the fashion of other countries such as Germany, identifying numbers which vary depending on the nature of the operation be attached to uniforms in a clearly visible manner (interview 17).

\textsuperscript{60} http://www.bmi.gv.at/cms/BMI_Service/Aus_dem_Innenen/Die_Polizei_als_Menschenrechtsschutzorganisation. pdf retrieved 5 May 2014
\textsuperscript{62} http://www.ris.bka.gv.at/Dokument.wxe?Abfrage=Bundesnormen&Dokumentnummer=NOR40152554 retrieved 19 May 2014
In general, the media have adequate access to assemblies. However, the freedom of the press was curtailed during the Academics’ Ball in 2014, where media representatives were only granted limited access to assemblies and counter-assemblies on account of a “street ban” (interview 7). CSO and legal representatives considered these measures as unjustified (interviews 7, 12, 15, 18, 19). Reporting was only possible for journalists under police control (embedded journalism). Small media organized by civil society (e.g. free radio stations) were more seriously affected by these measures than big media companies such as, for instance, the ORF (the Austrian Broadcasting Agency) or the Neue Kronen Zeitung, because they were not granted the same privileges (interviews 7, 18). In a press release on May 20, 2014, the Austrian Journalists Club criticized the “security services’ massive assaults on journalists” at a demonstration of the right-wing identity movement (“Identitäre”) a few days before. It also announced the establishment of a reporting office for infringement of the freedom of the press in Austria. The reason for taking this step was the decision of the Vienna police to repeatedly refuse passage to journalists and a representative of the Austrian Ombudsman Board in the area of the Volkstheater during the demonstration a few days earlier. Another point of criticism that came up was that journalists often didn’t bother to cover certain gatherings out of preemptive obedience to media owners and advertising customers. In view of the public service obligation and responsibility of the media, however, it is desirable to have political assemblies covered (interviews 15, 19).

Other topics raised by interviewees in connection with the freedom of assembly were as follows:

Diverse clauses in Austrian criminal law (StGB) contradict the freedom of opinion and freedom of assembly. These restrictions on civic involvement can be directed against the activities of CSOs (interviews 7, 12, 15, 18, 19). Coercion charges (§ 105 ff StGB) are particularly problematic for organizations. If campaigning organizations publicly put pressure on companies by accusing them of maladministration and damaging the environment, they are in danger of being charged with coercion. Relevant articles in Austrian criminal law were i.a. deployed in the proceedings against animal rights activists.

Furthermore, a demand for prosecution was filed against Michael Genner of the CSO „Asyl-in-Not“ ("Asylum in need"), a refugee relief organization, for “incitement to punishable offences and endorsement of punishable offences” (§ 282 para. 2 StGB). He was said to “have endorsed an offence committed deliberately and punishable by imprisonment for more than one year in a way which was suitable to incense people in their sense of justice and to incite them to commit such an offence”. If convicted, he could have faced imprisonment of up to two years. He had, supposedly, pointed out that smugglers of refugees were doing a “socially beneficial job” by permitting people to escape from persecution, torture and murder. The charge of endorsement of people smuggling is derived from a statement published on a website which was reproduced in excerpts and reported to the prosecution (interview 12). The prosecution, however, was instructed by the chief prosecutor to withdraw its “complaint”.

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63 http://derstandard.at/1389857991064/Akademinikerball-Journalistentengewerkschaft-kritisiert-Platzverbot
retrieved 5 May 2014


retrieved 30 Apr. 2014

retrieved 30 Apr.2014


Potential for improvement

In legislation
The following areas of improvement have been identified:

1. **Explicit alignment of the Assembly Act with the requirements of the ECHR and the IPBPR and revocation of the reservation clause applying to IPBPR requirements.**

2. In concrete terms, this involves, e.g. permitting EU citizens and third-country nationals to organize and conduct assemblies and to act as stewards.

3. In Austria, there are, at the moment, **no legal means for appealing timely** against the unjustified prohibition of an assembly, which would allow organizers to claim their right to freedom of assembly prior to the appointed date of the event. The current situation might be improved by introducing summary proceedings at administrative courts, following the example set by Germany.

4. **Filing a measures complaint** against disproportionate measures taken by the security police is linked to a high cost risk if the court case is lost. A measures complaint, therefore, is not lodged very often. The cost risk should be reduced in order not to discourage people with a low income from filing such a complaint.

5. In order to be able to take action against police misconduct, it is recommended that, in the fashion of other countries, e.g. Germany, **identifying numbers** varying depending on the nature of the operation be **attached to uniforms in a clearly visible manner** (interview 17).

6. **De-escalation** should be established as a **guiding principle** in the preparation and carrying out of operations. Large-scale street bans and measures which promote escalation, such as **kettling and the use of violence at assemblies**, should be avoided.

7. **Administrative penalties** should only be handed out to protesters when they are legally substantiated. They should **not be used as a repressive measure**.

8. Any misconduct, e.g. excessive use of violence by the police, is to be recorded by **internal and external authorities**. The discovery of excessive use of violence by a particular person should lead to repercussions determined by the disciplinary authority, and these repercussions should be suited to developing a preventive effect.

9. **Video surveillance** of demonstrations should only be deployed if public security and order are actually threatened.

10. **Criminal charges** such as „breach of the peace“(§ 284 StGB), „coercion“(§ 105 ff StGB) and “Incitement to and endorsement of punishable offences” (§ 282 StGB) should be abolished or, at least, **modified** in such a way as to eliminate any possibility of them being used for criminalization of civic engagement (interviews 7, 12, 18).

11. The right to freedom of assembly of **persons who do not have Austrian citizenship** should be established in national law. It should be granted to people regardless of their country of origin.

12. Basically, the populace should be **better informed as to the relevance and significance of the right to freedom of assembly**. It is imperative for a democracy that people know and comprehend their own rights and the nature and mode of operation of political assemblies. One possibility to increase knowledge of the right to freedom of assembly is to attach greater importance to this aspect in the context of political education in school.
13. In cities as in rural regions, the **safety authorities' knowledge** concerning freedom of assembly and related procedures should be enhanced in order to prevent wrong decisions and, therefore, interference with freedom of assembly, e.g. through undue prohibition of public events.

14. Unconditional protection and guarantee of the freedom of press by the executive forces.
In the context of CSOs and their advocacy groups

1. It is recommended to avoid threats of violence in communication prior to and during assemblies, so as not to convey the impression that public security and order are threatened and, thus, to provoke the police into taking repressive measures (street bans, prohibition).

2. The degree of comprehension and knowledge of the right to freedom of assembly and associated political rights within the CSO sector is capable of improvement. Best-Practice schemes such as action academies, guides and workshops should be increasingly implemented.

3. Media coverage of assemblies and protests plays a decisive role. A political culture in which public assemblies are regarded as important constituents of a democratic society is a prerequisite for active citizenship (interview 15). Strategic communication of concerns/causes of, and necessity for the protest should become an integral part of assemblies.
4. ACCESS TO FINANCIAL RESOURCES

This section of the report raises the question of whether civil society organizations (CSOs) in Austria are free to look for and secure financial resources from domestic and foreign sources. CSOs differ notably from profit-oriented organizations when it comes to funding. CSOs pursue charitable objectives and are not permitted to distribute profits among owners. Since strong identification with the mission or mission-related tasks are a priority in the context of CSOs, financial functions are merely a means to an end and regarded as a necessary evil, especially among smaller organizations. There is little planning certainty when it comes to projecting income from donations and public funding. Considerations regarding the maintenance of liquidity dominate, while questions of profitability are secondary (Littich/Schober 2013).

CSOs take on public services and cover the demand for social services which are not provided by the market or the public sector in sufficient quantity or quality. They assume a decisive role in society while, at the same time, being faced with financial insecurity and challenges, the challenge being to reconcile social and economic objectives by finding an appropriate combination of financing. While receipts from public funding in CSOs amount to 53% and 36% of CSO income stem from economic activities, donations and sponsorships contribute 11% to overall CSO income (Schneider et al. 2010).

Legal regulations

Legal regulations-Indicators

1. The law permits CSOs to engage in economic activities as purveyors of services in the market.

2. CSOs are permitted to accept funding from abroad.

3. CSOs are permitted to obtain funding, e.g. financing by individuals, companies and other sources.

Austrian legislation does not differentiate between profit-oriented and non-profit organizations as long as organizations engage in economic activity as operators in the market. Due to the large variety of tasks and functions which CSOs perform, however, the capability of generating revenue in the market differs considerably from one CSO to the next. Market profits are mainly an issue for CSOs which offer services, e.g. service charges which are incurred by way of deductibles (e.g. in the case of care services), fees (e.g. admission fees for a museum), as well as cost-covering revenue from the selling of mission-related services (e.g. private, unsupported care consultation). What is typical for CSOs is that the people paying for services and the recipients of benefits are, in many cases, not identical. This is, for example, the case when it comes to service agreements concluded with the public sector, transfers from other CSOs or sponsorship and corporate partnership within the framework of corporate social responsibility. In contrast to NPOs which offer services, NPOs which focus on representation of interest and/or community building often generate only little sales revenue. Since the latter want to retain independence from the state, membership fees and donations are often their only source of income (Littich/Schober 2013).

With regard to sources of funding, varying degrees of diversification may be observed in CSOs. There are organizations which rely on a single source (e.g. membership fees, subsidies) only, while others benefit from more than ten different sources. Austrian CSOs use an average of 5,2 different sources of funding (Schober et al. 2011).
The trick in financing is to maintain liquidity without relying on market revenue. In Austria, the public sector plays a major role as a source of funding in this context. If organizations strongly depend on public funds, cutbacks on government expenditures may cause problems regarding the maintenance of their range of services. Certain provisions commonly included in assistance agreements and regulations, which provide that income from sources other than the state reduces public funds by the very amount which has been obtained from other sources, are also problematic - they severely limit a CSO's room for maneuver.

Venture philanthropy and charitable or non-profit foundations constitute alternative sources of funding. Venture philanthropy basically implies major donations bestowed by companies or wealthy individuals which are sometimes arranged by foundations (Pepin 2005). In venture philanthropy, donors are often more strongly involved than sponsors in more ordinary donor–beneficiary relationships: they have a say in the application of funds. In Austria, 1-5 euros are currently distributed by foundations for non-profit purposes per resident per year. This contribution is rather small compared to Germany (where contributions amount to 180-230 euros) (Schneider et al. 2010). Fiscal framework conditions are partially responsible for this, because they allow for private foundations but are primarily aimed at self-interest foundations. At present, efforts are made in Austria to establish a (distinct) legal framework for charitable or non-profit foundations - a proposition which was also included in the 2013-2018 government program.

With regard to donor financing, various sources must be taken into account. Donations may be obtained from individuals, companies or foundations. In Austria, the collection of donations in public is the responsibility of the federal states and subject to permit. Calls for donations which are made by mail or via mass media are exempted from the obligation to obtain a relevant permit. Laws pertaining to the collection of donations also provide for exceptions in the case of fundraising by regional authorities, political parties, churches, schools, fire departments, the Red Cross etc. Exceptions, however, differ from one federal state to the next. Public recruitment of members is strictly subject to approval if “the nature and scope of the invitation to donate and other circumstances lead one to assume that the purpose of the invitation is not to bring about a permanent relationship between the donor and the organization but to obtain money or other services” (§ 2 para. 4 NÖ “Sammlungsgesetz” (Lower Austrian law on fundraising)). The recruitment of supporting members is not subject to fundraising law if their rights and duties are clearly spelled out by the articles of association. Provision of financial support as the main objective of membership is permissible, however.

In general, CSOs are permitted to accept financial resources from abroad. Larger organizations operating on an international level tend to establish affiliated societies in the respective countries. However, accepting donations from abroad is also unproblematic for CSOs which operate only in Austria. According to EU law, donations do not fall within the scope of freedom of establishment. They are, however, subject to free movement of capital. The reason for this is that donations, for lack of being in the nature of pay, do not fall within the category of employment (Achatz 2006). According to § 40 para.1 Z 2 BWG, payments of more than 15.000 euros have to be identified in Austria (as a measure against money laundering and terrorist financing). Financial transactions within Europe can easily be processed by means of SEPA credit transfers. Outside the euro area, large sums are normally handed over to foreign currency transaction dealers such as Western Union for processing. These dealers then take care of all the administrative requirements involved in such a transaction (interview 20).

69 CSOs are permitted to build up reserves equal to their annual budget. For reserves exceeding this limit, tax benefits can be withdrawn if there are no pending investment projects and the organization continues to generate surpluses (Höhne et al. 2009).


71 Advisory opinion on public fundraising and recruitment of supporting members („Öffentliches Sammeln und Fördermitgliederwerbung“), compiled by o. Univ.-Prof. Mag. Dr. Bernd-Christian Funk on behalf of the Fundraising Verband Austria, May 2010.

Problems sometimes arise in connection with donations from abroad if the donor wants to set off a donation against tax. For this to be possible, the beneficiary CSO has to fulfill the necessary requirements in the country of origin of the donation. Since, in Austria, an assessment confirming common public interest or non-profit status is not available (see chapter 5), this imposes certain restrictions on donations from other countries. CSOs affected by this problem sometimes draw on the Austrian "Spendenbegünstigungsbescheid" (a notification that favorable treatment of donations has been granted) or the "Spendengütesiegel" (a quality label which guarantees the lawful and appropriate use of donations) in order to indirectly establish non-profit status, but they do not always succeed with this strategy (interview 20).

Practical features

**Practice-indicators**

1. Legal provisions concerning economic activities of CSOs are implemented and do not discriminate against CSOs.

2. CSOs face no restrictions (e.g. administrative or financial barriers or channeling of funds by certain bodies) when obtaining funds from abroad.

3. The process of obtaining financial resources from individuals, companies or other sources is simple, effective and does not involve unnecessary financial or administrative burdens.

Where funding happens via donations by individuals, companies and foundations, one may differentiate between non-specific donations and donations earmarked for a specific purpose. With fundraising organizations, a tendency towards earmarked donations has been observed (interview 20). By earmarking donations for a specific purpose, foundations and major donors want to make sure that a particular project is supported. In order to achieve that aim, proposals and agreements regarding particular projects are developed - if the purpose of the foundation coincides with the purpose of the organization, or if co-donors such as the “Austrian Development Agency” pursue similar aims. As a result, organizations lose flexibility, and their liquidity is restricted. Usually, the donors are known because they are interested in obtaining a confirmation regarding the deductibility of donations (interview 20).

In general, CSOs have broad access to funding opportunities. However, CSOs face difficulties when it comes to raising external funds. In the context of credit financing, organizations with regular and sustainable income (e.g. membership fees in motorist associations), continued financing by the public authority and/or high diversification are at an advantage (Yan et al. 2009). Because traditional banks find it difficult to assess the creditworthiness of CSOs, an increasing number of specialized banks which operate according to the social banking model and work for CSOs are currently being set up. The German GLS bank, for example, recently provided funding for an Austrian housing project in the area of the northern railway station (“Nordbahnhof”) in Vienna73. In a participatory process, the development of high-quality and affordable housing in a metropolitan area was supported financially. In Austria, the Erste Bank is active in the field of social banking, attempting to provide funding for CSOs and moving beyond conventional rating systems. In 2014, the “bank for the common good” (“Bank für Gemeinwohl”) will assume a concrete shape in Austria. This civil society-based bank will help make favorable loans for socially and economically sustainable projects available74.

On the one hand, there are rules which discriminate positively against economic activities of beneficiary CSOs. On the other hand, CSOs are de facto discriminated against in the negative

73 [www.wohnprojekt-wien.at](http://www.wohnprojekt-wien.at)  
74 [http://www.mitgruenden.at](http://www.mitgruenden.at) retrieved 12 Apr. 2014
sense due to certain grey areas in connection with these rules. Crowdfunding as a method of financing is particularly worth mentioning in this context. According to media reports, the Austrian Financial Market Authority (FMA) is currently investigating 39 reported cases of illegal financial market transactions, some of which involve CSOs which have taken out an interest-free private loan.\textsuperscript{75} Such transactions are classified as unlawful by the FMA, because they promote the development of an unregulated credit market. The FMA's legal opinion that such transactions require a banking license was confirmed in a judicial precedent.\textsuperscript{76} SMEs from the consumer goods and solar energy sectors are mainly affected by this decision. In some cases, CSOs and the FMA have settled on a transition to the legal funding model of the subordinated loan. In comparison to other creditors, private investors are thus subsequently entitled to bankrupt's assets in the case of bankruptcy\textsuperscript{75}.

In practice, CSOs, for the most part, do not face any problems or restrictions with regard to domestic and foreign financial transactions. With donations from abroad, smaller amounts are often handled by credit card companies which charge fees for their services. In all other cases, bank transfers, which are available to CSOs on favorable conditions, are used for carrying out transactions. As has already been mentioned, difficulties may arise in connection with donations from abroad where deductibility and the absence of evidence of non-profit status are concerned (interview 20). Liquidity and investment of funds are subject to further restrictions. CSOs financed through donations are limited in their freedom of action, because they are not permitted to get involved in high-risk forms of investment, meaning that it is not possible for them to benefit from high interest rates on shares, derivative instruments and options. Instead, CSOs focus on sustainable, low-risk investments and on exploiting advantages offered by banks in the form of favorable conditions or better interest rates (interview 20).

In order to sustain cash flow in the form of donations from individuals, companies or the public sector over a prolonged period of time, incentives for donating as well as regular monitoring of the utilization of funds is necessary. Only a short while ago, a community foundation was established in Austria by the Capital Bank with the objective of bringing together wealthy donors and not-for-profit projects.\textsuperscript{77}

For many fundraising CSOs, the recruitment of supporting members in public spaces is an important means to diversify their sources of income. In some CSOs, supporting memberships contribute up to 80\% to the overall income from donations. That is why CSOs bemoan the strict implementation of fundraising law in some federal states. In 2014, the federal capital Vienna responded to a decision of the independent administrative panel ("Unabhängiger Verwaltungssenat") and an advisory opinion by constitutional expert Bernd Funk by amending the law on fundraising accordingly. Other federal states such as Lower Austria and Carinthia are lagging behind in this respect.

**Potential for improvement**

The following opportunities for improvement were mentioned by the interviewees:

**Legal certainty in connection with the receipt of funds** from abroad or forms of financing such as crowdfunding should be improved. An official notification attesting non-profit status would

enable CSOs to generate higher income through donations from abroad (interview 20) (see also chapter V on tax law).

Since many CSOs rely on state support among other sources of income, a decline in public funds must be offset by alternative means. Provisions regarding funding which specify that, **upon receipt of alternative additional means**, the contribution of public funds will be reduced accordingly will not encourage organizations to explore alternative funding methods.

Since it is becoming increasingly problematic for CSOs to borrow funds due to higher equity requirements on the debtor (Basel III/Third Basel Accord), **social banking models** should receive continued support, as has happened in Austria through the establishment of the Gemeinwohl Bank.

In addition, further activities such as the **promotion of (venture) philanthropy, crowdfunding and amendment of foundation law** should enhance access to financial resources.

Finally, CSOs relying on donations for financing their activities demand that **constitutionality be established with regard to relevant fundraising laws of the federal states**, which currently penalize potentially the recruitment of sponsors.
5. TAX LAW

There is, in general, social consensus in Europe that CSOs should be preferred over profit-oriented businesses with regard to taxes for their services to the community. Form and scope of such tax incentives, however, may differ considerably in different countries and may change over the years (Friedrich et al. 2005). Austrian tax law, which has its origins in the monarchy and which shares many features with German Fiscal Code (“Abgabenrecht”), has, in contrast to the German variety, seen little change in recent decades where non-profit status is concerned.\(^{78}\) From the point of view of experts interviewed for this report, a reform of Austrian charity law is, therefore, long overdue.

While EU member states are free to choose their tax systems, the European Commission is currently making efforts to harmonize tax law, also with regard to tax benefits for CSOs. Proposals for a council regulation on the statute for a European foundation (FE)\(^ {79} \) or for a review of existing VAT legislation on public bodies and tax exemptions in the public interest\(^ {80} \) exemplify these efforts. The scope and impact of these efforts on national legislation, however, cannot be foreseen at present.

This section of the report is based on written responses to an online survey from public accountants/tax consultants and practitioners in CSOs as well as 7 interviews conducted with charity experts from March to April 2014.

Legal regulations

### Legal regulations – indicators

**Tax incentives for CSOs are provided for**

1. The law provides for tax incentives for all grants/subsidies/benefits and donations which do not promote CSOs’ profit-oriented activities.

2. The law provides for tax benefits for the economic activities of CSOs.

3. The law provides for tax benefits for passive forms of investment (asset management).

4. The law permits the formation of foundations and offers tax incentives for (charitable/non-profit) foundations.

5. There is a high degree of legal certainty regarding charitable activities of CSOs.

6. CSOs are not disadvantaged in matters of tax compared to companies.

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\(^{78}\) The most recent reform of German charity law was implemented in 2007, when the bill for the promotion of civic engagement was passed (Winheller 2008; Zengerling 2008). A bill for the strengthening of volunteer work, which was passed in 2013, further improved fiscal framework conditions for public benefit organizations (Schütz/Runte 2013).

\(^{79}\) [http://ec.europa.eu/internal_market/company/eufoundation/index_de.htm](http://ec.europa.eu/internal_market/company/eufoundation/index_de.htm)

(Tax) deductibility of donations

7. The law provides for tax benefits for donations to CSOs by private individuals and companies.

8. There are distinct terms and provisions regarding the receipt of deductible donations, and they cover a wide range of charitable activities.

Regulations concerning taxes which are relevant to CSOs are notably contained in the federal law on general provisions and procedures for levies managed by tax authorities of the state, the federal states and municipalities (Austrian Federal Fiscal Code = "Bundesabgabenordnung", BAO), BGBl. Nr. 194/1961, which was last altered in 2014 by the Tax Code Amendment Act ("Abgabenänderungsgesetz"). The law determines the general requirements which make a CSO eligible for tax benefits. In order to be entitled to tax benefits, a CSO has to serve charitable and/or church-related purposes and, "in accordance with the law, the articles of association, the charter or any other legal basis, serve such purposes directly and exclusively" (§ 34 para. 1 BAO).

The BAO differentiates between different activities ("spheres") of CSOs: services rendered free of charge and income which is not directly linked to a return service ("club sphere") are distinguished from asset management, economic activities without gainful intent and economic activities with gainful intent, the latter being classified as inherently non-eligible for tax benefits ("begünstigungsschädlich").

**Economic activities** are categorized as indispensable, dispensable or non-eligible for tax benefits and treated differently with regard to taxes. Indispensable auxiliary activities are only permitted to earn „random profits", and they may not compete with other taxable economic activities of the same or a similar kind. For CSOs, this differentiation involves the danger of their activities being categorized as economic business activities, which automatically implies tax liability and the loss of non-profit status unless an individual or general exceptional law is applied (Achatz/Oberleitner 2013).

While the BAO has been amended 86 times since 1961, §§ 34 ff., which are essential to CSOs, have remained unchanged since that time. In order to accommodate changes which occurred in the third sector during the past 50 years, Austrian tax authorities have developed an extensive administrative practice and judicature which is recorded in the **Associations Guidelines** ("Vereinsrichtlinien"). These are adapted regularly and basically applied to all corporate bodies, including non-profit foundations and non-profit limited companies (Ltd.). These guidelines, however, are not binding for tax authorities and courts, because they neither constitute administrative orders nor regulations. In contrast to Germany, where common public interest or non-profit status is established by means of an official notification, there is only limited legal certainty for CSOs in Austria.

The exact nature and scope of tax benefits are regulated by respective **tax laws**, notably by corporate ("Körperschaftssteuergesetz"; § 5 para. 6 KStG), turnover ("Umsatzsteuergesetz"; § 10 para. 2 Z 7 UStG), municipal ("Kommunalsteuergesetz"; § 8 KommStG) and land tax laws ("Grundsteuergesetz"; § 2 Z 3 lit b and Z 4 GrStG). Entrepreneurially active CSOs are only exempt from municipal tax if they serve charitable purposes in the areas of health- and childcare, youth-

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81 Over time, the Associations Guidelines have assumed a scope which is hardly comprehensible for laymen: the main document currently comprises 251 pages. Decrees concerning the amendment of the Associations Guidelines, which are issued every two to three years by the Federal Ministry of Finance, may well comprise 100 pages.
and family welfare, aid to the blind, or care of elderly or disabled persons. Deduction of input tax is only an option if CSOs engage in entrepreneurial activities. Capital income is subject to capital gains tax ("Kapitalertragsteuer" (KESt); § 1 para. 3 Z 3 KStG). Exemption from capital gains tax liability is only possible (and economically reasonable) if capital investments constitute necessary business assets in the context of an economic activity (and if its losses exceed investment income) (Achatz/Oberleitner 2013). Charitable/non-profit legal entities which finance their activities through donations are thus disadvantaged.

**Sports clubs** are permitted to cash out reimbursements of costs of up to 60 Euros per day or a maximum of 540 Euros per month exempt from taxes and insurance to athletes, referees and coaches (§ 3 para. 1 Z 16c EStG and § 49 para. 2 Z 28 ASVG) and, thus, occupy a special position. This is not legally possible for other public benefit or charitable organizations, including emergency services. Under certain conditions, sports clubs and mountain rescue are also exempt from advertising charges in connection with corporate sponsorship (Achatz/Oberleitner 2013).

Distinct regulations also apply to entities of public law such as churches or volunteer fire departments, but we will not go into these here.

As stated elsewhere in this report, charitable or non-profit foundations only play a minor role in Austria. The Federal Foundations and Funds Act ("Bundesstiftungs- und Fondsgesetz") and diverse federal state laws on foundations apply in their case. It is also possible to establish partially or exclusively charitable foundations according to the Austrian Private Foundations Act, but only few founders make use of this possibility (Schneider et al. 2010). One reason for this is the demand for exclusive and direct fulfillment of purpose: it forces potential donors to personally accomplish the charitable purpose or to contractually commission an agent to accomplish the purpose in their place, instead of allowing them to support CSOs who are already experienced in the respective field of work. The fact that donations made to charitable or non-profit private foundations are not tax-supported but, rather, fiscally disadvantaged compared with other charitable legal entities, constitutes another major obstacle: donations to charitable foundations are non-deductible during the process of formation – only organizations which have existed for a minimum of 3 years have a right to favorable treatment of donations (FVA 2013b).

In principle, CSOs are not fiscally disadvantaged compared to companies. There is, however, a recognizable tendency in tax legislation toward treating CSOs and profit-oriented businesses as equal. This was, for example, the case when property gains tax was introduced in 2012: non-profit and charitable organizations are not exempt from it, even if the sale of property is the result of a gift or an inheritance. The same situation threatens to arise in the pending reform of the land transfer tax, which will require that instead of the triple ratable value which was used up to now, the current market value – which is normally a lot higher - be used for (tax) computation. The current bill allows for exceptions in the case of a transfer within a family association but not in the case of CSOs.

Until a few years ago, only donations made to scientific institutions were tax-deductible. In 2009, tax deductibility was also established for voluntary donations to organizations which either serve charitable purposes or which are active in the area of poverty reduction in developing countries or in disaster relief. Favorable treatment of donations was also introduced for environmental and animal protection groups, although it only applies to the latter if they run animal shelters. In addition, tax deductibility was extended to apply to foreign institutions active in the field of research and teaching, provided that these institutions are equivalent to tax-supported domestic institutions. In 2014, Austria once more extended deductibility of donations to make it applicable to certain institutions based in member states of the EU or countries which entertain a relationship of 82

### Footnotes

82 A donor tried to explain the situation at an event at the Austrian House of the European Union in October 2013 in a slightly sarcastic tone, referring to the example of an association offering hippotherapy for children: „I am not permitted to support the association. I have to learn how to ride a horse in order to be able to offer therapeutic treatment myself.”

broad administrative cooperation with Austria. Such institutions notably include umbrella organizations in the area of disabled sports, museums and institutions in the field of art and culture, so long as they have supra-regional significance or some kind of connection with Austria (§ 4a para. 4 EStG 1988).

These changes were made by Austrian legislature in response to a judgment of the European Court of Justice (ECJ) from 2011, in which it ruled that the exclusion of foreign institutions from favorable treatment of donations was against European Union law (Heidenbauer 2011). All other charitable purposes, including those in the area of adult education, art and culture, remain excluded from favorable treatment of donations.

Issuance of a “Spendenbegünstigungsbescheid” (official notification confirming that favorable treatment of donations has been granted) by the Vienna 1/23 tax authority and the subsequent inclusion in the list of institutions eligible for favorable treatment of donations kept by the Federal Ministry of Finance (BMF) are prerequisites for the deductibility of donations. The beneficiary CSO must have existed for at least 3 years at this point. The presence of the prerequisites for beneficiary status regarding donations must be confirmed by an auditor and proof must be submitted to the authorities. Donations of up to 10% of the tax profit or (in the case of private persons) earnings of the current year are deductible (§ 4a EStG).

At the present time, 965 organizations receive favorable treatment of donations, including 736 charitable organizations and 20 environmental or animal rights groups. The rest are scientific institutions.

Practical features

**Practice-indicators**

**Tax benefits for CSOs are provided for**

1. There are no direct or indirect (hidden) taxes on subsidies/grants/donations.
2. Tax benefits for economic activities of CSOs are effective and promote these activities.
3. Passive forms of investment/capital investments are exploited by CSOs and not penalized by the law.
4. (Charitable/non-profit) foundations can be established without great difficulty and can be run without administrative efforts or high costs.
5. The legal framework for exchanges is clearly defined.

**Deductibility of donations**

6. There is an appropriate procedure for obtaining tax benefits for private and corporate donations.
7. Donations to CSOs which operate in important areas of public interest, including human rights and watchdog organizations, are tax-deductible.

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84 https://service.bmf.gv.at/service/allg/spenden/_start.asp retrieved 19 May 2014
From the point of view of experts polled for this report, the major and most common problems for CSOs regarding taxes arise in the context of turnover tax and charges linked to wages and salaries. Difficulties often arise without the affected organizations being fully aware of the risks (interviews 13, 16, 22). One explanation which was offered is that entrepreneurial awareness and knowledge of tax liability in connection with the exchange of services rendered for money is generally underdeveloped in Austria. This is why idealistic associations which start out as small organizations, then gradually grow and diversify their activities, often become liable to tax without being aware of the fact. This also holds for exchanges, carpooling organizations, etc., where a taxable exchange of services also takes place (interview 13).

An additional problem is that tax-related issues in the context of CSOs – which often rely on highly diversified sources of income such as donations, subsidies, sponsorships, revenue from economic activities etc. – are outstandingly complex, meaning that an adequate degree of legal certainty is only attainable with the help of tax experts who are familiar with the matter (Online survey, interview 13). Only few organizations – mainly the large ones and those acting on a professional level - call upon the help of such experts and are prepared or able to bear the costs (interviews 13, 23). De facto, therefore, there have been instances where CSOs had accumulated tax debt of several hundred thousands of euros – an amount which threatens the very existence of an organization when it is claimed by the authorities. In extreme cases, board members can personally be held liable. There are also instances, however, where the opposite happens and CSOs make no use of tax benefits for lack of expertise (interviews 13, 16).

The situation takes a dramatic turn for CSOs when the authorities, in the course of an auditing, reach the conclusion that the (tax)-supported purpose is no longer immediately and exclusively fulfilled. As a matter of fact, it seems to be increasingly common in administrative practice to classify assistance offered to other CSOs in return for payment, e.g. supplying personnel, making infrastructure available, accounting etc., as "begünstigungsschädlich" - a reason for suspending tax benefits. In this case, CSOs are threatened by the loss of public benefit or non-profit status and retroactive claims, with those claims including not only turnover tax but also tax on income and wage taxes (municipal tax). In the opinion of many experts, the demand for immediate fulfillment of purpose in particular does not do justice to present conditions in which division of labor is on the increase and CSOs frequently collaborate in international or national networks (interviews 13, 14, 16).

A formal error in the legal basis (articles of association) or the fact that the means for accomplishing the beneficiary purpose mentioned in the articles of association do not correspond to actual practice in the organization suffice to forfeit tax benefits (Online survey, interview 13).

In such a case, the CSO or its fiscal representative will attempt to reach an agreement with the authority. In the course of such proceedings, a settlement is often reached according to which a CSO repays part of its debts but does not lose its tax benefits (interviews 13, 21, 23). In this context, some criticize the fact that CSOs are thus at the mercy of the officials’ goodwill. As one of the tax experts polled for the survey put it rather drastically: "One party is sitting on the longer branch with a saw in hand and the power to cut off the branch at any given time" (interview 13). Then again, others believe that the "rules of the game" are known and that there should be no interference with current practice, except for a few small amendments in the fiscal treatment of club events or employment projects.

The case of the “Association against animal factories” ("Verein gegen Tierfabriken", VGT) which, apart from being prosecuted pursuant to § 278a StGB (criminal code), the so-called „Mafia-clause“, had to submit to a tax inspection after the Federal Ministry of Finance had expressed doubts concerning the association’s benefit to the public to the responsible tax office, shows that the charge of dependence on the goodwill of officials is not pure invention.15 In other cases where CSOs with close links to the regional authority, a political party or other public institutions are

involved, tax authorities are more willing to turn a blind eye and overlook circumstances which would clearly justify suspension of tax benefits (interviews 13, 16, 23).

Another grey area exists with regard to municipal tax which is collected by the local authorities and the amount of which is, to some extent, “subject to negotiation” (Online survey, interview 16).

Meanwhile, there is evidence that, in view of their precarious financial situation, many communities are reluctant to welcome charitable or non-profit enterprises - which are exempt from municipal tax - in their municipal area.

The Associations Guidelines, which are a major point of reference during the assessment of fiscal facts and circumstances, provide clarification in many areas, but they are not binding for authorities and courts. This explains why decisions in the first instance are seldom appealed: experience has shown that the second instance - the Independent Finance Senate ("Unabhängiger Finanzsenat"), now called the Federal Finance Court ("Bundesfinanzgericht") - strictly abides by the law and its ruling usually turns out to be to the disadvantage of the CSO. Some regard this as an alarming fact in the light of the principle of the separation of powers, because the legislature leaves (too) much room for interpretation for the executive. They demand that, through regulations, for example, more clarity, validity and legal certainty be ensured (Online survey, interviews 13, 16, 22). Legal experts also warn that first instance decisions may be annulled by the independent Federal Finance Court or the Superior Administrative Court (VwGH) more often in the future, e.g. as a result of competition complaints, and that precedents will thus be set which could have far-reaching consequences for non-profit organizations (interview 21).

Meanwhile, it cannot be ruled out that entrepreneurs will attempt to exploit this grey area, e.g. by establishing a public-benefit or non-profit limited company and enjoying associated tax benefits while actually running a commercial business. This kind of thing is said to occur frequently, especially in the advisory services sector (interview 22). Tax authorities have reacted to this by increasing inspections, a measure which is facilitated by the fact that corporations are recorded in the commercial register. Nevertheless, the image of the whole sector suffers considerable damage if distinctions between commercial and non-profit activities become blurred or rules dividing the two are being circumvented (interviews 13, 16, 22).

In contrast to Germany, Austrian tax authorities do not issue an official assessment or a notice of exemption when tax benefits are granted. This is why it is not possible to get accurate information on the exact number of non-profit or charitable organizations in Austria. In the past, some CSOs have had the relevant tax authority informally confirm the regularity of their articles of association. These confirmations, however, offer no protection if, in the course of an audit, the authority reaches the conclusion that the respective organization has pursued activities which compromise its right to tax concessions. Also, such formless confirmations are insufficient evidence in case organizations have to prove favorable tax treatment to foreign authorities in order to obtain favorable treatment of donations in these countries.

This is why CSOs which are entitled to favorable treatment of donations in Austria use the "Spendenbegünstigungsbescheid" (notification that favorable treatment of donations has been granted), which presupposes non-profit or charitable status, to provide the required proof. Of course, this option is only available to a limited number of organizations and charitable purposes. Thus, human rights organizations only become entitled to favorable treatment of donations by declaring themselves charitable organizations, while animal rights organizations which do not run animal shelters according to relevant regulations are excluded from deductibility of donations. It also remains incomprehensible to many that tax deductibility does not apply to donations to art and cultural associations in Austria - which is, after all, considered to be a "land of culture" (interviews 13, 21).

Until 2011, beneficiary organizations focusing on research and teaching were treated differently from charitable and other organizations, which have also enjoyed tax benefits for donations from 2009 onwards. The latter are obliged to undergo annual inspections by a certified public accountant.
which satisfy the requirements of §§ 268 ff of the Austrian Corporate Code ("Unternehmensgesetzbuch", UGB). Since 2012, this also applies - with certain exceptions - to beneficiary research and adult education facilities. Because these examinations involve considerable costs for small associations, the number of such organizations has since gone down significantly (FVA 2013a).

Potential for improvement

Tax experts and CSO representatives interviewed largely agreed that there were opportunities for improvement in the following areas:

Legislation:

1. Normative and partially outdated concepts like common public interest and charity which form the basis of the Federal Fiscal Code and other laws should be put up for discussion and restated in the light of the developments which the sector has seen in the past five decades (Online survey, interviews 14, 16, 22). Such a reform should aim at enhancing legal certainty for CSOs, the simplification of administrative practices, the reduction of existing discrimination, and the promotion of public services and civic engagement among the population while, at the same time, preventing abuse. This could be achieved by declaring the promotion of the non-profit sector a state objective, which was already done, for example, in connection with gender equality, equal treatment of people with disabilities, environmental protection and animal welfare. CSOs’ inherent principle of honorary or voluntary service – referred to as “selflessness” in Germany – should be acknowledged in particular (interview 22). As a matter of fact, the coalition government which was sworn in in December 2013 incorporated a proposition for establishing “a distinct legal framework for public benefit or non-profit organizations” in its agenda for the following years, without, however, putting the plan into action.87

Specific proposals:

2. Tax benefits for CSOs should be granted ex ante in a distinct legal act, e.g. by issuing an official assessment or a notice of exemption, or by enrolment on a register. This would provide CSOs with an adequate degree of legal certainty even at the point of formation. (Online survey, interviews 21, 22, 23, 24). A routine inspection by the authority or on its behalf after a maximum of five years in order to prevent abuse is conceivable (interview 22).

3. The requirement of immediate and direct fulfillment of purpose should be mitigated. As is already the case in Germany, organizations should be allowed to place part of their resources at the disposal of other organizations which serve the same beneficiary purposes (Online survey, interviews 13, 14).

4. A move away from the requirement of exclusive fulfillment of purpose in order to enable private foundations in particular to get more involved in public benefit or non-profit ventures is at least worth thinking about (Online survey, interview 13). While some say that this would render monitoring more difficult and encourage abuse, experts maintain that the accounting methods and technologies available today allow for full traceability of funds (interview 13).

86 Universities, music and (performing) arts universities or colleges, the Academy of Fine Arts, research promotion funds ("Forschungsförderungsfonds") on national and on state level, the Austrian Academy of Sciences and equivalent institutions based in EU member states or a state which entertains a relationship of broad administrative cooperation with Austria are exempt from this regulation (§ 4a EStG).

5. The government has already made plans to “create, in certain areas, a legal basis for charitable/non-profit foundations by establishing a national supervisory structure”\(^{88}\). This plan should be put into action as soon as possible (Online survey).

6. The right to tax and insurance–free reimbursement of costs which already applies in the context of sports clubs should be extended to all charitable/non-profit CSOs (Online survey).

7. Like operating assets, external assets of fundraising organizations and foundations should be exempt from capital gains tax liability if donations are used for financing the relevant charitable activity (Online survey).

8. Favorable treatment of donations should be made available to all charitable or non-profit purposes, especially in the areas of health care, education, youth, art and culture (interview 13). Discrimination against animal rights organizations (which do not run animal shelters) should be eliminated (Online survey).

9. Maximum tax allowance for donations should be raised and spread over several years, as is already being done in Germany, where up to 20% of the annual profit (or annual revenue) or up to 2 million euros, spread over 10 years, are deductible (Online survey).

10. Input tax, which the non-entrepreneurial sections of CSOs are liable to, could be compensated for by offering an investment premium in the amount of the non-deductible input tax. Such a premium is already available to certain non-profit organizations in accordance with the Health – and Social Sector Subsidies Act (“Gesundheits- und Sozialbereich-Beihilfengesetz”, GSBG 1996) (Online survey).

CSOs and their advocacy groups:

1. CSOs should enhance compliance measures and commit themselves to increased transparency in accounting – e.g. by obtaining the Austrian “Spendengütesiegel”, a quality label which requires regular inspection and thus guarantees the lawful and appropriate utilization of donations (interview 13).

2. CSOs and their interest groups should discuss the attempts of the European Union to harmonize common public interest and tax benefits for public benefit/non-profit organizations and participate in relevant consultations (interviews 22, 24).

3. At the same time, alternative models of preferential fiscal treatment of CSOs and deductibility for entrepreneurs and private individuals which already exist in other member states, e.g. in Germany, Hungary or Romania, should be explored and evaluated in terms of their suitability for the Austrian non-profit sector (Online survey).

6. EMPLOYMENT AND VOLUNTEERING

During the past decades, the non-profit sector has developed into a major field of employment (see also chapter III/3). Several developments suggest, that this trend will continue in the future – at least, in certain parts of the sector. One such part is the care sector, which, due to current demographic developments, will become even more important in future decades (Schneider et al. 2006). In Austria, the state traditionally plays a major role in the financing of care work. The question of how an adequate amount of nursing services may be provided in the future was extensively discussed in recent years. Apart from financing issues, the availability of (qualified) nursing staff poses a major challenge. Low wages and difficult working conditions lessen the appeal of this professional field. With regard to services in the social and health sectors, CSOs often face the challenge of meeting increased demand while revenues from public funds are on the decrease or remain level (Simsa/More-Hollerweger 2013). This often affects working conditions and puts CSOs in a paradoxical position: while they are committed to social welfare, their employees are working under difficult conditions and CSOs, thus, contribute to the casualization of employment (Dimmel 2012). In the social and healthcare sectors, the number of precarious employment relationships is above-average (Liebig/Karla 2003; Dathe et al. 2009), and burnout is a serious issue (Schober/Schober 2004). This is not a specific problem of the non-profit sector, but a problem of the respective line of work, as discussions concerning 24-hour care have shown. However, people working in fields of activity which CSOs specialize in are often characterized by specific motivational structures. This applies to employees and volunteers alike. Apart from pursuing economic goals, e.g. earning a living, many also have a social, political or cultural agenda for which they are prepared to waive part of their salary, do off-the-clock overtime or volunteer (Haider/Schneider 2009). This explains the variety of different forms of employment to be found in the non-profit sector, e.g. volunteering, community service, voluntary year of social service, voluntary ecological year, etc. In view of these circumstances, a legal framework which regulates the interface between paid and unpaid work in the interests of all concerned parties seems important. The aim of this chapter is to depict the current legal framework within which CSOs operate and its practical implementation.

Legal regulations

**Legal regulations-indicators**

**Employment**

1. CSOs are treated like other employers by politics and by the law.

2. Funding authorities are obliged to finance wage increases which were fixed in wage agreement negotiations, i.e. they are obliged to valorize funds.

**Volunteering**

3. There are clear regulations demarcating voluntary work and employment relationships.

4. Legislation promotes voluntary work, provides for coverage and - at the same time - permits spontaneous voluntary engagement.

5. There are clearly defined legal regulations concerning contractual relationships and protective measures for organized voluntary work.
6. There are clearly defined legal provisions on contractual relationships and protective measures for people completing a voluntary social /ecological year in their home country or abroad.

CSOs are largely treated like other employers by the law and by politics. However, there have been repeated demands for positive discrimination of CSOs and/or non-profit organizations with regard to labor costs, in order to give them a competitive edge in this respect. It is argued that CSOs do not distribute their profits to owners but reinvest them to accomplish their mission, thus contributing to a positive social impact. Because of the sectors’ general focus on the provision of services, many areas of the non-profit sector require a large numbers of staff. Compared to the EU average, labor costs in Austria are relatively high. In Austria, the tax wedge, that is, the total of wage taxes, social security contributions and other wage-related contributions by employers and employees, accounted for 49.1% of overall wage costs assigned to individuals without children.\(^\text{89}\)

Suggestions concerning positive discrimination of charitable NPOs aim for a reduction of non-wage labor costs. So far, non-profit associations pursuing charitable purposes in the areas of healthcare, childcare, youth work, care for the disabled, the blind and the elderly, are granted relief when it comes to municipal tax: Municipal tax only has to be paid for employees working in the entrepreneurial branch of an association, that is, in the commercial business operations section (indispensable auxiliary enterprise) or in another profit-oriented branch of the association (§8 22 KommStG 1993\(^\text{90}\)). Employees working in the major branches of the association are not subject to municipal tax.

Not all CSOs are subject to wage agreements, meaning that price settings do not apply. The BAG’s wage agreement for organizations active in the area of healthcare, social policy, work with the disabled, child and youth welfare and job market services has been effective since 2004. In 2006, the work agreement was given the status of a bylaw, meaning that it is now applicable to all organizations in these areas.\(^\text{81}\). While this constitutes an improvement in the legal protection of employees, it may become problematic for CSOs if the pay rise determined within the framework of the wage agreement is not covered by funding, as is often the case. As a result, a financing gap develops which either has to be covered by other revenue or which, in the longer term, leads to a reduction of staff (e.g. interview 8).

The Volunteer Engagement Act ("Freiwilligengesetz") has been effective in Austria since 2012. The act defines volunteer engagement as voluntary services provided by natural persons on a voluntary basis, within an organizational framework but without pay; with the objective of advancing the community or for predominantly social motives. Services are provided without any intention of earning money, and not on the basis of an employment relationship or in the context of professional training (§2 Abs. 2 Freiwilligengesetz).\(^\text{92}\) Moreover, the Volunteer Engagement Act provides special regulations for the voluntary social year (domestic), the voluntary ecological year (domestic) and the memorial service ("Gedenkdienst"), which involves peace and social service abroad. The latter constitute longer-term forms of volunteer engagement (6-12 months) in the case of which special rules apply, e.g. regarding allowance and various quality criteria.

Despite the existence of the Volunteer Engagement Act, the distinction between volunteer engagement and gainful employment often remains vague. Especially with regard to voluntary service abroad, legal certainty is still insufficient (interview 10). For the purpose of empowerment, it would also be helpful if people with learning disabilities (who are classified as unable to work) were allowed to perform easy tasks in the context of a care facility's daily routine.

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\(^{91}\) [http://www.bags-kv.at/1001,3535,0,2.html](http://www.bags-kv.at/1001,3535,0,2.html) retrieved 26 Apr. 2014

These tasks could be classified as voluntary activity, and the person performing the tasks would be covered by insurance and remunerated with an allowance (interview 4). Criteria such as (a) no contractual obligation with regard to job performance, (b) no payment, (c) will to do voluntary work (motivation) distinguish volunteer engagement from employment. An employment relationship is characterized by heteronomy (working hours, job location and workflow are determined not by the worker but by a superior) and by being subject to instructions and directives. It is possible to make bilaterally consensual agreements for which volunteers can be held accountable (e.g. violation of the agreement may lead to a claim for damages) (interview 6 and Eder 2009).

There are considerable differences in the coverage of volunteers depending on their occupation. According to §176 paragraph 1 ii.7a ASVG, accidents of volunteers working in rescue organizations (emergency medical and fire services) which occur during volunteering are treated as equal to occupational accidents, meaning that the person affected is entitled to treatment, rehabilitation and injured person's pension (Eder 2009). For other volunteers, no insurance coverage regulated by law is available, although voluntary organizations sometimes take out insurance (usually accident and liability insurance). In recent years, schemes were developed in which Austria's federal states (e.g. Tirol, Vorarlberg) took out accident and liability insurance for volunteers with private insurers (see also following section) (More-Hollerweger/Hora 2014). There is an ongoing discussion on whether volunteer engagement should also be taken into account in the social security records (especially the public pension scheme). A respective regulatory system has not been established so far (More-Hollerweger/Hora 2014).

**Practical features:**

### Practice-indicators

#### Employment

1. CSOs are treated like other sectors with regard to employment.

#### Volunteering

2. There are incentives and state-aided programs for the development and promotion of volunteer engagement.

3. Incentives and programs are characterized by transparency and easily accessible to civil society organizations. Political measures, strategic documents or laws are fully implemented, supervised and periodically evaluated on a participatory basis.

4. Volunteering may occur in any form. No complaints regarding restrictions on voluntary work have been raised.

Another problem mentioned in interviews is the deterioration of working conditions for employees which is a result of the outsourcing of social and healthcare services from the public to the non-profit sector. The mingling of voluntary work and employment is also problematic, because it establishes a grey area where intermediate forms of employment such as unpaid overtime, practical training, internships, or projects involving long-term unemployed persons who are not under obligation to work and are not entitled to compensation, e.g. engagement of unemployed persons for reintegration in socio-economic businesses (“sozialökonomische Betriebe”, SÖB) via the job center (“Arbeitsmarktservice”, AMS), prevail (interview 6).

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The UN’s declaration of 2001 as the International Year of Volunteers was an important incentive for Austrian federal politics to finally deal with the issue of voluntary work. Since then, a number of measures have been taken to promote volunteer engagement in Austria: the establishment of the Austrian Council for Voluntary Work, the Volunteer Engagement Act (“Freiwilligengesetz”, 2012), the development of curricula for initial and further training of volunteers as well as tools for documenting the voluntary work, e.g. in the form of a volunteering certificate (“Nachweis über Freiwilligenarbeit” or “Freiwilligenpass”) (Heimgartner 2009). The Volunteer Engagement Act provides for the periodical compilation of a report on the situation and development of volunteer engagement in Austria - the second edition of the report will be published in 2014. The reports serve as a basis for evaluating the measures implemented by politics and to enhance the perceptibility of voluntary work in society. The Austrian Council for Voluntary Work is composed of representatives of voluntary organizations from all areas of volunteer engagement and of delegates of the relevant federal ministries, provincial governments, employers' and employees' organizations, the Association of Austrian Cities and Towns and the Association of Local Authorities. The council participates in the conception of the report concerning the content and is also responsible for advising the Federal Ministry of Labour, Social Affairs and Consumer protection on political issues which affect the interests of voluntary organizations and volunteers themselves. The establishment of the council is statutory (§ 30 Freiwilligengesetz) and a meeting is called at least once a year. Moreover, the legislature is committed to promoting volunteer engagement, e.g. by granting subsidies to voluntary organizations, albeit organizations are not entitled to funding (§2 Freiwilligengesetz).

Only few promotion programs specifically support voluntary organizations with regard to acquisition and support of their volunteers. In a survey involving about 700 voluntary organizations, an open question was asked regarding the improvement of framework conditions. (More-Hollerweger/Hora 2014). Frequently, the desire for support concerning accident and liability insurance was expressed. In 60% of all organizations, volunteers are covered by liability insurance. 49% of these organizations pay for insurance themselves, while 11% of these organizations have other institutions bear the insurance costs for volunteers. With regard to accident insurance, the percentage of people covered is slightly lower. Here, 43% are insured via the organization itself, while 13% are covered via other institutions. An evaluation according to states shows that several organizations are apparently not aware of the availability of state-wide insurance which exist e.g. in Vorarlberg and Tirol (More-Hollerweger/Hora 2014).

It was also mentioned several times that legal certainty concerning expense allowances was wanting. Some organizations also desire more permissive regulations in order to avoid compulsory social insurance (More-Hollerweger/Hora 2014). Expense allowances and flat-rate reimbursement of expenses may be interpreted as hidden salary (interview 6). Liberal exceptions are only made for sports clubs. A demand made rather often was that volunteer engagement be credited against the public pension scheme (More-Hollerweger/Hora 2014), but there is no consensus on this issue. Opponents argue that this constitutes a form of payment.

Another topic mentioned in the interviews was that of providing incentives for employers who support voluntary engagement of their employees. Especially in the field of rescue organizations, (emergency medical services and fire service) the voluntary activity often interferes with gainful employment, e.g. when volunteers are summoned to an operation during working hours or when their work performance is affected after a long night doing voluntary work. An obligation for employers to temporarily release the volunteers from duty is not regarded as desirable because it might lead to discrimination of volunteers when they are in search of work. Rather, support measures for employers who are open-minded about voluntary commitment are being discussed (interview 2).

Potential for improvement

The following suggestions for improvement were made in the context of interviews and in complementary sources (especially More-Hollerweger/Hora 2014):
There is need for improvement regarding legal regulations for several forms of employment which are common in the sector, e.g. social service abroad (interview 4, 6, 10).

The introduction of more permissive regulations in the legal grey area between expense allowances and salary, especially with regard to social security and income tax (More-Hollerweger/Hora 2014), would be desirable (Interview 6).

Regulations concerning accident and liability insurance are unsatisfactory for most volunteers. With the exception of a few special volunteer groups (e.g. ambulance and fire services) and volunteers in certain federal states, it is up to the volunteers’ or the individual organization's discretion to take out appropriate insurance. As a consequence, many volunteers are not covered by either accident or liability insurance. Suggestions in this respect range from placing CSOs under an obligation to insure their volunteers to requests that the public authorities guarantee full insurance coverage for volunteers. With regard to longer-term forms of voluntary engagement, financial support in health insurance would be desirable (More-Hollerweger/Hora 2014, interview 10 and 6).

Potential for improvement also exists with regard to crediting voluntary engagement against the public pension scheme (More-Hollerweger/Hora 2014, interview 6).
7. PROVISION OF SERVICES (SERVICE AGREEMENTS / FUNDING)

CSOs offer a range of services. The state acts as a major contracting entity and sponsor and, thus, influences the activities of CSOs in many ways. In the following section, the legal framework and practical configuration of the relationship between CSOs and the public sector in the context of rendering services will be examined.

Legal regulations

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<th>Legal regulations-indicators</th>
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**CSOs as service providers**

1. Existing legislation enables CSOs to offer services in a variety of sectors such as education, healthcare, and social services.

2. Existing legal provisions do not involve additional burdens for CSOs which do not exist for other providers.

**The state as a demander of social services**

3. The state budget provides financial means (including multiannual means) for different kinds of services provided by CSOs.

4. There are no legal restrictions to prevent CSOs from obtaining public funds for the provision of services (either through service agreements, through other contractual forms or in the context of other funding schemes).

5. CSOs may sign long-term contracts for provision of services.

**Availability of public funds to CSOs**

6. There are laws and other kinds of regulations governing state funding for the institutional development of CSOs, project promotions and the co-financing of EU-projects.

7. A procedure for the distribution of public funds to CSOs exists on a national level.

8. Public funds for CSOs are recognizably calculated in the budget.

In Austria, CSOs are active in many areas of social life, e.g. in education, healthcare, social services, art/culture, sports etc. In these contexts, they are often competing with other (public and profit-oriented) providers, as is the case with schools, retirement homes or playschools (kindergarten), where different providers usually offer a similar range of services. The nature of the services provided in the non-profit sector, however, is often slightly different. Thus, sports clubs normally offer activities which are more participatory than those of fitness centers. In the educational sector, offers differ according to ideological orientation. In Austria, there are denominational providers (e.g. catholic or protestant) on the one hand and educational providers who focus on the implementation of particular pedagogic concepts (e.g. Montessori or Waldorf education) on the other. While it is basically possible for CSOs to offer services, the fiscal non-profit status conflicts with the participation in tendering procedures, since CSOs are in danger of failing to
fulfill the criteria for non-profit status. Thus, they risk to lose benefits that come with non-profit status but also the non-profit status itself (Ansastasiadis et al. 2005).

The state is a major contracting authority and sponsor of various services. As was mentioned in chapter II/3 above, public funds contribute about 53% to CSO revenue (Schneider/Haider 2009). Essentially, there are two different ways in which the state may act as a demander of services (Ansastasiadis et al. 2003):

1. **Service agreements**:\footnote{94}{The term „service agreement“ („Leistungsvertrag“) has not been accurately defined so far – Neumayr (2010), for example, also refers to financial assistance in cases where the object or project to be sponsored is described in great detail, as a service agreement.} in this case, clearly defined services are commissioned. Public procurement law constitutes the legal basis.

2. **Funding/subsidies**: projects and expenditures in infrastructure may be entitled to funding. The level of detail regarding the definition of what exactly is being sponsored varies considerably. One may distinguish between funding by decision/notification (in the context of sovereign administration) and subsidy agreements (in the context of the private sector). Here, general administrative law, state budget law, civil law and EU funding guidelines constitute the legal basis.

CSOs are contractors as well as recipients of funding, and they sign **multi-year contracts** (interviews 2, 3, 4). One-year contracts, which may be extended, are common as well (interviews 3, 4). On the part of the EU, there is a trend toward abandoning long-term contracts in order to increase competition (interview 9).

In recent decades, public authorities have increasingly awarded service agreements in order to increase competition through tendering procedures. This tendency is, above all, a result of the EU’s competitive policy. In subsidy contracts, tighter definitions concerning the services to be provided are also being introduced, while disposable benefits are hardly ever granted at the moment. In this case, too, European framework conditions are a decisive influence. EU law on state aid ("Beihilfenrecht", Art 87 EG) specifies what kinds of financial benefit the member states may grant to organizations which provide public services. State aid in the form of subsidies is subject to validation by the European Commission’s state aid control. By contrast, funding obtained in exchange for specific service, does not count as benefit (Neumayr 2010).

The upside of this development (from subsidies/funding to service agreements) is that CSO go from being the supplicants to being partners on an equal footing (Neumayr 2010). Thus, prices fixed under public procurement law, for example, are only valid for a maximum of 12 months (§24 para. 7 BVergG 2006), after which period they have to be valorized and adjusted (interview 9). No corresponding index clauses exist with regard to funding, as will be explained further below. However, there are disadvantages to the focus on service level agreements. Critics argue that, in tendering procedures, the emphasis is on costs only. This leaves little room for the consideration of other functions or alternative processes of service provision which may generate added (social) value, meaning that the purchased services are not always best in quality (interview 8). Researchers\footnote{96}{Neumayr (2010) provides an overview.} are currently investigating **the extent to which service agreements or clearly specified subsidy contracts cut out advocacy or community building functions** frequently assumed by CSOs. It is argued that cross-financing of these functions is no longer possible and that growing professionalization will lead to a crowding-out effect (Neumayr 2010).

**Employment of volunteers** constitutes one such example. In Austria, ambulance and fire services are inextricably linked to the concept of volunteer engagement. Apart from providing relevant services, however, these organizations also fulfill other functions (Schober et al. 2012).
2012, Austrian fire services alone had a total of 338,664 members\(^97\) (which amounts to just under 4% of the Austrian population), meaning that as many people have had training and command the respective skills, meet periodically and are, therefore, involved in social networks. The same holds true for volunteers in emergency medical services. This implies that **CSOs have an impact on society which greatly exceeds the mere provision of services**. It is, therefore, problematic, that profit-oriented organizations which do not aim for additional social impact but simply distribute profits to owners are in competition with CSOs. In the context of tenders, it is only the ability to perform specific services which counts – additional effects are not taken into consideration. Another problem occurs when individual services (e.g. ambulance services) are singled out from a cluster of services (e.g. ambulance and emergency medical services) and put out for tender. On the one hand, potential synergy effects are lost. On the other hand, profit-oriented businesses prefer to service areas which promise to yield a profit while CSOs – in accordance with their ideological purpose – consider things in their entirety, which facilitates cross-financing between different work areas. If individual services are singled out, cross-financing is no longer possible, and additional funds are required. The exclusive focus on the provision of specific services endangers existing and well-functioning social structures, participatory elements in service provision, and may even result in economic drawbacks (interview 2). New ideas, the diversity of providers, and quality are lost, if service providers are chosen only according to the principle of the cheapest offer.

Thus, efforts are being made to establish the criterion of common public interest in public procurement law. On EU level, this has already been achieved in the context of ambulance service. A common public interest clause was incorporated in the public procurement and concessions directives on a European level. This means, that carriers of ambulance services (e.g. local communities) may assign responsibility for the service to non-profit organizations without issuing a formal Europe-wide call for bids (Glanzer/Dempfer 2014\(^98\)). The move was justified by saying that it would be difficult to preserve the nature of public benefit/non-profit organizations or associations if service providers had to be chosen according to the procedures specified in these directives.\(^99\) The EU public procurement and concessions Directives will be implemented in Austrian law in spring 2016.

Funding by the public sector is individually regulated, depending on field of activity and the funding authority. There are no separate regulations concerning CSO funding, especially because the term “CSO” is not established anywhere in Austrian law. Nonetheless, clubs and societies, for example, are often mentioned explicitly as institutions eligible for funding, and CSOs actually benefit from funding in many areas of social life such as arts, culture, sports, social services etc. National public funds for CSOs are included in the budgets of the state, the federal states and the communities. The amount of funds is not legally regulated but at the discretion of politics and the administration. For lack of statistical data, the share of funding for CSOs in Austria cannot be calculated.

**Practical features:**

**Practical-Indicators**

**CSOs as service providers**

1. CSOs are able to obtain and conclude contracts in competition with other providers, and they are active in different fields of the services sector (e.g. education, health, research).


2. CSOs are involved in all stages of the development and provision of services (market analysis, determination of services which best meet people’s needs, monitoring and assessment).

The state as a demander of social services

3. CSOs receive funds in exchange for services.

4. CSOs receive sufficient funding to cover basic costs of contractually agreed services including prorated institutional (overhead) expenses.

5. Multi-year services are valorized periodically.

Availability of public funds to CSOs

6. Public funds meet the requirements of the CSO sector.

7. There is a governmental authority with a mandate which clearly entitles it to the distribution and monitoring of government funds.

8. Funding is predictable. There are no radical cutbacks from one year to the next, and the share of the budget allocated to CSOs can be easily identified.

9. CSO participation in the public funding cycle is transparent and significant.

CSOs offer a wide range of different services in many areas of social life, and they participate in tenders. The following are two major examples for tenders that were hotly debated in the Austrian media. In both cases, CSOs were in competition with profit-oriented businesses:

1. **Refugee support (centers) – federal care facilities (“Bundesbetreuungs-einrichtungen”) Traiskirchen, Thalham, Bad Kreuzen and Reichenau:** In 2003, two providers were nominated as final candidates in the tender for outsourcing federal care facilities: European Homecare and a consortium including Rotes Kreuz (“Red Cross”), Caritas, Diakonie and Volkshilfe. The German company European Homecare emerged as a winner, but the contract was cancelled in 2010 for lack of economic viability. The Swiss company ORS was awarded the contract in 2012 after a renewed tender.

2. **Ambulance service (“Rettungsdienst”) Tirol:** In 2010, the country of Tirol contracted out its ambulance service after it had been put out for tender on a European level. Apart from a Tyrolean consortium of bidders (including Rotes Kreuz, Arbeiter-Samariterbund, Johanniter-Unfall-Hilfe, Malteser Hospitaldienst and Österreichischer Rettungsdienst), Falck, a Danish company, submitted an application. The latter, however, was not awarded the contract. The consortium had to amend costs, whereupon Falck filed a lawsuit. The lawsuit was dismissed and is currently in the hands of the Administrative Court.

**Criticism** concerning these tenders was, on the one hand, directed against profit-oriented businesses. Profit-oriented companies were reproached for lowering their sights with regard to quality (Falter 100 12.07.2011). Besides, the public authorities’ approach to the problem was criticized. With regard to the refugee support centers, critics argued that the authorities had given profit-oriented companies preference because they had no political agenda and, therefore, made for more “agreeable” trade partners (ibid.). CSO representatives also mentioned that it was

100 http://www.forum-vergabe.de/fileadmin/user_upload/Rechtsvorschriften/Annahme_Modernisierung/Text_SKR_neu.pdf retrieved 14 Apr. 2014
difficult to obtain information from providers because they were, as a part of the contract, apparently bound to secrecy. They were, therefore, not allowed to pass on information which would have been important for advocacy-related work (interview 5). Concerning the tender of the ambulance service, the public authorities were accused of using tendering procedures deliberately to cut prices (Tiroler Tageszeitung\textsuperscript{101}).

In the context of interviews, it was mentioned that it was difficult for smaller organizations to participate in a tender because extensive legal know-how was required. Interviewees also said that participation in tendering procedures meant a lot of work (interview 11).

In many areas in which CSOs are active, funding still plays a decisive role. A wide range of services is, therefore, provided within the framework of subsidy contracts. Conditions regarding funding vary depending on the area of activity. In some cases, several local authorities are involved in the financing of particular services. The policy of cutbacks is often palpable, albeit not in every organization. Thus, state funding for sports (“Bundes-Sportförderung”) has continually increased in recent years. In a survey of 53 CSOs, the financial situation in the years from 2008 to 2012 seemed surprisingly stable in the sample (Simsa/More-Hollerweger 2013). All in all, the situation remained the same for the organizations polled. 6% each state that their financial circumstances have either improved or worsened considerably. 34% have seen improvements, 30% have seen deterioration, and 24% have experienced no change in their financial situation. Even so, demand for activities or services provided by NPOs has increased considerably in the past four years, as has the actual supply. 96% report increased demand, with 35% of those reporting an increase in demand of 20%. A majority of NPOs (80%) have stepped up quantitative supply – 27% have upped supply at a rate of more than 20%. More than 80% are offering a greater variety of services, e.g. additional advisory activity, services for new target audiences, and new contents or networking activities (ibid.). Considering current demographic developments, large amounts of additional funds will be required in the future, especially in the social and health sectors.

In the context of another survey (IGO 2013), 256 public benefit organizations were interviewed on their level of satisfaction concerning funding conditions. 62.2% of those who were polled and had entered into subsidy agreements with the public authorities stated that they were not satisfied with existing regulations. Insufficient value adjustment with regard to services was referred to as the most urgent problem. Almost 46% said that an increase in multi-year contracts (with 3-year contract duration as a minimum) would be a desirable improvement.

\textsuperscript{101} \url{http://www.forum-vergabe.de/fileadmin/user_upload/Rechtsvorschriften/Annahme_Modernisierung/Text_SKR_neu.pdf} retrieved 14 Apr. 2014
Es sollte ein allgemeiner (kostendeckender) Tarif für Leistungserbringungen ermittelt werden und gemeinnützige Organisationen können sich dann für diese Leistungen bewerben.

Fördergeber sollten nach einer Ausschreibung von Leistungen einen Vertrag von mindestens 3 Jahren mit der gemeinnützigen Organisation abschließen, der nur in Ausnahmefällen gekündigt werden kann.

Eine regelmäßige Valorisierung der Leistungen sollte fester Bestandteil der Vereinbarung sein.

n=118
Source: IGO (2013)

Several problems relating to funding conditions were mentioned in the interviews:

- **Economic exposure**

  The above mentioned *lack of index adjustment (value adjustment)* in (multi-year) funding was also confirmed in interviews. Financing gaps develop when collectively agreed pay rise coincides with stagnant funding. Another problem which organizations face is that basic costs of services are normally covered, whereas *overhead costs* are only *insufficiently covered* (interview 4). Occasionally, CSOs are unable to fulfil legal requirements (e.g. exempted works council, depending on the size of the company) because these are not covered by the sponsors. In these cases, alternative ways of financing would have to be found, which is difficult for some CSOs. The conditions for funding are often very narrowly defined, meaning that CSOs are unable to build up reserves, which further increases economic exposure (interview 4).

  **Tariff decisions** are often made very *late* in the year. In extreme cases, subsidy contracts for the current year are only signed at the end of December, and payment is made even later. This means, that the CSOs have to bear the *risk*. To be sure, the ordering happens by implied conduct, but CSOs would still have to bear the risk of litigation if funding was denied. Furthermore, in cases of multiple dependencies between a CSO and the funding authority, CSOs run the risk of losing other projects if they go to court (interview 11). *Deferred disbursement* of public funds often leads to *liquidity problems* which, for smaller organizations in particular, are difficult to bypass (interview 8). Taking a gamble is generally difficult for smaller organization, unless they are highly specialized (interview 11). Sometimes, demand for services can not be controlled by CSOs but is regulated by the public authorities, e.g. the allocation of asylum seekers. A gradual process of concentration and a high level of self-exploitation in the context of CSOs are common consequences of these developments (interviews 5, 11).

- **Interference of public authorities in details of service provision; bureaucracy in accounting**

  In many interviews, the strong interference of the public authorities or its subordinate departments in details of service provision was mentioned. Often, it is not on the actual *quality of the provided services* which is measured, but, rather, the input. This becomes particularly obvious during *accounting*, which is an extremely bureaucratic and strenuous process. Sometimes, the accounting mode and, therefore, the costs eligible for funding, are only determined retrospectively (interview 4). One interview partner termed this an "Ersatzhandlung" (surrogate or compensatory
action): instead of focusing on what is relevant, only things that can be measured are taken into account. As a result, a high level of administrative effort is necessary for both the CSOs and the public authorities. Another problem is that different funding authorities use different accounting systems, which further increases overhead costs by increasing efforts in accounting (interviews 4, 8, 11).

- **Problem: conflict advocacy functions - dependency on the public sector**

Due to the strong dependency on the public sector, many CSOs cannot adequately perform required advocacy work. There is a constant threat of usurpation by the state (interviews 5, 11). CSOs often have a high level of competence in many areas because they are highly aware of the problems and needs of the beneficiaries. They often conduct internal negotiations, secluded from public awareness. This results in a lack of public dispute between CSOs and the public sector concerning developments in various highly sensitive areas (interview 11).

CSOs have acquired a high level of expertise in solving social problems in many areas. This expertise also has an influence on the **development of new services**, even though it does not always have the degree of influence deemed necessary by CSOs. Interviewees stated that innovation in the area of social services is not valued by the public authorities because it is mainly seen as a cost factor. The hospice sector, however, was referred to as a positive example in this context. There used to be urgent need for action in this area which was initially covered by CSOs by means of donations. Subsequently, the public sector took over financing (interview 11). Possibility of involvement of CSOs in the run-up to tenders is limited, because it would entail an exclusion from the tendering procedures. The only possibility of contributing expertise is to ask questions aiming at rectification or adjustment of the performance description. With regard to services which can not be described a priori by the contracting authority, there is the instrument of the procurement procedure which takes the input of the bidder into account (interview 9).

**Potential for improvement**

During the interviews, the following areas of improvement were mentioned:

In the **public sector**:

**Framework contracts**

The desire for a higher level of planning security through **multi-year framework contracts** is a major concern. It is desirable that the funding authorities themselves develop long-term strategies for the following years, so that CSOs can adapt to them. Contracts without an **index clause** should not be drawn up for service providers who are very demanding in terms of human resources, because "staff whose job it is to care for people needs to be competent and motivated." (interviews 3, 8, 11) Overhead costs should also be adequately funded.

**Definition of quality standards**

Interviewees also expressed a wish for a more precise definition of quality standards in conjunction with a reduction of regulations to the crucial aspects necessary for ensuring quality (Interview 11).

Similar to the health sector, where target agreements are common, a clear definition of quality should also be established in other areas of service. Furthermore, clear arrangements should be made regarding the partitioning of funding among the different sponsors (interview 2). A catalog of criteria which ensure that quality standards are maintained when social services are transferred to private service providers should be developed (interview 8).

Furthermore, the assignment of an expert committee for assessing the quality and the price - performance ratio of projects was suggested ("instead of ministerial bureaucracy") (interview 5).
**Strengthening common public interest**

Public benefit organizations should be given preference in the awarding of contracts for certain services. The fact that CSOs do not pay a dividend to owners but reinvest their profit instead is an important argument in this context. Moreover, they create added social value, that is, they achieve a kind of impact which goes beyond the provision of services. What CSOs do is for the public benefit and should be supported and funded accordingly (interview 2, 4, 8).

**Possible configuration of competition/award criteria**

The following suggestions concerning the configuration of award procedures were made in interviews:

1. Different configuration of the procedures: 1. Procedure for establishing whether an organization meets the requirements 2. Agreement on the exchange of services 3. Inspection and monitoring (interview 8).

2. Commissioning of suitable organizations which were previously issued a seal of approval.

3. Approval procedures – whoever meets certain criteria may submit an offer on certain terms (within a certain price range), quality criteria are defined in advance.

4. Competition on the market, including approval procedures. Whoever meets framework conditions may submit an offer within a particular price range. This means, that there is a focus on the regulation of services and conditions for particular target groups, as well as on appropriate quality control. Positive discrimination of public benefit organizations should be possible. By contrast, competition for the market implies that one provider covers the entire market. This results in the monopoly of one provider, while the competition is driven out of the market (interview 11).

**Diversity – taking smaller organizations into account**

Interviewees suggested the establishment of safety nets for smaller organizations, for example, by providing a basic allowance combined with performance-based financing (e.g. if organizations offer counseling or housing for refugees – such accommodation is not always fully occupied, but CSOs still have to deal with overhead costs) (Interview 5).

In addition, counseling for smaller organizations regarding tenders/bids would be desirable.

**Clarification of responsibilities**

In many areas (e.g. housing and work for disabled persons), a definite clarification of responsibilities (state/federal state/community) is necessary. Where several carriers are involved in funding, coordination among them should be improved (interview 2, 8).

In **CSOs:**

**Advocacy**

In order to be able to advocate their interests and concerns more effectively in public, CSOs should pool and advertise them (Interview 8).
8. TRANSPARENCY IN THE CONTEXT OF SERVICE AGREEMENTS AND FUNDING

Transparency in the awarding of service agreements and the allocation of funds became a central issue in recent years. In the following section, framework conditions and topics relating to practical implementation of the concept will be analyzed.

Legal regulations

**Legal regulations—indicators**

**Transparency in awarding service agreements**

1. There are distinct and transparent procedures for distributing financial resources to service providers.

2. The costs are not the decisive criterion when it comes to choosing a provider. Apart from costs, quality criteria play a major role in the assessment of competitors.

3. There are clear guidelines to ensure transparency and avoid conflicts of interest.

4. It is possible to object to the outcome of a competition on a legal basis.

**Transparency in allocation of funding**

5. Procedures for allocating public funds are transparent and legally binding.

6. Eligibility criteria are plain and advertised in advance.

7. There are distinct procedures addressing potential conflicts of interest in decision making.

**Accountability/monitoring/evaluation in the context of service agreements**

8. It is legally possible to monitor expenditures as well as the quality of service provision.

9. Quality standards and control procedures regarding services are available.

**Accountability/monitoring/evaluation in the context of state funding**

10. The procedure for the distribution of public funds includes specific provisions regarding accountability, monitoring and evaluation.

11. There are mandatory penalties for CSOs which misuse funds. These penalties are proportional to the degree of violation of the procedure.

12. Available public funds are advertised on the website of the responsible institution and are updated once a month.
Public procurement law does not distinguish whether purchased services are provided by the carriers from the public sector, profit-oriented companies or CSOs. The decisive factors are legal (trade law), technical (facilities, staff, references), and economic performance (contract value in relation to total sales) (interview 9). Tenders have to be configured in a way which neither favors nor discriminates against particular interests (§19(1) „Bundesvergabegesetz“ (Public Procurement Act) – principle of equal treatment of all bidders in competitive tendering procedures), which means that, according to law, best possible supply is the main concern of the contracting entity (interview 9).

A wide range of funding is available in Austria from different funding authorities. The website of the Austrian Federal Ministry of Finance (BMF)\(^\text{102}\) lists about 2.600 support programs on a national level and 3.100 programs on federal state level. Funding guidelines and award procedures (tender, submission, and evaluation) differ, depending on the sponsor. Funding guidelines tend to meet the criteria mentioned in the context of the indicators (clarity of eligibility criteria, stating of conflicts of interest, guidelines on measures concerning accountability, monitoring and evaluation, mandatory penalties), although not always to the same extent.

Public procurement law is based on European Directives and guarantees clear guidelines and transparency in avoiding conflicts of interests. For example, discrimination is to be avoided at all costs even if no branch office has been set up in the domestic market (interview 9). “The principle of transparency is one of the most important principles in public procurement law” – procurement law distinguishes between the principle of the lowest and that of the best bidder. When choosing contractors, cost- and quality-related criteria are applied, e.g. experience, in the case of approved contractors. It is possible to raise an objection at the Public Procurement Office but this kind of procedure is very time-consuming.

There are distinct accountability, monitoring and evaluation schemes regarding service provision, including certain quality standards which, however, are not verified independently (by an external authority) (interviews 5, 8).

With regard to funding, attempts have been made in recent years to make the „funding jungle“ (“Förderdschungel”; verbatim BMF, Ministry of Finance) more transparent. In order to do that, a transparency portal („Transparenzportal“)\(^\text{103}\), which is to be extended step by step in the future, was set up. The aim is to offer a consistent description of all support programs available on a national level, to provide information on possible future funding and to assist organizations in the submission process. The portal distinguishes between benefits/funding for private persons, companies, NPOs and public institutions. It does not provide information on the amount of funding. Since the transparency portal constitutes a relatively recent measure, it remains to be seen to what extent it actually contributes to transparency.

In addition, attempts at enhancing transparency and clarity with regard to funding are being made in the individual sectors. Thus, it is the objective of the Federal Sports Promotion Act (“Bundessportförderungsgesetz“) to unambiguously define promotions in order to avoid multiple funding, among other things (interview 1).


\(^{103}\) https://transparenzportal.gv.at retrieved 28 Apr. 2014

Practical features:

Practice-indicators

Transparency in awarding service agreements

1. CSOs are commissioned to do a large number of services.
2. The competition is considered fair and conflicts of interest are avoided.

Transparency in allocation of funding

3. Information on funding procedures and on sponsored projects is available to the public.
4. Decisions on the allocation of funds (for and against, or partial) have to be justified comprehensively and in accordance with the criteria established for tender.
5. Government bodies obey the procedures and apply them in a coordinated way in their dealings with different sponsors.
6. The demands on CSOs are not overly burdensome.
7. Decisions in favor of bids are considered fair and conflicts of interest are resolved in the preliminary stages.
8. A report on allocated funds which indicates the amount of funding, the beneficiary organization as well as the purpose of funding is presented in parliament each year.

Accountability/monitoring/evaluation in the context of service agreements

9. CSOs are not subject to excessive scrutiny.
10. Monitoring takes place on a regular basis and is carried out according to procedures and criteria which are announced previously.
11. Evaluation regarding the quality and impact of services takes place at regular intervals and is publicly accessible.

Accountability/monitoring/evaluation in the context of state funding

12. Monitoring takes place continuously and in accordance with previously defined indicators.
13. Government authorities carry out regular evaluations regarding the utilization and impact of public funds. The evaluation is accessible to the public.

CSOs are commissioned to provide a wide range of services, either in the context of service agreements or in return for funding. It was often mentioned in the interviews, that the allocation of funds and placing of orders was not always regarded as fair. There is evidence of political preference, e.g. in cases where providers are awarded a contract despite the fact that they have little experience in the provision of services or in cases where the authorities deviated from the originally established tender criteria (interview 5). Interviewees often got the impression
that a call for bids was specifically geared to the profile of the preferred provider, with the result that other bidders had no chance of winning the bid. Then again, CSOs occasionally profited from this practice themselves (interview 4). It was also mentioned, that there were mechanisms for distributing public funds to CSOs according to interests of particular parties (SPÖ and ÖVP) (interviews 5, 8). There is increasing transparency regarding subsidies and the amount of funding in the context of individual funding programs. There is little transparency, however, regarding the terms under which contracts are ultimately awarded and regarding the reasons for accepting the bid of a particular provider (interview 5). Shortcomings were also spotted with regard to the rejection of offers. Often, rejections are not conclusively justified by reference to bidding criteria.

Problems in coordination often occur when services are financed by different public sponsors (especially communities, federal states, social insurance carriers). Each financier tries to optimize his/her own subsystem, with the result that CSOs are always referred to the “other” sponsor (respectively) during negotiations (interview 2). Accounting is also a complex process, especially in cases of multiple funding because different funding authorities use different accounting systems (interviews 5, 8).

The state publishes an annual report on support programs (“Förderungsbericht”) which is presented to the National Council and which lists all subsidies104. The federal states also supply reports on funding and subsidies in various forms. The country of Upper Austria, for example, publishes disbursed funds on the internet. Purpose and amount of funding (from 4.000 euros) as well as beneficiary institutions are listed according to their field of activity.

Interviewees often claimed that accountability and evaluation duties were excessive. The accounting process is described as time-consuming and tedious. People appreciate the need for monitoring, but the additional effort is out of all proportion to the service provided: “providing evidence almost requires more effort than providing services, and this doesn’t make sense” (interview 8). It was also mentioned that there were too many inspections, even by external auditors, and that accounting systems were very complex (interviews 1, 8, 5).

Generally, CSOs are under great pressure to prove their legitimacy. For a long time, the focus of attention was on how financial resources were put to use. More recently, attention is paid to the actual impact of services, which can be seen as a positive development because it means that the focus is no longer exclusively on the costs occasioned by CSOs. However, there are limits to the meaningfulness of impact measurement and the comparison of impacts, depending on the actual task field. Thus, the sustainability of training for people with disabilities cannot actually be measured and compared with that of unemployed persons (interview 8).

Potential for improvement

The following improvement potentials were mentioned in the interviews:

Many suggestions were made with regard to the configuration of quality control. Interviewees basically demanded that more trust be placed in CSOs, that accountability be simplified and that strict inspections relating to this be limited to spot checks, “without stripping it of its substance” (interviews 8, 11). Regulations, methods of processing and accounting standards which differ depending on the funding authority involve concerned parties in unnecessary efforts. A standardization of procedures would facilitate bureaucratic matters.

More independent authorities should be hired for performance monitoring, and NPOs could be involved in this process (interviews 5, 8).

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Transparency should basically be enhanced by
- providing up-to-date information regarding available subsidies/public funds
- enforcing transparency in the context of decisions and decision criteria
- establishing assessment of the quality of performance as a basis for funding
- publishing a final report (at least in the form of an abstract) in order to facilitate learning effects in view of further projects.
9. VISIBILITY OF THE IMPACT OF CIVIC ENGAGEMENT

The Austrian population’s knowledge of and attitude towards NPOs or public benefit organizations constitutes an important prerequisite for the work of such organizations. It affects voluntary engagement, willingness to donate money, and all other forms of support.

So far, little is known about the public perception of the sector in Austria. It was, therefore, decided to explore this issue in more detail in the context of the Civil Society Index – Rapid Assessment.

The survey focuses on

- the perception of public benefit or non-profit organizations among the Austrian people
- assessment of the state of knowledge regarding NPOs and major sources of information
- personal contacts and appreciation of NPOs in Austria
- an evaluation of future developments concerning NPOs in Austria

Visibility of the impact of civic engagement - indicators

1. Personal state of knowledge regarding public benefit/non-profit organizations
2. Ideas/concepts spontaneously associated with public benefit/non-profit organizations
3. Potential sources of information concerning public benefit/non-profit organizations
4. Importance attached to public benefit/non-profit organizations in our society
5. Spheres of action rated as important for public benefit/non-profit organizations
6. Personal perception of beneficial effects of public benefit/non-profit organizations
7. Personal contact and manner of involvement with public benefit/non-profit organizations
8. Evolution of the significance of public benefit/non-profit organizations
9. Endorsement of potential future support for NPOs

In order to explore these issues, a market research institution called market was commissioned to conduct a representative telephone survey. The following information and results were taken from the corresponding report.105

Method: The entire Austrian population from the age of 18 constituted the target group of the survey. For the purpose of representativity, a combination of random and quota-sample was used.

Telephone interviews carried out with the aid of a questionnaire were judged to be the most expedient means for the purpose of gathering information, first of all, because they allow enough time for delving into the subject. Secondly, we could make sure that people who could not be

105 market Institut (2013): „Zugang und Wahrnehmung von gemeinnützigen Organisationen bzw. NPOs in Österreich, unveröffentlichter Kommentarbericht“ ("Access to and perception of public benefit organizations, or NPOs in Austria, unpublished commentary report")
reached in an online survey (the older section of the population, mostly) would not be excluded. 401 persons participated in the survey, which was conducted from April 16 to April 24, 2014. The maximum statistical fluctuation range was +/- 4.99 percent.

**Summary of results**

The **personal standard of knowledge** regarding public benefit/non-profit organizations can be described as **good**. 70 percent of those polled believe that they are “well” or even “very well” informed about the aims, functions and activities of public benefit/non-profit organizations.

A closer look at the results, however, reveals that only 29 percent actually believe themselves to be very well informed, while only 40 percent regard themselves as “well” informed. These results point to information needs, especially among the quarter of interviewees which admits to little knowledge of NPOs. In urban areas, the standard of knowledge is perceived as being slightly lower than in rural regions. At the same time, unsurprisingly, a positive correlation between the level of education and knowledge about NPOs can be observed.

![Figure 4: Standard of knowledge regarding public benefit/non-profit organizations](chart.png)

Source: market-survey 2014

Most notably, public benefit/non-profit organizations are spontaneously associated with direct support. **One person in three associates public benefit organizations with concepts such as “helping people”, “aid for fellow human beings”, or “relief for the poor”.** A further 30 percent think about specific organizations, e.g. the Caritas, the Red Cross or the volunteer fire department. The topic of “voluntariness and volunteer engagement” is referred to by younger people (18-29 years of age) especially. This connotation is mentioned by 20 percent of those polled in this age group and, thus, twice as often as by the rest of the sample.

**Most of the interviewed persons** (41 percent) gather basic information on public benefit/non-profit organizations in **conversation with friends and acquaintances**. This sort of information behavior is followed by general internet research (google or the like). Television and Radio are in third place when it comes to potential channels of information: 28 percent gather information this way. The range of potential sources of information, therefore, is rather diverse and points up a number of starting points for public relations work. With regard to PR work, there is a noticeable tendency towards newspaper reports and postal mailing of information in Eastern Austria (Vienna, Lower Austria, Burgenland). Social Media have not yet caught on in connection with the subject of NPOs/public benefit organizations: only 12 percent state that they use these media to gather information.
Public benefit/non-profit organizations are considered very important for Austrian society. 9 out of 10 Austrians attach "very high" or "rather high" importance to such organizations and, thus, clearly emphasize the enormous relevance of such institutions. There are hardly any people who have a low opinion of the role NPOs play in our society. Those 10 percent of interviewees who think little of NPOs are among those who are less well informed about these organizations in general. Conversely, this supports the conclusion that those who know about public benefit organizations and are familiar with them attach high importance to NPOs.

Figure 5: Social significance of NPOs

Source: market-survey 2014

Furthermore, the Austrian people's subjective perception of the relevance of NPOs' various spheres of action was investigated. In this context, "health and social services" rank first for 80 percent of those polled, followed by "family, children and young people", for which sphere 73 percent regard the work of NPOs as particularly important. Younger people (up to 29 years of age) believe that NPOs play a vital role in the fields of "human rights" (64 percent) and education (57 percent). Younger people of up to 50 years of age most of all consider organizations in the area of family highly relevant.

With regard to the issue of human rights and development cooperation, a correlation between educational level and subjective assessment can be observed: persons with higher educational levels attach higher importance to NPOs in these contexts.

People are highly aware of the beneficial effects achieved by public benefit/non-profit organizations. 64 percent of those polled agreed "entirely" with the statement that NPOs "make a decisive contribution to society". 58 percent stated that NPOs "enriched many people's daily lives". Just as many (58 percent) are aware that NPOs "relieve the state". The NPOs' "control function regarding economy and the state" was less present in the interviewees' minds, the reason for this probably being that younger people in particular doubt the "political independence" of many organizations. Once again, it proves true that well-informed persons are more aware of the benefits of non-profit organizations than those who are less well informed.

85 percent of Austrians were in some form of personal contact with public benefit organizations in the past. Organizations like the Red Cross, the volunteer fire department or even the Caritas, which have established dense and widely ramified local networks, were mentioned most frequently in this context. Among those aged 30 – 49, 92 percent had already been in contact with NPOs. 70-80 percent of those contacts were about financial support. Of those people who stated that they had been/were in contact with the Red Cross, the volunteer fire department or Caritas, 30 percent were already playing an active part in those organizations.
Future developments:

More than 50 percent of those polled expect that the importance of NPOs is going to increase. Interestingly, this belief is particularly common in urban areas, where people are less well informed about NPOs but expect increased demand for their services.

With regard to potential future support for NPOs, 67 percent speak out in favor of “tax benefits”, and 23 percent gave a grade of 2 ("good") regarding this suggestion. All in all, 90 percent take a positive stance on this form of support.

Slightly fewer people (61 percent) entirely endorse “direct government subsidies”. A grade of 2 is given by 27 percent regarding this form of support. Thus, almost 90 percent altogether look favorably on support through direct subsidies.

It is possible, in this context, to isolate preferences corresponding with age: younger people tend to favor direct subsidies, while older people are more likely to argue in favor of tax benefits for NPOs.

Regarding the issue of giving NPOs a greater say in political decisions, interviewees were more reluctant. Even so, almost half of those polled, that is, 48 percent, thoroughly support stronger involvement of NPOs in political decision making. A further 23 percent give a grade of 2, meaning that 71 percent signal approval concerning this subject.

Figure 6: Endorsement of potential future support for NPOs

Source: market-survey 2014
# IV. FRAMEWORK CONDITIONS FOR CIVIL SOCIETY IN AUSTRIA – STRENGTHS AND WEAKNESSES

<table>
<thead>
<tr>
<th>Strengths</th>
<th>Weaknesses</th>
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<tbody>
<tr>
<td><strong>Democracy</strong></td>
<td></td>
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<tr>
<td>1. Guarantee of individual freedom</td>
<td>1. Highly concentrated media</td>
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<tr>
<td>2. Rule of law: effective legal system,</td>
<td>2. Exclusive voting rights for citizens</td>
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<tr>
<td>trust in the judicial system, equality</td>
<td>3. Small faith in the government, parties and the parliament (even though</td>
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<tr>
<td>faith in these institutions is relatively</td>
<td>faith in these institutions is relatively high in an international</td>
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<td>high in an international comparison)</td>
<td>comparison)</td>
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<td>3. Free competition for votes</td>
<td>4. Limited inclusion of CSOs in political processes</td>
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<td>4. Control: working system of checks and</td>
<td></td>
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<tr>
<td>balances</td>
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<tr>
<td><strong>Freedom of association</strong></td>
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<tr>
<td>1. Established legal framework regarding the</td>
<td>1. Provisions of criminal law, especially § 278a StGB regarding criminal</td>
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<tr>
<td>exercise of freedom of assembly</td>
<td>associations („Kriminelle Vereinigung“) may restrict civic engagement</td>
</tr>
<tr>
<td>2. Beneficial regulations for certain registered</td>
<td>2. Few incentives to promote the formation of charitable/non-profit</td>
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<tr>
<td>associations with regard to liability, tax</td>
<td>foundations</td>
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<tr>
<td>relief and undeductibility of donations</td>
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<tr>
<td><strong>Freedom of assembly</strong></td>
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<tr>
<td>1. The basic right to freedom of assembly is</td>
<td>1. Laws on assemblies, the constitution and article 11 of the ECHR are</td>
</tr>
<tr>
<td>based on international standards in accordance</td>
<td>out of sync with each other and sometimes inconsistent</td>
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<tr>
<td>with the European Convention for the Protection of Human Rights</td>
<td></td>
</tr>
<tr>
<td>2. The right of assembly is, in most cases,</td>
<td>2. Legal mechanisms for lodging a complaint in good time are missing</td>
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<tr>
<td>not restricted but protected by the public</td>
<td></td>
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<tr>
<td>authorities</td>
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<tr>
<td>3. Assemblies are not subject to approval;</td>
<td>3. Complaints concerning disproportionate (violent) measures taken by the</td>
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<tr>
<td>they merely require non-prohibition</td>
<td>police often involve a high cost risk</td>
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<td></td>
<td>4. The criminal charge of breach of the peace (§ 274 StGB) and the liability</td>
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<td></td>
<td>risk related to this charge constitute a serious threat for organizers</td>
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</tbody>
</table>
### Access to financial resources

1. In principle, open access to various sources of funding
2. Receipt of donations from domestic and foreign individuals and companies is possible

1. Difficulties in the raising of outside capital due to regulations concerning the assessment of creditworthiness – social banking not yet securely established as an alternative
2. Sometimes cash flow problems due to late payment by the public sector
3. Lack of official evidence of non-profit status may lead to problems when it comes to donations from abroad
4. Low amount of charitable/non-profit private foundations compared to other countries

### Tax concessions for CSOs

1. Tax benefits for CSOs so long as they exclusively and directly serve charitable or church-related purposes
2. Under certain circumstances, CSOs may also engage in economic activities
3. CSOs enjoying favorable tax treatment may benefit from tax deductibility of private or company donations

1. No official (ex ante) assessment of the right to tax concessions in the case of CSOs
2. Insufficient legal certainty in the (ex post facto) assessment of the right to tax concessions by the tax authorities
3. Tax deductibility is limited to a few beneficiary purposes
4. Hardly any tax incentives when it comes to formation of charitable/non-profit foundations

### Employment and Volunteering

1. CSOs are basically treated like other employers, tax relief (municipal tax) for select non-profit/public benefit associations
2. Wage agreements such as BAGS and emergency services (not for all CSOs, however)
3. Volunteer Engagement Act provides a legal basis for select forms of voluntary work

1. Increasing insecurity in working conditions due to CSOs’ precarious circumstances with regard to funding
2. Insufficient legal certainty regarding certain forms of engagement (e.g. social engagement abroad)
3. Third party liability and accident insurance are not guaranteed for many voluntary activities
### Provision of services

<table>
<thead>
<tr>
<th>1. CSOs basically enjoy the equal rights as providers of services in relevant areas such as education, health and social welfare</th>
</tr>
</thead>
<tbody>
<tr>
<td>2. Public funds are made available to CSOs in the form of subsidies and service level agreements</td>
</tr>
<tr>
<td>1. Often, negotiations between CSOs and the public sector are not conducted on a level playing field, heavy interference with the service provision process</td>
</tr>
<tr>
<td>2. Sometimes high economic risks due to lack of index linking</td>
</tr>
<tr>
<td>3. Restrictions regarding the financing of overhead costs</td>
</tr>
<tr>
<td>4. Insufficient planning security due to one-year contracts, slow decision making processes and late payments</td>
</tr>
</tbody>
</table>

### Transparency in the context of service agreements and funding

<table>
<thead>
<tr>
<th>1. Public procurement law is based on equality and transparency</th>
</tr>
</thead>
<tbody>
<tr>
<td>2. Increasing efforts to guarantee transparency in the allocation of subsidies</td>
</tr>
<tr>
<td>1. Preferential treatment of certain bidders/beneficiaries for political reasons</td>
</tr>
<tr>
<td>2. Little transparency when it comes to justifying a negative reply</td>
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</tbody>
</table>

### Visibility of the impact of civic engagement

<table>
<thead>
<tr>
<th>1. Austrians believe themselves to be well-informed regarding CSOs.</th>
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<tbody>
<tr>
<td>2. 88% of the population recognize the value of CSOs and believe that they play an important role in society</td>
</tr>
<tr>
<td>3. 90% of the Austrian people argue in favor of higher tax benefits for NPOs, while 88% advocate direct funding for such organizations</td>
</tr>
<tr>
<td>4. 70% of the Austrian people want NPOs to have a stronger say in political decision processes</td>
</tr>
<tr>
<td>1. No consistent statistics on the actual performance of the CSO sector</td>
</tr>
<tr>
<td>2. Little confirmed knowledge of the impact of civil society or CSOs</td>
</tr>
<tr>
<td>3. NPOs are primarily associated with the concept of „helping“ – little awareness of the corrective role (watchdog function) of a vibrant civil society</td>
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</table>
V. RECOMMENDATIONS FOR ACTION

**In general:** The promotion of the common public interest/non-profit sector should be declared a **state objective.**

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**Democracy**

1. Stronger and obligatory involvement of CSOs and citizens in decision making processes, e.g. by
2. Setting a reasonable period of time for the assessment of laws, which enables CSOs and citizens to give an opinion
3. Introducing “green papers” (discussion papers on a specific topic to facilitate public and scientific discussion) and “white papers” (summaries of collected proposals) in analogy to European Commission practice
4. Developing and enhancing new forms of participation, e.g. citizens’ councils

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**Freedom of association**

1. Revision of § 278a StGB so as not to endanger civic engagement while, at the same time, providing protection against criminal organizations
2. The associations’ register, which records associations, should not be kept at the interior ministry but at court, like the commercial register

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**Freedom of assembly**

1. Knowledge of the relevance and meaning of freedom of assembly should be enhanced in the civil society sector, among safety authorities and in the entire population
2. Explicit adjustment of the Assembly Act to the requirements of the ECHR
3. Abolition of laws which penalize civic engagement: e.g. breach of the peace § 274 StGB (criminal code)
4. Introduction of complaints mechanisms (in the style of Germany, where it is possible to initiate summary proceedings at an administrative court) which facilitate timely complaints in case of unlawful prohibition of an assembly
5. Introduction of low-risk complaints mechanisms for protesters affected by disproportionate (police) measures
6. As in Germany, visual identification numbers attached to uniforms should ensure that police officers can be identified
7. Systematic establishment of the principle of de-escalation in the preparation of and during police operations in the context of assemblies
8. Reduction of liability risk for persons organizing assemblies
Access to financial resources

1. Amendment of eligibility requirements for funding – government subsidies should not be offset against income from other sources (see also recommendations for action in the context of service provision)

2. Legal/fiscal incentives for charitable/non-profit foundations

3. Promotion of framework conditions for the establishment of social banks

4. Amendment or removal of § 8 para. 1 Z 5 of the Vienna law on fundraising, which makes the recruitment of supporting members a potentially punishable offence

Tax law

1. Confirmation that tax benefit has been granted should be provided in a distinct legal act (notice of exemption or assessment by the competent authority and/or enrolment on a relevant register)

2. Mitigation of the requirement for direct fulfillment of purpose, so that at least part of an organization’s resources can be made available to other organizations which serve the same beneficiary purposes

3. Equal treatment of charitable/non-profit organizations and sports clubs regarding tax – and social security free reimbursement of costs for voluntary work

4. External assets of fundraising organizations and foundations should be exempt from capital gains tax if they are used to finance non-profit or charitable activities

5. Extension of favorable treatment of donations to all recognized charitable/non-profit purposes, especially in the areas of healthcare, education, youth, animal welfare (even if an organization does not run animal shelters), art and culture

6. Higher tax benefits should be granted for the formation of charitable/non-profit foundations

7. Withdrawal of the demand for exclusive fulfillment of purpose in order to enable existing private foundations (those in particular) to get involved in charitable activities

8. Maximum tax allowances in connection with donations should be raised, and it should be possible to spread these over several years

9. Refund of input tax to which the non-commercial sections of CSOs are liable, e.g. in the form of an investment premium

Employment and volunteering

1. Establishment of legal certainty regarding intermediate forms of paid and unpaid work in the context of civil society organizations

2. Accident and liability insurance for all kinds of voluntary activity
### Provision of services

1. Competition policy should promote common public interest (especially in the larger European context)
2. Planning certainty should be guaranteed by concluding multiannual framework agreements which include a clause on value adjustment
3. Quality standards should be defined regarding the provision of services on behalf of the state = > inspections should focus on compliance with standards (results); fewer requirements/inspections in the actual service provision process
4. Contracts should be awarded according to the best instead of lowest bidder principle. If the price is a decisive factor, clearly defined qualitative criteria should ensure comparability
5. Overhead costs should be budgeted realistically in the context of (public) funding
6. Responsibilities should be clarified where several contracting authorities/sponsors (e.g. Federal government, federal state, municipality, social insurance company etc.) are involved
7. Accounting should be standardized, controls should be reduced to a meaningful level
8. Preservation of diversity: support measures, especially for smaller CSOs, e.g. mitigation of economic exposure, providing assistance with regard to submissions
9. Climate for negotiations: CSOs as professional associates/providers instead of supplicants

### Transparency in the context of service agreements and funding

1. Transparency should be enhanced with regard to the following aspects:
2. Up-to-date information concerning available subsidies and areas eligible for funding
3. Level of funding and organizations which receive funds
4. Decision criteria
5. Reasons for a positive/negative reply

### Visibility of the impact of civic engagement

1. Appeals for donations aside, public service media should afford more space to civil society-related and common public interest issues and draw more attention to the accomplishments and functions of CSOs
2. More attention should be paid to the role and functions of CSOs in political education
3. The corrective role and advocacy function of CSOs and/or a vibrant civil society should be emphasized
4. Development of consistent statistics on the characteristics and the impact of the third sector


