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The EU14's "Sanctions" Against Austria: Sense *and* Nonsense

The background

The Austrian political system had since World War II been characterized by two major parties. Social Democrats (SPÖ) and Christian Democrats (ÖVP) were each embedded in a stable socio-political subculture. The Freedom Party (FPÖ) under Jörg Haider having steadily increased its votes since 1986, the elections in October 1999 finally resulted in three parties of approximately the same weight. Of the 183 seats in the lower house of the Austrian Parliament, the SPÖ won 65 (33%; 1995: 38%), the FPÖ 52 (27%; 1995: 22%) and the ÖVP 52 (27%; 1995: 28%). This result allowed for another "grand coalition" between social and Christian democrats as well as for a center-right government, while a center-left government between SPÖ and Green Party (14 seats or 7%; 1995: 5%) was not feasible (and the Liberal Party failed to win any seats this time).

Who voted for the FPÖ, and why? Most importantly, a reorientation occurred among workers. In this group, the FPÖ could, within 13 years, double its proportion twice. The traditional worker's party, the SPÖ, was in 1999 only voted in by 35% of workers (1986: 57%). The FPÖ furthermore became the strongest party among the male electorate (32%; SP 31% and VP 26%, Grüne 5%; among women, the FPÖ scored 21% only) and among those under 30 years old (35%; 25% SP, 17% VP, 13% Grüne). Against frequent expectations, various "protest motives" were more important than the FPÖ's anti-migration policy (47%). The prime motives of voting FPÖ were to fight against misgovernment and mismanagement (65%), to promote change more generally (63%), and to sanction the members of the former grand coalition government (36%). This created a kind of dilemma: On the one hand, the result of the elections can be read as expressing a desire for change. On the other hand (and this was often neglected internationally), 63% did *not* vote for the FPÖ. However, only one form of stable (non-minoritarian) government except another grand coalition was possible, and this included the FPÖ, which had not been considered a suitable member of government by large parts of the political elite (including the ÖVP) until then (all data from Plasser, Ulram and Sommer 1999).

Against this background, it is crucial to know that the SPÖ had been in government for 30 years and the grand coalition between the dominant parties, the SPÖ and ÖVP, since 1986 (after WWII, there had already been a grand coalition government until 1966). In addition, the Austrian system of corporatism connected the major (and basically monopolistic) interest groups of labor and industry closely to the SPÖ and the ÖVP, respectively. Under these conditions and under an economic system with relatively high levels of state influence in the economic, cultural and even academic systems, it was a frequent public complaint that party patronage flourished and mismanagement grew. (It should be noted, however, that Austrian economic performance indicators are nevertheless good in international comparison.)

Another frequent concern was that the grand coalition government managed to keep the FPÖ out of government (many considered that it was too right-wing, populist, and unstable in its positions), but only at the price of adapting its actual policies to FPÖ views. Even Jörg Haider himself once stated that the Social Democratic Minister for Internal Affairs acted as an ideal policy executor for the FPÖ. Out of fear of losing votes, political statements by the FPÖ were often hardly commented on by the grand coalition parties. They tried to keep contested topics

such as migration and Eastern enlargement of the EU out of the public debate, instead of facing the challenge of winning the citizens' agreement against populist attitudes. It was against this background that even some Austrians who were strongly opposed to FPÖ standpoints questioned the usefulness of another grand coalition government. In any case, negotiations between the SPÖ and ÖVP in early 2000 soon broke down.

The "sanctions"

A few days before the Austrian center-right government was formed on 4 February 2000, the Portuguese Council Presidency issued a statement "on behalf of 14 Member States". It announced that "*the governments of the fourteen Member States will not promote or accept any official bilateral contacts at political level with an Austrian government integrating the FPÖ; there will be no support for Austrian candidates seeking positions in international organizations; Austrian Ambassadors in EU capitals will only be received at a technical level.*"

In a communication on government formation in Austria, the European Commission stated that it shared the concerns of the Fourteen and would, as the *guardienne* of the Treaties, continue to watch over their provisions and values (*Agence Europe* 2 February 2000). The notion of values was innovative in this context. The relevant Treaty provision speaks about principles: "The Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles which are common to the Member States." (Art. 6.1 TEU) While under the Maastricht Treaty, any "European state" could still apply for EU membership, applicants now have to respect these principles (Art. 49 TEU).

So far, the TEU includes no provision to exclude existing members for reasons of non-respect of the principles laid down in Article 6. However, membership rights may be suspended, according to a detailed procedure. Determination of "the existence of a serious and persistent breach" by the Council needs unanimity (except for the votes of the government concerned) on a proposal by one third of the Member States or by the Commission, and the assent of the European Parliament – all this after "inviting the government of the Member State in question to submit its observations". Only if such a breach is formally established, the Council may (by qualified majority) "suspend certain of the rights" deriving from the application of the Treaties to the Member State in question, including voting rights.

It is important to note that this procedure was at no point initiated in the Austrian case since the almost uncontested view was that Austria was not "in serious and persistent breach" of the Treaties' basic principles. The other EU governments' concerns were, however, that this might be the case at some point in the future, under a government including the FPÖ. Hence one crucial issue concerned the distinction between actual breaches of principles and potential future breaches. Another tricky issue involved the difference between acting against such principles as human rights in actual deed versus "only" using verbal insinuations in such directions (e.g. in electoral campaigns). There is no easy answer to these questions. In any case, such concerns seem legitimate in a close political community where the members of national governments make up the main decision-making body and can block many crucial initiatives, even unilaterally. From this perspective, reacting to the Austrian government formation made sense.

However, there are good arguments for questioning the sensibility of the specific form of reaction. Considering the EU provisions in force, it would have been a clear breach of the Treaty provisions if "EU sanctions" had been decided on against Austria. Many even thought that the Fourteen's "bilateral" action was premature because the Union's basic rules contain not only the clear procedures for potential sanctions outlined above, but also provisions on the respect of the

national identities of the Member States (Art. E TEU), on abstaining from any measure which could jeopardize the attainment of the objectives of the Treaty (Art. 10 TEC), on the promotion of the Common Market and of solidarity between the Member States (Art. 2 TEC), and, very prominently, on non-discrimination for reasons of nationality (e.g. Art. 12 TEC).

Apart from the fact that the Fourteen's "bilateral" measures seemed questionable, therefore, at least in the spirit of the Treaties, their design has also been harshly criticized. The Presidency, an institution of the Union and the Communities, was used to proclaim the multi-national (but not "European") decision (on legal aspects see Pernthaler and Hilpold 2000). Strategically, the open-ended character and the lack of an exit option other than a breakdown of the Austrian center-right government was striking. Content-wise, the second measure (non-support of Austrians in international organizations) has been discussed most controversially since one of the EU's major policies is non-discrimination on grounds of nationality. Point two of the "sanctions" could, however, affect persons who had never in their life voted for the FPÖ or who even protested against the center-right government.

The effects

As widely reported in the media, the Fourteen developed an exit strategy five months after the imposition of the "sanctions." It should be noted that the Austrian government had threatened to seek legitimization for blocking EU reforms, in a domestic referendum. The report of three "wise persons" of 8 September criticized the FPÖ (e.g. for methods of campaigning and for intimidation of political critics via litigation in court) but confirmed the general opinion that the new government had not acted against European values. On that basis, the "sanctions" were immediately lifted without follow-up procedure or qualification.

What this episode actually meant for both Austria and the EU remains to be seen in the longer term (for a profound early analysis, see Schneider 2000). Meanwhile, the Commission president reportedly does not believe that "sanctions in this type of case can provide better results than serious, open and in-depth dialogue" (*Agence Europe* 13 July 2000) and the Portuguese Prime Minister stated that the "sanctions" had done more harm than good (*Der Standard* 23 June 2000). However, the Fourteen's communiqué of 12 September approved that "the measures ... have been useful" but should be lifted (*Agence Europe* 14 September 2000).

In any case, it seems that the Austrian center-right government came out of this episode rather more strongly and more unified than was initially the case. This indicates that the Fourteen may, after all, not have attained their desired effect inside Austria. It is also much too early to judge if the strategy to no longer exclude the FPÖ, but rather "domesticate" it by sharing government responsibilities, will attain the goals of its protagonists. What always made this strategy seem risky is near monopolistic private ownership of certain kinds of print media that are rather open for populism, on the one hand, and predominantly state-owned TV, on the other hand, where manifold intervention pathways for the new political elite exist (and are, reportedly, being used). As to other European countries, more thorough studies are needed to clarify if the "sanctions" were useful in the fight against racist or neo-fascist movements, or if they rather furthered internal polarization and rising EU skepticism on this very issue (as the Danish "No" to the Euro suggests).

Will the measures hastily imposed and withdrawn without any change in the Austrian government strengthen European integration? Many have welcomed the advent of a more "political" union and of mutual concern about each other's political representatives and values. Indeed, thoughts about the future of human rights, the basic freedoms and democracy seem

timely enough – considering not only the Austrian situation but also right-wing and populist upswings in Belgium, Italy, Germany, and in some applicant states. The form and proportionality of the Fourteen's "sanctions," however, could easily be challenged by others, arguing that the Union must be first in respecting the procedures agreed in its basic Treaties (in the more or less narrow sense), in furthering dialogue instead of confrontation, and in working towards non-discrimination on the grounds of nationality.

Last, but not least, it should be mentioned that the episode underlines the "new institutionalist" argument about the longevity of established political patterns. Quite obviously, nationality is even more "sticky" than it may have seemed until recently (at least to integration specialists). While those acting at the EU level actually wanted to strengthen *European* values and identity, discrimination on grounds of nationality quickly came alive once high-ranking politicians had opened the door for it. To give just a few examples, Brussels taxi drivers denied transport to Austrians; Austrian school children seemed no longer acceptable in Paris as part of a school exchange program; and Austrians were excluded from various sports and cultural events in other Member States.

At the same time, the debate on the "sanctions" was largely shaped in terms of "the outside world" against "us Austrians" in the country concerned. This served the purposes of the center-right government and many media, but even the opposition parties often seemed caught in the web of the new mainstream feeling of "national identity" which culminated when "we all" were supposed to feel happy about the lifting of the sanctions. The episode has indeed shown that despite the EU's long-standing tradition of fighting discrimination on grounds of nationality, even the highest-ranking politicians and many citizens are once again very ready to jump on this bandwagon without sparing it too much thought.

Post scriptum: At the Nice Summit (7-11 December 2000), the EU15 decided that the Union can in the future already intervene if there is a *danger* of serious breach of Treaty principles (by addressing appropriate recommendations or setting up a Committee of Wise Persons to report on the case). That the Member State in question must be heard before this was welcomed by the Austrian government which had promoted the introduction of such an "active prevention strategy."

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