

12-1-2002

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Recommended Citation

Heather Berit Freeman, *Austria: The 1999 Parliament Elections and the European Union Members' Sanctions*, 25 B.C. Int'l & Comp. L. Rev. 109 (2002), <http://lawdigitalcommons.bc.edu/iclr/vol25/iss1/5>

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AUSTRIA: THE 1999 PARLIAMENTARY ELECTIONS AND THE EUROPEAN UNION MEMBERS' SANCTIONS

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Abstract: The 1999 parliamentary elections in Austria sparked a fire of controversy in the European Union. Led by the far-right activist Joerg Haider, the Freedom Party achieved a second place victory, causing leaders and activists to voice their concerns about Austria's future. Acting on that apprehension, the individual members of the European Union joined together to issue diplomatic sanctions against Austria, an unprecedented action. When the sanctions were lifted in September, 2000, the European Union was left to reexamine its role and to determine whether to amend its founding treaties to reflect any changes in the relationship between the government of the European Union and its Member States.

INTRODUCTION

"Xenophobia Triumphs in Austria's Historic Poll," "Far Right Tears up Austria's Political Turf," "Rightist Party Gains in Austrian Elections," the headlines of the world's major papers screamed on October 4, 1999, the morning after the far-right Freedom Party (FPO), led by the charismatic and controversial Joerg Haider, placed second in Austria's parliamentary elections, shocking observers across Europe and throughout the world.¹ Garnering 27.3% of the electorate, the FPO edged ahead of the Austrian People's Party (OVP) to claim second place, throwing into disarray a coalition government that had been dominated by the center-right OVP and the center-left

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¹ Alex Blair, *Xenophobia Triumphs in Austria's Historic Poll*, THE SCOTSMAN, Oct. 4, 1999, at 9, available at LEXIS, News Library, Major Newspapers File; William Drozdiak, *Rightist Party Gains in Austrian Elections*, WASH. POST, Oct. 4, 1999, at A16, available at LEXIS, News Library, Major Newspapers File; Carol J. Williams, *Far Right Tears Up Austria's Political Turf*, L.A. TIMES, Oct. 4, 1999, at A1, available at LEXIS, News Library, Major Newspapers File.

Social Democratic Party (SPO) since 1945.² In the months to follow, the FPÖ and the ÖVP would form a new coalition government.³ Fearing that this unlikely alliance indicated growing intolerance towards non-whites and foreigners in Austria, the fourteen other Member States of the European Union (EU), in an unprecedented action, issued diplomatic sanctions against Austria in February, 2000.⁴ These sanctions were lifted after a team of “wise men” appointed by the European Court of Human Rights recommended their termination to the President of the European Council in September, 2000.⁵

Articles 6 and 7 of the Treaty on the EU (TEU) bind the Member States to the principles of liberty, democracy, respect for human rights, and fundamental freedoms, and these Articles reflect the states’ common distaste for all forms of discrimination; however, no provision of the Treaty gives the EU, as a government entity, the authority to declare sanctions against a Member State absent a “serious and persistent breach.”⁶ The European Council has the authority to determine if such a breach exists.⁷ While Austria’s inclusion of a politically far-right party in its coalition government justly raised concerns among the EU Members, no action taken by the Austrian government constituted such a breach.⁸ Therefore, the Member States did not act under the procedure outlined in Article 7. Instead, the sanctions issued represent a consensus among the fourteen EU Members, rather than an official EU action.⁹ The underlying motive for the Members’ coordinated measure is “clearly moral;” many officials feared that inaction by Austria’s EU partners would be read as approval of Haider’s controversial views.¹⁰ Austria, on the other hand, argued that the sanctions were not necessary, as the nation already

² JULIE KIM & KAREN DONFRIED, AUSTRIA: CONTROVERSIAL GOVERNMENT AND EUROPEAN DIPLOMATIC SANCTIONS 6 (CRS Rep. for Congress RL30455, 2000); Williams, *supra* note 1, at A1.

³ KIM & DONFRIED, *supra* note 2, at 6.

⁴ Donald G. McNeil, Jr., *Austrian Politician Sometimes Down but Never Out*, N.Y. TIMES, July 23, 2000, at A3, available at LEXIS, News Library, Major Newspapers File.

⁵ Suzanne Daley, *Europe Lifts Sanctions on Austria, but Vows Vigilance*, N.Y. TIMES, Sept. 13, 2000, at A6, available at LEXIS, News Library, Major Newspapers File [hereinafter Daley, *Europe Lifts Sanctions*].

⁶ TREATY ON EUROPEAN UNION, OCT. 2, 1997, art. 7, 1997 O.J. (C 340) 145 (as amended 1999) [hereinafter TEU].

⁷ *Id.*

⁸ *See id.* arts. 6, 7; KIM & DONFRIED, *supra* note 2, at 8.

⁹ *See id.* at 7, 8.

¹⁰ *Id.* at 8.

had its own political and legal safeguards in place.¹¹ The EU Members now are left with the dilemma of whether to institutionalize an official monitoring procedure in the Treaty on the EU.¹²

This Note examines the Austrian political and legal system and the necessity of the Member States' sanctions against Austria. Part I provides background on post-World War II Austria, the nation's government and politics, and the rise of the FPÖ and Jörg Haider. Part II examines the October 3, 1999 parliamentary elections and the resulting coalition government, while Part III explores the European response to the Austrian election. Part IV analyzes the necessity of the sanctions, and Part V looks at proposed EU legislation addressing future situations of this type.

I. BACKGROUND

A. Austria's Post-World War II History and Demographics

Austria is a small country in central Europe with a population of approximately eight million.¹³ From 1938 to 1945, Nazi Germany occupied Austria, and during World War II, the Allies called Austria the "first victim of Hitlerite aggression."¹⁴ Despite the Allies' abhorrence of the German occupation, many Austrians welcomed the union.¹⁵ On November 1, 1943, the governments of the Soviet Union, the United States, and the United Kingdom declared that Austria would be liberated from German domination.¹⁶ In 1955, the occupying powers signed the Austrian State Treaty, which gave Austria full sovereignty and independence.¹⁷ Shortly thereafter, Austria passed a law "declaring perpetual neutrality and a ban on entering any military alliances or allowing foreign military bases on Austrian territory."¹⁸ In its role

¹¹ See Press Statement of the Austrian Foreign Minister Mrs. Benita Ferrero-Waldner (Feb. 14, 2000), at <http://www.austria.it/fwraa02.htm> (last visited Oct. 11, 2000) [hereinafter Press Statement].

¹² MARTTI AHTISAARI, JOCHEN FROWEIN, MARCELINO OREJA, REPORT [TO THE PRESIDENT OF THE EUROPEAN COUNCIL] ¶ 117, (Sept. 8, 2000), available at <http://www.eumc.at/general/report-A/report-en.pdf> (last updated Sept. 11, 2000) [hereinafter REPORT]; *Inter-Governmental Conference: Progress on Closer Co-Operation and Article 7*, EUR. REP., Oct. 11, 2000, available at LEXIS, European Library [hereinafter *Inter-Governmental Conference*].

¹³ KIM & DONFRIED, *supra* note 2, at 1.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ HERBERT HAUSMANINGER, *THE AUSTRIAN LEGAL SYSTEM* 7 (1998).

¹⁷ KIM & DONFRIED, *supra* note 2, at 1.

¹⁸ *Id.*

as a neutral state, Austria viewed itself as a bridge between the East and West during the Cold War and hosted a number of United Nations agencies and international organizations in Vienna.¹⁹ Despite its political neutrality, however, Austria remained closely aligned with western democracies both culturally and ideologically.²⁰

In a June, 1994 referendum, 66% of Austrians demonstrated their favor for EU membership, which led to the signing of the Treaty of Accession of Austria to the EU on June 24, 1994.²¹ This Treaty subsequently entered into force, and Austria became a member of the EU on January 1, 1995.²² Presently, Austria is one of the wealthiest EU Members.²³ Over 60% of the nation's imports and exports come from or go to other EU countries, rendering the nation's economy largely dependent on the EU.²⁴ Currently, Austria is one of eleven EU Member States that has adopted the Euro and, consequently, it has implemented an economic plan in accordance with European Monetary Union requirements.²⁵ Traditionally, Austria's economy operated as "a corporatist system of 'social partnership' between government, industry, labor, and agriculture."²⁶ In the 1980s, however, the government's role began to wane as a result of the privatization of many enterprises formerly under state ownership.²⁷ The services sector dominates the economy, and tourism generates approximately 15% of the nation's capital.²⁸

Over 9% of Austria's population is considered "foreign," with communities of ethnic Magyars and Croats living in the province of Burgenland and Slovenes in Carinthia.²⁹ Nevertheless, 98% percent of Austrians speak German.³⁰ In 1996, more than 700,000 immigrant workers were registered in Austria, and an unknown number of illegal immigrants and refugees presently reside there.³¹

¹⁹ *Id.* at 1–2.

²⁰ *Id.*

²¹ HAUSMANINGER, *supra* note 16, at 14; KIM & DONFRIED, *supra* note 2, at 2.

²² *Id.*

²³ KIM & DONFRIED, *supra* note 2, at 2.

²⁴ *Id.*

²⁵ *See id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ KIM & DONFRIED, *supra* note 2, at 2–3.

²⁹ HAUSMANINGER, *supra* note 16, at 1; KIM & DONFRIED, *supra* note 2, at 3.

³⁰ HAUSMANINGER, *supra* note 16, at 1.

³¹ KIM & DONFRIED, *supra* note 2, at 3.

B. Government and Political Structure

The Austrian Constitution refers to two distinct representative bodies—the National Council and the Federal Council.³² The National Council is referred to as “Parliament,” and functions as the “central decisionmaking organ.”³³ One hundred eighty-three deputies are elected, each for a four year term, by the electorate, which is comprised of all Austrian citizens over eighteen who have not been convicted of a crime.³⁴ All members of the Austrian voting population “enjoy a general, equal, immediate, personal and secret right to vote.”³⁵ The electoral system used to determine the composition of the Parliament is based on proportional representation of contending political parties.³⁶ Under this complicated and somewhat confusing system, essentially, the number of votes cast for a party is used to calculate the number of seats that the party gains in Parliament.³⁷ In turn, from among its members, the Parliament elects a President, a Second President, and a Third President.³⁸ The three presidents and the party whips form a steering committee that organizes the work of Parliament.³⁹

As in other democracies, such as the United States and most other European countries, political parties play a major role in the exercise of state functions in Austria.⁴⁰ The Political Parties Act of 1975 provides, “[t]he existence and plurality of political parties are essential components” of the Austrian democratic system and “[t]he tasks of the political parties include their participation in the policy-making process.”⁴¹ An all-inclusive state-funding plan has developed since 1960 which, as of the passage of the Political Parties Act, includes the state funding of all party organizations.⁴² While political parties may form freely in Austria, the Political Parties Act, the Prohibition Act, and the State Treaty prohibit the revival of national social-

³² HAUSMANINGER, *supra* note 16, at 46.

³³ *Id.*

³⁴ *Id.* at 43, 46.

³⁵ *Id.* at 43–44.

³⁶ *Id.* at 44.

³⁷ See HAUSMANINGER, *supra* note 16, at 43–44.

³⁸ *Id.* at 46.

³⁹ *Id.* at 46–47.

⁴⁰ See *id.* at 36.

⁴¹ *Id.* at 39.

⁴² HAUSMANINGER, *supra* note 16, at 39 n.9.

ism, and the Constitutional Court outlawed the right-wing National Democratic Party in 1987.⁴³

As mentioned above, two major parties dominated the Austrian political landscape for over fifty years—the center-left SPO and the center-right OVP.⁴⁴ The stable political environment that resulted from the long-term coalition between these two parties was marked by a fair-minded and practical approach to policy-making.⁴⁵ Scholars note, however, that the agreement between the parties resulted in large part from a lack of attractive alternatives.⁴⁶

Though originally founded as the Austrian Communist Party, the modern SPO represents the mainstream left of the political spectrum.⁴⁷ The SPO traces its centrist roots to the post-World War II years, when leaders sought to expand its support base and moderate its orientation.⁴⁸ Committed to issues of social welfare, equality, justice, and Austria's permanently neutral status, the SPO claimed almost 600,000 members in the 1980s, but that number has declined steadily in recent years.⁴⁹

With a more decentralized party structure than the SPO, the OVP represents the mainstream conservative Christian democratic movement.⁵⁰ Like the SPO, the modern OVP was established in the years following World War II in an attempt to broaden its appeal.⁵¹ The OVP maintains a strong focus on European integration, pressing in recent years for consideration of Austrian membership in NATO.⁵²

C. Joerg Haider and the Freedom Party

Since 1955, the FPÖ has served as Austria's third major political party.⁵³ The FPÖ succeeded the Association of Independents, a group of "disgruntled liberal and national voters."⁵⁴ For this reason, the FPÖ was stigmatized as "nationalist" and remained isolated until it began

⁴³ *Id.*

⁴⁴ KIM & DONFRIED, *supra* note 2, at 3.

⁴⁵ *Id.*

⁴⁶ *See id.*

⁴⁷ KIM & DONFRIED, *supra* note 2, at 3.

⁴⁸ *Id.*; HAUSMANINGER, *supra* note 16, at 41.

⁴⁹ *Id.*

⁵⁰ KIM & DONFRIED, *supra* note 2, at 4.

⁵¹ HAUSMANINGER, *supra* note 16, at 41.

⁵² KIM & DONFRIED, *supra* note 2, at 4.

⁵³ *Id.*

⁵⁴ HAUSMANINGER, *supra* note 16, at 42.

to emphasize more mainstream ideas in the mid-1960s.⁵⁵ Under the leadership of Joerg Haider, the FPÖ has risen to new prominence.⁵⁶

Prior to Haider's securing leadership of the FPÖ in 1985, the party's representation in Parliament was a mere 5%.⁵⁷ Haider immediately employed his "charisma and skill" to shape the party into a far-right national movement.⁵⁸ In ten years, the "youthful" leader with "seemingly boundless energy" attracted enough new followers to raise the FPÖ's parliamentary representation to 22% in 1995.⁵⁹ Much of Haider's impact has been attributed to his ability to attract protest voters, who were drawn initially by his mantra of "attack rather than compromise."⁶⁰

Known for shifting his positions on issues for strategic reasons, Haider was forced to resign as Governor of the Province of Carinthia in 1991 after he publicly commended the "sound employment policies" of the Third Reich, a statement that was interpreted as an endorsement of slave labor.⁶¹ Haider's political legacy was tainted further by a 1993 split in the FPÖ, resulting in the formation of the Liberal Forum, and the failure of "Austria-first," an anti-immigration initiative sponsored by Haider.⁶² Haider faced an additional setback in his political agenda when he failed to garner adequate support for his campaign against the 1994 referendum on Austrian membership in the EU.⁶³ The referendum passed with 66% of the vote.⁶⁴ Concerns were raised again in 1995 when Haider extolled former members of Hitler's Waffen SS as "decent people of good character who also stick to their convictions."⁶⁵ Earlier in the same year, he had been criticized for referring to Nazi concentration camps as "punishment camps," implying that the inmates who suffered there were guilty of crimes.⁶⁶ Despite these political stumbling blocks, Haider managed to regain his position as Carinthian Governor in 1998.

⁵⁵ *Id.*

⁵⁶ KIM & DONFRIED, *supra* note 2, at 4.

⁵⁷ HAUSMANINGER, *supra* note 16, at 42.

⁵⁸ *Id.*

⁵⁹ HAUSMANINGER, *supra* note 16, at 42; Williams, *supra* note 1, at A1.

⁶⁰ HAUSMANINGER, *supra* note 16, at 42.

⁶¹ Drozdiak, *supra* note 1, at A16.

⁶² *Id.*; KIM & DONFRIED, *supra* note 2, at 4.

⁶³ KIM & DONFRIED, *supra* note 2, at 4.

⁶⁴ *Id.* at 2.

⁶⁵ *Id.* at 15.

⁶⁶ *Id.*

In 1999, Haider outlined his priorities in a "Contract with Austria" and managed to appeal to men, youth, professional workers, and increasingly to blue-collar workers, who traditionally aligned themselves with the SPO.⁶⁷ His Contract with Austria listed a number of populist initiatives, including increasing social benefits, introducing a 23% flat tax, decreasing immigration, cutting the size of government, injecting a "more entrepreneurial spirit into the economy," and fighting corruption.⁶⁸ Haider's success largely has been attributed to his ability to tap into rising public resentment of the long-standing coalition between the SPO and the OVP.⁶⁹ The two parties, which dominated Austria's politics from 1955 until 1999, created a government packed with friends and supporters which was considered by many to be frozen in bureaucracy.⁷⁰ One Austrian voter summarized sentiments about the cronyism between the two parties, commenting, "I was sick of the two big parties doing their deals together. It was time for a change and the Freedom Party was the only option."⁷¹

Haider's more controversial positions are those arising from his far-right extremism and, in particular, his anti-immigrant activism.⁷² His 1999 campaign slogan in Vienna was "stop the over-foreignization," which raised suspicions and gained disapproval from observers.⁷³ Critics also condemned Haider's promise of zero immigration, due to concerns that the pledge might restrict further refugee access to Austria, lead to mass deportations of illegal immigrants, and promote violence towards both legal and illegal immigrants already residing in Austria.⁷⁴ Furthermore, Haider's history of anti-Semitic comments and his perceived potential to appeal to neo-Nazis spurred some members of Austria's Jewish community to threaten to leave the country after the FPÖ's rise to power.⁷⁵ Many of Austria's 9000 Jews reported that they would not remain in Austria if Haider and his party became part of the Austrian coalition government.⁷⁶

⁶⁷ *Id.* at 4.

⁶⁸ KIM & DONFRIED, *supra* note 2, at 4; Drozdiak, *supra* note 1, at A16.

⁶⁹ KIM & DONFRIED, *supra* note 2, at 4.

⁷⁰ Williams, *supra* note 1, at A1.

⁷¹ Philip Sherwell, *International: Austrian Shift to Right Risks Jewish Exodus*, SUNDAY TEL. (London), Oct. 10, 1999, at 26, available at LEXIS, News Library, Major Newspapers File.

⁷² KIM & DONFRIED, *supra* note 2, at 5.

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ Sherwell, *supra* note 71, at 26.

⁷⁶ *Id.*

Haider's parents embraced Nazism and were punished for their affiliation after World War II.⁷⁷ Though he admitted that he has the privilege of hindsight, Haider stated that, despite his parents' views, "I think I would have been in prison during the Nazi period because I am a fighter for freedom and not for dictatorship."⁷⁸ Nonetheless, public concern led Haider to issue a statement in November, 1999 in which he apologized for his past comments.⁷⁹ In this declaration, Haider further asserted that the FPO was committed to freedom and democracy, and he assured Austrians that "no one need[ed] to pack their suitcases and no one [had] to leave their home."⁸⁰

II. THE OCTOBER 3, 1999 PARLIAMENTARY ELECTIONS

In what Haider called a "sensational breakthrough," the FPO claimed a second place victory in the Austrian parliamentary elections held on October 3, 1999.⁸¹ In the election, Social Democrats placed first with 33.15% of the vote, despite showing their lowest turnout at the polls since World War II.⁸² Officially, the FPO and the OVP tied for second place with 26.91% of the vote, though in actuality the FPO received about 400 more votes.⁸³ The Green Alternative Party (GAL) acquired the remaining parliamentary seats, with 7.4% of the vote, and the Liberal Forum lost all representation by missing the 4% threshold necessary to claim any seats.⁸⁴ The final breakdown gave sixty-five seats to the SPO, fifty-two parliamentary seats each to the FPO and the OVP, and fourteen seats to the GAL.⁸⁵

For many Austrians, their fears of a new government that included the FPO were realized when, after months of negotiation, the SPO and the OVP were unable to renew their longstanding majority coalition.⁸⁶ Acting Chancellor Viktor Klima of the Socialist Democrats initiated talks with the GAL, but the two groups failed to form a minority government.⁸⁷ Realizing that there was no hope of forming a

⁷⁷ Dominic Lawson, *I lead. I lead. I lead the People.*, SUNDAY TEL. (London), Feb. 13, 2000, at 20; Sherwell, *supra* note 71, at 26.

⁷⁸ Lawson, *supra* note 77, at 20.

⁷⁹ KIM & DONFRIED, *supra* note 2, at 15.

⁸⁰ *Id.* at 15-16.

⁸¹ Drozdiak, *supra* note 1, at A16.

⁸² *Id.*; KIM & DONFRIED, *supra* note 2, at 5.

⁸³ *Id.* at 5-6.

⁸⁴ *Id.* at 6.

⁸⁵ *Id.* at 5-6.

⁸⁶ *Id.* at 6.

⁸⁷ KIM & DONFRIED, *supra* note 2, at 6.

government that included the SPO, Klima ended his efforts in January, 2000 and, for the first time, gave the FPO and the OVP the opportunity to form a coalition.⁸⁸ Despite his displeasure with the arrangement, Austrian President Thomas Klestil stated, "in a democracy, a parliamentary majority has to be respected."⁸⁹

III. THE EUROPEAN RESPONSE TO THE NEW AUSTRIAN GOVERNMENT

On January 31, 1999, anticipating the formation of a new government that included the FPO, Austria's fourteen EU partners (the "Fourteen") pressed the European Council Presidency, at the time held by Portugal, to announce three steps that would be taken by the EU.⁹⁰ The steps provided that: (1) the governments of the Fourteen would not "promote or accept any bilateral official contacts at [a] political level with an Austrian Government integrating the FPO;" (2) there would be "no support in favor of Austrian candidates seeking positions in international organizations;" and (3) "Austrian Ambassadors in EU capitals [would] only be received at the technical level."⁹¹ Within twenty-four hours, the proposal, which did not include economic sanctions, was circulated and signed by all of the EU Member States.⁹² The European Commission issued a statement on February 1, 1999, publicizing the views of the Fourteen and reiterating that the EU is "founded on principles of liberty, democracy, respect of human rights[,] and fundamental freedoms and the rule of law."⁹³

The TEU prohibits Member States from pursuing any actions against a fellow Member State absent the existence of a "serious and persistent breach."⁹⁴ The European Council and the Court of Justice have the authority to determine whether such a breach exists.⁹⁵ Since there was no such suggestion in Austria's case, the sanctions levied by the Fourteen represent a coordinated measure rather than an official EU action, such as a directive or a regulation.⁹⁶

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ *Id.* at 8.

⁹¹ *Id.*

⁹² KIM & DONFRIED, *supra* note 2, at 8; see Jonathan Clarke, *Is the EU Ready for Prime Time?*, L.A. TIMES, Feb. 10, 2000, at B9, available at LEXIS, News Library, Major Newspapers File.

⁹³ KIM & DONFRIED, *supra* note 2, at 8.

⁹⁴ TEU, *supra* note 6, art. 7.

⁹⁵ *Id.*

⁹⁶ *Id.*

By issuing diplomatic sanctions against Austria before the swearing-in of the new government, the EU Members had hoped to prevent its formation; however, this effort failed.⁹⁷ On February 3, 2000, one day before the new government took office, President Kletsil pushed the leaders of the OVP and the FPÖ, Wolfgang Schüssel and Jörg Haider respectively, to sign a joint statement responding to international concerns.⁹⁸ The declaration, entitled "Responsibility for Austria—A Future in the Heart of Europe," reaffirms Austria's "unswerving adherence to the spiritual and moral values which are the common heritage of the peoples of Europe."⁹⁹ In the statement, Haider and Schüssel expressed the Austrian Government's commitment to human rights and condemned "any form of discrimination, intolerance and demagoguery."¹⁰⁰ The two party leaders further committed themselves and the Austrian Government to the principles of the EU as expressed in Article 6 of the Treaty and voiced Austria's support for EU expansion.¹⁰¹

Furthermore, the European Parliament contemporaneously adopted a resolution condemning Haider's views.¹⁰² In this declaration, the Parliament affirmed European distaste for past statements made by Haider that expressed "insulting xenophobic and racist" views.¹⁰³ The resolution stresses that "any Austrian government must respect the spirit and the letter of the fundamental principles of the Treaty" and calls on the European Commission and Council to monitor developments in Austria and throughout Europe.¹⁰⁴ In the midst of this imbroglio of disapproving commentary and comeback, President Kletsil swore in the new Austrian government on February 4, 2000.

IV. THE NECESSITY OF THE EU MEMBERS' SANCTIONS

Following the issuance of a September 8, 2000 report written by the three "wise men" appointed by the European Court of Human

⁹⁷ KIM & DONFRIED, *supra* note 2, at 8.

⁹⁸ Dr. Wolfgang Schüssel & Dr. Jörg Haider, *Responsibility for Austria—A Future in the Heart of Europe*, (Feb. 3, 2000), at <http://austria.org/newgovt1.htm>, (last visited Oct. 11, 2000) [hereinafter *Responsibility for Austria*].

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² *Austria—Haider's Views Condemned*, EUR. PARL. DAILY NOTEBOOK (Feb. 3, 2000), at <http://www.europarl.eu.int/dg3/sdp/journ/en/n0002031.hr> (last visited Oct. 1, 2000).

¹⁰³ *Id.*

¹⁰⁴ *Id.*

Rights, the EU Members' sanctions towards Austria were lifted on September 12, 2000.¹⁰⁵ For the most part, the sanctions did little beyond promoting the common values of the EU.¹⁰⁶ Each Member State individually interpreted and implemented the bilateral sanctions, and actions commonly included boycotts of school trips, cultural exchanges, and military exercises.¹⁰⁷ These actions caused some Austrians to see the measures as an expression of aversion towards their nation rather than a commitment to EU principles.¹⁰⁸ The sanctions were intended as a moral message expressing the significance of the principles outlined in Article 6 of the Treaty on the EU; however, because of safeguards and internal concern about the new coalition government, from Austria's perspective, outside pressure from the Fourteen was not necessary.¹⁰⁹

The new Austrian coalition government reiterated commitment to the EU values in a statement issued by Schuessel and Haider on February 3, 2000.¹¹⁰ The authors of the report to the European Council President do not accredit the statement to pressure from the sanctions, but instead imply that Austria's own concern about the FPO's positions led President Kletsil to demand the proclamation.¹¹¹

Internal safeguards enable Austria to monitor its own activities related to potential human rights violations.¹¹² In 1958, Austria ratified the European Convention for the Protection of Human Rights and Fundamental Freedoms.¹¹³ As declared in 1964, this document has the rank of constitutional law within Austria.¹¹⁴ A further defense protects against the formation of national socialist organizations.¹¹⁵ The Austrian Constitutional Court (ACC) has ruled that the prohibition of socialism must be implemented by every relevant state authority.¹¹⁶ The FPO has been an applicant in the ACC in "many cases concerning electoral matters," but the court has never seen any reason to question the FPO's lawfulness in relation to the prohibition of na-

¹⁰⁵ Daley, *Europe Lifts Sanctions*, *supra* note 5, at A6.

¹⁰⁶ *Id.*

¹⁰⁷ Suzanne Daley, *Report Clears Way for Europe to Drop Austrian Sanctions*, N.Y. TIMES, Sept. 9, 2000, at A1, available at LEXIS, News Library, Major Papers File.

¹⁰⁸ *Id.*

¹⁰⁹ Drozdak, *supra* note 1, at A28.

¹¹⁰ Responsibility for Austria, *supra* note 98.

¹¹¹ REPORT, *supra* note 12, ¶ 86.

¹¹² *Id.* ¶¶ 73-75.

¹¹³ HAUSMANINGER, *supra* note 16, at 116.

¹¹⁴ *Id.*

¹¹⁵ REPORT, *supra* note 12, ¶¶ 73-75.

¹¹⁶ *Id.* ¶ 74.

tional socialism.¹¹⁷ The fact that the FPO has never been convicted for engaging in national socialist activities lends support to the idea that the sanctions had little effect within Austria other than building resentment towards the EU.¹¹⁸

Austrian officials reiterated the state's ability as a democratic nation to monitor its own political activities.¹¹⁹ After expressing disapproval of the measures taken by the Fourteen, Austrian Foreign Minister Benita Ferrero-Waldner stressed the nation's commitment to the spirit of the EU Treaties in a statement issued shortly after the inauguration of the new coalition government.¹²⁰ In this statement, Ferrero-Waldner reminded her audience that the FPO had been in existence for fifty years and that Austria had spent fourteen years trying to isolate the party, only to watch the FPO gain support and prominence through populist opposition.¹²¹ The clear implication stemming from this declaration is that the FPO's social and political prominence risked growth throughout Europe as long as the sanctions remained in place.¹²² The Foreign Minister continued that the other option in facing populist opposition was to convince the FPO to "share responsibility . . . and to bring them back on a pro-European path."¹²³

Ferrero-Waldner's statement reflects a commitment to the Austrian Constitution, which binds the government to "uphold democracy, freedom of expression, tolerance[,] and the prohibition of racial discrimination."¹²⁴ These ideals are reaffirmed in Austrian legislation protecting cultural rights.¹²⁵ An amendment to the Austrian Constitution "promote[s] the existence and activities of the national minority groups."¹²⁶ Although this amendment did not become effective until August 1, 2000, after the implementation of the EU sanctions, its enactment had been discussed since 1997.¹²⁷ In their report, the "wise men" also concluded that Austrian policy towards immigrants displayed commitment to common EU values.¹²⁸

¹¹⁷ *Id.* ¶ 75.

¹¹⁸ *See id.* ¶¶ 73–75.

¹¹⁹ Press Statement, *supra* note 11.

¹²⁰ *Id.*

¹²¹ *Id.*

¹²² *See id.*

¹²³ *Id.*

¹²⁴ *See* REPORT, *supra* note 12, ¶ 107.

¹²⁵ *Id.* ¶¶ 20, 24, 25.

¹²⁶ *Id.* ¶ 26.

¹²⁷ *Id.* ¶ 25.

¹²⁸ *Id.* ¶ 51.

V. PROPOSED EU MEASURES ADDRESSING CONCERNS RAISED BY THE SITUATION IN AUSTRIA

Despite widespread Austrian disapproval of the sanctions, on February 28, 2000, Joerg Haider resigned as leader of the FPÖ.¹²⁹ Haider's resignation generally has been regarded as a strategic move aimed at relieving some of the international pressure on the new Austrian government.¹³⁰ Thus, the Fourteen might view the unprecedented sanctions as successful.¹³¹ Haider has not disappeared completely from the political forum, however, as he remains Governor of Carinthia, and reports indicate that he has his eye on becoming chancellor in 2004.¹³²

After the sanctions towards Austria were dropped on September 12, 2000, the EU Member States were left with the decision of whether to adopt new legislation outlining procedures to be taken to uphold common EU values.¹³³ While Austrians argued that their democratic elections were their own concern, social awareness and the increasing willingness to intervene in fellow-Member States' affairs led Austria's EU partners to conclude otherwise.¹³⁴ A majority of the Member States now believe, and the "wise men's" report recommends, that Article 7 of the TEU should be amended to introduce a "surveillance and warning mechanism."¹³⁵

In their report to the President of the European Council, the "wise men" note that the addition of a preventative monitoring procedure would allow the EU to deal with a situation similar to that which occurred in Austria from the beginning.¹³⁶ Furthermore, an Article 7 mechanism would reiterate the common European values to which the EU Members committed in Article 6 of the TEU.¹³⁷ The primary controversy over such a measure lies in its method of implementation, and some smaller EU countries remain skeptical of such a

¹²⁹ KIM & DONFRIED, *supra* note 2, at 5.

¹³⁰ *Id.*

¹³¹ *Id.*

¹³² *Id.*

¹³³ *Inter-Governmental Conference, supra* note 12.

¹³⁴ *See id.*

¹³⁵ *Id.*; REPORT, *supra* note 12, ¶ 117.

¹³⁶ REPORT, *supra* note 12, ¶ 117.

¹³⁷ TEU, *supra* note 6, art. 6, § 1 (providing "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.").

proposition, fearing that it unjustly would interfere with Member States' internal affairs.¹³⁸

In addition to an Article 7 provision, the "wise men" suggest the establishment of arrangements within the EU institutions to further the EU's commitment to human rights.¹³⁹ Such plans might include a human rights office within, and reporting to, the European Council, the appointment of a commissioner responsible for human rights issues, and the expansion of the "existing EU Observatory on racism and xenophobia . . . in order to make possible the establishment of a full EU Agency on Human Rights."¹⁴⁰

At a December, 2000 summit held in Nice, EU heads of state drafted new procedures for sanctioning a Member State.¹⁴¹ Article 1 of the Treaty of Nice amends Article 7 of the TEU to require four-fifths of the European Council and the assent of the European Parliament to "determine that there is a clear risk of a serious breach by a Member State" of the principles of freedom, democracy, human rights, and the rule of law.¹⁴² The amendment allows the Member State in question to be heard before the European Council, and permits the Member to "call on independent persons to submit within a reasonable time limit a report on the situation in the Member State."¹⁴³ The Treaty of Nice was signed by heads of state or government on February 26, 2001, but it will not enter force until it has been ratified by all Member States.¹⁴⁴

CONCLUSION

The EU Members' sanctions may have produced some benefit within the EU despite their controversy in Austria. While Austria's people and government resented the treatment the nation received from its fourteen disapproving EU partners, this reaction was not unfounded. Austria asserted its status as a democratic nation with its own political and legal safeguards, and the report issued by the three "wise

¹³⁸ *Inter-Governmental Conference*, *supra* note 12.

¹³⁹ REPORT, *supra* note 12, ¶ 119.

¹⁴⁰ *Id.*

¹⁴¹ Judy Dempsey, *Foreign Ministers Shy Away from Poll Comment*, FIN. TIMES, May 15, 2001, at 10, available at LEXIS, News Library, Major Papers File.

¹⁴² TREATY OF NICE, Feb. 26, 2001, art.1, 2001 O.J. (C 80); see TEU, *supra* note 6, art. 6.

¹⁴³ TREATY OF NICE, *supra* note 142, art. 1.

¹⁴⁴ European Commission, *Guide for the European Citizen: Who's Who in the European Union? What Difference Will the Treaty of Nice Make?*, at http://europa.eu.int/comm/igc2000/dialogue/info/offdoc/guidecitoyen_en.pdf (last visited Oct. 2, 2001).

men” affirmed this contention. While the sanctions may not have impacted Austria substantially, the measures highlighted an area of the TEU that needed attention and resolution. In deciding whether to modify Article 7 to include provisions allowing the EU to react to events similar to the Austrian elections, the EU Members must consider carefully the role of the EU as a body in relation to each Member State. By amending the TEU through the Treaty of Nice, the Members would increase the EU’s oversight of their own democratic elections. Should the Member States decide to ratify the Treaty of Nice, the EU will gain the right to intervene when faced with the risk of human rights violations. These changes potentially could modify the role of the EU and the relationship among the Member States.