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Austria: Confronting Controversy

“Mentally Austria has not yet arrived in Europe,” such was the assessment of Franz Fischler,¹ Austrian EU Commissioner for Agriculture, three years after Austria had joined the European Union in 1995. Indeed, history has taught Austrians to shift identities and to live comfortably with contradictory roles. Depending on the prevailing international context, Austria has viewed itself as a gateway to the East; a neutral arbiter; a Western showcase or as the West’s abandoned outpost. Complicated also by its historical relationship with Germany, Austria’s journey toward European integration was, thus, replete with ambivalence and skepticism.

Not on the agenda until 1985, joining the European Community remained controversial and was long opposed by a significant segment of the population and all ends of the political spectrum. Yet, on June 12, 1994 Austrians turned out in record numbers for the EU referendum (81.27 percent) and approved of EU membership by margins (66 percent) larger than in any other of the recent applicant countries. Austria joined the European Union on January 1, 1995.

After meeting the stringent criteria for monetary union and following Austria’s successful presidency of the EU in 1998, the small Alpine nation seemed well on the way to have found its place in the New Europe. Yet, on January 31, 2000, representatives of 14 member governments of the European Union came together in a secret all-night meeting with the expressed goal to isolate their fellow member state Austria politically and diplomatically.

These measures represented the harshest sanctions ever imposed on a West European country and were unprecedented in the history of both the European Union and Austria. Along with the 14 EU nations, most other Western countries downgraded their bilateral contacts with the government in Vienna to a technical level. Simultaneously, a storm of protest erupted in the international media which turned Austria from a place of benign neglect into an international pariah to be eclipsed in Europe only by Serbia. What had caused this outrage was the formation of a new government that included ministers of the far-right Freedom Party (FPÖ). The new political arrangements, a coalition government between the Conservatives and the Freedomites, reflected the outcome of the national elections held a few months earlier on October 3, 1999.

Pariah, Proporz and Populis

Dropping by 4.7% to merely 33.4% in the vote, the previously governing Social Democrats (SPÖ) had their worst showing ever. Their coalition partner, the Peoples Party (ÖVP), also known as the Conservatives, lost only 1.4%, but for the first time in a national election, managed to slip to the disappointing third place (26.9%). This was a humiliating experience for a party that had been the senior partner in several Austrian postwar governments. A third party, the small Liberal Forum, lost nearly half of its voters and was eliminated outright from parliament. Conversely, the Greens, gained 2.6% in electoral support to capture 7% of the vote, thus exceeding their wildest expectations. However, the elections received international notoriety

¹ Interview with Commissioner Franz Fischler, *Format* 1, October 5, 1998, p.40.

because of the success of Austria's right-wing Freedom Party (FPÖ), led by the controversial populist Jörg Haider. Gaining 5%, the FPÖ obtained 27% of the votes and soared to the coveted number two position, inching ahead of Conservatives by the narrowest of margins.

While it is understandable that outside Austria a tendency exists to interpret Austrian politics in light of the country's troubled Nazi-past, the danger remains of overwhelming such an analysis with too much emphasis on right-wing extremism, thereby misinterpreting important developments within the Austrian electorate. While the increase in nationalist and anti-foreigner sentiments was undoubtedly a cause for concern, both in terms of Austria's specific historical responsibility and as a reflection of a possible wider European trend, the story of Austrian politics was far more complex and multifaceted.

The decade of the 1990s saw major developments in Austrian politics and society. The process of modernization, liberalization and economic integration, as well as the instability in the neighboring Balkans and Eastern Europe had heightened people's anxieties about economic security, social peace, and political stability. Following an unprecedented influx of foreigners, notably labor migration and refugees from Eastern Europe and former Yugoslavia, throughout the 1990s, competition, and declining resources intensified both latent xenophobic feelings and material concerns.

Despite these enormous developments, the political arrangements in Austria had remained virtually unchanged for decades. Since 1970 the country had been governed without interruption by one of the most powerful Social Democratic (SPÖ) parties in Europe. After 1982, the SPÖ required a coalition partner to secure the necessary majority for the government in parliament in order to compensate for the steady decline of social democratic electoral fortunes. The ÖVP, Austria's large Christian-Conservative Party had performed this role since 1986. This leftist-conservative coalition pulled both parties to the center and converted the traditionally Euro-skeptical Social Democrats into supporting an ever-expanding European agenda.

Moving to the political center and pushing European integration resulted in defections of core social democratic and conservative party supporters. The Freedom Party under Jörg Haider, undoubtedly Austria's most savvy politician, skillfully exploited this political vacuum by cobbling together a loose coalition of modernization losers, nationalist, small business interests, blue collar workers, and, especially, young voters turned off by politics as usual. A series of scandals involving influence peddling and corruption in Austria's political system, the problem of foreign immigration, as well as the government's inability to communicate generally very successful public policy to the voter created an opportunity for Haider to court disaffected voters in all parts of the political spectrum.

Haider should be considered neither a phenomenon nor a neo-Nazi, but a savvy and talented populist, who looms large in an otherwise small country. His main achievement up to 1999 was to evoke and sustain the promise of change without defining it. His rise to power was made easier by the fact that the large membership and political strength of SPÖ and ÖVP was in part attributable to an elaborate patronage system known as *Proporz* [proportionality]. Under this system positions in virtually all public and quasi-public institutions (e.g., banks, utilities, schools, state media, the executive boards of public companies, etc.) were divided proportionally between the two political camps according to the parties' respective strengths in elections.

The Austrian Political System: Constructing Consensus

Austria is a federal republic consisting of nine *Länder*. All federal legislative power is technically exercised jointly by the bicameral parliament, in which the National Council functions *de facto* as the central decision making organ. Its 183 deputies, elected for four-year terms, carry formally independent mandates from their districts, but owe their legislative careers to the political parties that nominate them on lists of candidates.

The most striking political feature of Austria is its so-called *social partnership*, an elaborate neo-corporatist system of economic governance and political conflict resolution. Austro-corporatism is marked by an inter-organizational concentration among highly centralized business, labor and agricultural associations and the government. A particular historical context along with specific political and economic factors has given rise to the lasting priority of converging interests for which the social partnership has served as a central bracket.² Corporatist actors and organizations as well as their culture of consensus pervade all of Austria's political institutions.³

Austria's Road to EU Membership

After years of (Soviet-imposed) neutrality and relative isolation from the West,⁴ the Social Democratic-Conservative coalition government made Austria's integration into the single market⁵ a national priority after 1986. Having to overcome enormous political opposition⁶ from labor groups, farmers, and environmentalists, the government required the backing of the social partners, who secured for themselves a seat at the negotiating table.⁷

Austria formally applied for membership on July 17, 1989. In February 1993 in Brussels, Austria along with Finland and Sweden began formal negotiations about EU membership, which were concluded by March 1994. Making Austrian law conform to EU law required a total constitutional revision, which had to be approved in a national referendum scheduled for June 12, 1994. All parties except the Freedom Party supported the subsequent parliamentary ratification of the accession treaty — the Green party had changed its negative position after the successful referendum.

Euro-phoria soon gave way to some disillusionment, in part due to the overblown expectations nurtured by the pro-EU campaign. Austria's EU presidency in the second half of 1998 once again boosted public support for European integration. Generally, Austrians view EU membership more favorably (43 percent) than the Swedes (20 percent), and Finns (33 percent)

² Talos, "Entwicklung, Kontinuität und Wandel der Sozialpartnerschaft", 1993, pp.11-34;

Kindley, "The Evolution...", 1996, pp.53-93.

³ Heinisch, "Modernization Brokers: Explaining the Resurgence of Austrian Corporatism in the Mid 1990s", 1999.

⁴ Chong-ko Tzou, *Die Rolle der Neutralen – Österreichs Beitritt zur EU und die Europäische Integration*, 1996.

⁵ Ferdinand Karhofer and Emmerich Tálos, *Sozialpartnerschaft und EU: Integrationsdynamik und Handlungsrahmen der österreichischen Sozialpartnerschaft*, 1996.

⁶ The Minister of Agriculture, Josef Riegler of the ÖVP.

⁷ Karhofer and Talos, *Sozialpartnerschaft und EU*, 1996.

- the EU average is 46 percent.⁸ A majority of Austrians also support the new currency (56 percent), the common foreign policy (64 percent), and even a common defense policy (63 percent).

The Reasons for Austria's Entry into the European Union

Austria's decision to enter the European Union was clearly motivated by economic concerns. Between 1984 and 1987 Austrian economic growth slowed to 1.8 percent, compounded by massive structural problems in the large state-owned industrial sector.⁹ The social partners and the export industry pressured the government to take quick action. Austria's small domestic market, its peripheral geographic location and numerous barriers to capital imports provided little incentive to foreign investors. While economic forecasts were initially inconclusive about whether EU membership would generate additional GNP growth,¹⁰ the fact remained that Austria was entirely dependent on foreign trade.¹¹ Sensing growing competitive pressures from Germany, Austrian businesses felt that an economic future could only be assured on the basis of equal economic opportunities.

The Consequences of Membership

By being a member of the European Economic Area (EEA), Austria had already adopted about two-thirds of the *acquis communautaire*, in all about 1,400 legal enactments of the EC.¹² Not included were provisions on the customs union, agriculture, economic and monetary policy, taxes and regional policy. These additional matters along with issues from pillars two (Common Foreign and Defense Policy - CFSP) and three (Justice and Home Affairs - JHA) were incorporated into Austrian law in the course of Austria's accession in 1995.

Effects on Neutrality Policy

On July 17, 1989 Austria submitted three applications for accession to the three European Communities, each of which contained a reservation concerning Austria's neutrality. Initially, the EU opposed these reservations, fearing that Austria's neutral status could conflict with article J(8)2 of the European Union Treaty requiring unanimity for a resolution on joint action related to the common defense policy. In long negotiations with Brussels, Austria subsequently reduced the concept of neutrality to the "military core", which the EU accepted in 1994.¹³

⁸ *Profil*, November 8, 1998, p.41

⁹ Luif, *On The Road to Brussels – The Political Dimension of Austria's, Finland's and Sweden's Accession to the European Union*, 1995.

¹⁰ Analyses by Austrian economists were inconclusive, even predicting that the expected trade deficit and the transaction costs of membership would offset any economic gains.

¹¹ Austria's Trade in percent:

	EU	Germany	EFTA	East.Eur.
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1988 Exports to	65	36	11	9
1988 Imports from	68	44	7	6

From 1986 to 1991 exports to the EU rose by 5.8 percent and imports rose by 3.4 percent -- Tzou, *Die Rolle ...*, 1996 p.98.

¹² Herbert Hausmaninger, *The Austrian Legal System*, 1998.

¹³ *Ibid*, 1998, p.84.

Legal Effects

Implementing the entire primary and secondary law of the EU, encompassing more than 4,000 EC regulations and some 1,200 EC directives, affected all branches of the Federation and the *Länder* governments. Substantial changes occurred in constitutional law, labor law, corporate law, telecommunications law, intellectual property rights and environmental law (where Austria had more demanding standards than the EC).

By 1998 Austria had implemented 89.88 percent of EU directives, thus occupying rank 15 in compliance after Belgium. The slow rate of implementation is partly the result of different administrative cultures in Austria (defensive, highly hierarchical, status-quo oriented, status-conscious, prone to negative coordination through interventions) and the EU (more innovative, “*esprit-de-coprs*-oriented,” less formal, less hierarchical, practicing positive coordination through alliances).¹⁴ Moreover, specific Austrian legal requirements and EU implementation rules, alien to Austria’s legal and administrative system, also hamper implementation.¹⁵

Financial Consequences

Austria is a net contributor to the EU, paying approximately 0.5 percent of its GDP or USD 2.5 billion annually. A substantial share of this amount (approximately USD 2 billion) flows back to Austria in the form of agricultural subsidies as well as social and regional structural measures.¹⁶

Effects on Economic Governance

Joining the European Union implied for the social partners: (1) the loss of policy instruments; (2) the curtailment of legal powers; and (3) the transfer of regulatory competencies to the supranational level, reducing the social partners’ macroeconomic leverage.¹⁷ Yet, organization and regulation in Austria continue to be the strategies to increase the competitive position of industry.¹⁸

Controversial Policy Issues from an Austrian Perspective

Aside from transportation and environmental policy, which will be treated extensively in the following policy-case study, accession to the EU ignited a number of policy controversies among Austrians.

Foreign Policy

¹⁴ Theo Öhlinger “Öffentliche Verwaltung,” 1994, pp.113-133.

¹⁵ Ibid.

¹⁶ Hausmaninger, *The Austrian Legal System*.

¹⁷ Gerda Falkner, “Sozialpartnerschaftliche Politikmuster und Europäische Integration”, 1993, pp. 79-102.

¹⁸ Traxler, “Sozialpartnerschaft am Scheideweg: Zwischen korporatistischer Kontinuität und neoliberalen Umbruch”, 1996, pp.13-33.

In terms of Common Foreign and Security Policy (CFSP), Austria's main foreign policy concerns lie in Eastern Europe and the Balkans. Austrians follow closely the conflicts in former Yugoslavia, which sent waves of refugees to Austria. Cultural and political ties to the region, most of which was part Austria-Hungary until 1918, have mobilized widespread support for "containing Serbian aggression." It is to be expected that Austria's most active contributions to CFSP will concern the former Yugoslavia.

Agriculture

Austria's agricultural interests clashed with those of other EU nations with less expensive production. Particularly critical points included production quotas and the amount and duration of subsidies.¹⁹ Austria eventually agreed to lower production prices but secured temporary national compensation payments.

Acquisition of Real Property

The Western provinces - Tyrol, Vorarlberg, and Salzburg - were concerned that EU membership would drive up the price of land suitable for building, an extremely scarce resource in these mountainous areas. One critical question concerned the secondary (holiday) residences purchased by EU (mainly German) residents. Here Austria managed to negotiate a five-year transition period.

Anonymous Bank Accounts

A relic from 1819, anonymous or secret deposit and savings accounts have been hugely popular in Austria.²⁰ In a country of 8 million people, there are currently some 26 million such accounts with approximately USD 130 billion.²¹ These practices conflict with EU regulations concerning (1) transparency; (2) fair competition (between Austrian and non-Austrian banks); and (3) the equal treatment of EU citizens.

In 1996, following mounting pressure from Brussels, Austria changed the law on new deposit accounts, forcing banks to apply the principle of "know-your-customer." However, fearing a popular uproar, lawmakers left savings accounts unchanged. In 1998, the European Commission made good on earlier threats and brought the matter before the European Court of Justice, which issued its ruling against Austria in 2000.

EU Enlargement

Politically, the most sensitive issue for Austrians, apart from EMU, has been the Union's scheduled eastward expansion. Supported by local politicians, many Austrians fear economic competition as well as a flood of migrant workers and day laborers from Eastern Europe. On the

¹⁹ Rainer Nick, "Survey of Austrian Politics," 1996, pp.409-425.

²⁰ See Pötzelberger, "Bankgeheimnis und Anonymität in Österreich", 1993 pp.83-85; Günther Roth and Hannes Fritz, "Anonymität, Identitätsfeststellung und Bankgeheimnis", 1996, pp.409-428; Christian Hausmaninger, "Einschränkung der Anonymität im Einlagen- und Wertpapierbereich – Chancen und Rechtsfolgen einer Verurteilung Österreichs durch den EuGH", 1996, pp.424-428.

²¹ *Financial Times*, May 14, 1996, p.13.

other hand, studies show that Austria stands to benefit economically and would enhance its geopolitical security by pushing the EU's external border further east.²²

Policy-Case Study: Transalpine Traffic Jams -- Transport Policy Disputes between Austria and the EU

Since the early 1970s a 200-mile long band of expressway (*Inntal-Brenner-Autobahn*) through Austria's alpine province of Tyrol has linked two of Europe's largest markets, Italy and Germany. With an average of 50 million motorists and one million trucks per year, and some 40,000 vehicles on peak days, the *Brenner-Autobahn* leads through ecologically sensitive alpine valleys, which depend heavily on tourism and agriculture.²³ Efforts by the Austrian government over the past 25 years to contain the explosive growth of commercial transit traffic (1967-1980: +22 percent per year) have brought Austria into repeated diplomatic conflict with its neighboring countries and the EU.²⁴ Geography and Swiss truck weight restrictions are responsible that the lion-share of European transalpine goods is transported on Austrian roads (5.2 million tons), compared with smaller freight volumes for France (4.7 million tons) and Switzerland (1.1 million tons).²⁵ Impacted by nitric oxide (NOx) emissions, noise and road congestion, vocal, and politically powerful, local interests began pressuring the Austrian government in the 1980s to act more decisively to regulate commercial traffic.

Policy Objectives and Strategies

After considering a number of options to lessen the impact of transit traffic ("silent asphalt," expanding rail freight service, mandating cleaner engines, etc.), only the application of regulatory and financial measures promised immediate and effective results.²⁶ Prior EU membership, Austria took full advantage of its unimpeded sovereignty by imposing weight limits, national quotas on the number of transit trucks, and substantial annual road taxes.

When Austria began contemplating EC membership, while transit volumes kept growing steadily, the Austrian government needed to find an accommodation with Brussels on this issue. Otherwise, the EC or individual member states could have used the transit question to extract substantial concessions from Austria during the accession talks.

Different Actors in Multiple Policy Arenas - The national setting.

All transit routes fall under the exclusive jurisdiction of the federal government, specifically the Ministry of Transportation and Traffic, traditionally a Social Democratic portfolio. While the Minister of Transportation is responsible for specific policy decisions, overall policy formation requires the unanimous consent Austria's SPÖ-ÖVP coalition government. The Ministry of Environment (responsible for emissions and environmental impact), the Ministry of Agriculture

²² Wilhelm Kohler and Christian Keuschnigg, "Die Osterweiterung der EU: Eine österreichische Perspektive", 1998, pp.324-38.

²³ Eberhard Brandt and Peter Schäfer, "Der alpenquerende Transitverkehr – auf der Suche nach Sustainable Mobility", 1996, pp.204-38.

²⁴ Wilfried Puwein, "Der Transitverkehr," 1994, pp.175-81.

²⁵ Puwein, "Erste Bewertung des Transitvertrages", 1998, p.110.

²⁶ *Ibid*, p.109.

Printquelle: in: Zeff, Eleanor E. (Ed.), *The European Union and the Member States. Cooperation, Coordination, and Compromise*, Lynne Rienner Publisher 2001, Boulder, 267-284.

(responsible for water reservoirs, plant life and the protection of landscapes), the Ministry of Health (responsible for the health effects on individuals), and the Ministry of Economic Affairs (in charge of road construction, energy, trade and industry) all share competencies in areas related to traffic and its impact on the environment.

Although transit traffic is a federal issue, its effects are felt locally and regionally, impacting tourism, local transportation, the environment and agriculture - areas that fall under the autonomous or partial jurisdiction of municipal and *Länder* governments. While the *Länder* may express their interests through various formal mechanisms (e.g., the Federal Council), informal channels provide a more effective voice. The highly federated organizational structure of the ÖVP provides Conservative *Länder* leaders, such as the governor of Tyrol, with ample opportunity to shape the Conservative Party's national-level political agenda. Austria's trucking and transportation lobby has also come to play a special role. Local transportation firms and policy makers were anxious that road taxes apply only to foreign vehicles and to short segments of specific transit routes. A more extensive toll system would have affected local deliveries and thus raised prices for Austrian consumers. Local officials also did not want to restrict the flow of non-commercial vehicle traffic for fear it might impede tourism.

Owing to the fragmented nature and the territorial differentiation of responsibilities, environmental policy and related agendas are characterized in Austria by *issue networks* rather than by the otherwise typical (corporatist) *policy communities* (e.g., such as in social policy).²⁷ Nevertheless, the saliency of the transit issue combined with the enormous burden it is perceived to impose on the local population, the environment, agriculture and the economy (especially tourism) has created a fairly homogenous Austrian policy perspective on this issue. It is shared across the political spectrum, uniting such disparate interests as green activists, industrial leaders and farmers. Since the all-important decision making arena on transit policy is located at the European level, the Austrian federal government has been the paramount architect of Austrian policy initiatives.

The international level.

The countries most impacted by Austrian restrictions on transit have been Italy and Germany. Business interests and policy makers in both countries, specifically in Germany's southern province of Bavaria, have repeatedly threatened with retaliatory measures and sometimes taken action. In 1989 foreign trucking firms blockaded all major border crossings in Western Austria in response to strict night time noise restrictions. A year later, Italy reacted to the construction-related partial closure of the transit *autobahn* by temporarily revoking all transport permits for vehicles to and from Austria, effectively bringing the entire transalpine traffic to a standstill.

Another important player is Switzerland, whose 28-ton weight limit for trucks forces an additional 29 percent of all transalpine commercial traffic on lengthy detours through either Austria or France.²⁸

The most important international actor on this issue has been the European Commission, specifically the Directorate General VII (DG VII) and the Commissioner for Transportation. Since

²⁷ Gerda Falkner and Wolfgang C.Müller, "Österreich im europäischen *Mehrebenensystem*", 1998.

²⁸ Brandt and Schäfer, "Der alpenquerende...", 1996, p.205.

the conclusion of the Treaty of Rome, the EC has regarded the alpine transit arteries as “vitaly important.”²⁹

While expressing sympathy for the plight of the people affected by commercial traffic, the Commission has generally opposed all discriminatory restrictions imposed by Austria and Switzerland, such as national quotas, nighttime restrictions, and exemptions for national transportation companies. Putting the blame partly on Austria and Switzerland for their failures to upgrade the, the EC/EU views the increase in road traffic as the result of an inadequate and antiquated railroad infrastructure (low tunnel clearance, small curve radius, inadequate loading facilities, inadequate train capacity, long clearance procedures at the borders, etc.) While a trucker can drive the 400 kilometers from Munich to Verona in one night, rail transportation can take up to two days.

The European Community has favored a comprehensive approach to addressing European traffic problems, of which transalpine traffic is seen as an integrated component. Articles 129b-129d of the new Title XII of the EC Treaty provides for the establishment and expansion of Trans-European Networks (TEN) of communication, transportation and energy infrastructures. In a white paper titled *Growth, Competitiveness, Employment*, former Commission President Jaques Delors proposed short-term investments of some 82 billion ecus in 26 priority TEN traffic infrastructure projects, including the Munich-Brenner-Verona axis as one of two transalpine rail corridors.

A group under former Commission Vice President Henning Christophersen was charged with developing proposals from the ideas laid out in the Delors report. The Christophersen Group recommended to the 1994 Essen European Council, making the Brenner-rail axis one of the 14 priority TEN projects.³⁰ After the proposal’s acceptance in the subsequent Councils of Cannes and Madrid (1995), the EU spent some 70 million ecus on preliminary studies of the Brenner project.

The planned 409 km Munich-Brenner-Verona rail corridor, of which 236-km will consist of new tunnels, including the 55-km *Brenner-Base-Tunnel*, is projected to cost some 12.5 billion ecus.³¹ The planned capacity of 400 trains a day, compared to today’s 200, is expected to relieve the Brenner road by some 18 million tons of freight (1.8 million trucks) a year. Its only drawback is the projected time frame. With construction scheduled to begin by 2000, even optimistic forecasts do not anticipate the project’s conclusion much before 2015. This is too long according to the Austrian government, which has thus been pursuing both unilateral action and cooperative solutions with the EC/EU.

Policy and Negotiations Prior to Accession

To the extent possible, Austria in 1988 needed to come to an understanding with the EC on transalpine traffic before formally applying for EC membership. In a strategic move Austria allied itself with Switzerland, which also needed to settle its transit problem with Brussels. Both countries made clear that without a satisfactory resolution of the transit problem they would veto the conclusion of the EEA Treaty between the EC and EFTA.

²⁹ Ibid, p.206.

³⁰ Trans-European Networks, The Group of Personal Representatives of the Heads of State or Government, Reports, Office for Official Publications of the European Communities, Luxembourg, 1995.

³¹ Brandt and Schäfer, “Der alpenquerende...,” 1996, p.205.

On December 6, 1992, following 3 years of difficult negotiations, Austria and Switzerland each concluded a transit agreement with the EC.³² This transit agreement forced all sides to make substantial concessions.

The agreements were viewed by all signatories as a comprehensive attempt to reconcile the competing interests of economic growth, local needs and environment. Scheduled to go into effect in 1993, the arrangements were to remain in force for 12 years. The agreement with Austria sought to reduce the impact of transit road traffic by (1) raising soot and NOx emissions standards; (2) by establishing an enforcement mechanism based on an “ecopoints system;” and (3) by applying the “true-cost” and “polluter-pays” principle as laid out in Art.130r, Sec. 2 of the EC Treaty.

From the start of the negotiations, the main sticking points concerned the tolerable volume of transit traffic, the compatibility of standards of vehicle weights and lengths, unilateral road taxes, and regulatory measures as well as EC contributions to Austrian and Swiss rail infrastructure investments.

The centerpiece of the agreement with Austria was a complex ecopoints system, which allocated point-quotas proportional to the nations’ previous transit volumes. The points were purchased for individual trucks on the basis of giving preference to those with the technologically highest feasible emissions standards. The ecopoint system, thus, provided an incentive for trucking firms across Europe to switch to vehicles with cleaner engines. The goal was to reduce harmful NOx emissions by 60 percent of 1991-levels by 2002.³³

Although Austria had initially favored a model capping the transit volume once an emission ceiling had been exceeded (ceiling model), the EC insisted on the ecopoints solution. The latter promised greater flexibility and even an increase in transit traffic by reducing the emissions per vehicle. Austria, however, could still unilaterally regulate transit, if the annual volume exceeded 8 percent (1,365,120 trips) of 1991 levels. The sticky question of vehicle weights was resolved by a compromise formula under which the Austrian standard of 38 tons remained in force but with a 2-ton tolerance limit, thus accommodating standard EC 40-ton trucks. Austria managed to keep domestic and bilateral commercial traffic out of the agreement but was forced to permit the passage of trucks from EC countries with lower environmental standards. Nevertheless, Austria’s restrictive interpretation of the agreement after its conclusion continued to be a source of great tension in Austrian-EU relations prior to Austria’s accession.

Policy and Strategies during Austria’s Accession Talks

When Austria applied for EU membership, the European Commission made it clear that a number of points in the transit agreement did not conform to EU law.³⁴ It criticized specifically (1) the special bilateral agreements between Austria and some EU member states; (2) the

³² CES(92)1030 23—09-1992.

³³ Brandt and Schäfer, “Der alpenquerende ...,” 1996, fn.37.

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unilateral weight restrictions; (3) the monitoring of ecopoints and weight limits at Austria's borders; and (4) the Austrian system of road taxes.³⁵

The EU maintained that with the realization of the internal market after January 1, 1993 the concept of "transit" no longer applied. Restrictions on the free flow of goods would thus be regarded as unacceptable under single market rules.³⁶

In terms of a negotiating strategy with the EU, Austria first tried to convince Brussels to incorporate the transit agreement into its primary law, which the EU refused. Austria then sought to make the transit agreement "accession-proof" by shielding it from expected objections by EU member countries. When this was not possible, Austria submitted a unilateral formal reservation concerning the TA, hoping to keep it out of the negotiations altogether, which Brussels rejected. As in previous accession talks, the EU insisted that the negotiations had to comprise the entirety of the relationship between the Community and an applicant country.

After long and difficult negotiations Austria succeeded in persuading the EU to allow Austria to keep its ecopoint system for the foreseeable future.³⁷ It had taken a personal appeal by the Austrian chancellor to French President Mitterand to overcome a threatened French veto.

It was especially important for Austria that the goal of reducing NOx emissions by 2001 by 60 percent of 1991 levels was written into the treaty.³⁸ Unless the European Council could recommend an effective alternative (which Austria as an EU member could always veto) the ecopoints regime was to be extended even further until December 31, 2003.

When the responsibility for monitoring the ecopoints shifted to the EU in 1997, Austria abolished bilateral quotas, reduced its highest road user charges, ceased all border inspections of ecopoints, and began setting up an electronic monitoring system. To calm the fears of the domestic agricultural lobby, Austria was also permitted to provide special subsidies to area farmers.

After Austria's Accession: The Transit-Standoff with the EU

Austria had invested considerable political capital in being allowed to keep its ecopoints system as an EU member. In time, however, the Austrian government was beginning to have serious doubts about the system, while the EU appeared to have grown fond of it. When reviewing the transit agreement in 1997, the EU Commission concluded that the ecopoints model was an effective means of reducing pollution.³⁹ Since 1993 harmful emissions had been reduced by about one-fifth, while the allocated quantity of ecopoints had never been exceeded. In short, ecopoints were clearly not reducing transit traffic volumes, which continued to mobilize the

³⁴ Ibid, p.223.

³⁵ Cf. Directive: 93/89/EEC.

³⁶ Brandt and Schäfer, "Der alpenquerende ...," 1996, p.224.

³⁷ Austrian Accession Treaty, Protocol 9, Art.11/2 30-12-1994.

³⁸ Austrian Accession Treaty, Protocol 9, Art.16. 30-12-1994.

³⁹ Puwein, "Erste Bewertung ...,"1998, p.116.

affected Austrian population.⁴⁰ In fact, the amount of freight transported on Austrian transit routes had sharply risen from 16.7 million tons in 1992 to 20.3 million tons in 1996, while Switzerland had seen only a modest increase (from 2.2 to 3.5 million tons), and France none at all. There, a general road toll system kept freight volumes constant at 10.3 million tons.

The reasons for this increase were several, such as the large number of available ecopoints, rapid fleet modernization, innovative strategies to maximize ecopoint usage, as well as the increased use of legal exemptions⁴¹ and smaller 7-ton trucks. Moreover, the EU-mandated reduction of road user fees and tolls in 1995 increased road transit by 20 percent.

The Austrian government found itself in the unenviable position of having to choose between mounting domestic pressure and international obligations. Political expedience prevailed, and Austria implemented massive unilateral Brenner-road toll and transit fee increases,⁴² while simultaneously lowering the domestic tax on commercial trucks. In response, the European Commission initiated legal proceedings on the grounds that Austrian measures were discriminatory and violated specifically Directive 93/89/EEC concerning road user charges. When citizen groups subsequently staged a series of road blockades, Austria threatened to ban nighttime traffic completely.⁴³

By 1998, the situation was becoming increasingly complex, characterized by an array of competing and coalescing preferences among a number of players. The European Commission was interested in a global solution to the alpine transit problem, based on the principles of user-pays and true-cost pricing. Commissioner Kinnock proposed a system of road user charges (Eurovignettes) designed to exact substantial premiums from the biggest polluters.⁴⁴ Successive meetings of the Transport Council in 1997 and 1998, however, failed to overcome Italian and German objections to the high road fees contained in the Kinnock proposal.⁴⁵

Switzerland, worried that its flag carrier SwissAir would be kept out of the lucrative European market, signaled its willingness to compromise on alpine transit. Specifically, the Swiss suggested trading their low truck weight limit for gradually increasing road user charges. Germany and Italy, however, were determined to bloc any agreement with either Austria or Switzerland that raised transit road fees.

Austria was thus facing a dilemma. It wanted an EU agreement with Switzerland, which would force the Swiss to rescind their weight restrictions, thus diverting traffic away from Austria. On the other hand, a threat to veto the deal with Switzerland would provide the Austrian government with enough leverage to persuade the EU Commission to drop its case against Austria before the ECJ. Furthermore, Austria had to ensure that EU concessions on Swiss transit fees remained competitive with any agreement Austria reached with the Commission concerning Austrian road charges.

⁴⁰ *Verkehr & Umwelt*, April, 1994, p.3.

⁴¹ These CEMT permits are designed to prevent possible bottlenecks in cross-border commercial traffic.

⁴² Austria doubled the one-trip transit permit for low-emissions trucks and sharply raised the *Brenner-Autobahn* toll.

⁴³ *Der Standard*, July 18, 1998, p.1.

⁴⁴ Com.PR June 2, 1998.

⁴⁵ Co.PR 2119 Transport Council 11-03-1997 p.3.

Printquelle: in: Zeff, Eleanor E. (Ed.), *The European Union and the Member States. Cooperation, Coordination, and Compromise*, Lynne Rienner Publisher 2001, Boulder, 267-284.

The Austrian Transport Minister, Caspar Einem, decided on a “carrot and stick approach.” The carrot was an Austrian promise to help deliver both the transit agreement with Switzerland and Commissioner Kinnock’s long-delayed Eurovignettes plan during Austria’s upcoming Council presidency. Simultaneously, the Austrian government conveyed to Commission President Jacques Santer that the transit issue was of “vital national interest,” thus signaling determination and obstructionism, if the EU did not relent in its harsh stance toward.⁴⁶

An intensive diplomatic exchange preceded the important Transport Council session on December 1, 1998. Austria had found important allies in France and other EU member states that had been most impacted by Swiss transit restrictions. Vienna was also fortunate in that the new German Social Democratic-Green government was largely immune to pressures from the German transportation lobby. By three o’clock a.m. and “after torturous discussion” [sic] determined Italian opposition was finally overcome.⁴⁷ The package deal contained a mutually satisfactory transit accord⁴⁸ with Switzerland, and a unanimous agreement on Kinnock’s proposed new directive on “road charges for heavy goods vehicles” (Eurovignettes).⁴⁹

As the transport ministers were ready to depart, Minister Einem placed the issue of the Austrian road toll on the agenda. The weary Council members finally reached a compromise under which Austria could maintain its higher toll on top of the ecopoint-based road fees, provided it applied to the entire 120km *Brenner-Inntal Autobahn* (the lower price/km ratio makes the toll compatible with EU law). If Austria implemented these changes by July 1, 1999, the Commission would in turn drop its charges before the ECJ.⁵⁰

Final Analysis and Conclusion

This outcome allowed the Austrian government to extricate itself from a situation in which policy makers were facing a choice between growing public anger over mounting traffic volumes, or proceedings before the ECJ when Austria had little hope of prevailing. Most importantly, the agreement between the EU and Switzerland holds the promise of redirecting some of the European truck traffic away from Austria to Swiss transit routes.

The outcome itself and the strategy employed to bring it about demonstrate how a small, but determined, actor can take advantage of the fragmented and shifting interests arrayed against it in multiple policy arenas. The transit issue involved several players at the supranational, national and sub-national level who found it difficult to align their objectives, especially when competing interests were at stake.

For Austria on the other hand, the transit problem was of paramount importance. Austria’s geographic location gave it a strategic potential to block vital EU commercial traffic. The government was thus able to prioritize its policy objectives accordingly. Austria was also fortunate because it could rely on a domestic consensus. Its negotiators could thus present a fairly unified

⁴⁶ *Der Standard*, February, 2 1998, p.36.

⁴⁷ See Co.PR 2142 Council-Transport 11-30-1998 p.5; *Profil* January 2, 1999, p.24.

⁴⁸ Switzerland accepted annually increasing quotas of 40-ton trucks after 2000, and lower than intended transit fees.

⁴⁹ Co.PR 2142 Council-Transport 11-30-1998 p.5.

⁵⁰ SPANC, 1998, No.992, XX, 12-24-98, p.16.

position with the federal government as the all-important strategist and actor. Furthermore, Austria was at times in a position to veto or delay agreements important to other parties in to the negotiations.

From the perspective of Austrian policy-making, this case provides further evidence that EU membership has bolstered the role of the executive vis-à-vis other political institutions such as the Austrian parliament and sub-national political actors. However, the transit issue also exposes some of the weaknesses inherent in the Austrian approach to policy-making in European arena. Prior to Minister Einem's tenure at the transport ministry there was a noticeable lack of anticipation, initiative and imagination. There was generally little Austrian input in the early stages of opinion and policy formation at the European level. Instead, Austria waited for a consolidated policy position to emerge, which it then sought to block, deflect or wear down in protracted negotiations. On a more general level, the shortcomings revealed in the transit negotiations have prevented the nation from playing a more substantial role in EU policy-making on issues that are of less immediate consequence for Austria.

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