Norm Consolidation in the European Union: The EU14-Austria Crisis in 2000
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Abstract


In late January 2000, the EU14 initiated a protest co-ordinated by the Portuguese EU Presidency against the coalition between Wolfgang Schüssel’s ÖVP and Jörg Haider’s right-wing extremist/populist FPÖ, accused of violating EU fundamental values expressed in Article 6(1) TEU. When the government took office on 4 February diplomatic ‘sanctions’ were launched. During spring, the EU14’s wider interpretations of the sanctions, clumsy handling of Austrian countermeasures and deficient strategy on dismantling the protest contributed to crisis escalation. The solution was the appointment of so-called ‘wise men’ to evaluate the political nature of the FPÖ and the effects of the EU14’s ‘diplomatic whipping’ on government policies. Shortly after the Wise Men Report was published the EU14 lifted the ‘sanctions’ unconditionally, but insistent question marks remained. At the informal European Council meeting in Biarritz 13-14 October, the EU14 and the Austrian government agreed on amendments to the trigger mechanisms for the ‘sanctions article’, Article 7 TEU, incorporated in the Nice Treaty from December 2000.

This study argues that the EU14’s interests and preferences concerning Article 6(1) TEU, coupled with a consensus-reflex and imagined and ‘real’ time pressure manifested in groupthink and ‘tele groupthink’, a concept including telephone diplomacy, affected the norm during its ‘journey’ through five stages: warning, implementation, crisis escalation, crisis de-escalation, and consequences. A central claim is that both self-interested behaviour and ideational/normative motives guided the EU14, but in a ‘more or less’ way. Mutually complementary arguments from both the rationalist and constructivist paradigms prove compelling in investigating this particularly complex and multi-faceted case.

This study concludes that the EU14-Austria crisis resulted not in a rupture in the integration process, but in consolidation of EU fundamental values expressed in Article 6(1) TEU. Thanks to mixed experiences with the EU14’s ‘diplomatic whipping’ of the FPÖ-ÖVP government, the Union took another step towards tighter monitoring of Member States’ compliance with its constituent values. This step was reflected in amendments to Article 7 TEU. The EU14-Austria crisis, as here presented, illustrates the claim that Union-wide crises can have a positive effect on its normative foundation.

Keywords: EU14, Austria, EU fundamental values, norm consolidation, process tracing, constructivism, rationalism.
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Abbreviations

AN     Alleanza Nazionale
CDU    Christlich Demokratische Union
CEE     Central and Eastern Europe
CONFER Conference of the Representatives of the Governments of the Member States
Coreper Committee of Permanent Representatives
CSU    Christlich Soziale Union
DF     Dansk Folkeparti
ECJ    European Court of Justice
ECHR   European Court of Human Rights
ELDR   European Liberal, Democrat, and Reform Party
EMU    European Monetary Union
EU     European Union
FDP    Freien Demokratischen Partei
FI     Forza Italia
FN     Front National
FPÖ    Freiheitliche Partei Österreichs
ICTs   Information and Communication Technologies
IGC    Intergovernmental conference
IR     International Relations
LN     Lega Nord
MEP    Member of European Parliament
MSI    Movimento Sociale Italiano
NI     New Institutionalism
NGOs   Non-governmental Organisations
PRL    Parti Réformateur Libéral
QMV    Qualified Majority Voting
RPR    Rassemblement pour la République
SPÖ    Sozialdemokratische Partei Österreichs
TEU    Treaty on European Union
UN     United Nations
US     United States
VB     Vlaams Blok
ÖVP    Österreichische Volkspartei
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CHAPTER ONE

Introduction to the study

Why study the EU14-Austria crisis?

In 2000, the EU Member States agreed on the Charter of Fundamental Rights of the European Union, considered by many as a milestone for the strengthening of the political Union. In this context, and in view of the Union’s eastern enlargement, the EU14’s diplomatic sanctions measures against the FPÖ-ÖVP government can be studied as an instance of the growing interest in developing a European community with a solid anchoring in its normative foundation. This foundation is reflected in Article 6(1) Treaty on European Union (abbreviated TEU) from 1992, which says: “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”. Arguably, the Member States’ commitment to reach an agreement on the content and status of the charter had an effect on the EU14-Austria crisis. The EU14’s protest against the political development in Austria in late January 2000, with the possible inclusion of

1 Henceforth, ‘the EU’, ‘the European Union’, and ‘the Union’ will be used interchangeably.
2 For information about the development of the charter, see the homepage of the European Parliament available at http://www.europarl.eu.int/charter/default_en.htm
3 The charter is available at http://www.europarl.eu.int/charter/pdf/text_en.pdf
4 Henceforth, the expressions ‘diplomatic sanctions measures’, ‘diplomatic whipping’, and ‘ostracism policy’ will be used interchangeably. The diplomatic sanctions measures were as follows:
   - Governments of XIV Member States will not promote or accept any bilateral official contacts at political level with an Austrian Government integrating the FPÖ.
   - There will be no support in favour of Austrian candidates seeking positions in international organisations.
   - Austrian Ambassadors in EU capitals will only be received at a technical level.
5 Freiheitliche Partei Österreichs (Austrian Freedom Party) led by Jörg Haider and Österreichische Volkspartei (Austrian People’s Party) led by Wolfgang Schüssel, Foreign Minister and Vice-Chancellor.
6 After ratification by the Member States’ parliaments, the Maastricht Treaty entered into force on 1 November 1993.
7 This expression covers the chain of events starting with the initiation of the EU14’s reaction to the political development in Austria in late January 2000, and ending with the amendments to the ‘sanction article’, Article 7 TEU, at the Biarritz summit 13-14 October 2000.
Jörg Haider’s right-wing extremist/populist FPÖ in the new government, was indeed a timely move; a concrete example of defending EU fundamental values expressed in Article 6(1) TEU. Perhaps one may even claim that the punishing of Austria constituted another stage in the construction of the Union’s political identity. It is clear that the formation of the FPÖ-ÖVP government challenged fundamental values that are constitutive of this identity. Furthermore, this normative Gemeinschaft had had an ‘unobjectionable’ character until the prospect of a government including a right-wing extremist/populist party challenged its existence.8

It is said that the Union is more intensively shaped and constructed during crisis situations. This study demonstrates that the EU14-Austria crisis gave an injection to the political Union, by which is meant a Union built on the Member States’ different political identities.9 In 2000, the manifestation of its political identity collided with the political identity of one of its constituent units. One may argue that there are two major reasons why the EU14 launched diplomatic sanctions measures against the FPÖ-ÖVP government. First, there was a widespread apprehension that the right-wing extremist/populist FPÖ in government position would continue violating EU fundamental values (Markovits 2002: 97; Schorkopf 2001: 4). Second, the EU14 was under pressure to set an example. In some Member States, similar parties to the FPÖ enjoyed growing support, which inspired the heads of state and government with fear of their own voters. Arguably, they pursued a certain form of democratic self-defence in the domestic arena in parallel with protests against the political development in Austria (Gehler 2002: 188; 2003: 27; Schorkopf 2001: 6-10; Zellentin 2003: 183). A related cause was the eastern enlargement of the Union. The EU14 feared that, should the Austrians get away with it, other political leaders in the candidate countries might try the same recipe. Undoubtedly, such a development would have negative effects on the accession negotiations between representatives of the EU and ‘deviating’ future Member States.

In late January 2000, a certain political unease spread across several EU capitals. What was in the making in Austrian politics could not just pass unnoticed. It was not only morals on the part of FPÖ and ÖVP politicians that were put to a test, but also the state of democracy in the Union and the essence of democratic-procedural norms underpinning Western European democracies. This study argues that instead of adopting a ‘wait-and-see’ stance during the ‘creeping crisis’ (cf. Larsson and Lundgren 2003: 15), the EU14 triggered an EU ‘domestic’ political crisis when turning moral-

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8 Perhaps some would disagree right here and point to Silvio Berlusconi’s government in 1994 including the ex-fascists in the Alleanza Nazionale. Would not the Italian case then contradict this assertion? However, the normative-political European Union was not mature at that time; the normative pressure on the Member States was neither as explicit nor as consolidated in 1994 compared to the year 2000.

9 The French newspaper Les Echos, 3 February 2000, took the stance that „Die politische Union, deren Abwesenheit so oft beklagt wurde, wurde vielleicht dank Österreich geboren“ (Schneider 2003: 123). This argument is also echoed by Vignes (2003: 463).
political considerations into concrete political action. By doing so, the EU14 ran into difficulties. A significant problem was the lack of a strategy for handling Austrian countermeasures, which affected decision-making in the Council of Ministers. Drawing on empirical evidence, this study claims that the EU14's policy of ostracising the FPÖ-ÖVP government did not produce a rupture in the European integration process. On the contrary, and perhaps paradoxically, it strengthened the norms-related development of the political Union.

Why, then, study the EU14-Austria crisis? Following the crisis in 2000, scholars in political science, history, international law and EU law have commented on aspects close to their own academic fields. Obviously, the crisis has lent itself to a variety of interpretations in different respects: empirical, methodological, and theoretical. On the whole, however, interest in the legal and political consequences of the EU14’s diplomatic sanctions measures against the FPÖ-ÖVP government has been quite limited. This study aims to redress this situation by presenting new evidence of how the EU14-Austria crisis was played out and with what significant consequences for the norm in focus and the institutional balance in the Union (cf. below). Three major challenges will be addressed: First, how to create a research design that will capture the complexity of the crisis? Second, what methodological approach will make it possible to analyse the chronology of events? Third, how to make comprehensible the idea of thinking in terms of complementarity when analysing the crisis with the help of the theoretical framework? The aim of this study lies in confronting these challenges in a way that enhances the knowledge and understanding of the EU14-Austria crisis.

The research puzzle and analytical framework

This study on the EU14-Austria crisis is guided by the following research puzzle: How is it possible that the EU14-Austria crisis consolidated EU fundamental values expressed in Article 6(1) TEU? This puzzle is complemented with two interrelated questions: What characterised the EU14’s crisis management?, and what are the effects of this management on the institutional balance in the Union?

A central claim in this study is that norm crises and norm collisions can open ‘windows of opportunity’ for norms-related institutional change. Drawing from the historical and sociological variants of new institutionalism (NI), where norms in an abstract sense equal institutions, supports this claim. Regarding the EU14-Austria crisis, the amendments formally adopted in Nice in December 2000 to the ‘sanctions article’, Article 7 TEU, marked a consolidation of EU fundamental values expressed in Article 6(1)

10 The expression ‘creeping crisis’ refers to a problematic situation that is simply neglected by the decision-makers. As the problem persists, the ‘creeping crisis’ escalates until it develops into a full-blown crisis (Larsson and Lundgren 2003: 15).

11 Cf. chapter seven on the legal and political consequences of the EU14’s ‘diplomatic whipping’ of the FPÖ-ÖVP government for the ‘sanction article’, Article 7 TEU.
TEU.12 With the Amsterdam Treaty from 1997 a new Article, Article 7 TEU, saw the light.13 Its purpose was to ensure the Member States’ compliance with the values of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, which constitute the foundation for the political Union, by spelling out a sanctions procedure.

Turning to the definition of norm consolidation, as taken in this study, it is inspired by Abbott et al.’s concept of legalisation appearing in a special issue of International Organization 54 (3) in 2000. In line with how the concept is used in various articles in this issue, it is fruitful to let it frame the analytical and empirical study of norm consolidation as outcome of the EU14-Austria crisis. What, then, is ‘legalisation’? According to Abbott et al. (2000: 401), it is “a particular form of institutionalization characterized by three components: obligation, precision, and delegation”. Furthermore, they argue that

“[t]he concept of legalization encompasses a multidimensional continuum, ranging from the “ideal type” of legalization, where all three properties are maximized; to “hard” legalization, where all three (or at least obligation and delegation) are high; through multiple forms of partial or “soft” legalization involving different combinations of attributes; and finally to the complete absence of legalization, another ideal type” (Abbott et al. 2000: 401-402).

Legal obligations means that states or other actors are “legally bound by a rule or commitment in the sense that their behavior thereunder is subject to scrutiny under the general rules, procedures, and discourse of international law, and often of domestic law as well” (Abbott et al. 2000: 401). It is possible to talk about a “high” performance when there is an unconditional obligation, that is, “language and other indicia of intent are accepted as legally bound upon actors” (Abbott et al. 2000: 410). Turning to ‘precision’, “[a] precise rule specifies clearly and unambiguously what is expected of a state or other actor (in terms of both the intended objective and the means of achieving it) in a particular set of circumstances. In other words, precision narrows the scope for reasonable interpretation” (Abbott et al. 2000: 412). Furthermore, it “increases the legitimacy of rules and thus their normative “compliance pull”” (Abbott et al. 2000: 413). A “high” performance is likely to be the case when there are determinate rules that only leave narrow issues of interpretation for the actors to influence (Abbott et al. 2000: 415). Finally, ‘delegation’ means that “third parties have been granted authority to implement, interpret, and apply the rules; to resolve disputes, and (possibly) to make further rules” (Abbott et al. 2000: 401). Examples of ‘third parties’ are “courts, arbitrators, and administrative organizations” (Abbott et al. 2000:

12 After ratification by the Member States’ parliaments, the Nice Treaty entered into force on 1 February 2003.
13 After ratification by the Member States’ parliaments, the Amsterdam Treaty entered into force on 1 May 1999.
415). A “high” performance is conditioned on binding regulations and centralised enforcement of legalisation (ibid.).

Drawing from Abbott et al.’s multidimensional continuum, this study argues that the amendments to Article 7 TEU were a case of strong legalisation. On the continuum, the ‘new’ Article 7 comes close to “high” properties on the two first criteria; obligation and precision. It is legally binding and very precise, but delegates almost no legal authority to a third party (for instance, the European Court of Justice (ECJ) or the European Commission), as the ultimate power over the norm is in the hands of the heads of state and government (European Council).

To repeat, for this study, the concept of norm consolidation stands for judicialisation that occurs through a process of institutionalisation, by which the norm in focus acquires a firmer legal protection. This is not to say that its ‘normative appeal’ has been strengthened, a stance which cannot be proved today. Suffice it to highlight the examples of Italy in 2001 and Denmark in 2001 and 2005, where new governments included or were supported by right-wing extremist/populist parties that had an influence on government policies concerning immigration, among others. One should keep in mind that the FPÖ was not the first party in the right-wing extremist/populist party family to enter a national government of an EU Member State (Minkenberg 2001: 1). In Italy, the Movimento Sociale Italiano (MSI), having its origin in the Mussolini-era, underwent a considerable transformation owing to Gianfranco Fini’s chairmanship. Seeking to rub off its fascist image and make it more attractive to larger groups of conservative voters, Fini rebaptised and restyled the party into Alleanza Nazionale (AN), a neoliberal right-wing party opposed to anti-Semitism, xenophobia, and racism. This turned out to be a clever move in strategic terms. After the 1994 general election, the success for AN was a perfect match with the success for Forza Italia (FI), “a party created by [Silvio] Berlusconi in the space of months, using his vast economic and media resources” (Donovan 2001: 194). In addition, Lega Nord (LN), the populist protest party headed by Umberto Bossi having its stronghold in the northeast region of Padania, joined the coalition government in Rome (Schneider 2003: 150-151), which also included two small parties; Centro Cristiano Democratico and Unione di Centro. Against the background of the EU14-Austria crisis in 2000, note that Berlusconi’s coalition government of 1994 again came to power, with a few changes, after the parliamentary election on 13 May 2001 (Donovan 2001).14

In Denmark, the xenophobic and openly racist Dansk Folkeparti (DF, the Danish People’s Party) headed by Pia Kjersgaard has registered spectacular success since the late 1990s. At the general election on 11 March 1998, the party was supported by 7.4 % of the electorate. On 20 November 2001, at the parliamentary election, the DF received 12 % of the vote and doubled

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14 Berlusconi’s coalition government included, besides FI, AN, and LN, two small Christian Democratic parties; Centro Cristiano Democratico and Cristiani Democratici Unitari, appearing in the election under the heading Biancogiore.
the number of seats in the Parliament. From 27 November to 18 February 2005, it was a supportive party to the conservative coalition government (*Venstre* and the *Konservative Folkeparti*) led by Prime Minister Anders Fogh Rasmussen (*Venstre*). Holding the balance of power, this position of the DF contributed to a tougher immigration policy, for example (Goul Andersen 2004: 147). Since 18 February 2005, the same minority government continues governing Denmark for another legislative period, with the support of the DF unchanged.

In none of the examples did the other Member States agree on a joint protest to defend EU fundamental values. This said, these examples invalidate the claim that Article 6(1) TEU has been consolidated politically. Nevertheless, as a result of the EU14-Austria crisis in 2000, Article 6(1) TEU is legally consolidated. One may claim that this is a first step towards a practical, political consolidation, where hopefully commitments to comply with EU fundamental values could be more pronounced in concrete politics.

In late January 2000, the EU14 initiated a diplomatic protest against the expected FPÖ-ÖVP government. However, they did not have a clear strategy for how to handle consequences that might be problematic in legal and political terms. Furthermore, there simply was no previously tested script matching the intention of the EU14’s policy; to produce a ‘pedagogic effect’ on the formation of Austria’s new government. This study demonstrates that despite serious democratic-procedural question marks surrounding the protest, such as the neglect of Austria’s right to a fair hearing and the presence of (tele) groupthink among the EU14, the Union’s normative foundation became consolidated at the end of the day.

Focusing on a pre-identified norm that became consolidated after a period of crisis and collision with other norms, interests and preferences, the task of this study is to clarify how it was possible for this change in status to come about. To achieve this, it will be argued that Article 6(1) TEU ‘travelled’ through different stages or phases in the EU14-Austria crisis (cf. figure 1.1 below). Accordingly, this ‘norm journey’ will be process traced in the following five stages: warning, implementation, crisis escalation, crisis de-escalation, and consequences, to be explained further ahead in the section about “Methodological considerations”. To repeat, this study claims that process tracing the journey of Article 6(1) TEU in empirical and theoretical terms makes it possible to explain why it eventually became consolidated despite

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15 The numbers are taken from Goul Andersen (2004: 148)  
16 Unfortunately, the question why the political leaders of the Union kept a low profile in these examples and did not outright condemn the government formations, has to be left for another study. However, it is worth mentioning that the Belgian Foreign Minister Louis Michel, in the run-up to the 2001 general election, issued a warning in the Italian media that Italy would not be safe from protests of the sort that had shocked the Austrians (Manoschek 2002: 144). Quickly, Italian politicians as well as other EU leaders played down this boycott threat.  
17 Expression used by Mr António Guterres, former Prime Minister of Portugal, who chaired the EU Presidency 1 January-30 June 2000, interviewed in Lisbon 24 July 2002.
experiences of crisis and collision with other norms, interests and preferences.

Figure 1. 1: Process tracing the ‘norm journey’ in the EU14-Austria crisis.

During its ‘journey’, Article 6(1) TEU was exposed to exogenous pressure. First, the EU14 (mis)used Article 6(1) TEU for the sake of different domestic interests and preferences. In some cases, they not only reflected the idea of defending EU fundamental values for the Union’s own sake, but also the need to send domestic warning signals to constituencies in some of the Member States should they increase their support for parties similar to the FPÖ in Austria. It should therefore not be controversial to claim that foreign and domestic policy processes are part of the same ‘political game’. On the contrary, they can still inspire each other to set out new political ambitions at the respective level. By identifying preference profiles in the group of the EU14, this study elaborates on domestic factors that shaped a particular foreign policy, namely diplomatic sanctions measures.

Second, different manifestations of time pressure constituted another form of exogenous pressure on Article 6(1) TEU. It is clear that perceived time pressure (imagined and ‘real’) was used as a lever to proceed with action at different stages in the crisis. This will be exemplified in the empirical chapters (chapters 3-7). To mention one example, time pressure was manifested in ‘tele groupthink’ (Larsson and Lundgren 2003: 74), a concept embracing telephone diplomacy and more general symptoms of groupthink (cf. Janis 1972), that played an important role for the initiation of a warning to the FPÖ and ÖVP politicians in late January. Finally, the EU14’s consensus-reflex is attached to the importance of time pressure. In relation to Article 6(1) TEU there had to be a consensus on what action to take during the different stages.

To round off, a process tracing approach helps to explain and understand the interests and preferences as well as the behaviour of the EU14 in situa-

18 Note that, as Eising (2002: 88) points out, “the term preferences implies, in its generic connotation, a ranking of interests”.

tions of time pressure during the EU14-Austria crisis. Having presented the study’s research puzzle and analytical framework, it is time to introduce the theoretical framework for the study.

A note on the theoretical framework for the study

A central claim in this study is that EU fundamental values are contained by the prescriptive norm of Article 6(1) TEU. Prescriptive norms, in general, prescribe appropriate behaviour to actors, that is, they have an ‘ought’ quality (Finnemore and Sikkink 1998: 891-892), and give rise to feelings of moral obligation to defend the norm (Herrmann and Shannon 2001: 623). Besides the influence on human behaviour, norms are also involved in a game of expectations (Bilder 2000: 67; Finnemore and Sikkink 1998: 891; Herrmann and Shannon 2001: 624). According to Scott’s “normative pillar” of sociological institutional analysis, norms

“confer rights as well as responsibilities, privileges as well as duties, and licenses as well as mandates […] The conceptions are not simply anticipations or predictions but prescriptions – normative expectations – of what the actors are supposed to do” (Scott 1995: 38).

Another scholar from the legal discipline argues that

“[u]nless norms are capable of […] permitting at least some level of prediction as to how other individuals, groups, or political actors such as states will behave, there is little reason to bother adopting them. Thus, it seems clear that the unique normative pressures inherent in treaties […] can represent serious commitments that provide a firm base for long-range planning and greatly increase the probability that such expectations will be met” (Bilder 2000: 67).

In a broad, sociological definition, norms are said to embrace “collective expectations about proper behavior for a given identity” (Jepperson et al. 1996: 54). Furthermore, norms operate like rules defining or even constituting an identity, “because norms in these instances specify the actions that will cause relevant others to recognize and validate a particular identity and to respond to it appropriately” (ibid.). Norms are thus related to agency; the actor’s actions. Another characteristic of norms is the power to constrain actors. This means that norms can have a regulative effect and operate as “standards for the proper enactment or deployment of a defined identity” (ibid.). Accordingly, this defines their relationship with structure. These two understandings of norms guide this study’s approach to Articles 6(1) and 7 TEU, which thereby is based on the assumption of a constantly ongoing interac-
tion between norms and actors, also labelled the ‘norm loop’ metaphor. In the context of the EU14-Austria crisis, the norm in focus, Article 6(1) TEU, feeds the actors’ behaviour, that is, the FPÖ-ÖVP government and the EU14. However, the way the actors use norms also feeds back into the very formation and transformation of norms, which is exemplified by the amendments to Article 7 TEU. The claim that “[n]orms can be conceived of as system-level structures, but their operation requires the construction of agent-level perception” (Herrmann and Shannon 2001: 625-626), is thus fundamental in this study. Certainly, “[n]orms may be part of a “suprapersonal objective order,” but, as Hermann and Shannon (2001: 626) argue, “they are enacted at the level of individual agents”.

Furthermore, this study argues that the EU14’s relationship with EU fundamental values can be analysed through the ‘norm continuum’ metaphor. Rather than being turned ‘on’ or ‘off’ by certain actors at a certain time, Article 6(1) TEU enabling and constraining agency is always there, but it constantly glides between two poles (see figure 1.2).

Figure 1.2: The ‘norm continuum’ metaphor.

At the one end of the spectrum, the norm is said to structure the actor’s actions and behaviour. At the other end, it is used as an instrument to fulfil the actor’s interests and preferences. The primary source for this dynamic is the variation over time of the norm’s ability to have an influence on the actor. Accordingly, the ‘norm loop’ metaphor is interrelated with the thesis on a ‘norm continuum’. This study illustrates how a norm ‘journey’ between the two extremes is played out in real life. As will be demonstrated in the empirical chapters, Article 6(1) TEU was used for the sake of different domestic interests. This said, when the norm was used as an instrument, its structuring and regulative characteristics could not gain any influence on the EU14’s actions at a certain point in time. To illustrate the claim, references to Article 6(1) TEU as a form of normative pressure in the hands of the EU14 did not have any effect on representatives from the FPÖ and the ÖVP in the warning phase. Otherwise the coalition government would not have come into being. This explains the need for an analytical perspective...

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20 This assumption is inspired by Gidden’s (1984) structuration theory where political actors and social structures are conceived as co-constituting each other. It is the focus on this dialectic relationship which makes process the object of analysis.

21 I owe this expression to Knud Erik Jørgensen, Aarhus University.
that recognises the use of norms as an instrument for the actor’s purposeful (re)actions, a point to be elaborated below.

Moving on to theory, this study favours parallelity. This said, theoretical arguments drawing from two paradigms,\textsuperscript{22} namely constructivism and rationalism, help to discipline and systematise the analysis of empirical evidence. The purpose is to test how far one could get with constructivist and rationalist perspectives respectively for the analysis of a given empirical domain. It should be emphasised that the aim is not to test the explanatory potential of rival paradigms. Instead, the objective is to evaluate empirically the conditions under which constructivism offers a better explanation of the impact of norms on the actors’ actions rather than rationalism. Similarly, to explore where in the chronology of the EU14-Austria crisis one can find conditions under which rationalism provides a more robust understanding of preference change than constructivism.

To continue on this note, a legal-constructivist approach to the EU14-Austria crisis makes it possible to claim that Article 6(1) TEU enjoys political authority in the EU, as it exerts normative pressure on the actions of the Member State governments.\textsuperscript{23} But, as the case in question illustrates, the power of this norm to constrain actors is not absolute. This said, even an ‘unobjectionable’ norm can be challenged (Elgström 2005: 29). For example, it can be used as an instrument to fulfil interests and preferences of the individual head of state and government, which, in their turn, can include both instrumental and ideational/normative concerns. As will be elaborated in chapters 3-7, some of the sanctioning Member States were guided both by calculated needs, for example, sending warning signals to their own constituencies, and community-based concerns, such as defending the ‘unobjectionable’ status of EU fundamental values for the Union’s own sake. Herein lays the principal motive for arguing that an exclusive legal-constructivist approach to the case in question would be at odds with empirical evidence. One simply needs a complementary analytical perspective to account for why Article 6(1) TEU was exposed to exogenous pressure during its ‘journey’. This is why rationalist arguments are included in the theoretical framework for the study of the EU14-Austria crisis.

To conclude, this study demonstrates that it is fruitful to think in terms of complementarity when approaching a case that is particularly complex and multi-faceted, and process tracing as a method is supporting this research design. This requires anchoring arguments, concepts, and frames in ‘real’ life, that is, in situations of a specific empirical setting. More on this will follow further ahead.

\textsuperscript{22} In the Kuhnian sense, a scientific paradigm covers certain methods and ways of viewing the world. In that they are institutionalised, they also play the role as boundaries for what is feasible for the scholar to investigate in the field of study. Put differently, “[a] paradigm governs, in the first instance, not a subject-matter, but a group of practitioners. Any study of paradigm directed or paradigm shattering research must begin by locating the responsible group or groups” (Kuhn (1970) [1962]: 80 in Guzzini 2000: 158).

\textsuperscript{23} Cf. chapter two for a presentation of a legal-constructivist approach to the EU14-Austria crisis.
Methodological considerations
This section first presents the epistemological stance of the study. It is followed by comments on the chosen case study research design. Next, process tracing as method to ‘unpack’ the EU14-Austria crisis is introduced. After that, the role of interviews in the case study design is discussed in relation to the empirical material. Finally, the sources of the empirical material are presented.

Epistemological reflections
As there are different epistemological perspectives to depart from, such as positivism and objectivism on the one hand and hermeneutics and relativism on the other, it is widely accepted that the scholar’s choice concerning epistemology will have a bearing on his/her methodological stance relevant to the study. The classic tension between explaining and understanding as the study’s driving force is still alive, although it has become more accepted to argue that most scholars are actually driven by a desire both to reach a deeper understanding in and developing explanatory concepts to ‘unpack’ a specific phenomenon, class of events, or case. This study is no exception in this regard.

It is said that causal claims can appear in three shapes (Alvesson and Sköldberg 1994: 41-47). First, they can be derived from theories, or won deductively. As a consequence, the connection between the theoretical arguments in the forefront and the empirical material is fairly weak. Second, causal claims can be won inductively, that is, from different kinds of empirical sources such as interviews or documents. The inherent problem with inductive research is the tendency to provide empirical summaries rather than testing theoretical ideas. Arguably, the majority of scholars in the social sciences do not depart from either an inductive or a deductive approach. Instead, there is often a dialogue between the two poles, an iterative back-and-forth research design, which is stimulated by empirics. As empirical findings then feed back into the deductive reasoning, theoretical perspectives applied in the study are further tested and perhaps even refined (Yin 1984: 113-115). This ‘dialogue’, which is also labelled abduction (Alvesson and Sköldberg 1994: 42-43), supports this study’s epistemological stance. The reason is because it has the virtue of reducing the risk of being blinded by purely descriptive facts in the case in question, as well as developing a predilection for theoretical l’art pour l’art.

The EU14-Austria crisis as a case study
The EU14-Austria crisis quite naturally lends itself to the case metaphor. It can be compared to a play with a dramaturgy where a handful of actors pursued different aims. There is also a beginning and an end. Adopting a process tracing approach to the case in question makes both fairly easy to identify. When the chronology is linked to different levels of decision-making, in which the actors play ‘the game’, this facilitates studying the EU14-Austria crisis indeed as a ‘case’.
However, the status of case studies as a scientific research method is widely disputed. Proponents take the most common misunderstanding to be the argument that the case study contains a bias towards verification, that is, a tendency to confirm the scholar’s preconceived notions (Flyvbjerg 2001: 67). Another criticism of case studies, that they cannot contribute as much to scientific inquiry as do comparative studies and statistical analysis, suggests that these studies are nothing more than idiographic story-telling (Yin 1984: 21). In response to this criticism, advocates of case studies have simply questioned the alleged obsession with generalisations. For example, Flyvbjerg (2001: 86) argues that in general “it is not desirable to summarize and generalize case studies” because “[g]ood studies should be read in their entirety”. Generalisations are thus overvalued as a source of scientific development.

So-called heuristic studies draw from existing theoretical ideas, but they are not immune to new theoretical propositions inspired by empirics (Eckstein 1975: 104). According to George, by applying a heuristic approach

“[t]he case study is used as a means of stimulating the imagination in order to discern important new general problems, identify possible theoretical solutions, and formulate potentially generalizable relations that were not previously apparent. In other words, the case study is regarded as an opportunity to learn more about the complexity of the problem studied, to develop further the existing explanatory framework, and to refine and elaborate the initially available theory employed by the investigator in order to provide an explanation of the particular case examined” (George 1979: 51-52).

To avoid turning the EU14-Austria crisis into a purely idiographic case study, its empirical specificities such as the consensus-reflex and ‘tele group-think’ are complemented with concepts good for generalisations such as norms, interests, preferences, and time pressure. As a unique event in the history of the European integration process, the EU14-Austria crisis should be reckoned as such. Nevertheless, it was an example of how a pre-identified norm in situations of crisis and collision with other norms, interests and preferences, paradoxically became consolidated owing to exogenous pressure (the instrumental use of Article 6(1) TEU and imagined and ‘real’ time pressure), which affected its ‘journey’ through a chain of events.

**Process tracing the EU14-Austria crisis**

The analytical framework for studying norm consolidation as outcome of the EU14-Austria crisis is inspired by Bennett and George’s (1997: 16) arguments on ‘process induction’. They claim that “process induction proceeds mostly backward from effects to possible causes, though it could also involve forward tracing from a long list of potential causes that have not yet been formalized as theories or widely tested in other cases”. Furthermore, process induction is embedded in “factor-centric” case studies. This implies that the scholar is interested in “assessing the causal effect of a particular
factor”, especially if this factor is in the hands of policy-makers, which they thereby can manipulate (ibid). As will be demonstrated, the analysis of the use and even misuse of Article 6(1) TEU through different stages identified in the EU14-Austria crisis corresponds with Bennett and George’s thesis on “factor-centric” case studies.

It is said that process tracing is a procedure for “investigating and explaining the decision process by which various initial conditions are translated into outcomes” (George and McKeown 1985: 35). Process tracing also offers more than ‘good historical explanation’, as it “requires converting a purely historical account that implies or asserts a causal sequence into an analytical explanation couched in theoretical variables that have been identified in the research design” (Bennett and George 1997: 6). Furthermore, process tracing makes possible the systematising that is important when examining snapshots rich in details. By reconstructing the EU14-Austria crisis in five chronological stages and adopting a “forward logic” where the EU14’s ostracism policy on Austrian government representatives is framed as “moving towards a distinct set of phases from inception to termination” (Bovens and t’ Hart 1996: 62), it is possible to shed light on extraordinary circumstances. That said, to lay out a framework for the study of norm consolidation, the EU14-Austria crisis is process traced through five stages drawing from concrete events, namely warning, implementation, crisis escalation, crisis de-escalation, and consequences. Although the ‘unpacking’ of each stage is the subject for the empirical investigation presented in chapters 3-7, right here a short summary follows of the roadmap for process tracing the EU14-Austria crisis (see figure 1.3).

Figure 1.3: Roadmap for process tracing the EU14-Austria crisis.
After several decades with more or less status quo in domestic politics, many Austrians desired a breach of the *Proporzsystem* that rewarded card-carrying members of the government parties, the SPÖ (*Sozialdemokratische Partei Österreichs*) and the ÖVP, with jobs and advantages while it excluded others. When bitter feelings spread towards the political elite, this was fuel to the right-wing extremist/populist FPÖ and its party leader’s anti-establishment rhetoric. The outcome of the general election on 3 October 1999 marked the climax of increasing electoral gains during the 1990s by the FPÖ, owing its success to the charismatic party leader Jörg Haider.24

The warning phase, preceded by the breakdown of the SPÖ-ÖVP coalition talks on the night of 21 January, started with Prime Minister Guy Verhofstadt’s fax to his Portuguese colleague on 27 January. The fax caused hectic telephone diplomacy between the Portuguese Presidency25 and the thirteen heads of state and government. Swiftly, an agreement was reached to launch a joint protest should the FPÖ be in government position in the upcoming days. This is how the political development in Austria was set on the EU political agenda. Moreover, it appears that the Stockholm International Forum on the Holocaust 26-28 January served as a platform for discussion on the new turn in Austrian politics. Arguably, the round of telephone calls co-ordinated by the Portuguese Presidency the following weekend 29-30 January was a natural consequence of the foreboding in the fourteen capitals concerning Austria. With the declaration on diplomatic sanctions measures, issued by the Portuguese Presidency on behalf of the EU14 on 31 January, the warning phase came to an end.

The second halt, entitled ‘Implementation’, focuses on the launch of the EU14’s diplomatic sanctions measures once the FPÖ-ÖVP government had taken office on 4 February. It is said that the arrival of the FPÖ in office was “a rude awakening” (Pat Cox in *The Irish Times on the Web*, 22 July 2000) and equal to “the crossing of a border-line” (Minkenberg 2001: 1). Very soon protests took place not only in the streets of Vienna, but also in other European capitals such as Brussels, London and Paris. It seems as though the FPÖ in government position “came as a thunderbolt, transforming perceptions of Austria, and undermining – at least temporarily – much of the good-will Austria had built up over decades” (Pick 2000: 223). Suddenly, the EU was thrown into a political crisis affecting its self-image as well as the image of the community around the world. Although the EU14’s diplomatic sanctions measures were adopted collectively, they did not constitute an EU action as they lacked an EU-legal basis. Instead, the ‘sanctions’ consisted of fourteen co-ordinated moves, which only concerned bilateral relations be-

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24 At the outcome of the general election, Jörg Haider’s FPÖ had secured 26.91 % of the vote and was suddenly second largest party behind the SPÖ with 33.15 %. The ÖVP had obtained 26.91 % of the vote, but it fell behind the FPÖ with 415 votes (Schorkopf 2001: 15).

25 The correct denomination is the Presidency of the Council of the European Union. However, this study uses the terms ‘EU Presidency’ or simply ‘Presidency’ as shorthand.
tween the Austrian government and its EU partners (Merlingen et al. 2001: 66).

During spring, criticism of the EU14’s ‘diplomatic whipping’ of the FPÖ-ÖVP government spread and was often debated in the media. The strained relationship between Austrian government representatives and their colleagues from the EU14 also had a negative effect on negotiations in the Council of Ministers. Among others, the Austrians threatened to block important decisions on EU institutional reforms that were necessary to prepare the Union for the eastern enlargement. The third ‘box’ thus examines the crisis escalation phase in the EU14-Austria crisis.

The following chapter analyses how the EU14 managed to de-escalate the crisis with the FPÖ-ÖVP government. As a way out of the stalemate situation, the EU14 commissioned the President of the European Court of Human Rights (ECHR) to appoint a group of so-called ‘wise men’. They were asked to evaluate the political nature of the FPÖ and the state of democracy in Austria, and to take into consideration the effects of the EU14’s reaction on the new government’s policies. It was equally important that the ‘wise men’ should give the EU14 recommendations for how to dismantle the ‘sanctions’. On 8 September in Paris, the *Wise Men Report* was published. The report concluded that the problem was not the government as a whole but the “ambiguous language” used by the FPÖ, *inter alia* (*Wise Men Report*, point 88). Shortly thereafter, on 12 September, the EU14 lifted the ‘sanctions’ unconditionally.

The fifth and final stage addresses legal and political consequences of the EU14’s ostracism policy on the FPÖ-ÖVP government, notably the amendments to the ‘sanctions article’, Article 7 TEU. Today it spells out a behavioural praxis in situations when a Member State is about to deviate from complying with EU fundamental values expressed in Article 6(1) TEU. Until the EU14-Austria crisis in 2000, Article 7 TEU, as ‘moral emergency brake’, spelled out a procedure for punishment when a Member State had violated EU fundamental values. The problem for the EU14 in late January 2000 was that they could not turn to Article 7 TEU for guidance as they merely *anticipated* the formation of the FPÖ-ÖVP government.

The EU14’s wider interpretation of the ‘sanctions’, their clumsiness concerning how to handle Austrian countermeasures, and the apparent lack of a strategy on how to dismantle the protest turned out as major points of criticism voiced from within the EU14 and by Austrian politicians. Eventually, conclusions presented in the *Wise Men Report*, coupled with the growing...

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26 One may perhaps argue that it is more correct to talk in terms of unilateral protests, as the FPÖ-ÖVP government had not declared itself a player in the ‘sanctions drama’, not in formal terms at least.

27 The so-called ‘wise men’ were: Martti Ahtisaari, President of Finland 1994-2000. He had previously had international missions for the United Nations (UN). Jochen Frowein, a leading German lawyer and the Director of the Max Planck Institute for Comparative Public Law and International Law in Heidelberg. 1981-1993 he had held the post as Vice-President of the European Commission of Human Rights. Marcelino Oreja, a former Spanish Foreign Minister 1976-1980 and member of the European Commission 1994-1999.
criticism of a ‘diplomatic fiasco’ giving rise to important democratic-procedural question marks, were taken into consideration by the EU14. Thus, the EU14 and the Austrian government agreed on substantial amendments to the trigger mechanisms for Article 7 TEU at the informal European Council meeting in Biarritz 13-14 October.28 This marked the closure of the EU14-Austria crisis. Incorporated in the Nice Treaty from December 2000, the crisis left a legacy not only in the *acquis communautaire* but also in the history of the European integration process.

**On the role of interviews in the case study research design**

The function of interviews in this study is threefold. First, the heuristic function in the sense of triggering further research on different stages in the case in question. Second, some interviews were clearly guided by a pre-understanding that they would serve as direct and/or new sources of information. Third, a few merely served the purpose of checking facts collected elsewhere, but there seemed to be a need for additional information. This said, some interviews were used as a means to bring to light aspects of informal politics and action not written down in official information, for example. Examining the initiation of the EU14’s protest against the government formation in Austria, it is only by taking into account the informal exchanges in a small group that a full picture is revealed. However, this examination is constrained by a delicate problem: “how can one study the crucial informal patterns on the basis of official statements and documents, when the entire point about informal politics is to break free from the formal patterns?” (Friis 1996: 20-21). This problem has been labelled the problem of indirectness. Thus, this study is, in some parts, nothing but an attempt to reconstruct what took place in off-the-record settings (cf. Friis 1996: 19).

The interviews were organised as semi-structured conversations or so-called non-standardised interviews, where the interviewer uses open-ended questions that leave room for more spontaneous associations from the interviewee’s side. Nevertheless, this form of interview is “a conversation that has a structure and a purpose” and it serves as “a construction site of knowledge” (Kvale 1996: 2). Besides the so-called elite interviews and interviews with officials from the Member States, this study also profited from interviews/conversations with scholars from various disciplines taking an interest in the EU14-Austria crisis. Nearly all interviewees agreed to be referred to by name, but some desired to remain anonymous. Concerning the principle of confidentiality, sometimes the information was received off-the-record. Obviously, this kind of information often adds exciting details to the analysis proper. This is why such valuable information was included without revealing the source. Criticism could be raised on this point, concerning the lack of transparency and corroboration. Where possible, the anonymous

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28 This informal European Council was asked to take stock of progress of the intergovernmental conference (IGC) 2000 on Treaty change in view of the EU’s eastern enlargement.
source is complemented with other sources indicating the same evidence or argument.

When planning the interviews, a trade-off between reliability and access to the interviewee’s experiences and opinions had to be made. There was a fear that the tape-recorder would be seen as a ‘conversation-blocker’ (Friis 1996: 32) especially when asking questions of a sensitive nature, for example on the subject of telephone diplomacy in the EU14-Austria crisis. Perhaps some could argue that the principle of reliability was sacrificed in order to enhance the uncertain possibility of getting more confidential information. The obvious drawback is that one cannot but “reconstruct the conversation” (Friis 1996: 23) when opting for a note-based research interview. In defence of this choice, it should be underlined that all the interviews were carefully written up within hours after the conversation. Unfortunately, when not using a tape-recorder one cannot quote at length from an interviewee. Nevertheless, parts of sentences and certain words appearing in the notes could be used to support the analysis of the EU14-Austria crisis.

A review of sources
The sources used in this study are of two kinds. Non-standardised interviews, statements, declarations, and documents are labelled primary sources. The study of press releases, newspaper articles, articles from various journals, and monographs are grouped as secondary sources. This method of collecting material, which is also known as crosschecking, allows for different sources to complement each other.

As a subject of analyses from different academic perspectives (political science, law, history, and sociology), it is necessary to comment briefly on previous research on the EU14-Austria crisis. There are a handful of empirical studies of good quality. Some of them are written by Austrian scholars, for example Austria in the European Union, edited by Bischof, Pelinka, and Gehler (2002), Eine Europäische Erregung. Die “Sanktionen” der Vierzehn gegen Österreich im Jahr 2000. Analysen und Kommentare, edited by Busek and Schauer (2003), Guilty Victim: Austria from the Holocaust to Haider, by Pick (2000), and The Haider Phenomenon in Austria, edited by Wodak and Pelinka (2002). Schorkopf’s (2001) Die Massnahmen der XIV EU-Mitgliedstaaten gegen Österreich: Möglichkeiten und Grenzen einer „streitbaren Demokratie“ auf europäischer Ebene, was a major source of inspiration due to its pedagogic clarity of presenting both legal and political aspects of the EU14’s ‘diplomatic whipping’ of the FPÖ-OVP government.

The EU14-Austria crisis has also been analysed from a crisis management perspective, where the concept of groupthink is in focus (cf. Larsson and Lundgren 2003). Certainly, the EU14-Austria crisis is a good example of small group decision-making with all the risks that it entails (cf. t’ Hart et al.

\[29\] Erhard Busek was ÖVP Vice-Chancellor 1991-1995.

\[30\] Hella Pick was the former diplomatic editor of The Guardian. Born in Vienna, she fled to Britain following Hitler’s take-over, with the so-called Kindertransport.
1997; Stern 1999; Vertzberger 1984, 1998). However, this study does not analyse the EU14-Austria crisis from an exclusive crisis management perspective. It has nevertheless to be acknowledged that the groupthink literature sheds light on debatable aspects of the EU14’s policy of ostracising the FPÖ-ÖVP government. The crisis management literature is therefore used when arguments on groupthink strengthen the analysis of the EU14’s actions and behaviour during the stages identified in the case in question.

Turning to the media’s coverage of the EU14-Austria crisis, several kinds of media sources (television, radio, the Internet, and newspapers) demonstrate how journalists reported intensively in the run-up in late January and immediately after the launch on 4 February of the EU14’s diplomatic sanctions measures against the FPÖ-ÖVP government. Moreover, the media was on a high alert during spring as soon as an important EU meeting drew close that was expected to have an effect on the continuation of the EU14’s ostracism policy. Thus, one may draw the conclusion that the media and the EU14 fed each other through the different stages identified in the EU14-Austria crisis (cf. Busek 2003: 13-15). Concerning newspapers and magazines, there is a flood of articles on the EU14-Austria crisis that are more or less helpful in establishing the chronology of events and identifying important snapshots. Information was taken from *Die Presse*, *European Voice*, *Helsingin Sanomat* (the international edition), *Jyllands-Posten*, *Le Soir*, *Le Monde*, *The Economist*, *The Financial Times*, and *The Guardian* among others.

Furthermore, press releases from the Portuguese and the French Presidencies of the EU, the President of the European Commission, the European Parliament, and the ‘wise men’ were used. Minutes of oral answers to questions to Prime Ministers and Foreign Ministers in parliaments and foreign affairs committees in some of the Member States also provided valuable information.

### Outline of the study

This introductory chapter (chapter one) concludes with an overview of the study. The chapter opened up with reflections on why the EU14-Austria crisis deserves to be studied in its own right. Thereafter, the research puzzle and analytical framework was presented. It was followed by an account of the theoretical framework of the study. The remaining part of the chapter presented methodological considerations for the study. This included epistemological reflections, the chosen case study research design, the process tracing approach to the EU14-Austria crisis, and the role of interviews for

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the empirical investigation. Chapter one also commented on the sources used in this study.

Chapter two: Stating the EU14-Austria crisis from constructivist and rationalist perspectives starts with a discussion on different views on meta-theorising and theorising in general. The next section elaborates on the virtue of thinking in terms of complementarity when studying the EU14-Austria crisis. Then, the home domain of constructivism is established. After that, scope conditions for a ‘moderate’ constructivist approach to the EU14-Austria crisis, with an emphasis on institutions and norms, and interests/preferences and interest/preference formation, are presented. The next section introduces a legal-constructivist perspective on the EU14-Austria crisis by asking: What is at the heart of a legal-constructivist perspective? In addition, Articles 6(1) and 7 TEU are framed in a legal-constructivist light. The focus is then shifted to rationalism. First, the home domain of rationalism is established. After that, scope conditions for a ‘moderate’ rationalist approach to the EU14-Austria crisis, with an emphasis on institutions and norms, and interests/preferences and interest/preference formation, are presented.

Chapter three: The EU14-Austria crisis: the warning phase analyses the run-up to the EU14’s declaration of 31 January 2000. Chapter four: The EU14-Austria crisis: the implementation phase addresses the launch of the EU14’s diplomatic sanctions measures against the FPÖ-ÖVP government. Chapter five: the EU14-Austria crisis: the crisis escalation phase analyses how the EU14-Austria crisis during spring overshadowed important negotiations between the Member States, which eventually resulted in a stalemate situation in the Council of Ministers. Chapter six: the EU14-Austria crisis: the crisis de-escalation phase examines how the EU14 wriggled out of the ‘sanctions impasse’ by letting three so-called ‘wise men’ point the way ahead for them in their continuous dealings with the FPÖ-ÖVP government. Chapter seven: the EU14-Austria crisis: the consequences phase summarises the outcomes in legal and political terms that followed from the EU14-Austria crisis, with a special focus on the revised Article 7 TEU. It should be pointed out that the section entitled “Conclusion” appearing in chapters 3-7 provides a shortcut to the overall EU14-Austria crisis. Thus, the purpose of these “Conclusions” is partly to assist the reader to form a quick understanding of what the crisis was all about, but also to summarise the previous sections in the particular chapter. Finally, in accordance with the theoretical framework for the study, each empirical chapter/stage is analysed from constructivist and rationalist perspectives.

Chapter eight: assessing the EU14’s crisis management and its effects on the institutional balance in the Union begins by looking at the consensus-reflex that characterised the EU14’s crisis management. It is followed by an introductory note on time pressure and groupthink. Next, the concept of groupthink in relation to the EU14 is addressed with the help of Janis’s (1972) theses on groupthink. Then, changing conditions for diplomatic activities owing to developments in information and communication technologies (ICTs) are discussed. After that, consequences of employing ICTs in political life, especially in crisis situations, are commented. Finally, the presence of groupthink
and ‘tele groupthink’ in the EU14-Austria crisis is discussed. The remaining part of the chapter examines what effects the EU14’s crisis management had on the institutional balance in the Union, especially the Member States’ relationship with the European Commission and the EU Presidency.

Chapter nine: concluding discussions first summarises conclusions from process tracing the ‘norm journey’ of Article 6(1) TEU. The next section brings together observations from applying the theoretical framework to the case in question. The study ends with an envoi relating to the EU14-Austria crisis.
CHAPTER TWO

Studying the EU14-Austria crisis from constructivist and rationalist perspectives

Different views on meta-theorising and theorising in general

Straightforwardly, Moravcsik (2003: 134) claims that rigorous theoretical-analytical and methodological frameworks together help ‘disciplining the discipline’. Furthermore, they enable anyone to challenge the empirical validity of individual claims. This is why one should reflect carefully on the relationship between the theoretical and the empirical as it is “the precise connection between particular events and specific theoretical narratives [that] constitutes an important focus for empirical research” (Ritzer and Smart 2001: 5). To put it differently, for theoretical arguments to be taken seriously in a research design they should be anchored in concrete reality, otherwise there is a risk of theoretical l’art pour l’art. On this subject, Moravcsik argues that

“[t]he primacy accorded by social scientific discourse to theory, method, and empirics makes sense only if we assume that its distinctive purpose is to illuminate patterns of cause-and-effect relations in the concrete empirical world of politics. Theory and methods are, therefore, means not ends; they exist to promote our understanding of empirical causes by encouraging breadth, logical coherence, and empirical objectivity” (Moravcsik 2003: 133).

Over the years, Moravcsik has criticised both reflectivists (such as Steve Smith) and constructivists (for example the so called ‘Copenhagen-school’) for taking a greater interest in the abstract and philosophical than in the concrete and empirical (cf. Checkel and Moravcsik 2001; Moravcsik 2001; 2003: 133-134). Disputes on the intellectual legacy of IR research are certainly interesting, but the crux is that ‘phoney wars’ between, say, reflectivists and rationalists present a hindrance to winning new (meta-)theoretical insights. Hence, “the payoff always remains just one more debate away” (Moravcsik 2003: 134). With the assumption that there is no reward to be won from this intellectual ‘warfare’; no absolute gains in terms of winning

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32 Interestingly, Moravcsik here quotes Steve Smith, perhaps the leading scholar of the reflectivism branch of International Relations (IR) theories.
arguments recognised by fellow EU scholars, perhaps it is wiser to content oneself with an empirical investigation supported by middle-range theories (such as variants of the new institutionalism in the social sciences) without making any meta-theoretical claims (for example, discussing constructivism pitched at a philosophical level)? Jørgensen (2001) takes a different standpoint in this regard and argues that one should not refrain from grappling with meta-theoretical issues. However, at the other side of the ring Moravcsik (2003: 136) exclaims: “Let’s get on with the empirical research!” According to Moravcsik (2003: 131), “pluralism among existing theories [should not] be preserved for [their] own sake”, which is a tendency in reflectivist research. Rather than being used for splitting meta-theoretical hairs in the social sciences, “theories ought to be treated as instruments to be subjected to empirical testing and theory synthesis” (ibid.).

On the virtue of thinking in terms of complementarity when studying the EU14-Austria crisis

A good balance between theory and empirics can be sustained by adopting the strategy of sequencing theories, which is taken as a major source of inspiration for the study of the EU14-Austria crisis. This strategy is connected with temporal domains (Jupille et al. 2003: 22). As point of departure, the scholar establishes the home domain of each theory by defining its ‘scope conditions’, that is, when a particular theory should be operative. Then, the empirical evidence is analysed by using different theoretical arguments. This is because sequencing theories is related to the idea of ‘stage-complementarity’ “whereby one argument covers one phase of a process, while another argument takes up the next phase” (Jepperson et al., 1996: 70). According to Jupille et al.,

“[d]ialogue based on the sequencing of constructivist and rationalist accounts [suggests] that each depends on the other temporally to explain a given outcome. Where domain-of-application approaches posit different empirical domains within one frame of time for rationalism and constructivism, sequencing approaches suggest that variables from both approaches work together over time to fully explain a given domain” (Jupille et al. 2003: 22).

The use of different theoretical perspectives for analysing the EU14-Austria crisis is motivated by the fact that the crisis in itself was indisputably complex and multi-faceted and therefore requires examination from more than one perspective. Hence, the analysis does not depart from a single meta-theoretical framework. Instead, constructivist and rationalist arguments are said to complement each other. This implies that, under the lens of the constructivist paradigm, certain assumptions regarding the nature of social reality and processes of knowledge gathering colour the analysis of the EU14-Austria crisis. The same argument is valid when using the rationalist lens. That said, it is important to be aware of different epistemological and onto-
logical stances that separate the two paradigms, which, in their turn, support two different pictures of the EU14-Austria crisis.

Students analysing the European integration process learn that seemingly endless variants of theoretical perspectives should not be seen as insurmountable obstacles, but rather as a precondition for a healthy debate in scholarly settings (cf. Jupille et al. 2003: 8). To engage in these debates, it is necessary, first of all, to observe that “each theory begins with a ‘basic image’ of social reality (ontology) upon which is built its theoretical superstructure including established ways of gathering knowledge (epistemology)” (Rosamond 2000: 7). From this starting point, the next step is to examine how arguments used in the debate are pitched at different levels, ranging from purely philosophical to case specific, and are therefore guided by different assumptions (cf. Jørgensen 2001).

The problem is that the lively discussions engaging constructivists and foremost reflectivists versus rationalists run the risk of producing little of interest outside the ‘happy few’, scholars and students familiar with the jargon, unless attempts are made to open up the intellectual dispute.33 Hence, there is a need for moving beyond the “dialogue of the deaf” where rationalists despise the constructivists’ predilection for sociological and psychological influences while they, in turn, criticise rationalists for being obsessed with the concept of rationality and static models (Pollack 2001: 237). Many would agree with Jupille et al. (2003: 7) that “the metatheoretical debate about institutions has run its course and must now give way to theoretical, methodological and carefully structured empirical dialogue”. For example, Checkel has observed that during the past few years IR scholars have gradually moved away from the ‘either/or’ approach, or ‘gladiator’ style of analysis, ruling out attempts at using both rational choice institutionalist and constructivist arguments for analysing a given domain, in favour of a ‘both/and’ perspective. According to Checkel,

“[t]his means that theoretical opponents are spending less time hurling meta-theoretical insults at each other and, instead, conducting an empirically informed dialogue, where tough issues of process, operationalization and scope are addressed” (Checkel 2001a: 19).

In other words, this attitudinal change enables scholars to discuss when and under what conditions rationalist as opposed to constructivist arguments (or the other way around) are more valid for analysing and understanding the outcome of a political crisis situation in the EU (cf. Checkel 2001a: 19), for example in the shape of norm consolidation. Jupille et al. (2003: 16) claim that proponents of rationalism and constructivism have divergent views on “the

33 It has been asked whether this popular dichotomy, which emerged in the 1990s and is still flourishing both in IR theory and EU studies, is nothing but a “replay of the old neofunctionalist/intergovernmentalist debate under another name” (Pollack 2001: 237). This would imply that having knowledge about this ‘classic’ debate, one also has a pre-knowledge to engage in more recent disputes on more or less the same issues of ontology and epistemology.
degree to which institutions structure and constitute identities and preferences [but] differences often more accurately represent differences of theoretical specification and causal priority than of which variables and actors to include in one’s analysis”. For example, the ideational causality discussion looks very different among rationalists compared to constructivists, because of different assumptions on the influence capacity of the same analytical category such as norms. In other words, there is an ‘agreement to disagree’ which may facilitate theoretical dialogue.

In this study, it is argued that persuasive argumentation (cf. Checkel 2001b: 54-55) characterised the EU14’s ‘diplomatic whipping’ of the FPÖ-ÖVP government, but it was also a clear example of ‘rhetorical action’ as a form of rational action (cf. Schimmelfennig 2000: 129). Accordingly, defending EU fundamental values in the interest of the Union was also related to specific interests and preferences of some of the fourteen heads of state and government, among others, to communicate warning signals to their own constituencies should they increase their support for parties similar to the FPÖ. Merlingen et al. advance this standpoint by saying:

“[C]entral features of the case can be understood only if one looks at both domestic politics and EU identity politics. In essence, the two explanations are complementary rather than exclusive. It is precisely the interplay between value-based norms and self-interest that accounts for the particular characteristics of this case” (Merlingen et al. 2001: 61).

A major challenge is to account for why the EU14’s interests and preferences in relation to Article 6(1) TEU changed or did not change during the five stages identified in the case in question. Consequently, when process-tracing the ‘norm journey’, one has to explore their variation among actors over time. It is said that constructivist arguments are well qualified to make such claims about change possible as they point to intersubjectivity, socialisation, learning, and persuasion as ‘push’ effects for change to take place. Elaborated comments on this will follow further ahead. It will also be demonstrated at a later stage in this chapter how a legal-constructivist approach to the EU14-Austria crisis is particularly apt to establish a link between concrete, legal arguments concerning Articles 6(1) and 7 TEU and the philosophical understanding of these arguments. That is why this study adopts a ‘moderate’ stance on constructivism, as claims coloured by the legal discipline also play a vital part in the analysis.34

As mentioned previously, drawing from empirical evidence, an exclusive legal-constructivist framework for the study of the EU14-Austria crisis would not do alone. Therefore one needs to think in terms of complementarity. The strategy, then, is to maximise the leverage of the constructivist and rationalist paradigms. Although the constructivist ‘camp’ is very helpful

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34 For a discussion of ‘moderate’ constructivism, see next section.
for analysing, among others, the ‘norm journey’ of Article 6(1) TEU, it nevertheless has its limits. First, as rationalists claim, constructivists too simply assume actors to be genuinely willing to co-operate, and thereby constructivists overlook collective action problems. Second, one could question the explanatory potential of socialisation. In reality, is it such a powerful mechanism that it can actually transform the individual’s identity and behavioural repertoire? For example, one may object that perhaps the socialised behaviour is only for show. Constructivists have a hard time of it in providing evidence that could prove how socialisation actually had an effect on a specific outcome. On the grounds of these shortcomings, this study claims that arguments drawing from the rationalist ‘camp’ are more helpful to account for why variation, in a given space of time, occurred in the EU14’s interests and preferences in relation to Article 6(1) TEU.

Summing up, this study demonstrates the complementarity of (legal- and social-)constructivist and rationalist arguments for analysing an unprecedented EU ‘domestic’ political crisis where norms, interests and preferences were at stake. This will proceed by evaluating empirically arguments from both sides (cf. chapters 3-7).35 As a first step, it is necessary to reflect on each paradigm’s home domain and its ‘scope conditions’, that is, looking for the conditions under which a particular paradigm should be operative (Jupille et al. 2003: 16).36 This is a means to reduce complexity in the domain of application of constructivist and rationalist arguments to the study of the EU14-Austria crisis. The strategy is to highlight a few concepts and assumptions cherished by proponents of the two paradigms. Further ahead, ‘stereotypes’ will be presented that illustrate how they, in general, frame the concepts of (1) institutions/norms, and (2) interests/preferences and interest/preference formation. This strategy will help to avoid conceptual overstretch and argumentative fuzziness in the overall research design, and lay a solid ground for the empirical investigation presented in chapters 3-7.

Establishing the home domain of constructivism

It is argued that a constructivist approach can be elaborated on four different levels: philosophical, meta-theoretical, development of theories matching the object of study, and the construction of frameworks of analysis for the empirical case in question (cf. Christiansen et al. 1999: 538, 2001: 11; Jørgensen 2001). According to its proponents, the virtue of constructivism is that it is ‘applicable’ across disciplines, which raises the study above interdisciplinary disputes. Thus, it is said that constructivism offers “a distinction from the incommensurable positions of rationalism and reflectivism, yet the

35 It is important to note that, in Risse and Wiener’s words (2001: 202), “[w]e cannot “test” rational choice against constructivism, but we can evaluate empirically the conditions under which sociological (or constructivist) institutionalism offers a better explanation of the effects of norms than rationalist institutionalism”.

36 Note that Jupille et al. do not talk in terms of paradigms but use the word ‘theory’ instead for this argument.
ability to engage in talk with both” (Christiansen et al. 2001: 9). In other words, constructivism as an ‘umbrella construct’ is a platform where scholars can engage in joint research projects while maintaining their integrity in the sense of not having to abandon their ‘pet’ middle-range theories, for example (cf. Christiansen et al. 2001: 16).

However, this generous view on what constructivism can bring to further the understanding of the European integration process does not prosper in scholarly consensus. Important criticism has been voiced that exhaustive constructivist meta-theorising clouds analytical arguments instead of producing new knowledge about the process itself (cf. Checkel and Moravcsik 2001; Moravcsik 2001: 186). Jørgensen, on the other hand, asks why we are so seemingly afraid of meta-theorising. Seeking to de-dramatise meta-theorising, he argues that one should not be discouraged from employing constructivism as a fruitful theoretical approach to the research field, provided that one is aware of its scope conditions and at what level one would like to elaborate the analysis.37 To continue on this note, one may argue that ‘a constructivism for everyone’ should not be seen as a problem. Rather, taking pedagogic arguments on how to approach constructivism seriously and turning them into practice, could help to overcome scepticism along these lines.

That said, constructivism is employed in this study not for the purpose of making meta-theoretical claims, but for the construction of a framework of analysis for the empirical case in question. It should be stressed that it is the fourth level, where legal-constructivist arguments are shaped, which serves as one of the analytical prisms for the study of the ‘norm journey’ ‘starring’ Article 6(1) TEU.38 Not wishing to bracket the philosophical and meta-theoretical, these two levels of theorising constructivism will be briefly commented upon further ahead.

To Jupille et al. (2003: 15) ‘moderate’ constructivism appears “well placed to bridge and integrate institutionalisms”. The term ‘moderate’ refers to the positivist epistemological methods of the approach. That clearly differs it from the more reflectivist-inspired social constructivism (cf. Diez 2001). Since this study seeks to strengthen the argument on complementarity, one needs to take a ‘moderate’ stance when incorporating ideas associated with historical and sociological institutionalism in the larger framework for a constructivist approach to the EU14-Austria crisis. Furthermore, it is argued that a ‘moderate’ stance on constructivism makes possible a ‘marriage’ with

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37 Source: Notes from lecture with Knud Erik Jørgensen, Department for Political Science, Aarhus University, 10 August 2003 at the Fourth Annual Summer School in EU Studies: “Theories and Research Design in the Field of EU Studies”, organised by the Department of Political Science, Aarhus University, in collaboration with the European Consortium for Political Research (ECPR), 3-14 August 2003 at the Sandbjerg Estate, Denmark.

38 See the section on “A legal-constructivist perspective on the EU14-Austria crisis” to be presented further ahead.
legal arguments, a ‘marriage’ that is necessary for the analysis of the roles of Articles 6(1) and 7 TEU in the case in question.\textsuperscript{39}

With the knowledge that constructivism comes in many variants, it is now time to return to the philosophical and meta-theoretical levels.\textsuperscript{40} Here, one finds, for example, comparisons between the epistemological and ontological luggage of constructivism and positivism respectively.\textsuperscript{41} To put it simply, constructivism has an epistemological position, which stresses the social construction of meaning (and hence knowledge), and an ontological position that puts in focus the construction of social reality through the notions of intersubjectivity and identity. This is echoed in the following, often-quoted passage by Adler (1997: 322): “Constructivism is the view that the manner in which the material world shapes and is shaped by human action and interaction depends on dynamic normative and epistemic interpretations of the material world”.

Over the years, a large number of EU scholars have claimed that constructivism enables a systematic study of major factors that form the integration process, for example rules and norms laying the ground for the EU-project, the transformation of identities, the role of ideas and the use of language.\textsuperscript{42} It has also been pointed out that there is an affinity with neo-functionalism on the central claim of causalities, “the causal role of ideas and values in defining actor preferences (interests)” (Haas 2001: 25). Many would agree that the focus on social factors enables social constructivists to side comfortably with sociological institutionalists (Christiansen \textit{et al.} 2001: 13). They both refer to the same mechanisms or processes for the transmission of ideas, namely socialisation, learning, argumentation, and persuasion.\textsuperscript{43} Furthermore, social factors embedded in these processes are said to make behavioural claims on actors. Thus, they can transform the actors’ identities, interests and behaviour. The buzzwords to explain such changes or transformations are norms and institutions, which are often used in more or less heated debates with proponents of rationalist theoretical assumptions.\textsuperscript{44}

\textsuperscript{39} \textit{Ibid.}

\textsuperscript{40} For an excellent overview of different constructivisms, see Christensen \textit{et al.} (2001). In the introductory chapter, Christensen, Jørgensen, and Wiener summarise constructivism’s emergence in IR in relation to its claim to “seize the middle ground”, that is, the ability to bridge the gap between rationalism and reflectivism. The authors illustrate this claim by presenting a model, an ‘umbrella’, which locates various constructivisms between rationalism and reflectivism, depending on their ontologies and epistemologies (Christensen \textit{et al.} 2001: 16). Another commendable study is Zehfuss’s (2002) analyses of Wendt, Kratochwil, and Onuf’s constructivisms.

\textsuperscript{41} See, among others, Adler (1997); the dialogue between Checkel and Moravcsik (2001); Guzzini (2000); Jupille \textit{et al.} (2003); Kratochwil (2001); Laffey and Weldes (1997); Wendt (1987); Wiener (2003).

\textsuperscript{42} For example, Checkel (2001b); Parsons (2002); Risse \textit{et al.} (1999); Risse (2000), who bring the role of ideas, dialogue, communication, persuasion and socialisation processes into the analysis of states’ behaviour on the international and domestic political arena. An earlier example is Kratochwil (1989).

\textsuperscript{43} See for example Eising (2002) and Johnston (2001).

\textsuperscript{44} See for example the debate between Andrew Moravcsik, and Thomas Risse and Antje Wiener in \textit{Journal of European Public Policy} 6:5 December 1999, pp. 775-782, “‘Something rotten’ and the social construction of social constructivism: a comment on comments”, following the special issue of the \textit{Journal of
It is clear that social constructivists reject the basic meta-theoretical premises of rationalism when elevating the role of social, structuralist ontologies (cf. Christiansen et al. 2001: 3; Schimmelfennig 1999: 10). These ontologies include various phenomena such as intersubjective meanings, norms, rules, institutions, routinised practices, discourse, constitutive and/or deliberative processes, symbolic politics, imagined and/or epistemic communities, communicative action and collective identity formation (Christiansen et al. 2001: 3). The core claim is that such phenomena cannot be reduced to aggregations or consequences of the actors’ attributes or motives. Rather, their interests and preferences must be endogenised, that is, analysed and explained as the products of social structures (culture, institutions) and social interaction. This implies that “social realities” are genuinely “fragile”, “changeable” and “contestable” as they exist only by human agreement (Christiansen et al. 1999: 530). The rationalist claim that actors in general act egoistically and instrumentally is thus rejected. Instead, rationality is “constructed” or “context-bound”; since the actors are committed in their decisions to embrace values and norms they thereby follow the “logic of appropriateness” (March and Olsen 1998: 951-952; Schimmelfennig 1999: 10). This logic is in opposition with the rationalist “logic of consequences” (March and Olsen 1998: 949-951), to be discussed further ahead.45

A note on scope conditions for a ‘moderate’ constructivist approach to the EU14-Austria crisis

As mentioned earlier, in order to apply a ‘moderate’ constructivist approach to the EU14-Austria crisis, a few conceptual ‘stereotypes’ need be established. They help to define the scope conditions for this particular approach to the case in question. For this purpose, two ‘pet concepts’ for theoretical disputes with rationalists are singled out: (1) institutions/norms, and (2) interests/preferences and interest/preference formation. Addressing these concepts, it is inevitable to comment on socialisation processes, which, in turn, requires an investigation of inbuilt micro-processes such as persuasion/argumentation and learning.

Institutions and norms

As Pollack (2001: 227) points out, “three primary ‘institutionalisms’ [rational choice, historical, and sociological] developed during the course of the 1980s and early 1990s, each with a distinct definition of institutions and a distinct account of how they ‘matter’ in the study of politics”.46 It is a widespread understanding that the scholar takes the institution to be more or less ‘thick’, depending on how convinced s/he is about its capacity to exist in its own right, with the possibility to safeguard the autonomy of its characteris-
tics and have an influence on the actors’ actions and behaviour (cf. Checkel 2001b: 52; Chryssochoou 2001: 115; cf. also figure 1. 2 in chapter one).

According to a ‘thick’ stance, “[i]nstitutions contain some sort of governmental DNA and tend to transmit that genetic code to the individuals who take up roles within them” (Olsen and Peters 1996 quoted in Chryssochoou 2001: 114). Sociological institutionalists together with their social constructivist ‘cousins’ in IR theory argue that international and European institutions do not simply regulate state behaviour but they also shape state identities and interests (cf. Checkel 1998: 4; Schimmelfennig 1999: 14). Scholars adhering to these ‘camps’ adopt a ‘thick’ approach to institutions – be they norms, rules, principles or values – and highlight their prescriptive and legitimising functions in domestic and international politics (Checkel 1998: 3; Pollack 2001: 228). For example, Finnemore (1996: 333) argues that “[i]n institutionalist analysis, the social structure is ontologically primary. It is the starting point for analysis. Its rules and values create all the actors we might consider relevant in international politics, including states, firms, organizations, and even individuals”. Thus, sociological institutionalism “falls on the structural or holist side of the agent-structure debate”, as “social structure is ontologically prior to and generative of agents. It creates actors; it is not created by them” (ibid.).

To put it another way, an institutional approach is one that emphasises the role of institutions and institutionalisation in the understanding of the actions and behaviour of the *Homo sociologicus* within an organisation, social order, or society. A central claim is that institutions can ‘get a life’ in both structures and actors. Accordingly, they are more than a hurdle for the actors since they are really independent (Checkel 2001b: 52). This implies that institutions are able to communicate their interests and identities with surrounding actors. Being “crystallized ideas”, institutions make possible the transmission of ideas. It is said that “[t]hey are detached from the minds in which they originated and are capable of affecting other minds” (Judd 1926: 17 in Bar-Tal 1990: 28). According to Rosamond,

> “[r]ather than being simple and passive vessels within which politics occurs, institutions provide contexts where actors can conduct a relatively higher proportion of positive sum bargains. […] They act as intervening variables between actor preferences and policy outputs” (Rosamond 2000: 114).

Recalling the EU14-Austria crisis, it is clear that Article 6(1) TEU as an institution, elsewhere referred to as a norm, had an influence on the decisions, actions, and behaviour of the EU14. In early 2000, there was a widespread anticipation in several European capitals that Austria would put itself in breach of that specific Treaty obligation. With the formation of the FPÖ-

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47 It is worth reminding that the impact of norms in international relations is not a contemporary discovery by modern ‘schools of thought’. As Björkdahl (2001: 17) writes: “Scholars in the fields of jurisprudence and moral philosophy have analyzed the influence of international norms for centuries”.

ÖVP government and the subsequent launch of the EU14’s diplomatic sanctions measures, a norm collision clearly came to the surface. It involved Article 6(1) TEU and institutions or norms that are fundamental in the model for (West) European representative democracy, for example respect for the electoral process and the outcome of free and fair elections. More on this will follow in the empirical chapters.

**Interests/preferences and interest/preference formation**

For social constructivists and sociological institutionalists, socialisation is the primary process through which intersubjective structures are transformed into individual interests, preferences and action. This section will undertake a close examination of this process, which includes micro-processes such as persuasion/argumentation and learning.

As a result of successful socialisation, the actors internalise the values and norms that constitute the social structure of a community or society. Through this process of internalisation, the actors identify themselves with their community and this fosters a commitment to its values and norms. In other words, “individual actors become socialized into institutionally defined roles, learn the norms and rules associated with these roles, and act appropriately by “fulfilling the obligations of a role in a situation”” (March and Olsen 1989: 160-161 in Schimmelfennig 1999: 14).

Proponents of constructivist theories elevate persuasion as a fundamental mechanism for the spread of international norms (Payne 2001: 40). In essence, they claim that “normative ideas are translated into practice and structures only after norm entrepreneurs persuade states to adopt them” (ibid). For example, Risse et al. (1999) investigate the ‘logic of communicative action’ where the link between behaviour and shared norms is underpinned by ‘argumentative rationality’. According to Checkel (1998: 19-20; 2001b: 57), when and if new social norms emerge in the EU context, two issues must be addressed: First, through what process do they arise at the European level, and second, how do such norms reach out to particular national settings and (perhaps) socialise actors. Checkel (2001b: 57) argues that “constructivists have theorized and provided empirical evidence for the importance of three dynamics”: individual agency, open ‘policy windows’, and social learning/socialisation. The idea of individual agency implies that individuals are qualified as ‘norm entrepreneurs’ (Finnemore and Sikkink 1998: 896-897).

In the EU context, one may argue that the Copenhagen criteria constitute a good example of successful norm spread. At the European Council meeting in June 1993, the heads of state and government agreed on a new package of norms, a set of conditionalities, in view of the Union’s impending eastern enlargement. From the sociological institutionalist perspective, the process of socialising the candidate states is related to the institutionalisation of norms. This said, once norms have been “formally and legally established with a constitutive mandate, they must fight to become ‘living institutions’, to establish their credentials and to avail of the opportunities in their institutional landscape” (Laffan 2000: 5). Social constructivist and sociological in-
stitutionalist approaches to the European integration process conclude that social learning, not political pressure, leads actors (typically elite decision-makers) to adopt prescriptions embodied in norms. Put differently, norms become internalised and constitute a set of shared intersubjective understandings that make behavioural claims on the Member States. In the context of the EU14-Austria crisis, both ‘schools of thought’ would argue that the formation of the FPÖ-ÖVP government was a breach of this specific normative Gemeinschaft.

It is obvious that socialisation is a pet concept for social constructivists and sociological institutionalists. In general terms, it stands for a process by which individuals learn to adopt norms, values, attitudes and behaviours that are accepted and practised by the ongoing system of social interactions. Johnston (2001: 494) takes social influence as a “separate effect of social interaction that can […] lead to pro-norm behavior in the absence of exogenous material threats or promises”. He also claims that

“[social influence] encompasses a number of sub-processes—backpatting, opprobrium or shaming, social liking, status maximization, etc.—where pro-norm behavior is rewarded with social and psychological markers from a reference group with which the actor believes it shares some level of identification” (ibid.).

Critical voices have argued that “the microprocesses of socialization [such as persuasion and social influence] have been generally left unexamined” (Johnston 2001: 487). Hopefully, the analysis of empirical evidence in the EU14-Austria crisis can contribute to making this remark invalid. For example, on the subject of defending Article 6(1) TEU as an ‘unobjectionable’ norm, argumentative persuasion flourished in the problem-solving network comprising the EU14. Thus, it will be demonstrated how the EU14 were exposed to, received, processed, and then acted upon normative arguments that prevailed in extraordinary social environments (cf. Johnston 2001: 488). These environments were of two kinds: first, the Stockholm International Forum on the Holocaust 26-28 January 2000, and second, the telephone calls during the week-end 29-30 January. To sum up, the micro-process of socialisation underlying the initiation stage of the EU14’s protest against the formation of the FPÖ-ÖVP government consisted of friendship and argumentative persuasion, besides a certain consensus-reflex, and group pressure and telephone diplomacy producing ‘tele groupthink’. It is Johnston’s conclusion that

“most noncoercive diplomatic influence attempts by most actors most of the time are aimed at “changing the minds” of others, of persuading, cajoling, or shaming them to accept, and hopefully internalise, new facts, figures, arguments, norms, and causal understandings about particular issues” (Johnston 2001: 489).
This conclusion is valid not only in enhancing the understanding of particular circumstances in the group of the EU14 during the warning phase. It furthermore supports the observation that the soon-to-be Chancellor and the ÖVP leader Wolfgang Schüssel did not yield to the threat of diplomatic sanctions measures. Thus, one may argue that the EU14 failed on this point, as the desired ‘pedagogic effect’ from the ‘diplomatic whipping’ (a form of coercion) was never achieved.

Having presented the larger constructivist approach to the EU14-Austria crisis, it is now time to focus the analysis more narrowly. That said, the following sections develop a legal-constructivist perspective on the case in question.

A legal-constructivist perspective on the EU14-Austria crisis

This study contributes to rendering constructivist claims operational by filtering arguments relating to Articles 6(1) and 7 TEU coloured by the legal discipline through the ‘moderate’ constructivist prism. To achieve this, a link between meta-theoretical claims and conceptual constructs on the one hand, and detailed empirical observations on the other, is elaborated (cf. Jørgensen 2001: 51). Given the collision of different interests and norms in the EU14-Austria crisis, the following sections discuss why a legal-constructivist perspective is helpful to identify and analyse such situations.

What is at the heart of a legal-constructivist perspective?

According to Christiansen et al. (2001: 13), “[w]ithout rules, and without compliance with these, the EU would not be what it is”: a community of values. Indeed, the Union is “structured through a saturated regime of legal and institutional norms” enshrined in the acquis communautaire (ibid.). With the development of the treaties into a constitution for the Union, one may claim that now, more than ever, “[t]here is a need to come to grips with the nature of the European polity as an increasingly rule-bound arena for social interaction” (ibid.).

One should bear in mind that the call for more studies taking into consideration the structuring role that law plays in the European integration process is in no way confined to legal scholars with an interest in EU research (Hunt and Shaw 2000: 574). Thus, it is argued that the “law in context” approach has become popular both within and outside the legal discipline since the mid-1980s (Haltern 2004: 177; Hunt and Shaw 2000: 574). The reason is that this dynamic approach to law and its institutional significance – understood in normative, organisational and procedural terms – is also conditioned on developments in other disciplines such as political science, economics, history, and sociology. Arguably, this ‘give and take’ is an

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48 See for example the works by Stone Sweet (2000); Weiler (1999, 2001); Wind (2001); Weiler and Wind (eds.) (2003).
incentive for creative thinking, which may lead to new research avenues. A major enabling factor is the stable interest across disciplines in institutional dimensions of policies and policy-making processes as explanatory forces, a research trend which developed in the frameworks for different new institutionalisms.

To Hunt and Shaw (2000: 574), a perspective on EU governance departing from new legal-institutionalist assumptions “should not be equated with a necessarily formalist, legalist view of the capacity of law and legal rules for the conditioning of behaviour”. They claim that “[i]nstead of a ready acceptance of the regulative effects of formal rules and laws, such perspectives seek to locate and identify those institutionalized norms which in fact regulate behavior” (ibid.). This is also valid for a legal-constructivist approach that seeks to “[bring] to the fore the production, reproduction or modification of the EU’s normative structures through processes of interaction” (Merlingen et al. 2000: 5).

A central claim for “law in context” proponents is that the legal dimension of the European integration process has a role to play in theory building (Armstrong and Shaw 1998: 148). For example, Armstrong (1998: 151) claims that “the challenge of integrating the legal dimension requires us to confront both the nature of ‘integration’, as an object of study and theoretical exposition, and the nature of law as a system of normative ordering and institutional framework”. Here, one may add Shaw’s argument that

“in relation to the articulation and understanding of issues of EU constitutionalism, methods of legal study overly focused on the authoritative legal text, seen in isolation from its (social, economic, political or cultural) context or studied without the interpretative aid of other types of social scientific knowledge, in general encounter many difficulties” (Shaw 2001: 66-67).

Against this background, it is clear that the legal order requires a particular institutional structure in which certain normative understandings are embedded. These, in turn, offer both constraints and opportunities to actors involved in the policy process. A legal-constructivist approach takes seriously the need for a “more complex conceptualization of the role(s) of law in which attempts to use law as a medium must confront the role of law as an institution” (Armstrong 1998: 156). Similarly, Armstrong considers law as both a tool and a resource that actors might employ to further their goals, and a normative structure which might shape “how actors line up and act on issues” (ibid.).

Framing Articles 6(1) and 7 TEU in a legal-constructivist perspective
How should one theorise the influence of Treaty articles that reflect ideas on fundamental values accepted and lived by a community of states? What factors determine the capacity of these legal institutions to function well and benefit from their status as legitimate political authorities (cf. Raz 1998: 157)? Elaborating on the idea of ‘unobjectionable’ norms, Elgström (2005: 45)
31) claims that such norms are often of a very general nature. Furthermore, there is usually a consensus about their meaningfulness because these norms outline “basic moral prescriptions” (ibid.). An ‘unobjectionable’ norm enjoys moral legitimacy as it is often taken-for-granted and even reckoned as inviolable. Being highly institutionalised, this kind of norm has attained a ‘halo’ of moral superiority. Anyone who dares to criticise the norm is therefore almost violating a taboo. Yet, ‘unobjectionable’ norms are not safe from challenges because “their status is linked to a certain social context or geographical space and is time bound” (Elgström 2005: 30).

To transpose this discussion to the EU14-Austria crisis, one may argue that there is always a risk of unforeseen events that could jeopardise the status of Article 6(1) TEU, for example more or less controversial governments taking office in the Member States. One means of minimising the risk of altering the unobjectionable status of the norm in question is to anchor it firmly in legal texts. Through this process of institutionalisation and judici-alisation, the norm will thus become consolidated in that it enjoys ‘eternal life’ in jurisdictional terms. Another means is to attach a punishment procedure for violations of the ‘unobjectionable’ norm, which is the function of Article 7 TEU.

It is said that the intrinsic characteristics of some norms or their innate qualities contribute to their influence and elevated status (cf. Finnemore and Sikkink 1998: 906). Article 6(1) TEU is a good example in this regard. It reflects the political identity of the European community and herein lies the “emotive appeal” of this norm.49 Put differently, it benefits from an added value as it mirrors the Union’s very foundational qualities. Following the introduction of Article 6(1) TEU as Article F in the Treaty on European Union of 1992, it has been increasingly reckoned as an important landmark for the democratic quality of the Member States. In the case of Article 7 TEU, its ‘added value’ originates from the sanctions procedure that is already triggered by a threat of non-compliance with EU fundamental values. It is fair to say that respect for these values forms the lowest common denominator for being accepted as a member of the EU-family. When a Member State fails to comply with specific standards of behaviour, the Union has the responsibility to defend these criteria for EU membership. That is why an ‘insider’ can be relegated to being an ‘outsider’.50 Over time, this lowest common denominator has been anchored in the political traditions and constitutions of the Member States. According to Raz (1998: 168), it is possible to infuse Treaty articles with authority by elevating their symbolic value:

“[Law] aims to guide people’s conduct and it claims moral authority to do so. And while it may fail to enjoy such authority, it must be in

50 On the subject of compliance, Chayes and Handler Chayes (1993: 187) write: “If the state's decision whether or not to comply with a treaty is the result of a calculation of costs and benefits, as the realists assert, the implication is that non-compliance is the premeditated and deliberate violation of a treaty obligation”.

principle capable of making its claim good. That is, the law is a social institution that claims moral authority over its subjects and is in principle, by its nature, capable of enjoying such authority” (Raz 1998: 170).

To put it differently, the EU treaties embrace a constitution-like set of moral guidelines including principles, rules and norms. According to Ikenberry (1998: 152), “[c]onstitutions are a form of legal constraint on politics, manifest as a declaration of principles that specify rights, protections and basic rules”. These “[c]onstraints on power are also insured through institutional devices and procedures” (ibid.). As a consequence, “holders of power must exercise that power within an institutionalized political process” (ibid.). It is Ikenberry’s (1998: 152) conclusion that, “[t]he political order’s rules and institutions are to a significant extent intractable — and through their design, entrenchment and principled specificity, limits on power are established”.

Alexander (1998: 2) makes a distinction between the constitution, signifying “a collection of agreed-upon symbols”, and the ‘metaconstitution’ that is also referred to as ‘preconstitutional rules’ or ‘metarules’. The latter denotes “agreed-upon norms […] about which particular set of symbols is the constitution, who is to interpret those symbols, and whose semantic intentions shall count as the authoritative meaning of the symbols” (ibid.). That said, the reason why the EU15 in 2000 accepted a kind of political authority established and inserted in the Treaty by previous Member State leaders, for example in conjunction with the Maastricht and Amsterdam Treaties, is the widespread acceptance of meta-constitutional norms such as Articles 6(1) and 7 TEU as, precisely, political authorities. Furthermore, they play an important role both for the self-image of political leaders and for the image of the Union projected to the outside world. To put it clearly, fundamental values constituting the Union’s political identity were created and internalised by the EU Member States over time. They developed into ‘unobjectionable’ norms and shared standards of behaviour long before their codification in a Constitution for Europe in 2004. On this note, the presentation of a legal-constructivist perspective on the EU14-Austria crisis comes to an end. Next, it is time to lay out the rationalist approach to the case in question.

**Establishing the home domain of rationalism**

Just like Jørgensen’s (2001) thesis on “four levels and a discipline” regarding constructivism, Griffiths (1992: 3-4) argues that “[h]ow one understands and evaluates [rationalism] in [IR] depends a great deal on whether one views it as a philosophical disposition, a scientific paradigm, a mere framework of analysis, [or] a testable explanatory theory of international politics”. In this study, rationalism is used at an operational level, that is, for the construction of a framework for analysis of a particular case.

Pollack (2001: 221) argues that realist, liberal intergovernmentalist and rational choice institutionalism approaches “show signs of convergence
around a single rationalist model, with constructivism remaining as the primary rival”.51 According to Griffiths (1992: 3), a realist approach departs from “a few broad assumptions about the importance of states as actors, the institutionally anarchic environment within which states coexist, and hence the importance of power as the master variable to explain broad patterns of states’ interaction”.52 In contrast to constructivists who assume that “social actors are responsive to external socialization and often altruistically motivated” (Moravcsik 2000: 226), rationalists claim that “states act egoistically and instrumentally, i.e., they choose the behavioural option which promises to maximize their own utility” (Schimmelfennig 2000: 112).

This study argues that an exclusive legal-constructivist framework for analysing the EU14-Austria crisis will not do, since it downplays the actors’ tendency to run their own game primarily for the sake of domestic interests. There simply is a need for a rationalist perspective which claims that the norm crisis, which seemingly started as an enterprise involving a piece of genuine supranational idealism, was in fact ‘hi-jacked’ by national politics and the interests of political leaders representing some of the Member States. Furthermore, their Innenpolitik voiced in the EU political arena was entirely rational, that is, in line with domestic interests.

This study also subscribes to the view that constructivists in general overestimate the capacity for consensus-generating activities in the EU’s top-level decision-making network. However, socialisation processes are not automatically a positive thing, which constructivist proponents sometimes seem to take as a given. This is why one should be on the alert for phenomena such as ‘tele groupthink’ and highlight some of the negative effects of this kind of socialisation, the risk of false consensus, for example.53

A note on scope conditions for a ‘moderate’ rationalist approach to the EU14-Austria crisis

Just like the presentation of constructivism’s home domain and its ‘scope conditions’, it is now the turn for an examination of a few concepts and assumptions that are cherished by proponents of the rationalist paradigm. Similarly, ‘stereotypes’ will be presented that illustrate how rationalists frame the concepts of (1) institutions/norms, and (2) interests/preferences and interest/preference formation.

Institutions and norms

Rationalists have criticised constructivists for adopting a too positive stance on the question to what degree institutions influence the dispositions and behaviour of individual actors. The aggregation of individual actions is considered of minor importance and theoretically trivial. On the prevalence of

51 For a critical scrutiny of “the enduring dilemmas of realism in international relations”, see Guzzini (2004).

52 See, for example, Bull ([1977], 1995); Morgenthau ([1948], 1978); Waltz (1979).

53 Cf. Chapter three: The EU14-Austria crisis: the warning phase.
consensual values or common templates, rationalists in general claim that constructivists tend to disregard collective action problems (Schimmelfennig 1999: 14-15). This tendency to overlook concurrent interests and preferences explains the need for a rationalist approach to fully understand the EU14-Austria crisis. It is also important to observe that empirical evidence supports the examination of collective action problems, threatening the consensus among the EU14 concerning how to manage the crisis with the Austrian government. From a rationalist point of view, such problems should be seen as a rather natural consequence of conflicting interests between the key actors involved.

Constructivists, on the other hand, argue that a major shortcoming of the rationalist research agenda is that it neglects conceptions of social ontologies such as identity, community and collective intentionality, while it puts focus on causal explanations as the only form of explanation to be counted with (Christiansen et al. 1999: 533). It is clear that rationalist ontology is radically different from constructivist ontology, which claims that social realities exist only by human agreement (Christiansen et al. 2001: 3). Accordingly, rationalists disagree with the view that actors’ behaviour changes because of endogenous pressure, that is, coming from within the actors themselves (Johnston 2001: 488).

Turning to the question about ‘thick’ or ‘thin’ approaches to institutions, there is a marked difference between rationalists and constructivists. Rationalists take institutions as instruments for calculated actions. Actors ‘run’ into institutions, say ‘ouch’ and then calculate how best to define their interest from this experience (Checkel 2001b: 51). In other words, institutions are more of “an intervening variable” than accepted as independent forces or players (Checkel 1998: 4). In contrast to constructivists, rationalist proponents claim that power does not reside in the institutions or norms themselves, but is retained in the hands of the actors. Put differently, institutions are empty vessels, not key players in their own right. Furthermore, institutions and norms cannot give rise to any form of institutional or normative pressure as actors always control them.54 A rationalist analysis of the EU14-Austria crisis therefore downplays the autonomy of Articles 6(1) and 7 TEU and hence their political authority. With this ‘thin’ understanding of institutions, EU fundamental values were used as a strategic tool by the EU14 to counter the FPÖ-ÖVP government. In reality, they were of minor importance because domestic struggles, opinion politics, or simply self-interest such as political prestige dictated the pace of the various stages in the case in question.

Examining the EU14’s motives for ostracising the Austrian government from a rationalist perspective, it is fruitful to take into consideration Moravcsik’s (2000: 248-249) argument that “[w]hat seems at first to be a con-

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54 Cf. Chong’s study, which aims to show, from a rational choice perspective, “why instrumental reasoning must be an essential component of any interesting theory of norms and values” (Chong 2000: 4). Cf. also figure 1.2 in chapter one.
version to moral altruism [that is, democratic self-defence of the Union] is in fact an instrumental calculation of how best to lock in democratic governance against future opponents”. Against this background, one may claim that some of the EU14 found it morally attractive to preach the importance of an ‘unobjectionable’ EU norm to FPÖ and ÖVP politicians, while at the same time addressing a warning to their domestic constituencies.

**Interests/preferences and interest/preference formation**

Snyder et al. (1962: 46-47) suggest that the ‘national interest’ can be approached from three angles. First, “as an explanation of state behavior involving the notion that policy-makers and diplomats discover, define, and preserve the “national interest””. Second, as “a formula or formulas employed by statesmen to guide their choices and to legitimate choices already made”. Third, as “reference to value conflicts and to competing clusters of values which might guide policy choices”. According to Gourevitch,

> “[r]ationalists tend to take interests as given, as somehow primordial. Rationalists tend to be materialists, seeing interests as arising from some structural logic of situation, usually economic, but interests could also derive from beliefs, which shape a preference, thus an interest. Interests drive preferences, which in turn drive the creation of institutions” (Gourevitch 2002: 312).

Unlike rationalists, constructivists argue that preferences are not exogenous from the institutional setting. That is, “preferences and meaning develop in politics as in the rest of life through a combination of education, indoctrination and experience” (March and Olsen 1984: 739). This means that preferences can have an ideational foundation. Furthermore, they can exert pressure on other actors. In the EU context, this point can be summed up as follows: once the Member States set up institutions they also ‘run the risk’ of creating norms, roles, stalemate, and ‘path-dependence’, which all act as intervening variables between preferences, power and outcome. Rationalists deny this pattern and claim that what matters above all is the actors’ conduct of Realpolitik.

It is said that “rationalists generally define institutions as (formal or informal) rules of the game that provide incentives for rational actors to adopt certain strategies in pursuit of their (exogenously given) preferences” (Pollack 2001: 234). This is why a rationalist argues that norms are easily ‘hijacked’ by national interests and preferences, because the domestic political conjuncture is a major factor in the state’s relationship with other states (cf. Bulmer 1983: 354-356). Recalling the EU14-Austria crisis, one may point to the examples of Belgium and France, two hard-liners against the FPÖ-OVP
government because of their own struggles with the *Vlaams Blok*\(^{55}\) (VB) and the *Front National* (FN) respectively.

Rationalists claim that constructivists fail to recognise the problematic relationship between norms and behaviour. In response to the question whether the FPÖ-ÖVP government’s alleged disrespect for Article 6(1) TEU was the major reason for the EU14’s reaction against its formation, rationalists would resolutely say ‘no’. Hence, the EU14’s decision to launch diplomatic sanctions measures should not be explained as a direct result of the alleged threat against the ‘unobjectionable’ status of EU fundamental values, although Article 6(1) TEU might have mattered for the very shaping and framing of this decision. For a rationalist, it instead makes more sense in analytical terms to use Putnam’s (1988: 427) argument that “[i]t is fruitless to debate whether domestic politics really determine international relations, or the reverse. The answer to the question is clearly ‘Both, sometimes’. The more interesting questions are ‘When?’ and ‘How?’”.

It is clear that the norm of Article 6(1) TEU as a store of EU fundamental values is at the same time local, regional, national, and international. This implies that the same norm-set is relevant on both game-boards; the domestic and the international. Recalling the EU14-Austria crisis, this can be exemplified by the interests and preferences of the ‘front-runners’ (notably Belgium and France). As Gourevitch claims,

“[d]ebates on norms in international relations lead […] straight to domestic politics, to an analysis of why norms are supported or opposed in any given country, which in turn links this discussion to all the debates on how to explain domestic outcomes” (Gourevitch 2002: 319).

In *The Choice for Europe* (1998), Moravcsik presents an exposé of the European integration process. Throughout this journey, he is constantly sceptical of the idea of supranational socialisation or ‘identity building’ in the framework for the Union’s institutions and decision-making processes. A proponent of liberal intergovernmentalism, Moravcsik’s analysis of the development of the integration process starts from the Member States’ fixed interests and preferences. They, in turn, are an outcome of the domestic political game. Political representatives bring these interests and preferences to the EU negotiation table, and they stick to them during the game. To sum up, Moravcsik (2000: 226) takes the EU Member States as “self-interested and rational in their pursuit of (varying) underlying national interests, which reflect in turn variation in the nature of domestic social pressures and representative institutions”. The Member States thereby follow the ‘logic of consequences’ (March and Olsen 1998: 949-951).

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\(^{55}\) Note that the party changed its name to *Vlaams Belang* (Flemish Interest) after Belgium’s highest court in April 2004 had ruled that *Vlaams Blok* was a racist party. Facing the threat of losing access to state funding and access to television, the party decided on 14 November 2004 to create a ‘new’ party. Source: « Le Vlaams Blok demeure VB », *Le Soir en ligne*, 15 November 2004.
To conclude, the rationalist ‘camp’ in general focuses on the individual or the state in relation to the concept of rationality. A core claim is that decision-makers are or can be necessarily rational. Therefore, nearly all models of rationality are geared towards individual actors. These models prescribe or describe the orientations of the individual decision-maker.

Having defined the home domains of and scope conditions for constructivist and rationalist approaches to the EU14-Austria crisis, the use of this theoretical framework for a comprehensive understanding of the ‘norm journey’ of Article 6(1) TEU will now be exemplified in the following empirical chapters.
CHAPTER THREE

The EU14-Austria crisis: the warning phase

This chapter marks the beginning of the empirical investigation of the EU14-Austria crisis. It starts with a discussion on what role the Austrian President played for the initiation of the EU14’s decision to launch diplomatic sanctions measures against the expected FPÖ-ÖVP government. The Stockholm International Forum on the Holocaust 26-28 January 2000 has been indicated as the platform where the development in Austrian politics was placed on the EU political agenda. Hence, the importance of this setting is investigated. Thereafter, the Belgian fax to the Portuguese Prime Minister and the chairman of the EU Presidency is examined. The next section elaborates on telephone diplomacy as a means for the Portuguese Presidency to co-ordinate the EU14’s protest. After that, the EU14 are approached as a problem-solving network. This is followed by an examination of question marks raised in Denmark and Sweden about the initiation of the EU14’s sanctions decision itself. Then the focus is shifted to the EU14’s warning signal, that is, the declaration issued on 31 January. After that follows an examination of different reactions to the declaration. They are mainly taken from the European Commission and the European Parliament. Reactions outside the EU to the development in Austrian politics are also observed, notably from the CEE states, the United States (US), and Israel. The next section elaborates on the EU14’s warning as a response to failure to observe the norm from the Austrian side. The chapter concludes with an analysis of the warning phase in the EU14-Austria crisis from constructivist and rationalist perspectives.

The Austrian President and the initiation of the EU14’s protest

At 3:17 a.m. on 21 January, outgoing SPÖ Chancellor Viktor Klima announced the end of the unsuccessful coalition talks between the SPÖ and

56 It is worth mentioning that the Committee of the Regions also reacted to the political development in Austria. See Resolution 2000/C 156/08 of the Committee of the Regions on ‘The governmental coalition in Austria’, Official Journal of the European Communities, 6.6 2000. Haider represented Carinthia in the committee but according to an anonymous source, he rarely participated in the sessions. However, he went back in 2002 for a new term (2002-2006). Cf. Busse (2003: 239); Hummer and Obwexer (2003: 289, 297-298); Schauer (2003: 192).
the ÖVP (Schorkopf 2001: 136). On 24 January, the ÖVP leader Schüssel made clear that he would start negotiations with the key figures of the FPÖ in order to form a new government, although Klima had been entrusted again by President Klestil to form a government, but this time a minority government consisting of independent experts (Fallend 2001: 241; Gruber 2004: 269; Schneider 2003: 133; Stein 2003: 162). This politically absurd situation: two parallel negotiations to form a new government going on, one ‘officially entrusted’, the other ‘self-initiated’ (cf. Järtelius 2004: 5), ended on 27 January, while Klima attended the Stockholm International Forum on the Holocaust. It then became clear that the FPÖ and the ÖVP had turned down the idea of an SPÖ-led minority government. The following day, the SPÖ renounced the coalition pact with the ÖVP dating from 1996 and announced its willingness to go into opposition. President Klestil knew at this time that the party leaders of the ÖVP and the FPÖ had already started negotiations on a future coalition government (starting on 25 January), without having been officially initiated by him (Adamovich 2003: 232; Gruber 2004: 269; Happold 2000: 954; Stein 2003: 162).

It is difficult to identify exactly when the real initiation of the sanctions decision occurred and who actually contacted whom in the first place to discuss the political situation in Austria at the end of January. There are speculations whether the EU14’s co-ordinated protest was in fact ‘ordered’ by President Klestil with the tacit approval of outgoing Chancellor Klima (Gehler 2002: 196; 2003: 39-40; Schorkopf 2001: 21), but this remains a point of contestation. Naturally, it has not been confirmed (not officially at least) that the initiative came from ‘within’, from the Austrian political leadership. Nevertheless, it appears that President Klestil had turned to hectic telephone diplomacy for assistance and understanding from abroad, thereby privately encouraging other state leaders in the EU to send warning signals to Schüssel and Haider (Gehler 2002: 196). On 27 January, President Chirac talked to President Klestil on the telephone about the political development in Austria (Gehler 2003: 25; Schorkopf 2001: 19). Although it is likely that President Klestil feared he might be pressed to accept a new coalition including the right-wing extremist/populist FPÖ, it would be an “overestimation” of his influence “if it were asserted that the measures of the EU 14 had been “ordered” by him” (Gehler 2002: 196; 2003: 41). At the same time, President Klestil’s attitude and behaviour indeed played a role as regards the early warning addressed to the FPÖ and the ÖVP party leaders that Austria might face some protest reaction should an FPÖ-ÖVP government come to power.

57 It is worth mentioning that President Klestil had served as a senior diplomat (Ambassador to the US, later Permanent Secretary at the Foreign Ministry) during President Waldheim’s term 1986-1992, which led to a virtual diplomatic boycott of Austria.
The Stockholm International Forum on the Holocaust

Curiously, the General affairs council meeting in Brussels on Monday 24 January, chaired by the Portuguese Foreign Minister Jaime Gama, did not address the political development in Austria (Larsson and Lundgren 2003: 26). However, there must have been a premonition in European capitals about Austria’s next government, most certainly including ministers from a right-wing extremist/populist party. On Wednesday morning 26 January, Chancellor Gerhard Schröder called his Austrian colleague Klima. Later that day, the two Chancellors met in Stockholm where Klima told Schröder that in practice he had no chance of preventing the FPÖ-ÖVP coalition from forming a government. The only means to block the coalition was to dissolve the parliament and call for new elections. However, this would probably result in the ÖVP losing even more votes to the FPÖ.58

It is fair to say that the Stockholm International Forum on the Holocaust contributed indirectly to putting the political development in Austria on the EU political agenda (Schorkopf 2001: 3). This conference was an initiative by the Swedish Prime Minister Göran Persson to gather political leaders as well as prominent academics and intellectuals to commemorate the atrocities against the Jewish people in the Nazi era. Its objective was also to highlight the need for spreading knowledge about the Holocaust to fight ignorance as a source of racism, xenophobia, and anti-Semitism.59 In addition, this initiative reflected a personal wish to reinvigorate Sweden’s “moral power” in issues with strong humanitarian connotations (Gehler 2003: 40). Thus, it was a conference in the large format: in total approximately 600 individuals from roughly 40 countries participated, among them were 20 heads of state and government (Larsson and Lundgren 2003: 27).60 Several statesmen addressed the theme of the conference in their speeches and commented on the present development in Austrian politics (Busse 2003: 232-233; Larsson and Lundgren 2003: 27-28).

The Stockholm International Forum on the Holocaust was a good example of how a multilateral conference can serve as an arena for top-level decisions-makers to discuss matters outside the formal agenda, that is, matters that are more or less of immediate concern to themselves (Berridge 2002: 150, Moscovici 2001: 140-141, Östergård 2003: 22-23). It is said that Chan-

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59 For a summary of speeches and a general presentation of the conference, see the conference website at http://www.holocaustforum.gov.se
60 Among the prominent politicians attending the conference were: Austria – Chancellor Viktor Klima; Belgium – ambassador Marc Baptist; Denmark – Prime Minister Poul Nyrrup Rasmussen; Finland – Prime Minister Paavo Lipponen; France – Prime Minister Lionel Jospin and the Minister for European Affairs Pierre Moscovici; Germany – Chancellor Gerhard Schröder; Britain – Foreign Minister Robin Cook; Greece – Foreign Minister George Papandreou; Ireland – ambassador Martin Burke; Italy – Prime Minister Massimo D’Alema; Luxembourg – Defense Minister Charles Goerens; Portugal – Minister Assistant to the Prime Minister Armando Vara; Sweden – Prime Minister Göran Persson; the Netherlands – Prime Minister Wim Kok; Spain – Ms. Speaker of the Parliament Esperanza Aquirre Gil de Biedma. See http://www.holocaustforum.gov.se/conference/participants/countries/list_of_delegation/index.htm
cellor Klima asked his Social Democratic colleagues for help with the situation in Austria, and one of the first to respond was Prime Minister Jospin (Schneider 2003: 135). While it is plausible that Klima actually expressed worry and consternation at the conference, “his role should not be overestimated”, Gehler (2002: 196) argues, because “[t]he not-so-distinguished socialist was really not in any position to give orders within the SI [Socialist International] or among European socialists”.61

Nevertheless, it is clear that between the speeches and workshops, some of the heads of state and government and their accompanying Foreign Ministers or Ministers for European Affairs discussed the prospect of facing Haider in government position (Gehler 2002: 189; Moscovici 2001: 140-141). When questioned on the initiation to the EU14’s reaction in the Standing Committee on the Constitution (Konstitutionsutskottet) on 14 April 2000, the Swedish Prime Minister argued however that the expected FPÖ-ÖVP government was never discussed at the conference in terms of forming a collective protest against its formation. Furthermore, the Prime Minister underlined that the so-called instigators or ‘front-runners’ of the joint protest, President Chirac and the Prime Ministers Verhofstadt, Aznar, and Guterres, were not even present in Stockholm.62

The Belgian fax to the Portuguese Prime Minister and chairman of the EU Presidency

On Thursday 27 January, Prime Minister Verhofstadt sent a fax (co-signed by Foreign Minister Michel) to the chairman of the EU Presidency, that is, the Portuguese Prime Minister Guterres. In this fax, Verhofstadt referred to a debate earlier the same day in the Belgian parliament, where concerns about the political development in Austria had been voiced. He now called on Guterres in his co-ordinating role as ‘President’ of the EU to find out whether the Belgian concern was widely shared in other EU capitals, thus possibly requiring further action (Larsson and Lundgren 2003: 29). Note that the fax from Verhofstadt did not include any concrete proposal for action to be taken, but was merely an expression of a growing concern (Schorkopf 2001: 20).63 Verhofstadt then asked the Portuguese Presidency

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61 Concerning these circumstances, the Finnish Prime Minister quickly dismissed Danish claims that the rapping over the knuckles had been ordered by the Austrians themselves during the International Forum on the Holocaust in Stockholm, or that the Austrian Social Democrats had requested their fellow Social Democrats within the EU to press the panic button on their behalf. See “Läpponen supports EU line on Austria”, Helsingin Sanomat (International Edition), 3 February 2000.

62 Minutes of the questioning of Prime Minister Göran Persson in the Standing Committee on the Constitution 14 April 2000 on the initiation of the EU14’s reaction against the development in Austrian politics are available in Swedish at http://www.riksdagen.se/debatt/9900/Utskott/KU/KU20del2/KU20DEL2.ASP#223E29

63 See also minutes of the questioning of Lars Danielsson, Swedish State Secretary in the Office of the Prime Minister, in the Standing Committee on the Constitution 11 April 2000 on the initiation of the EU14’s reaction against the FPÖ-ÖVP government, available in Swedish at http://www.riksdagen.se/debatt/9900/Utskott/KU/KU20del2/KU20DEL2.ASP#E223E22
to convene an extraordinary meeting of EU Foreign Ministers on 28 January, to discuss the ‘Austrian problem’ (Busse 2003: 233; Leidenmühler 2003: 349). However, both Austria and the European Commission were entitled to take part in such a meeting, which would certainly create an awkward situation.

As it turned out, Prime Minister Guterres did not give a positive response to the Belgian proposal. Instead, on Friday evening 28 January, the Portuguese Prime Minister sent a fax to his thirteen colleagues with the aim of gathering viewpoints on how they should address the political situation in Austria. Besides the statement by the Prime Minister briefly expressing his private opinions on the matter, the fax included a copy of the above-mentioned fax from the Belgian Prime Minister (see Appendix 1) (Larsson and Lundgren 2003: 29).

### The Portuguese Presidency and telephone diplomacy

As previously mentioned, it fell to the Portuguese to co-ordinate the reaction to an unforeseen EU ‘domestic’ political crisis which later during spring would ‘disturb’ the EU political agenda (Schneider 2003: 150). The key player was Prime Minister Guterres and his closest government colleagues; Foreign Minister Jaime Gama, and Secretary of State for European Affairs Francisco Seixas da Costa. Personally, it was a sensitive task for Guterres to co-ordinate a joint protest from the EU14’s side. The dilemma was how to work out a consensus that would satisfy those Member States recommending a tough stance on the Austrians, the ‘front-runners’, while at the same time pleasing the ‘followers’ and ‘sceptics’, the latter arguing that the outcome of the general election in October 1999 was a matter for the Austrians themselves. It appears that some Member States had suggested quite extensive punitive measures to be taken against the new Austrian government, but these proposals were finally avoided (cf. the section further ahead on the declaration by the EU14). Nevertheless, the EU14’s reaction could not be toothless. Representatives from the FPÖ-ÖVP government must experience what discomfort they had caused their EU colleagues.

Interviewing Mr Guterres about his experiences of the EU14-Austria crisis, he repeatedly underlined that he had taken the Presidency’s “instrumental role” very seriously. Mr Guterres explained his view of the Presidency’s important steering and mediating function in sorting out different alternative ways of responding to the development in Austrian politics in late January. At the time, it was out of the question to advance a Portuguese proposal since that, in the Prime Minister’s opinion, was considered at odds with the functional role of the Presidency. That said, the Portuguese Presidency was guided by the need for a solution that could be accepted by everybody.

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64 Schneider (2003: 134) referring to Die Presse, 26 January 2000.
Against the background of a serious EU ‘domestic’ political crisis, Mr Guterres emphasised how important it had been for Portugal to demonstrate a capacity for good management and co-ordination especially under considerable time pressure.

However, the Portuguese Prime Minister was criticised in some respects. For example, it was controversial to agree to co-ordinate the EU14’s reaction when it was not an EU-action in legal terms. That said, the Presidency as part of the EU’s institutional framework was exploited by the EU14. As a matter of fact, the Presidency could (and can) only speak in the name of all members, thus including the FPO-ÖVP government, otherwise they must speak in their own name. Another line of criticism is that the Portuguese Presidency did not inform the European Commission until Monday 31 January about what was in the making, that is, the same day as the EU14’s declaration was issued. The situation was therefore nothing but a fait accompli for the Commission President Romano Prodi (cf. the section further ahead on the reaction from the European Commission).

In practical terms, how did the Portuguese Prime Minister proceed when seeking support from his colleagues in the EU? It has been confirmed that during the week-end 29-30 January, Guterres made several rounds of telephone calls to the capitals of the EU13, calling some heads of state and government several times to discuss the ‘Austrian problem’. Furthermore, on Saturday 29 January, talks between the Portuguese Prime Minister and the EU14, the Portuguese Prime Minister and the Austrian President Klestil, and the Foreign Ministers Gama (Portugal) and Schüssel took place within the so-called PRIME-NET-system (Schorkopf 2001: 21). The PRIME-NET-system is a communications network set up by the Austrians during their first EU Presidency term in 1998. Ironically, it now served a non-EU action, facilitating the information exchange between the actors involved in the plan to protest, in one way or another, against the expected FPO-ÖVP government.

It appears that Mr Guterres did not have any particular strategy on what capital to contact first in order to rally support for a joint reaction. Certainly, he knew beforehand the extreme standpoints, with France and Belgium on one side, and Denmark on the other, but this fact did not have any influence on how to go about calling the thirteen EU capitals. However, the truth is

66 For a discussion of this subject, see chapter eight.
68 An anonymous high-ranking Austrian official at the Permanent Representation of Austria to the EU also provided this information during an interview in Brussels on 8 May 2003.
69 Interview with Mr António Guterres in Lisbon 24 July 2002.
that Denmark and Sweden were the last Member States to give their support on Sunday evening, with the exception of Finland.\textsuperscript{70}

Summing up, the co-ordinating role of the Portuguese Presidency consisted in: (1) telephone calls to the thirteen heads of state and government on Saturday 29 January to spread information about what was in the making; (2) drafting a declaration of diplomatic sanctions measures; and (3) getting the wording of the declaration accepted by the EU13. This round of telephone calls on Sunday 30 January sought approval for the suggested sanctions measures and the joint statement. Should the EU13 have any objections or wish to make any amendments, this was to be notified to the Presidency within reasonable time (a deadline was set). Prime Minister Guterres entrusted his diplomatic attaché with the task of fine-tuning the final details. Having secured a consensus between the EU14, Guterres then would announce the joint reaction from the EU14’s side. Accordingly, the declaration on the EU14’s diplomatic sanctions measures against the anticipated FPÖ-ÖVP government was issued on Monday 31 January around 2 p.m.. It was also published on the website of the Portuguese Presidency, which is no longer available.\textsuperscript{71}

As will be shown later, the co-ordination process had the negative effect of producing ‘information asymmetries’ regarding what to do with the deviant Member State and the question how to proceed in concrete terms. Furthermore, it enabled the diplomatic sanctions measures to become ‘the only game in town’, as it was difficult for other suggestions or alternatives to reach out to all the other heads of state and government without passing through the Presidency. It is important to observe that the ‘information asymmetries’ caused by ‘tele groupthink’ accentuated different strategy preferences in the group of the EU14. This explains why there was a consensus on launching diplomatic sanctions measures but not a unanimous decision. In other words, from the very beginning conflicting views lurked beneath the surface. For instance, the Italian Prime Minister Massimo D’Alema had declared at the Stockholm International Forum on the Holocaust that he did

\textsuperscript{70} See the section further ahead on question marks about the initiation of the EU14’s reaction. A word has to be said about the situation in Finland, which is not commented on in greater detail. It appears that on Sunday evening 30 January, Prime Minister Guterres had telephoned Prime Minister Lipponen. However, it was not until Monday morning, when Lipponen judged that the declaration communicated by the Portuguese Presidency left him with no room for negotiation but to simply accept or reject it, that a Finnish stance was adopted. At the time, President Martti Ahtisaari was at an economic summit in Davos and unreachable until the evening. Facing time pressure, Lipponen instantly decided the Finnish official standpoint. At a later stage he notified Ahtisaari and received his approval of the answer to the Portuguese Presidency. According to Finland’s largest newspaper, “The entire issue of Finland’s involvement in the Austrian boycott has raised some doubts — including some among members of the government itself — that the move was a precipitate one by the EU leaders and that Finland would have done well to distance itself from it, or at least that the decision should have been passed to a larger forum than simply the Prime Minister himself”. Source: “Centre Party launch into Lipponen over Austria decision”, Helsingin Sanomat (International Edition), 8 March 2000. See also “Lipponen explains Austria boycott procedure”, Helsingin Sanomat (International Edition), 20 April 2000.

\textsuperscript{71} During the interview, Mr Guterres emphasised that this was all he was prepared to do with a view to the mediating and co-ordinating tasks when occupying the Presidency chair.
not wish to interfere in Austria’s domestic politics (Gehler 2002: 189; 2003: 25; Schneider 2003: 139). Thus, one may ask whether the Portuguese Prime Minister had secured a true consensus at the end of the round of telephone calls the following week-end. One should keep in mind that consensus is not the same as unanimity. Therefore, the overall majority in favour of the diplomatic sanctions measures could neglect the dissenting view of Greece, in addition to more or less half-hearted supporters like Denmark and Luxembourg (Gehler 2002: 188-189). This explains why the question whether the ‘diplomatic whipping’ was merely a ‘second best solution’, and what would otherwise have been the ideal one, will probably never be answered.

The EU14: a problem-solving network

Two kinds of foreign policy decision-making processes run parallel through the EU14-Austria crisis. First, the informal decision-making process characterised by telephone diplomacy in the top-level network of the fourteen heads of state and government, co-ordinated by the Portuguese EU Presidency. Second, there is a formal decision-making process which is divided into two parts. The EU14-Austria crisis was discussed in the framework for the European Council and in conjunction with the IGC 2000. Furthermore, there is the decision-making process in the Council of Ministers. Not only is a minister in constant dialogue with the Prime Minister but s/he is also communicating intensively with other ministers in the Council of Ministers. Here, one should not overlook the importance of the Committees of Permanent Representatives (Coreper, grouping together national ambassadors to the EU), as it is they who “mediate national preferences and then pursue an agreed common position” in the negotiations in the Council of Ministers (Peterson 2001: 295). The next chapter will present in greater detail how heads of state and government and government representatives took part in the implementation itself of the diplomatic sanctions measures. However, the next section returns to the informal decision-making level. The figure below frames the EU14 as a problem-solving network.
What follows is a step-by-step explanation of this figure. The Stockholm International Forum on the Holocaust 26-28 January 2000 and telephone diplomacy during the week-end 29-30 January provided the overall context. The actors were the thirteen heads of state and government and representatives from the Portuguese Presidency. They discussed the problem how to co-ordinate a joint protest against the formation of the expected FPÖ-ÖVP government. In relation to this there was widespread agreement on the policy in focus, namely to defend EU fundamental values expressed in Article 6(1) TEU. The decision itself was taken in a top-level network. Whether a genuine climate of consensus prevailed or not in this problem-solving network has been a point of discussion. It is said that participants in dense networks tend to know each other well and are keen to protect the boundaries of their network. Communications then flow more freely, which may enhance the capacity for problem-solving (Elgström and Jönsson 2000: 696). One may also argue that the EU14 relied on interpersonal trust, which embraces personal contacts and friendship. Furthermore, it has a lubricating function. Supporting informal discussions between state leaders, it also facilitates problem-solving in political crisis situations. In the EU14-Austria crisis, a group of middle-aged men having several times tested the waters of each other’s personalities in EU-settings, used telecommunications as a diplomatic channel for the forging of a consensus. As regards the question of the extent to which possibilities of co-operation and collective action were dependent on established ties of interpersonal trust, empirical evidence provides a strong, affirmative answer. Commenting on his position as Prime Minister and ‘President’ of the EU during the first half of 2000, Mr Guterres explained how interpersonal trust had mattered for the rapid forging of a
consensus. The pivotal role had been played by personal affinities with political leaders rather than by party colour. Therefore, he did not need several days to secure an agreement from non-socialist EU leaders. However, this interpersonal diplomacy brought harsh criticism from the political opposition in some Member States, for example Denmark and Sweden, as will be shown in the next section.

Question marks on the initiation of the EU14’s sanctions decision: the examples of Denmark and Sweden

After Prime Minister Guterres’s telephone call on 29 January, neither the Danish nor the Swedish Prime Minister informed their respective Ministry of Foreign Affairs. Accordingly, diplomats and members of parliaments were either not informed, or the information came so late that there was simply no time to raise any objections. This led to strong criticism in these Member States where judicial principles establish that the government should inform the foreign affairs committee (including members of the political opposition) about extraordinary foreign policy situations and decisions. Clearly, the Prime Ministers of Denmark and Sweden sidestepped this principle.

During an interview with Niels Helveg Petersen, Foreign Minister 25 January 1993-21 December 2000 in the government of Paul Nyrup Rasmussen (Social Democratic Prime Minister 1993-2001), he argued that “the diplomatic sanctions measures gave the EU a bad name”, although it was a matter of bilateral protests. The underlying reason was the fact that in some Member States, the head of state or government informed neither the Foreign Minister nor the political opposition about the planned reaction against the political development in Austria. This left an embarrassing dent in the European and international reputation of the individual Member State’s handling of the ‘diplomatic whipping’ of the FPÖ-ÖVP government. According to Mr Helveg Petersen, if the EU14 had acted more cautiously, taking their time to discuss the matter with diplomats at the respective Ministry of Foreign Affairs, then the state of diplomatic panic would not have arisen. Rather, the Foreign Ministers would have suggested to the heads of

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72 Interview with Mr António Guterres in Lisbon 24 July 2002.
74 Interview with Mr Niels Helveg Petersen (member of the liberal Radikale Venstre) in Copenhagen 21 February 2003. For an explanation from the Danish Ministry of Foreign Affairs to the diplomatic sanctions measures against the FPÖ-ÖVP government, see Europaudvalget. Alm. Del – bilag 528.
state and government that Austria should be monitored for a couple of months with the support of a contact group.

As the decision to launch diplomatic sanctions measures was taken in an exceptional situation characterised by a narrow time horizon, ‘normal’ democratic procedures were put aside. Mr Helveg Petersen informed that Prime Minister Nyrup Rasmussen personally briefed him about Denmark’s position on the evening of 30 January, after the Prime Minister had notified Denmark’s ‘yes’ to the Portuguese Prime Minister during the afternoon. The official Danish standpoint was thus presented as a *fait accompli* to the Foreign Minister. Moreover, the European Affairs Committee of the parliament (*Folketingets Europaudvalg*) was not informed about the official position. This is why the EU14’s declaration issued on 31 January by the Portuguese Presidency was not hailed with enthusiasm, but unleashed strong criticism from politicians, government members and members of the opposition parties, Mr Helveg Petersen explained.\(^75\)

The Danish constitution clearly spells out how the question of information regarding the initiation of the EU14’s protest should have been dealt with. Paragraph 19: 1 and 3 set out the limits for the actions of the government.\(^76\) With a strictly legal interpretation, Prime Minister Nyrup Rasmussen breached fundamental principles, such as the obligation to inform the parliament (*Folketinget*) about foreign policy decisions of a ‘significant scope’ (*større udenrigspolitiske rækkevidde*). Mr Helveg Petersen argued that the Prime Minister could have convened a meeting with the standing committee on foreign affairs (*Det Udenrigspolitiske Nævn*) early on the Monday morning of 31 January. Most likely, the members of the committee would have joined in the declaration co-ordinated by the Portuguese Presidency. Having obtained a ‘yes’ from the committee, then Nyrup Rasmussen could have telephoned Guterres and deliver Denmark’s approval of the co-ordinated protest. Instead, the Prime Minister immediately exposed himself to considerable criticism – quite unnecessarily, according to Mr Helveg Petersen – because he had neglected vital constitutional principles to give his support to an unprecedented policy of defending EU fundamental values, initiated by equally unprecedented means. In addition, one may claim that Nyrup Rasmussen


thereby contributed to the creation of democratic-procedural question marks on this particular policy.

Turning to Sweden, Prime Minister Göran Persson received a telephone call from his Portuguese colleague quite late in the evening of 30 January in Athens, where he was on an official visit. When asked in the Standing Committee on the Constitution (Konstitutionsutskottet) whether the Prime Minister had had any knowledge about the nature of the planned reaction against the political development in Austria prior to Prime Minister Guterres’ call on Sunday evening, he responded negatively. The first telephone call from Guterres on Saturday 29 January had merely asked Prime Minister Persson to give his personal opinions on the development in Austrian politics, but there was no discussion about how to shape a joint protest. On Sunday evening, when the Portuguese Prime Minister again telephoned his Swedish colleague, the joint protest was practically settled. With the information that only one or two Member States were missing (Denmark and Finland), Persson immediately gave his support to the sanctions decision. Thereafter he informed Foreign Minister Anna Lindh about Sweden’s ‘yes’.

To conclude, details from the questioning of Swedish government representatives in the Standing Committee on the Constitution on 11 and 14 April 2000 can be taken as evidence to support the claim that the use of telephone diplomacy satisfied the EU14’s need for a swift protest in view of the expected FPÖ-ÖVP government formation. That said, the Swedish example is relevant as it provides knowledge about extraordinary circumstances in the EU14-Austria crisis.

The EU14’s declaration of 31 January 2000

The EU14’s declaration of 31 January, presenting the diplomatic sanctions measures, was nothing but an ultimatum while the ÖVP and FPÖ leaders still negotiated on the formation of a coalition government. The aim was undoubtedly to exert pressure on these actors so that the FPÖ would be prevented from reaching government power (Cramér and Wrangle 2001: 47). Earlier signals from the EU14 had made clear that contacts with Austrian representatives in the EU institutions would not be “business as usual”. Hence, the initiative by the EU14 had a precautionary character with regard to an anticipated breach of EU fundamental values expressed in Article 6(1)

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77 Minutes of the questioning of Prime Minister Göran Persson in the Standing Committee on the Constitution 14 April 2000 on the initiation of the EU14’s reaction against the FPÖ-ÖVP government are available in Swedish at http://www.riksdagen.se/debatt/9900/Utskott/KU/KU20del2/KU20DEL2.ASP#223E29

See also the information provided by Foreign Minister Anna Lindh, questioned on the same subject 14 April 2000 at:
http://www.riksdagen.se/debatt/9900/Utskott/KU/KU20del2/KU20DEL2.ASP#223E26

and State Secretary in the Office of the Prime Minister Lars Danielsson, questioned 11 April 2000 at http://www.riksdagen.se/debatt/9900/Utskott/KU/KU20del2/KU20DEL2.ASP#E223E22
TEU (Cramér and Wrange 2001: 44).\footnote{For analyses of the EU14’s declaration, see for example Pernthaler and Hilpold (2003: 97-99); Winkler (2003: 467-468).} It is clear from the “Statement from the Portuguese Presidency of the European Union on Behalf of XIV Member States”\footnote{The declaration derives from the homepage of the Portuguese Presidency at http://www.portugal.ue2000.pt, which is no longer available. Here, it is taken from Gehler (2002: 180-181). See also Appendix 2.} (see below) that Prime Minister Guterres personally had informed both the President and the Chancellor of Austria about the EU14’s planned reaction to the anticipated FPÖ-ÖVP government:\footnote{Interview with Mr António Guterres in Lisbon 24 July 2002.} Today, Monday, 31 January, the Portuguese Prime Minister informed both the President and the Chancellor of Austria, and the Portuguese Minister of Foreign Affairs notified his Austrian counterpart of the following joint reaction agreed by the Heads of State and Government of XIV Member States of the European Union in case it is formed in Austria a Government integrating the FPÖ:

- Governments of XIV Member States will not promote or accept any bilateral official at political level with an Austrian Government integrating the FPÖ;
- There will be no support in favor of Austrian candidates seeking positions in international organisations;
- Austrian Ambassadors in EU capitals will only be received at a technical level.

The Portuguese Prime Minister and the Minister of Foreign Affairs had already informed the Austrians authorities that there would be no business as usual in the bilateral relations with a Government integrating the FPÖ.

It is worth mentioning that Prime Minister Guterres had preferred a wording such as “Austrian candidates from the FPÖ-party”, thereby avoiding the risk of a collective punishment. However, he did not try to impose his opinion, but sought to satisfy the wish of the majority of the EU13.\footnote{An anonymous high-ranking Austrian official at the Permanent Representation of Austria to the EU also provided this information during an interview in Brussels 8 May 2003.}

Concerning the nature of the diplomatic sanctions measures, France had pushed for a tougher line with the support of Belgium.\footnote{See also Appendix 2.} This proposal implied that Austrian representatives would be excluded from meetings in the Council of Ministers at the second-lowest level of decision-making, known as Coreper I and Coreper II meetings, where “much EU business is effectively decided”\footnote{Happold 2000: 957.} (Happold 2000: 957). However, the majority of the protesting Member States turned it down. Note that the consequences of the French proposal would most likely have jeopardised the capacity of the Council of Ministers to keep a ‘normal’ working pace. At the end of the day, Austrian government representatives were guaranteed full participation in
deliberations. To put it clearly, Austria was not excluded from the decision-making process in the EU, a process that was unaffected by the sanctions measures. Otherwise the EU14 could be accused of violating Article 10 TEU when preventing Austria from participating fully in the decision-making process. Accordingly, on 7 February the Portuguese Presidency could announce that Austria’s new FPÖ Minister for Social Affairs, Elisabeth Sickl, would be invited to the next informal meeting in Lisbon on 11 February (ibid.).

Nevertheless, criticism has been raised that the EU14’s ‘diplomatic whipping’ of the FPÖ-ÖVP government in practice had the effect that “Austrian representatives were excluded from informal consultations, preliminary discussions, and coordination, which are very important for European committee work and which take place before the decisions by the Council” (Gehler 2002: 211). As Gehler puts it, this kind of punishment was indeed “a severe political disadvantage”, which rendered Austria the status of “victim” of an unprecedented policy (ibid.).

### The reaction from the European Commission

In the EU14-Austria crisis, the European Commission was a purely reactive actor. The EU14 had the ‘first mover advantage’ in shaping a response to the political development in Austria in late January. This said, the declaration of 31 January was not anchored in the European Commission. Emphasising its task of safeguarding the acquis communautaire, President Romano Prodi voiced his preoccupation with the EU14 taking action outside the legal framework of the Union. Hence, the European Commission had its own interests to defend in the EU14-Austria crisis.

To some observers it was controversial that the Portuguese Presidency did not inform the President of the European Commission until early Monday afternoon the 31 January. Facing a fait accompli, Prodi could do nothing to influence the EU14’s planned protest against the presumed FPÖ-ÖVP government (Happold 2000: 956; Hummer 2000: 35; Merlingen et al. 2001: 60). In reply, Prodi convened an emergency meeting with the Commission—

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82 Mr Guterres stressed this point during the interview in Lisbon 24 July 2002.
83 Article 10 TEU reads: “Member States shall take all appropriate measures, whether general or particular, to ensure fulfilment of the obligations arising out of this Treaty or resulting from action taken by the institutions of the Community. They shall facilitate the achievement of the Community’s tasks. They shall abstain from any measure which could jeopardise the attainment of the objectives of this Treaty.”
84 As will be shown in chapter seven, the initial ‘information asymmetry’ between the EU14 and the European Commission on how to handle the development in Austrian politics in late January left an imprint on the amendments to Article 7 TEU. Article 7 post-Nice does not give the European Commission any significant role in the modified procedure of defending EU fundamental values. Although the European Commission actively sought to present its own interest and preferences in conjunction with the Biarritz summit 13-14 October, the outcome of this negotiation on rewriting Article 7 TEU shows how the EU14-Austria crisis at the end of the day strengthened the intergovernmentalist way of integrating the EU Member States.
ers on 1 February (Happold 2000: 956; Gehler 2003: 38). This meeting was followed by a press conference with the Commission President himself as spokesperson. Prodi emphasised that it was fundamental for the Commission to continue to play its role as guardian of the Treaties, but he carefully declined to say whether the Commission approved or not of the EU14’s statement.85 In full, the statement on Austria by the European Commission reads (cf. Appendix 3):86

The Commission notes the agreed joint view expressed by 14 Member States of the Union on January 31st and shares the concerns which underlie that decision.

The Commission will continue to fulfil its duty as guardian of the provisions and values set down in the Treaties, which provide that the Union is founded on the principles of liberty, democracy, respect of human rights and fundamental freedoms and the rule of law, as set out notably in Articles 6 and 7 of the Treaty on European Union.

At this stage the working of the European institutions is not affected. In this context the Commission, in close contact with the Governments of the Member States, will follow the situation carefully, maintaining its working relations with the Austrian authorities.

Consequently, the Commissioners unanimously87 agreed to maintain working relations with the Austrian government unless and until it violated EU fundamental values expressed in Article 6(1) TEU. Furthermore, the statement made clear that the European Commission would rigorously scrutinise Austrian legislation for conformity with the treaties. This was interpreted as a political declaration of intent and a preliminary measure to Article 7 TEU, as indicated by the reference to Articles 6 and 7 TEU.88

The position adopted by the European Commission was also reflected in a speech delivered by the external affairs Commissioner Chris Patten in Ottawa on 8 February:89

“What’s happened in Austria in the last few days has been difficult for a number of member states, partly because of their historic

87 Including the vote of the Commissioner for Agriculture, the Austrian Franz Fischler (cf. Hummer and Obwexer 2003: 288). Remaining a respected representative of Austria, he stayed at his post in Brussels during the EU14-Austria crisis. Fischler also issued a “Personal statement about the forming of the new government in Austria”, see Appendix 4.
memories and partly because of their nervousness about the consequences for their own political development of irresponsible populism. So it’s understandable that member states have acted as they have. But the EU is an organisation of rules and laws and treaties, and we in the Commission act as the guardian… of that legal framework.”

In a speech addressing the European Parliament on 3 February, Prodi on the one hand expressed the same concerns about the ‘Austrian problem’ as the EU14, and on the other hand he highlighted the role of the European Commission in the integration process by saying: “When one of its members is in difficulty, the whole Union is in difficulty. It is the duty of a strong supranational institution not to isolate one of its members, but instead to keep it firmly in the fold”. He underlined, with address to Austria, that when a state becomes a member of the Union it “accepts its fundamental principles without reservation and forever”. However, in this situation of deep EU ‘domestic’ political crisis, it was not easy for the European Commission to play the role of independent monitor of the Member States’ compliance with the acquis communautaire. The problem was that the diplomatic sanctions measures did not constitute an EU action, while they had an acute relevance for the Union as such. This is why the European Commission had “a rightful interest to be involved in order to fulfil its duties under the Treaty” (Cramér and Wrange 2001: 46). Article 3 TEU is clear on this point: “The Union shall be served by a single institutional framework which shall ensure the consistency and continuity of the activities carried out in order to attain its objectives” (ibid.).

Against this background, is it possible to argue that the EU14 actually weakened the Union structure? Could they be accused of breaching a fundamental duty of loyalty with regard to the attainment of the Union’s objectives (cf. Article 10 TEU)? To many legal experts, this argument is scarcely convincing. Neither the European Commission nor the European Parliament criticised the EU14’s ‘diplomatic whipping’ in terms of a collective infringement of EU law. Furthermore, representatives of the Commission expressed an understanding for the joint protest and did not distance themselves from the concerns underlying its raison d’être (Cramér and Wrange 2001: 46-47).

The reaction from the European Parliament

Another EU institution was also taken by surprise and had objections against the EU14’s declaration of 31 January. On 2-3 February the European Parliament met in plenary session in Brussels. The British Member of European Parliament (MEP) Andrew Duff representing the European Lib-

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eral, Democrat, and Reform Party (ELDR) followed the discussions in the parliament at the time. According to Mr Duff’s observation,

“still in a state of shock, [the parliament had] to formulate its own resolution on the matter. Amid a widespread disgruntlement that the Parliament itself had, with the Commission, been ignored by the Fourteen, the different political groups began to debate their responses” (Duff 2000: 9).

A snapshot from the debate in the European Parliament is captured by Duff in the following:

“At the close of the debate, notable for its passion, Commissioner Kinnock defended the integrity of his colleague Fischer as well as the position of the college as a whole. Nicole Fontaine, President of the Parliament, said it was thanks to such crises that Europe is built. She also asked, pertinently enough, how the Union could expect the candidate countries to respect fundamental rights if they were not fully respected by all existing member states” (Duff 2000: 11).

On 3 February, the European Parliament adopted a resolution (see Appendix 5), “tabled jointly by the five larger groups”, that condemned the formation of the FPÖ-ÖVP government (Duff 2000: 11). The European Parliament welcomed the “timely political intent of the Portuguese Presidency in as far as it [reiterated] Member States’ common concern to defend common European values” and called on the European Council and the European Commission to monitor the political development in Austria. Furthermore, the resolution stated that the European Parliament “[b]elieves that the admission of the FPÖ into a coalition government legitimises the extreme right in Europe”.

The resolution was passed by a vote of 406 to 53 with 60 abstentions. According to Duff (2000: 10) “the five deputies from the FPÖ led by Daniela Raschhofer, sitting independently as ‘non-inscrits’, made their presence felt in the hours leading up to the crucial vote of the Parliament to most if not all members”. MEPs representing the FN, the MSI, and the VB, among others, voted ‘no’ (Duff 2000: 11). 9 Austrian MEPs voted in favour of the motion (all the SPÖ deputies and Flemming who represented the ÖVP), 10 against (all the ÖVP deputies with the exception of Flemming), and 1 abstained (Rübig who represented the ÖVP), Schierhuber, representing the ÖVP was absent (ibid.).

To conclude with Duff’s (2000: 13) words, “[d]espite the tone of the resolution, it was clear that the Parliament was not minded to accentuate the
crisis. The ‘political intent’ of the [EU14’s] statement had been welcomed, but not the decision itself”.

Reactions outside the EU

Besides the CEE states, the US and Israel, on which there is comment below, the governments of Norway, Canada, and Argentina issued statements supporting the EU14’s protest against the government formation in Austria (Gehler 2002: 198; Hummer and Obwexer 2003: 289).

The EU14’s ‘diplomatic whipping’ of a small Member State with little weight in the EU’s decision-making processes sent shockwaves across the CEE candidate countries. Yet, they did not present a common position in the shape of a joint statement on the political situation in Austria, or the like. It is said that one reason for keeping a low profile was the fact that each of the fifteen Member States was able to block their entry to the Union (Pietrzykowski and Migalski 2003: 111).

Pietrzykowski and Migalski (2003: 109) claim that the attitude of the Polish political leadership was “extremely cautious”. As R. Sikorski from the Ministry of Foreign Affairs put it: “We believe that the 14 EU Member States know what they do. Poland is not a member of the club and therefore it should keep reserved” (Pietrzykowski and Migalski 2003: 110). On the whole, however, the Polish government supported the EU14’s reaction “primarily for historical reasons” (Gehler 2002: 193; 2003: 34). In the Czech Republic, the official declarations by Prime Minister Milosz Zeman and Foreign Minister Jan Kavan were of a different nature than the reaction from Václav Klaus, the opposition party leader and President of the Czech Parliament (Pietrzykowski and Migalski 2003: 111). He had originally referred to the diplomatic sanctions measures as “a greater evil than Haider” (Gehler 2002: 193). In Slovakia, the official standpoint was somewhat ambivalent; certainly the political leadership understood the EU14’s wish to set an example, but there was hesitation as to the nature of the protest (ibid.). In the case of Hungary there was outright criticism. As Suppan puts it,\(^{92}\)

\[^{92}\text{Suppan (2003: 175) referring to The Economist, 12 February 2000, p. 50.}\]

[Prime Minister Viktor Orbán had] “interior pragmatic reasons for being soft on the Haiderites, because his conservative-liberal Fidesz party had […] to consider […] ultra-nationalist groups in the Hungarian parliament. Above all, the Prime Minister [cherished] Hungary’s historic links with Austria, and that Austria as the EU’s bridgehead into East-Central Europe [was] far too important to annoy, whoever [was] running its government.”

Finally, Slovenia also expressed doubts about the nature of the EU14’s reaction.\(^{93}\)

\[^{93}\text{For an analysis of the political relationship between Slovenia and Haider, see the article by Svetlana Vasovic published by Alternativna Informativa Mreža (Alternative Information Network), available at}\]

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At a press conference on 1 February, one journalist asked the spokesperson for the National Security Council why the US was getting involved in Austria’s internal politics. The spokesperson replied that no action had been taken yet, and that “it’s something we’re watching closely”. He continued by saying: “This is obviously an important issue to the new Europe, and to the ideals and principles that we’ve long spoken out for. We noted what the European Union [sic] said yesterday, and if the Freedom Party does join the government in Austria, we have to consider how this impacts our own interests, and what steps to consider”. Urged by journalists to specify what steps could be considered, the spokesperson clearly refused to “speculate” because “we are dealing with a situation that hasn’t occurred yet”. Nevertheless, as a concrete sign of protest following the FPÖ-ÖVP government formation of 4 February, the US ordered its Ambassador Kathryn Hall back to Washington “for consultations”, although she returned to her post, with somewhat less publicity, a few days later (Happold 2000: 956; Johnson 2000: 2; Suppan 2003: 175).

On 25 January, Israel threatened to withdraw its ambassador from Vienna in the event that the FPÖ, with the inclusion of Haider, became the ÖVP’s coalition partner. However, Haider declared that he had no aspiration to become Vice-Chancellor or to hold any ministerial portfolio (Larsson and Lundgren 2003: 26). In view of the Stockholm International Forum on the Holocaust 26-28 January, due to start the following day, the Swedish Prime Minister Göran Persson had a conversation with his Israeli colleague Ehud Barak. Both Prime Ministers criticised the idea of a coalition government between the FPÖ and the ÖVP. Barak made clear that the ongoing coalition talks were a serious preoccupying signal to all Jews around the world. He also underlined that Israel’s relationship with Austria would reach a low point once the new government had taken office. Shortly after the FPÖ-ÖVP government formation on 4 February, Israel withdrew its Ambassador immediately for an unlimited period (Happold 2000: 956; Johnson 2000: 2; Suppan 2003: 175). It was not until the second half of 2003 that Israel resumed its ‘normal’ diplomatic relations with Austria.

Conclusions: warning as a response to failure to observe the norm

Some of Haider’s statements over the years had given him a reputation as a racist, xenophobe and Nazi sympathiser. Criticism along these lines by the French and Belgian political leaders provoked Haider to verbal attacks in
January. President Chirac ‘who in the past had done everything wrong that could be done wrong’ obviously did not know what he was talking about regarding Austrian politics.97 In the case of Belgium, ‘Austria had not demanded the removal of its corrupt government’.98 Finally, it was Haider’s conclusion that “there is panic in the chicken coop [meaning the EU14] even before the fox has got in” (Pick 2000: 183).99

On the grounds of its Nazi past, the EU14 considered Austria not just like any other Member State, and the election result of October 1999 confirmed their fears of the particularity of the Austrian political culture. Although Austria was officially declared the first victim of Nazi aggression by the allied powers (Britain, France, Russia, and the US), the majority of Austrians welcomed the 1938 Anschluss, and their incorporation into the German Reich (cf. Gehler 2003: 21). Fact is that several prominent Nazis were of Austrian descent, most notably, Hitler himself (Happold 2000: 955). Unlike the case of Germany, the Allied forces never sought to confront in a systematic way the Austrians with their Nazi past (Pelinka 2003: 89; Schneider 2003: 132).100 Over the years, it has been pointed out that the “societal internalization” of Austria’s Nazi past has been quite half-hearted (Howard 2001: 22). According to Howard, “the post-war Austrian national myth is one that views Austria not as the very incarnation of Nazi ideology and aggression, but instead as its victim” (ibid.). This myth, which is a form of “historical revisionism”, struck a chord with the Austrian population in general (ibid.).

In relation to Austria’s Nazi past, the ‘Waldheim debate’ must be highlighted. In 1985 Kurt Waldheim, a diplomat who had served as the two-term Secretary General of the UN 1972-1981, was elected President. Austria’s ties with the Nazi era were again highlighted when it was revealed that Waldheim had lied about his role in the German army during the World War II. Waldheim was accused of involvement in brutal actions against civilians (including Jews) in the Balkans (Happold 2000: 955; Wodak and Pelinka 2002: xi-xii). In the run-up to the presidential election, strong domestic and

98 “Nous-mêmes, nous n’exigeons pas la mise à l’écart du gouvernement belge corrompu, qui a maintenant des idées sur l’Autriche et qui tolère les abus contre les enfants, et où les parents doivent descendre dans les rues de crainte que ce gouvernement conspire avec des criminels […]. Voici une attitude typique des bureaucrates de Bruxelles, qui n’acceptent pas de reconnaître le choix des citoyens. » Source: Libération, 31 January 2000, quoted in Debruyne (2000: 20).
99 In an interview with the magazine Nouvel Observateur Haider said: « Je considère Monsieur Chirac comme un très grand ennemi de l’Autriche. […] De la part d’hommes politiques européens sérieux, j’attends d’abord qu’ils se renseignent […] au lieu de s’intéresser à notre programme et à nos militants, on annonce immédiatement des sanctions. La menace de quelques États de l’Union européenne d’interrompre leurs relations avec l’Autriche montre combien ces États sont en réalité désespérés. […] Il y a une excitation dans le poulailler européen alors que le renard n’est pas encore dedans. Une chose est sûre : la politique européenne, ce n’est pas la politique intérieure autrichienne. » Source: Nouvel Observateur, 31 January 2000, quoted in Debruyne (2000: 20-21).
100 One should not forget that following the end of World War II, Austria was governed by the four allied powers. It was not until 1955 when the Second Republic was proclaimed that Austria gained full sovereignty as a state.
international protests against his candidacy were made. They included threats to cut diplomatic contacts with Austria in the event that Waldheim was elected. However, such threats about diplomatic sanctions measures did not deter the Austrian voters. 54% of the votes cast were in favour of Waldheim. The reaction from the international community was a rupture with Austria (Järtelius 2004: 3). Put under virtual diplomatic boycott, Austria received almost no official American or West European visitors of note (except for Pope John Paul II). For six years (1986-1992), Waldheim remained persona non grata in most countries, implying few state visits during his term as President. For example, he was barred from entering the US in May 1987, and Israel had no ambassador in Vienna. The international diplomatic boycott only ended when Waldheim chose not to run again for the president office when his term expired in 1992.

That said, the protracted deliberations on the formation of a new government in 2000 were not just seen as the normal working-out of the democratic process under an electoral system based on proportional representation. Schüssel’s contacts with the leadership of the FPÖ left the EU14 with little time to wait and see how things would evolve. One may claim that this was nothing but an abandonment of the tacit agreement between EU governments that “birds of a feather flock together” in the Union. To put it another way, the EU14 had taken for granted the normative pressure of EU fundamental values. While several European politicians publicly warned against the consequences of forming a coalition government with a right-wing extremist/populist party, Schüssel appeared quite indifferent to these warning signals. It is not relevant to discuss here whether the soon-to-be Chancellor was blinded by the thirst for power and seemingly had no scruples about paying only lip-service to EU fundamental values (cf. Puntscher-Riekmann 2003: 119; Schneider 2003: 133). Suffice it to mention that on several occasions Schüssel reassured the international community about Austria’s continuous respect for the fundamental values expressed in Article 6(1) TEU, while at the same time tolerating the FPÖ’s unchanged political discourse which contradicted the very same values.

The following remark by Rubenfeld aptly describes the challenges for the European political elite in general at the turn of the twenty-first century.

“Those who make commitments may always be in for more than they originally foresaw. [C]ommitments come fully into being only as they are lived out. Their true entailments cannot be known by ex ante or a priori philosophizing. One can know them only by living with or under the principles, institutions, or whatever else one has committed oneself to. I have already observed one reason for this: the necessity of lived experience for the moral knowledge of a commitment. The other reason is the human capacity for hypocrisy and rationalization. Moral astigmatism is general in man” (Rubenfeld 1998: 222-223).
With an eye to the EU14-Austria crisis, the decision by the ÖVP leader to form a coalition government with the FPÖ, a decision one may assert was based on the desire to become Austria’s next Chancellor, fits with Rubenfeld’s thoughts on commitments and moral astigmatism.

It is a widespread argument that states internalise and live by international norms, for example human rights norms. When states do not comply with widely shared norms they often meet with negative reactions from other norm-followers, that is, other states (Haas 2000).101 There is also a reputation factor in the process of compliance. In order for this factor to be valid, there must be a consensus between the Member States about the value of engaging in or abstaining from the very act of compliance with the norm in question. The assumption is that the individual Member State is eager to enjoy a positive reputation in this regard not just at the European level but also in the international arena (ibid.).

Attached to the concepts of commitment and compliance is often a kind of threat of legal enforcement. The reason for such a threat is the risk of a situation where the intent to comply is lacking. Thus, a legal and credible threat of sanctions may induce compliance. Accordingly, “[t]he existence of [...] sanctions presupposes the existence of institutions and procedures for detecting violations and for imposing penalties on delinquents” (Kay 1998: 41). In the EU context, this corresponds with the Member States’ relationship with Article 7 TEU having a high moral status. It has been made a valid legal one both for ‘insiders’ (Member States) and ‘outsiders’ (future Member States) and is not only respected because of social acceptance.

In this discussion it is pertinent to ask, in Shelton’s (2000: 9) words, “whether the form of a normative instrument, or the formality with which it is approved, as opposed to its language and its content, is crucial to securing compliance”. To put it another way, “[d]oes formalism, or adoption of a norm according to approved ‘law-making’ methods, make a difference in compliance with the norm being asserted, with state decisions to comply or not comply” (ibid.)? This study argues that the informal norm, shared by the Member States (perhaps with the exception of Italy), of keeping right-wing extremist/populist parties at arm’s length was violated by the formation of the FPÖ-ÖVP government. Hence the conclusion that legal formalism indeed matters for the Member States’ relationship with the Union’s normative Gemeinschaft.

Analysing the warning phase in the EU14-Austria crisis from constructivist and rationalist perspectives

This study claims that self-interested behaviour as well as ideational/normative motives guided the EU14, but in a ‘more or less’ way.

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101 For an interesting approach to ‘contested compliance’ with norms, see Wiener’s (2004) article inspired by reflexive sociology in IR theory. Among others, Wiener takes the normative structure as the ‘structure of meaning-in-use’ that works as reference frame for decision-makers.
Therefore, arguments drawing from both the rationalist and the constructivist paradigms are necessary to understand what was at stake in the case in question. The following analysis of the warning phase in the EU14-Austria crisis illustrates this reasoning.

According to Merlingen et al. (2000: 6), to argue that the norm crisis concerning Article 6(1) TEU enabled the EU14 to proceed with the sanctions measures is one thing. It is quite another thing to identify "the precise mechanism by which [the norm] prompted governments initially sceptical of the boycott to agree to take measures against Austria". The challenge is thus to find and unpack this "precise mechanism". Merlingen et al. reject the idea of norms as the cause for the EU14’s protest. Instead, they point to the role played by political leaders, for example President Chirac and Prime Minister Verhofstadt, pursuing rational interests and fixed preferences (Merlingen et al. 2000: 7). However, this study argues that the "precise mechanism" is found in the consensus-reflex, 'tele groupthink' and more general symptoms of groupthink that characterised the EU14's crisis management.102 In late January, when the Union had plunged into a collective state of shock following the signals from Vienna that the ÖVP would form a coalition government with the FPÖ, some Member States were simply quicker to react than others. It is no secret that the Belgians and the French exploited the situation to send warning signals to the VB and the FN, who were supportive of Haider’s political ideas.

In general, it is said that rationalists take institutions as an instrument for calculated actions serving a fixed purpose driven by self-interested actors. In other words, institutions are rather "an intervening variable” than accepted as independent players (Checkel 1998: 4). A rationalist approach to the warning phase in the EU14-Austria crisis downplays the autonomy of Article 6(1) TEU. With this approach, EU fundamental values were used as a strategic tool by the EU14 to counter the FPÖ-ÖVP government. They were of minor importance, because it was domestic struggles, opinion politics or simply self-interest such as political prestige which dictated the pace of the various stages in the case. Put differently, what seemingly started as an enterprise involving a certain amount of genuine supranational idealism was in fact ‘hi-jacked’ by some Member States to send warning signals to parties similar to the FPÖ. For example, Belgium and France sought to promote domestic opinion politics at the European level. As mentioned before, Belgian and French politicians used the ‘diplomatic whipping’ of FPÖ and ÖVP politicians as a lever to send strong warning signals to the VB and the FN (Gehler 2002: 190; Merlingen et al. 2001). To sum up, the Member States were the ‘masters of the game’, not values or norms of any kind.

With the political development in Austria in late January 2000, domestic politics became an acute concern for the Union. Furthermore, among the EU14 domestic interests pushed through or incited a certain foreign policy behaviour. This is why one cannot argue that the status of ‘unobjectionable’

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102 See chapter eight for a discussion of these characteristics.
norms was the only cause for taking action against the political development in Austria. That said, when examining the EU14’s interests and preferences in relation to Article 6(1) TEU from a rationalist perspective, it is appropriate to use Moravcsik’s (2000: 248-249) argument that “[w]hat seems at first to be a conversion to moral altruism [that is, democratic self-defence of the Union] is in fact an instrumental calculation of how best to lock in democratic governance against future opponents”. Against this background, a rationalist would claim that it was ‘satisfying theatre’ for the EU14 to preach the importance of EU fundamental values to Austrian politicians, while at the same time addressing a warning to their domestic constituencies.

Shifting focus to the constructivist paradigm, some of Checkel’s studies present “micro-, process- and agency-based argument[s] on the nature of social interaction within institutions” (Checkel 2001a: 2). To Checkel, argumentative persuasion is a social process of interaction in which the norm entrepreneur seeks to transform the attitudes, beliefs and behaviour of another person by inculcating messages in a context in which the persuadee is relatively autonomous. Through this process, “preference change may occur” (Checkel 2001a: 4). It is important to observe that persuasion should not be equated with manipulation. It is rather “a process of convincing someone through argument and principled debate” (ibid.). Checkel (2001a: 5) claims that there are incentives when “the persuader does not lecture or demand, but, instead, “acts out principles of serious deliberative argument””. Furthermore, the success of argumentative persuasion is more likely “when the persuader-persuadee interaction occurs in less politicized and more insulated, in-camera settings” (ibid.).

Drawing a parallel with the warning phase of the EU14’s protest against the expected formation of the FPO-ÖVP government, this line of argument corresponds with the circumstances surrounding the Holocaust conference in Stockholm 26-28 January as well as the rounds of telephone diplomacy the following week-end. Furthermore, the ‘norm entrepreneurs’ (Finnemore and Sikkink 1998: 896-897) were some of the heads of state and government who managed to turn “individually held ideas into broader normative beliefs” by exploiting the “policy window” created by the crisis situation (Checkel 2001b: 57).

Checkel (2001a: 5-6) emphasises that one cannot escape from fundamental methodological challenges concerning how to measure persuasion which, at times, leads to preference change. To handle the uncertainty on whether it is a case of argumentative persuasion or not, he favours a process-tracing method “where one seeks to investigate and explain the decision process by which various initial conditions are translated into outcomes”. This method is said to work well for “uncovering the setting and reconstructing the mechanisms through which social agents may change their preferences”.

103 Manipulative persuasion “is devoid of social interaction, often concerned with political elites manipulating mass publics. […] With its individualism and emphasis on strategic agency, persuasion of this sort figures prominently in the work of several rational-choice scholars” (Checkel 2001a: 4).
(Checkel 2001a: 6). With an eye to the case in question, it is a challenge to apply this method on the grounds of the secretive nature of telephone diplomacy. Based on the initiation of the diplomatic sanctions measures, one may ask: In what ways were political leaders exposed to normative argumentation? Among other things, one could point to numerous speeches delivered by some of them, along with other invited guests, at the Holocaust conference in Stockholm 26-28 January. The reception of the speeches was immediate and processed in discussions with politicians and experts in a setting of mutual understanding and trust-building climate. Shortly thereafter, the EU14 acted upon normative arguments in relation to the political development in Austria. Telephone calls in combination with the consensus-reflex, groupthink, and argumentative persuasion characterised the co-ordination of a joint protest in the event that the new Austrian government included FPÖ ministers.

In contrast to rationalists, social constructivists/sociological institutionalists claim that all actors have limits to their cognitive capacities. Turning to the EU14-Austria crisis, one should then question the degree of rationality attributed to the EU14. After all, there was a problematic confusion between morality and demagogy, electoral tactics and political strategies (cf. Moïsi 2000: 625). The EU14 cannot qualify as rational actors in their conduct of a particular Innenpolitik on the EU playing field as they had no clear strategy about what would be an appropriate action to take. As mentioned previously, the guidance from Article 7 TEU was of little help in the present circumstances. Moreover, the EU14 had insufficient information for rational action because they anticipated the crucial move, that is, the official declaration of the FPÖ-ÖVP government. As a matter of fact, the Portuguese Prime Minister announced the sanctions threat on 31 January, that is, five days before the FPÖ-ÖVP government took office on 4 February. Thus, from the very start the co-ordinated protest suffered from ‘information deficit’ because the Haider/Schüssel tandem had had no chance to implement their government programme and expected policy changes. Accordingly, the EU14’s ‘diplomatic whipping’ was a purely preventive reaction to the anticipated breach of EU fundamental values.

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104 However, in the case of Sweden’s position on the ‘Austrian problem’ there are minutes available on the web of the questioning of Prime Minister Göran Persson and Foreign Minister Anna Lindh in the Standing Committee on the Constitution (K 1999/2000: KU20) at http://www.riksdagen.se/debatt/9900/Utskott/KU/KU20dei2/HTFRAME.HTM
CHAPTER FOUR
The EU14-Austria crisis: the implementation phase

This chapter begins by looking at the declaration of the FPÖ-ÖVP government and the launch of the EU14’s diplomatic sanctions measures as soon as President Karestil swore in the FPÖ-ÖVP government on 4 February 2000. The following section elaborates on the EU14’s preference profiles at the time of the implementation of the ostracism policy, with the EU14 grouped as ‘front-runners’, ‘followers’, and ‘sceptics’. Next, examples of the EU14’s implementation of the diplomatic sanctions measures are highlighted. After that, reactions from the Austrian public opinion to the formation of the FPÖ-ÖVP government and the EU14’s protest are taken into consideration. Furthermore, the reactions from the FPÖ-ÖVP government are investigated by tracing consequences in Austrian politics following the EU14’s ‘diplomatic whipping’. The next section elaborates on the norm crisis and norm collision in the case in question. The chapter concludes with an analysis of the implementation phase in the EU14-Austria crisis from constructivist and rationalist perspectives.

The declaration of the FPÖ-ÖVP government and the launch of the EU14’s diplomatic sanctions measures

124 days after the 3 October 1999 general election, a new Austrian government came to power (Hummer and Obwexer 2003: 287). The protracted process almost beat a record in forming a government. In 1963 it took 129 days, and this was the longest time ever (Fallend 2001: 243). Against this background, it is quite remarkable that “up to 90 percent of the coalition pact was identical to the SPÖ-ÖVP pact negotiated before” (Fallend 2001: 242).

In accordance with established procedures, the two coalition parties’ executive boards took separate votes on the government package. In the case of the FPÖ it was a unanimous decision, whereas in the ÖVP there was one opposing vote. With this ‘green light’ from their respective parties, Schüssel and Haider approached President Klestil on 1 February (Fallend 2001: 242). It is argued that the measures taken by the Austrian President in conjunction with the government formation testified to his mixed private feelings. Anxious to preserve his personal high moral principles, Klestil sought to impose his own doubts on the coalition government. Knowing that he could not refuse to swear in the FPÖ-ÖVP government, which might have led to accusations that he had violated fundamental democratic principles
such as ignoring the election result of 3 October 1999 (Cramér and Wrange 2001: 29), he could nevertheless make public his concern for Austria’s political future, for example on television (see Appendix 6).

One of Klestil’s measures was the refusal to accept two ministers suggested by the FPÖ party executive. First, Thomas Prinzhorn, a popular candidate “who had reproached the social services for distributing hormones free of cost to foreigners in order to increase their birth rate” (Fallend 2001: 242), and second, Hilmar Kabas, the chairman of the party organisation in Vienna, who had been “responsible for posters [only appearing in Vienna] during the October electoral campaign that explicitly appealed to xenophobic sentiment by warning against Überfremdung (the excessive influence of foreigners)” (Johnson 2000: 5). They were thus replaced with more ‘moderate’ FPÖ politicians.

Another measure by President Klestil before giving his approval of the coalition government was to insert in the preamble to the government programme a declaration entitled “Responsibility for Austria – A Future in the Heart of Europe” (see Appendix 7). In a timely move, this declaration signed by the two party leaders was presented to the Austrians and the international community on the very same day, 3 February, when the FPO-OVP coalition government became official news at 11:30 (Cramér and Wrange 2001: 29). In the EU context, the declaration was indeed “remarkable” (Gärtner 2002: 347). Drafted by the President himself, it explicitly stated what one should be able to expect of a European government: the commitment to fundamental principles on democracy and human rights, and the disapproval of all forms of xenophobia, anti-Semitism and racism. It also commented on Austria’s Nazi past and the need for taking active responsibility by establishing compensation funds for the victims of Nazi persecution, among others the forced labour force (Fallend 2001: 242-243; Pick 2000: 234). Below is an extract from the declaration:

“The Federal Government works for an Austria in which xenophobia, anti-Semitism and racism have no place. It will take vigorous steps to counter every way of thinking which seeks to denigrate human beings, will actively combat the dissemination of such ideas and is committed to full respect for the rights and fundamental freedoms of people of any nationality – irrespective of the reasons for their

105 For further comments, see for example Adamovich (2003: 226); Hummer and Obwexer (2003: 287); Pelinka (2003: 90); Rotter (2003: 390).


107 The New York Times’s 4 February 2000 comment on the declaration was that it “amounted to a bizarre list of democratic commitments and mea culpas for the prospective government of a modern European state” (Suppan 2003: 174).

108 See Appendix 7 for the declaration in its entirety.
It is clear that this phraseology is contrary to ideological standpoints in the FPÖ’s party programme from 1997 and Haider’s speeches during the election campaign in 1999. According to the FPÖ-ÖVP government, the path here indicated for the future government of Austria was identical with that already being followed by the EU14. However the EU14 saw it as merely a trick to appease criticism from abroad and immediately denounced it. Their scepticism thus reflected a widespread impression of Haider as a politician capable of putting his name to any piece of paper that would bring him closer to power (Pick 2000: 234). Commenting that this Austrian measure had been taken solely for show, the French Minister for European Affairs, Pierre Moscovici, concluded in an interview with French radio: « J’ai envie de dire, vous savez Paris valait bien une messe et la chancellerie valait bien une déclaration. Alors, il faudra juger cela […] dans la durée. »

The Austrian opposition parties, the SPÖ and the Greens, welcomed President Klestil’s initiative but they also criticised the fact that the declaration contained little new besides Austria’s obligations as an EU Member State (Fallend 2001: 243). In a detailed newspaper interview on 2 February, President Klestil was quoted as saying: “If I have to approve this government, I won’t do so out of personal conviction, because I fear that Austria will suffer internationally. […]. In a democracy, a parliamentary majority must be respected. Personal sensitivities do not count” (Cramér and Wrange 2001: 29). After all, Haider was the leader of the second largest party and his popularity, despite international criticism, could not be ignored.

To Markovits (2002: 101-102), the Austrian President capitalised on the controversial nature of the FPÖ-ÖVP government. Both his objection to the proposed ministers and the declaration bolstered the image of President Klestil as a man of high moral. In general, heads of state in parliamentary democracies perform without delay their ceremonial obligations, such as approving the cabinet proposed by the head of government, but President Klestil departed from this ‘normal’ routine. Besides personal convictions, his unexpected measures were undoubtedly influenced by the EU14’s concern over the political development in Austria.

The mass demonstration in Vienna on 4 February is evidence of the fact that large groups of Austrians did not see the FPÖ-ÖVP government as an ‘ordinary’ government. Demonstrators gathered at the Ballhausplatz between the Chancellor’s office and the Presidential office (situated in the Hofburg) actually prevented appointed cabinet members from returning peacefully to the Chancellor’s office after the ceremony with the President. They had to use a subterranean passage because of the sheer number of protesters and

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Gärtner (2002: 347) deems it a “remarkable” fact that never before in Austria’s political history had the Chancellor been appointed from a party arriving third in the parliamentary election. For obvious reasons it is hard to believe that an FPÖ Chancellor would have been welcomed by the international community, or even in Austria. Fallend (2001: 243) argues that the FPÖ exerted pressure on the ÖVP leadership, in which they traded acceptance in a coalition government against dropping their claim to the post of Chancellor. Perhaps the most remarkable fact was that neither the chairman (Haider) nor the top candidate (Thomas Prinzhorn), representing the strongest party in the government coalition, actually became members of the government (Gärtner 2002: 346). In fact, Haider had refused to accept a ministerial portfolio and had recommended that his ‘right hand’ from Carinthia, Susanne Riess-Passer, should be given the post of deputy Chancellor. It is fair to say that Haider’s decision to abstain, but to continue as the head of the parliament in Carinthia, enabled President Klestil to give his consent to the coalition government.

On 4 February, when the FPÖ-ÖVP government was sworn in by President Klestil, the Portuguese Presidency on behalf of the EU14 declared that the threat of diplomatic sanctions measures announced a few days earlier would be implemented (Cramér and Wrange 2001: 30; Gehler 2002: 198). The reception in European public opinion more broadly was mixed. Certainly, manifestations against the new Austrian government rallied an impressive number of people in major European cities. Nevertheless, public opinion in the majority of European countries did not support the diplomatic sanctions measures, the notable exceptions being Belgium, France, and Sweden. In parallel with European and international protests, Haider was congratulated on his remarkable success by Jean-Marie Le Pen. It is worth mentioning that Haider had been at pains to distance himself from the French extreme right. Furthermore, Umberto Bossi, the party leader of the LN, also expressed his satisfaction with Haider’s political triumph (Gehler 2002: 194-195).

The EU14’s preference profiles at the time of the implementation of the ostracism policy

Carlsnaes (2002: 342-343) claims that foreign policy action is guided by an intentional dimension which encompasses motives, preferences, and purposes on the part of the actors concerned. This study not only examines the EU14’s divergent and convergent domestic interests and preferences at different stages in the EU14-Austria crisis, but also different dimensions of them, such as ideational/normative and utilitarian/strategic, in relation to

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110 See survey of the support for the EU14’s ‘diplomatic whipping’ of the FPÖ-ÖVP government published in Busek and Schauer (2003).
EU fundamental values expressed in Article 6(1) TEU. In order to do this, it is necessary to establish preference profiles for the EU14. In particular, one should look for changes in these interests and preferences over time. This study thus sets out to trace changes occurring at three stages in the EU14’s relationship with Article 6(1) TEU, which, in turn, affected the development of the crisis between the EU14 and Austria, namely during the implementation, crisis escalation, and consequences stages.

Obviously, it is possible to model and elaborate on the EU14’s stances in the implementation phase in the EU14-Austria crisis in several different ways. The figure below is just one suggestion (see figure 4.1). It should be underlined that the objective is not to examine each country, but to pick examples that elucidate the interplay between actors and the ‘norm journey’ of Article 6(1) TEU. That said, in this phase only the examples of Belgium and France in the group of ‘front-runners’ will be addressed in greater detail.

Figure 4.1: The EU14’s preference profiles at the time of the implementation of the ostracism policy.

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<th>‘Front-runners’: Acting on the grounds of a double self-defence logic: domestically rooted and anchored in the idea of defending EU fundamental values.</th>
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<th>‘Followers’: Approving of the idea of defending EU fundamental values without any domestic overtones influencing their stance.</th>
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<th>‘Sceptics’: Hesitant about the idea of diplomatic sanctions measures against the FPÖ-ÖVP government, but agreeing with the need to defend EU fundamental values.</th>
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‘Front-runners’
While the major reason for the EU14’s protest was said to be the alleged threat against the ‘unobjectionable’ status of Article 6(1) TEU, some Member States apparently also had strong domestic motives. As pointed out previously, there were different preferences within the EU14 on how to handle the political development in Austria in late January. Hence, there were
“agenda-setters and followers” (Merlingen et al. 2001: 67) or ‘front-runners’ and outright ‘sceptics’. Many observers agree that it was some of the most powerful state leaders in the EU at the time, notably the Social Democratic Chancellor Schröder and the Green Foreign Minister Fischer, the Conservative President Chirac and the Socialist Prime Minister Jospin, the Conservative Prime Minister Aznar, and the Liberal Prime Minister Verhofstadt and the Liberal Foreign Minister Michel (Markovits 2002: 96) who led the polemic and the charge “to prevent the Austrian ‘sickness’ from spreading” (Pick 2000: 234). What they had in common was the “challenges from parties of the far right, forcing their mainstream conservative forces to modulate between being as distinctive and hostile as possible to the far right on the one hand, and being tempted to accommodate the far right on the other” (Duff 2000: 9; cf. Gehler 2000: 188).

On 3 February, at a press meeting in Gaza, the German Defence Minister Rudolf Scharping emphasised that such a party as the FPÖ would never ever be tolerated as a coalition partner in Germany. Turning to the Austrian leaders, he said: “Germany and European institutions have a very clear position, where we don’t accept a right-wing radical party in Austria. I hope that this mistake will be corrected in a short time” (Cramér and Wrangle 2001: 30). In Germany, Chancellor Schüssel became “the target of sharp attacks, such as the beseeching and admonishing appeals from […] Joschka Fischer” (Gehler 2002: 197). Furthermore, the State Secretary for Foreign Affairs said that it was not excluded that the government would deny Haider entry to German territory (Busse 2003: 237; Hummer and Obwexer 2003: 298).111

Turning to Spain, support for the EU14’s ‘diplomatic whipping’ of the FPÖ-ÖVP government enabled Prime Minister José Maria Aznar to “distance himself from the repeated accusations of Francoist wishful thinking […] and thus demonstrate an “antifascist” image” (Gehler 2002: 190). Furthermore, Aznar “needed to nail his colours to the mast considering the upcoming [general] elections […] on March 12” (ibid.).

The Belgian and French governments, whose attitudes will be examined in greater detail further below, feared that if they recognised participation in government by the FPÖ negative repercussions with regard to the VB and the FN might ensue. Arguably, they managed quite cleverly to forge a link between the identity of the Union and the ‘diplomatic whipping’ of the FPÖ-ÖVP government. At the same time, “[t]hey sought to reinforce their own position in the domestic political arena by invoking EU norms as a weapon against the FPÖ in particular, and the extreme right in general” (Merlingen et al. 2001: 68). This explains why Belgian and French government representatives defended the punishing of Austria until the lifting of the ‘sanctions’ on 12 September. It should be underlined that, despite their loud criticism of the new direction in Austrian politics, Belgium and France

111 For analyses of the political debate in Germany on the EU14’s ‘diplomatic whipping’ of the FPÖ-ÖVP government, see Busse (2003: 235, 238); Schneider (2003: 144-148).
were not in a position to mastermind the ‘diplomatic game’ with the Austrian government or dictate what steps the EU14 should take next.

In the case of Belgium, the concept of *diplomatie morale* is a fruitful starting point. In July 1999 Louis Michel, the leader of the *Parti réformateur libéral* (PRL) in Wallony, was nominated Foreign Minister. Many expected him to become Interior Minister with his background in politics at the municipal level. However, it was the turn of a French-speaking liberal to be in charge of Belgium’s foreign policy. With no previous experience in this field Michel, together with his colleagues in the liberal government led by the Flemish Prime Minister Verhofstadt, presented a government programme on 7 July in which the respect for human rights was emphasised as the cornerstone in Belgium’s foreign policy. This was indicative of the focus on fundamental values that from now on would characterise the new Foreign Minister’s political discourse. The aim of this moral diplomacy was to re-establish Belgium’s tarnished reputation of a country struggling with a variety of societal problems ranging from political corruption, to a malfunctioning legal system in relation to the Dutroux paedophile scandal, and to expensive food scandals (Franck 2000: 17).

In August 2000, when the Supreme Court in Chile stripped Augusto Pinochet of his presidential immunity, Michel claimed that Belgium’s tough stance towards Pinochet and Haider had turned the country into a moral power. This also contributed to a more positive image of Belgium in the domestic and international arenas, the Foreign Minister argued. Against this background, it should not come as a surprise that in September, Michel was the only politician among the EU14 who wanted to combine the lifting of the ‘sanctions’ with a continuous monitoring of the FPÖ-ÖVP government (Franck 2000: 17-18).

Being a ‘politician of convictions’, the EU14’s ‘diplomatic whipping’ of the FPÖ-ÖVP government was indeed a just and rightful cause for Foreign Minister Michel. The following arguments by Chandler (2003: 301) shed some light on the desired image as Belgium’s Foreign Minister: “The attention to the articulation of a political mission […] through foreign policy activism abroad has been an important resource of authority and credibility for western political leaders”. In other words, “[t]he ability to project or symbolise unifying ‘values’ has become a core leadership attribute”. Apparently, the anti-Pinochet and anti-Haider crusades enjoyed large support from public opinion, in particular in the French-speaking community. Quite logically, the objections to Michel’s tough attitude came from the Flemish-speaking community, notably from sympathisers with the VB. True to his own principles, the Foreign Minister declared that he would treat the FPÖ as he had treated the Flemish right-wing extremist/populist party (Franck 2000: 18).

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112 For more comments on the Belgian position, see for example the article “Louis Michel, Belgium’s moralistic diplomat”, *The Economist*, 26 February 2000. See also Schneider (2003: 149-150).
On 21 March 2000, Michel gave a speech at the UN Commission for Human Rights in Geneva. Commenting on the Belgian position in the EU14-Austria crisis, he explained why it was not enough simply to judge the outcomes of coalition agreements. The assessment of a democratic election must also take into account the means and arguments used to win the election. Demagogy, populism, and exclusion are all examples of essential criteria with which to evaluate the character and support for a party, Michel said. He often employed the word *sordide*, meaning repulsive or dirty, to describe certain arguments by Haider, Dewinter, and Bossi (Franck 2000: 20-21).

However, Michel was accused of practising double standards. Why did he shake hands with L. D. Kabila, the President of Congo, but not with the Austrian Foreign Minister, who was not even from the FPÖ? It was not until a meeting in Evian in September 2000 that Michel changed his manners towards his Austrian counterpart (Franck 2000: 18, 20). In an interview with the newspaper *De Morgen* on 2 September 2000 he explained:

“...I have been criticised for shaking hands with Kabila, while refusing to speak with Austrian politicians. However, Austria is not Africa. I do not see any contradiction in this. Austria is part of my European country [“*mijn Europees land*”]. Haider and Dewinter live in a continent where human beings have been fighting for four hundred centuries for democratic values. Kabila, on the other hand, is excused for historic reasons” (Franck 2000: 20, my translation from French).

The harsh criticism expressed against the FPÖ and the VB thus takes its roots in the context of a European democratic, political culture. The underlying message seemed to be that on the African continent, one has to be patient with the slow progression towards genuine democratic societies, and its historic record validates this standpoint (Franck 2000: 20).

Why did France react remarkably forcefully to the formation of the FPÖ-ÖVP government? Unlike the former President François Mitterand, President Chirac rejected firmly any kinds of ties with the Vichy Regime period. He also condemned any attempt from the Right to initiate co-operation with the FN in order to gain political power (Gehler 2002: 190; Judt in *The New York Review of Books*, 23 March 2000; Schneider 2003: 140). It is thus logical that consistent reaction against Haider’s FPÖ was on the President’s agenda. In the run-up to the 1998 regional elections, several politicians from the Rassemblement pour la République (RPR) sought to form alliances with the FN in order to obtain the post of President of the region in question. This was

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113 « On m’a reproché de serrer la main de Kabila, mais de refuser de parler avec les responsables autrichiens. Mais l’Autriche n’est pas l’Afrique. Je ne vois pas de contradiction. ... L’Autriche fait partie de mon pays européen (« *mijn Europees land* ») ... Haider et Dewinter (le leader du Vlaams Blok) habitent un continent où l’on a lutté pendant quatre siècles pour les valeurs démocratiques... Kabila a l’excuse de l’Histoire. »
widely condemned not just among the socialists, but also by liberal parties and some currents within the RPR (cf. Moscovici 2001: 144).

Interviewed by the radio station *France Inter* on 2 February, the French Minister for European Affairs, Pierre Moscovici, expressed France’s official standpoint, but also his personal reflection on the ‘Austrian problem’. When asked whether it was true that the Austrian President had pleaded to the EU14 to intervene in the process of government formation, Moscovici replied that he had heard of no such thing. The interviewer was quick to add the rumour about French diplomats having had close contacts especially with the Austrian President. However, the minister refused to comment on this. On the prospect of negotiating with a controversial political leadership, Moscovici pointed out that the Union now had to prepare itself to accept a Member State that would not respect EU fundamental values, because the EU could not, and moreover did not wish to, exclude this particular Member State. He also underlined that the EU14’s intention was not to take action against Austrian citizens, but to give a clear signal to the country’s political leadership about the limits of tolerance.114 Immediately, the interviewer pointed to the fact that at the present time being, the presumed government had not taken office. While one could not be sure about its actual formation, there was already a mobilisation of fourteen EU leaders exercising a previously unknown right of interference in an individual Member State’s domestic affairs. Haider had nevertheless enjoyed the support of 27% of the Austrian population; he had not come from nowhere. Moscovici then replied that certainly one could talk about interference, but interference in this regard was something legitimate, a ‘positive’ interference related to the specific nature of the contract governing the relationship between the Member States and the Union.115

Interviewed on 3 February by another radio station, *Europe1*, Moscovici was asked about the risk of a division among the EU14. The interviewer pointed out the complexity of the situation as Belgium, France, and Ger-

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114 « [I]l faut vivre avec, vivre avec, dans l’Union européenne, un pays qui ne respecte pas les valeurs fondamentales de l’Union européenne alors que l’Union européenne ne peut pas, et elle ne veut pas d’ailleurs, exclure ce pays. [...] Nous ne voulons pas agir contre les Autrichiens mais nous voulons dire aux gouvernants autrichiens jusqu’où on ne peut pas aller. » Interview with the Minister for European Affairs, Pierre Moscovici at *France Inter*, 2 February 2000. Available at http://www.diplomatie.fr/actual/dossiers/autriche/autriche10.html

115 The interviewer: « Alors, pour l’instant, Monsieur Moscovici, ce gouvernement n’est pas constitué, on ne sait pas ce qu’il en sortira si jamais il se constitue et pourtant, déjà, il y a une mobilisation à l’intérieur des autres de cette Europe des Quinze devenue Quatorze puisqu’il y a le rejet de cette coalition et on a l’impression qu’on rentre là dans un processus d’ingérence au niveau des États qui est tout à fait nouveau, qui est inédit. Parce que, quand même, M. Jörg Haider a été élu par les Autrichiens, je veux dire, il n’est pas venu par une création magique, donc il y a, quand même, près de 27 % des Autrichiens qui ont voulu que son parti participe au pouvoir. » Pierre Moscovici: « J’entends cet argument-là, on peut dire qu’il y a ingérence mais s’il y a ingérence alors à ce moment-là, c’est une ingérence qui est légitime, une ingérence positive qui tient à la nature même du contrat particulier que nous avons au sein de l’Union européenne. » Interview with the Minister for European Affairs, Pierre Moscovici at *France Inter*, 2 February 2000. Available at http://www.diplomatie.fr/actual/dossiers/autriche/autriche10.html
many had taken a very tough stance against the political development in Austria, whereas Britain and Denmark, for example, had been less eager to denounce the coalition between the FPÖ and the ÖVP. Accordingly, the minister was asked whether the EU14’s united front against Austria could last very long, as there seemed to be divergent opinions on the ‘diplomatic whipping’. Rhetorically, he answered that the Portuguese Presidency had been able to issue a statement in the name of all the fourteen EU leaders. Moreover, the European Parliament had adopted a resolution supported by the large majority of the party groups including, with some exceptions, the Christian-Democratic and Conservative MEPs. The minister emphasised that it was of the outmost importance for the EU14 not to yield to the new Austrian government. He claimed that it would attempt to seduce the EU leaders by referring to the solemn declaration signed by Schüssel and Haider. Furthermore, government representatives would seek to trivialise the deterioration in relations between Austria and the EU, hoping that within a few weeks or months the FPÖ-ÖVP government cease to be the topic of the day on the EU political agenda.116

In another interview on 3 February for TV5, Moscovici was asked whether the diplomatic sanctions measures constituted an example of a new kind of right to interfere, but interference in the name of what? Was it in the name of principles and values constituting ‘Europe’? Moscovici then replied that there was a kind of misunderstanding on this subject. There was no interference, but if this continued to be the general understanding, then the interference was legitimate. The reference to ‘interference’ was wrong, because the EU14 perceived the political situation in Austria as an EU ‘domestic’ affair. The Union is not only about creating a common market or developing a community of various interests, but it is a community of values, the minister said.117

‘Followers’
Some Member States were happy to be mere ‘followers’, giving rather lukewarm support to the joint protest. Britain, Finland, and Ireland kept a low profile in the beginning of the EU14-Austria crisis. For example, Robin

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116 Pierre Moscovici: « Mais ce qui est très important, c’est effectivement de ne pas céder à ce gouvernement autrichien. Sa tentative va être claire : ça va être un peu de séduction, avec la déclaration qui a été signée là, ça va être ensuite jouer la banalisation en espérant que d’ici à 15 jours, trois semaines, un mois, deux mois, trois mois, on n’en parlera plus. » Interview with Pierre Moscovici at Europe1, 3 February. Available at http://www.diplomatie.fr/actual/dossiers/autriche/autriche12.html

117 Interviewer: « Ce que vous êtes en train de décrire, c’est une sorte de nouveau droit d’ingérence. Au nom de quoi ? Au nom de principes, au nom des valeurs qui ont fait l'Europe ? » Pierre Moscovici: « Non. Je crois qu’il y a là quelque chose qui est mal compris. Il n’y a pas d’ingérence à mon sens. S’il y a ingérence, elle est légitime. Il n’y a pas d’ingérence parce que, pour nous, c’est une affaire intérieure, c’est cela que je voudrais bien faire comprendre. En faisant l'Europe, nous ne faisons pas un grand marché, en tout cas pas uniquement un grand marché, ce n’est pas une communauté d’intérêts, c’est une communauté de valeurs. » Interview with Pierre Moscovici for TV5, 3 February. Available at http://www.diplomatie.fr/actual/dossiers/autriche/autriche11.html
Cook, the British Foreign Minister, declared on 15 February during Question Time in the House of Commons:

“Britain fully supports the position of the 14 European Union countries which have announced that they will not hold bilateral meetings with Ministers in the new Austrian Government. Mr. Haider’s appeal to xenophobia and racism is in flat conflict with the values of tolerance and mutual respect on which the European Union is founded. I also fully understand the grave offence to Jewish communities, including here in Britain, of Mr. Haider’s statement that the Waffen SS were “decent men of character”. Austria is entitled to exercise its full rights at meetings of the European Union but, with regret, we cannot maintain our traditionally warm bilateral relationships while its Government includes people who reflect Mr. Hadier’s repugnant views.”

‘Sceptics’

Turning to the ‘sceptics’, different sources indicate that the smaller Member States, such as Denmark, Finland, Greece, Ireland, and Luxembourg, were under pressure from the ‘front-runners’ and the Portuguese Presidency (Gehler 2003: 25; Hummer and Obwexer 2003: 290). According to Gehler,

“the Greek foreign ministry made known that the developments in Austria were a cause for worry, but thought that such hasty “sanctions” represented a “meddling in internal affairs” and “a dangerous precedent”. Athens formally and publicly distanced itself. The decision was thus made under false pretenses—the assent of the Greeks was still lacking. However, those in favor of the measures against Austria feared appearing as a “defender of Haider” if a united front was not put up” (Gehler 2002: 189; 2003: 25; cf. Schneider 2003: 139).

That said, not all of the EU14 were in favour of the declaration of 31 January. For example, the Prime Minister of Luxembourg, Jean-Claude Juncker, qualified the sanctions measures “exaggerated” (Gehler 2002: 189; 2003: 25; cf. Schneider 2003: 139).

Examples of the EU14’s wider interpretation of the diplomatic sanctions measures

It should be emphasised that this study does not examine whether the Austrian government was punished in accordance with the wording of the EU14’s declaration of 31 January. Furthermore, it is not relevant to engage in a discussion whether there was a mismatch between the values to be

defended and the measures taken. The question whether the ‘diplomatic whipping’ was a measured or proportionate reaction from the EU14’s side is moreover outside the scope of this study. To put it clearly, it is the variety of expressions of disapproval with the FPÖ-ÖVP government that is of interest here.

To reiterate, the diplomatic sanctions measures were as follows:

- Governments of XIV Member States will not promote or accept any bilateral official at political level with an Austrian Government integrating the FPÖ;
- There will be no support in favor of Austrian candidates seeking positions in international organisations;
- Austrian Ambassadors in EU capitals will only be received at a technical level.

The measures implied that no head of state or government would make a state visit to Austria. Austrian ambassadors in other EU countries would not be received at the customary level, but rather directed to lower-ranking Ministry of Foreign Affairs officials (Mitten 2002: 203). In general, bilateral diplomatic contacts at the senior government level were cooled. However, the EU14 faced a problem here, concerning how to draw a clear line between bilateral politics and EU politics. The way the EU system works implies that the domestic, European, and international levels of decision-making are deeply intertwined. Despite advancing the bilateral character of the joint protest, the EU14 could not bypass this overlap, which became evident during spring in negotiations in the Council of Ministers. Moreover, one should not forget that Austria was still reckoned a fully-fledged member of the Union in strictly legal terms. Thus, the FPÖ-ÖVP government enjoyed all EU rights and privileges, for instance voting rights in the Council of Ministers.

It is important to observe that although the EU14’s ‘diplomatic whipping’ of the FPÖ-ÖVP government was adopted collectively, it was not an EU measure as it lacked a formal EU-legal basis. In other words, it consisted of fourteen co-ordinated stances concerning bilateral relations between the Austrian government and its EU partners (Merlingen et al. 2000: 1; 2001: 66; Mitten 2002: 203). However, the joint protest soon had an impact upon Austria’s role in multilateral EU policy-making. It is therefore not so strange that the ‘sanctions’ were susceptible to ‘mission creep’, and that their implementation varied considerably from one Member State to another. For example, there were even “calls for a boycott of Austrian goods and services” (Gehler 2002: 198). Clearly, some of the sanctions measures that were implemented had little to do with the substance of the EU14’s declaration of 31 January.\textsuperscript{119} They included, among others,

“the suspension of student exchange programs, the refusal to consider the participation of the Austrian Archaeological Institute in the Area II Pilot Project, the exclusion of Austria from the opening ceremonies of “Brussels, European City of Culture” and of the European Monitoring Centre on Racism and Xenophobia in Vienna, the revocation, by order of the Wallon government, of an already agreed-upon loan from a Belgium museum for an exhibition about Charles V in Vienna, the refusal to award honors to Austrians, cancellations of projects, obstruction of cooperation, condemning resolutions, and more” (Gehler 2002: 198).

The Belgian Foreign Minister, in particular, appeared as a hard-liner. He recommended the Belgians to spend their winter holiday in other places than in Austria, as this would otherwise be an “immoral” choice (Gehler 2002: 191; 2003: 31; Schwarzenegger 2003: 443). This call for a boycott of Austrian skiing holidays was given a brusque reply on 8 March by the Austrian President, qualifying such moves as “counter-productive”. Criticism was also voiced from the Commission President Prodi (Busse 2003: 239). At a later stage Foreign Minister Michel apologised for his remark (Busse 2003: 240; Gehler 2003: 31; Schwarzenegger 2003: 457).

In the case of Britain, a visit by the Prince of Wales to Vienna was cancelled. To take another example, when the ÖVP Foreign Minister went to London in June for a visit, nobody from the Blair government agreed to meet with her (Happold 2000: 956). The only person who declared herself willing to welcome Benita Ferrero-Waldner was the former Conservative Prime Minister, Baroness Margaret Thatcher, which perhaps was not what the Austrian government had expected.

The behaviour of ministers from the EU14 in meetings with their Austrian colleagues in the Council of Ministers was revelatory of personal stances. The most obvious example is the informal meeting of the Ministers for Social Affairs in Lisbon on 11 February. As soon as the new Austrian minister, Elisabeth Sickl from the FPÖ, started talking, the French minister Martine Aubry got up and left the room, followed by her Belgian colleague Laurette Onkelinx (Busse 2003: 238; Hummer and Obwexer 2003: 301; Schorkopf 2001: 31). Immediately, the media started reporting about how Austrian government representatives were now ostracised in EU negotiations. This example is indicative of how the EU14 and the media came to feed each other with reactions that kept the ‘ball rolling’. As one journalist pointed out shortly after a meeting in the General Affairs Council in Brussels, the EU14’s mobbing tactics – not shaking hands with Austrian government representatives or refusing to stand next to an Austrian at an ‘EU-

family photograph’ – could be qualified as “a diplomatic ballet around Haider’s shadow”, because he was never present at EU level meetings.122

The ‘boycott of Austria’ also became a scoop at the international level, although the interest faded away during spring. It is Gehler’s (2002: 210) observation that the international media reported “intensively” about the initiation and implementation of the EU14’s ‘diplomatic whipping’ of the FPÖ-OVP government, but “disproportionately” less about the lifting of the ‘sanctions’ and the reasons for it. Gehler (2002: 195) also claims that “[t]he international press reacted in a far more sophisticated manner than did the European media world”. In France, newspapers emphasised the Nazi shadow over Austria’s new government. Among others, the cover of the newspaper Libération was a sepia-tinted photo of Schüssel and Haider under the headline “The Brown Waltz” – a blending of Vienna’s classic dance and brown-shirted storm troopers”.123

The fact that the EU14’s diplomatic sanctions measures were at times simply discourteous is clear from yet another example. When President Klestil on 8 March went to Belgium, no government representative was at the airport to welcome his arrival. After the meeting with Commission President Prodi the following day, Klestil asked the EU14 to give the new government a chance. At a packed press conference, he told journalists that: “Objectivity is essential; fairness is essential. It is in the interest of all Member States that there is a clear picture of the real situation. I came to appeal to the EU institutions and the media to give the Austrian government a chance and to judge them according to what they do”.124 The final example of how Austria was ostracised from the EU-family is the decision by the Portuguese Prime Minister to exclude Vienna from the tour de capitales he made in order to prepare the Lisbon summit scheduled for 23-24 March.125

It is often said that the EU membership is a profound badge of state identity. Moreover, it is a widespread understanding that the membership brings about a qualitative difference in relations between members and non-members. To be considered an EU-family member entails “involvement in a shared enterprise, a degree of commonality so necessary to identity building” (Laffan 2000: 7). As Laffan writes, “[a]t every European Council the heads of state and government pose for what is known in EU jargon as the ‘family photograph’. The use of the term ‘family’ to describe the members of the European Council implies deep ties between the participants” (ibid.). As mentioned before, the diplomatic sanctions measures at times boiled down to such trivial matters as to whether it was appropriate or not to shake hands with Austrian representatives at regular EU meetings and appear with them in ‘family photographs’ (cf. Schneider 2003: 124; Schwarzenegger

125 This example is discussed by Busse (2003: 239); Hummer and Obwexer (2003: 301); Rotter (2003: 389); Schorkopf (2001: 32); Stein (2003: 163).
To many observers, this was simply ridiculous behaviour (Busek 2003: 14; Stein 2003: 161). Nevertheless, body language such as no handshake, a cool tone of voice, facial expression, and turning one’s back on someone did serve the purpose of establishing the desired tone at ‘threshold moments’ in the EU14’s relationship with representatives from the FPÖ-ÖVP government (cf. Cohen 1987: 90-91).

The apparent widespread confusion among the EU14 about the limitations of the ‘diplomatic whipping’ led the Austrian Commissioner Franz Fischler to urge the EU14 for a reassessment of the ‘sanctions’ as he considered them counter-productive. He also accused some politicians of being plainly “impolite” by snubbing their Austrian colleagues: “It escapes me how it could make any sense, in conjunction with these measures, to ignore common courtesies, like the fact that they will not shake hands with Austrians. That is not sanction-induced, that is just impolite”.

To close this subject, it is likely that FPÖ and ÖVP politicians were tacitly apprehensive about the practical consequences of the EU14’s threats of isolation and ‘unfriendly acts’ (cf. Gehler 2002: 182). In psychological and social terms, the measures would probably hurt as there was little prospect that the usual collegial courtesies in the Council of Ministers would be extended to FPÖ ministers. Although Schüssel had served as Austria’s Foreign Minister for four years (1996-2000) and was presumably fairly well acquainted with top decision-makers from the other Member States, this was no guarantee that his words on the ‘harmless’ FPÖ leader would strike a chord with the EU14.

Reactions in Austrian public opinion to the formation of the FPÖ-ÖVP government and the EU14’s protest

What were the reactions like from the Austrian public opinion to the formation of the FPÖ-ÖVP government and the EU14’s launch of the diplomatic sanctions measures? Numerous sources testify to a mixture of humiliation, consternation, relief about the strength of the external criticism, anger, and stupefaction as to how the EU14 could claim that they had the right to ostracise the untested FPÖ-ÖVP government in diplomatic situations, including EU negotiations. Furthermore, representatives from the opposition parties, together with FPÖ and ÖVP supporters critical of the EU14’s ostracism policy, argued that with isolation and the diabolisation of right-wing

126 Die Presse, 13 March 2000, my translation.
127 For example, Winter (2000: 324) writes: „Es kommt in Wien zu massiven Demonstrationen und Straßenschlachten, auch in anderen Städten gehen tausende Menschen auf die Straße. Nicht zuletzt herrscht bei Teilen des ÖVP-Personals und den der ÖVP nahestehenden Organisationen (Junge ÖVP, Wirtschaftsbund, Bauernbund u.a.) Verwirrung, Unmut und Empörung“. For a concrete example of how the ‘sanctions against Austria’ were debated in Austrian society, see Gruber’s (2004) political discourse analysis of the ‘Conversation on Austria’, a televised debate between politicians, academics, students, and representatives of various NGOs, taking place in Vienna on 15 March 2000.
extremist parties one always runs the risk of strengthening their supportive base.

At the end of January, when it became clear that the FPÖ and the ÖVP would actually form a coalition government, daily demonstrations took place in the city of Vienna. When the FPÖ-ÖVP government was sworn in on Friday 4 February, the centre of Vienna was transformed into a battlefield (cf. Johnson 2000: 2). Demonstrations gathering thousands of people took place only a few metres from the *Heldenplatz*, where in 1938 Hitler addressed a crowd of around 250 000 Viennese citizens following the *Anschluss*, the annexation of Austria by Germany. Some of the demonstrators held banners reading “1938 reasons to be against Haider”. The situation was quite dramatic with security barriers surrounding the parliament and hundreds of police officers in riot gear, facing protesters (mostly “autonomous anarchists”) who were trying to break out from the controlled zone. Truncheons were also used against the protesters as they threw blue paint (the FPÖ’s party colour) at police officers. Furthermore, police officers were injured as they defended the office of President Kestil, where 5 000 people gathered to protest against the new government. Several cars were damaged and the police, under a hail of fireworks, eggs and fruit, allegedly used batons against protesters who tried to climb over the barricades around the *Hofburg*. On the banners one could read “Haider is a fascist” and “Haider’s Austria is not my Austria”. Several EU flags could be seen swaying over the heads in the crowd, representing the ‘other’ to Haider and people who wanted to manifest their belonging to a Union of values. As another symbolic gesture, black flags were hung from the trees and many of the protesters were dressed in black. More than 50 people were injured that day. On Saturday 5 February, the demonstrations continued with thousands of people taking part.

On 19 February, around 250 000 people demonstrated in Vienna for an ‘open Austria’ against intolerance and racism (Milza 2002: 359; Wistrich 2003: 181). After that, smaller demonstrations were organised on a regular basis every Thursday throughout the year. These ‘Thursday marches’ became “a regular focal point of public mobilisation” (Minkenberg 2001: 1). In particular, young people, immigrants, SPÖ voters along with some ÖVP voters, and elderly people who had experienced the *Anschluss* of Austria took to the streets. Moreover, trade unions threatened to launch strikes and street protests against the new government’s right-wing economic policies.

131 The number of people who took to the streets varies from more than 100 000 (police estimates) to 250 000 (estimates by the organisers) (Johnson 2000: 20).
However, Austrian artists and intellectuals had been the perhaps earliest and most vocal opponents of Haider’s FPÖ. When the government was about to be sworn in, some popular artists threatened to leave the country or even to renounce their citizenship. Many so-called Nestbeschmutzer (‘nest-foulers’) were nervous about signals from the FPÖ about cutting state subsidies to the arts and some forms of the media, supporting only ‘purely’ Austrian project and renouncing proposals from ‘cosmopolitan free-thinkers’. This would imply a kind of censorship, threatening the freedom of expression and providing evidence of the FPÖ’s politics of ‘no tolerance’.

One example of an individual protest is the engagement by Anton Pelinka. A Vienna-based professor of political science, he openly criticised Haider’s rise to power on numerous occasions. Among others, he taught a course about opposition and resistance, which included an analysis of the ‘Thursday marches’. This was considered politically sensitive by the FPÖ-led ministry of science, who interfered with Pelinka’s teaching (Minkenberg 2001: 16). Moreover, the Viennese Criminal Court (Straflandesgericht) found Pelinka guilty of having “defamed” the FPÖ leader in an interview on Italian TV RAI on 1 May 1999. Dieter Böhmdorfer (FPÖ Minister of Justice), who at the time was Haider’s lawyer, originally brought this case to the court. When Pelinka was threatened with fines in 2000, the EU immediately protested. Scholars in Austria and elsewhere in Europe signed petitions in favour of Pelinka, demanding that the FPÖ-ÖVP government should annul the charges brought against him. Apparently, Pelinka had said that Haider had trivialised the significance of the National Socialist concentration camps by terming them Straflager. Although it was proved that Haider had used this expression, Pelinka was convicted because he failed to add that Haider had spoken of an ethnic minority, which was almost annihilated 50 years ago in those “punitive camps”. According to the Court, Pelinka should have added this element (Wise Men Report, point 100). The Wise Men Report (point 101) has the following to say about this case: “This judgment shows how difficult the situation is for somebody who wants to criticise the

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132 For example, the writer Elfride Jelinek, winner of The Nobel Prize in Literature in 2004, who forbid Austrian theatres and culture institutions to give her plays as long as the FPÖ-ÖVP government was in power. Among others, Jelinek wrote „Das Lebewohl“ in 2000, a play (a monologue) based on Haider’s speeches.


134 It is worth mentioning that Pelinka was a member of the Executive Board of the European Monitoring Centre on Racism and Xenophobia (located in Vienna) from its start in January 1998 until June 2000, when he decided to resign. Source: Report from the Commission to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions on the activities of the European Monitoring Centre on Racism and Xenophobia, COM (2000) 625 final. Available at http://europa.eu.int/comm/employment_social/fundamental_rights/pdf/arcr/com625_en.pdf

use of ambiguous language in that context. It is completely incomprehensible in the normal use of the German language to use the notion “Straflager” for camps where ethnic minorities are annihilated”.

It is clear that the EU14’s declaration of 31 January on launching diplomatic sanctions measures should the FPÖ-ÖVP government come to power, “triggered paralyzing dismay and complete bewilderment in large sections of the Austrian population” (Gehler 2002: 181). According to Pick (2000: 189), “[f]ar too many Austrian voters failed to understand – or simply did not want to know – that the outside world had long seen Haider as a sinister figure whose populist message endangered political stability and undermined democracy”. Many of those voting for the FPÖ decried the ‘sanctions’ and claimed that they were unfair, but they were not the only group of Austrians protesting. Even among Haider’s opponents many feared that outside pressures to remove the FPÖ from the coalition government would backfire, and only serve to strengthen Haider’s popularity. There was also a concern that the exclusion of FPÖ-ÖVP government representatives from informal consultations and negotiations in the Council of Ministers would reduce Austria’s ability to defend its vital interests. Moreover, many Austrians worried that the EU14’s ostracism policy would “handicap Austria’s tourist trade, deter inward investment, and thus inflict serious damage to the economy” (Pick 2000: 234).136

In retrospect, one may wonder how many Austrians were actually aware about the rationale behind the EU14’s ostracism policy. That the FPÖ was a controversial party in the European party family was not a big surprise, but it was no worse than the FN in France or the VB in Belgium. The difference was that the FPÖ had managed to take seats in the Austrian government. Still, one may wonder whether the party was so very different from France’s FN, which for many years had had the executive power in some municipalities, especially in towns in southern Provence (Orange and Toulon, for example). The fact that the EU had tolerated the presence of right-wing extremist parties at the local level for decades, and therefore had not threatened forceful protest against more or less obvious risks of violations of EU fundamental values, was arguably an example of double standards. A lax attitude was adopted towards lower levels of governance, whereas criticism was more pronounced concerning the national/federal decision-making arena.137 As a result of this general attitude, early signs of discrimination, racism, and exclusion embedded in policies were not considered an EU-wide problem until they flourished at the national/federal level.138

136 See also “Boycott fears alarm Austrian business”, BBC News Online, 9 February 2000.
137 Maier’s (2000: 2) criticism of „Inkonsequente EU“ asks: „Warum durfte Haider [...] eigentlich so lange ungestraft Landeshauptmann (also Ministerpräsident) von Kärnten sein? Nach der österreichischen föderalen Verfassung zählt der Landeshauptmann zur Elite der hoheitlichen Verwaltung und Gesetzgebung. [...] Wäre Kärnten ein Staatswesen, hätte man Haider schon früher geächtet”.
138 An important exception is the Italian government of 1994 led by Silvio Berlusconi, which included the right-wing/populist AN and LN. The government formation did not lead to any co-ordinated protest reactions from other heads of state or government, which can be explained by the fact that the political
The reaction from the FPÖ-ÖVP government to the EU14’s ‘diplomatic whipping’

Despite the launch of the EU14’s diplomatic sanctions measures, the FPÖ-ÖVP government “set to work right away” (Minkenberg 2001: 14). The government programme ‘Österreich neu regieren. Das Reformprogramm der FPÖ-ÖVP-Regierung 2000-2003’ (‘Governing Austria Anew. The Reform Programme of the FPÖ-ÖVP Government 2000-2003’) stressed, among other things, the continuity of Austria’s membership of the EU, international security arrangements and defence, the consolidation of the economy, and the fight against domestic (and transnationally) organised crime (ibid.).

However, there were some radical proposals, largely inspired by the FPÖ’s political discourse, which clearly marked a rupture with the past policies of the SPÖ-ÖVP coalition (1996-2000). For example, the idea of consociational democracy was rejected, a stance which is reflected in the heading ‘Im Interesse der Bürger – vom Verwaltungsstaat zum Leistungsstaat’ (‘In the Interest of the Citizens – from the Bureaucratic State to the Efficient State’) (Minkenberg 2001: 14). The government programme comprised proposals including, inter alia,

> “the introduction of more direct democracy, the curtailing of the power of trade unions in collective bargaining and workers’ representation; the reduction of immigration to a zero-level (Haider: ‘de-facto-Nullzuwanderung’) and a preference of nationals for employment opportunities. These propositions [were] embedded in a cultural policy (‘Kulturland Österreich’), which emphasise[d] the concept of Heimat and include[d] measures such as the creation of an Austrian National Foundation for the protection of Austria’s culture, specific subsidies to the film industry, and the establishment of a ‘Home of the History of the Republic of Austria’ […] supposed to co-ordinate various cultural programmes” (Minkenberg 2001: 15).

Furthermore, in the field of cultural policy, the FPÖ insisted on including in the government programme support for a new field of university research called Volkskultur. This was part of a larger attack by Haider on modern culture and his commitment to save Austria’s ‘real’ art and culture from subversive left-wing counter-culture (Minkenberg 2001: 16).

Haider accused both President Klestil and outgoing Chancellor Klima for setting ostracism rolling against Austria. Other FPÖ members, and also ÖVP members, supported him. Among other things, he pictured an ‘international left-wing conspiracy’, orchestrated by the majority of the Social Democratic governments in the EU14, to keep the SPÖ in power at all costs. The fact that Prime Minister Guterres was not only ‘President’ of the EU at the time, but also chairman of the Socialist International, was taken as evidence. However, Haider simply overlooked the fact that the most ardent
supporters of the measures had included Conservative and Liberal politicians such as Foreign Minister Michel, President Chirac, and Prime Minister Aznar (Fallend 2001: 245).

Above all, the FPÖ-ÖVP government condemned the legitimacy of the EU14’s ‘diplomatic whipping’. Major objections concerned the fact that the EU14 had shown disrespect for the democratic political process in Austria, and that the sanctions decision had been taken without hearing representatives from the respective parties. Thus, the EU14 had violated the legal principle of *audiatur et altera pars* (Busek 2003: 11). Moreover, the FPÖ-ÖVP government criticised the EU14’s ostracism policy for having no solid base. As a matter of fact, no ‘serious and persistent breach’ of Article 6(1) TEU could reasonably be claimed before the new government had started to work. Chancellor Schüssel addressed these points in his personal statement about the formation of the new government in Austria (see Appendix 8). Along the same lines, at the meeting with the General affairs council on 14 February in Brussels, the ÖVP Foreign Minister expressed in a press statement her profound regret about the present situation between Austria and its EU partners (see Appendix 9).

Fallend (2001: 246) argues that a major problem for the EU14 was the FPÖ-ÖVP government’s use of the diplomatic sanctions measures to “stabilise its position with the public by interpreting them as being directed not only against the government, but against the country and its citizens”. Evidently, it was a successful strategy: In March, opinion polls indicated that the EU14’s ostracism policy was condemned by 66% of the Austrians, and 41% deemed the protests against the FPÖ-ÖVP government as negative for the ‘image of Austria’ in the European and international political arena (*ibid.*). It is Fallend’s conclusion that “[t]he term ‘sanctions’ immediately gained a momentum of its own, standing for an unjustified treatment of Austria and its population as the pariah of Europe” (*ibid.*).

However, the FPÖ-ÖVP government’s attempts to form a national alliance against the EU14’s ‘diplomatic whipping’ failed as the SPÖ, the Greens and the Liberals were not willing to excuse the FPÖ for its xenophobic and anti-Semitic statements of the past. That said, there was a rapid “deterioration of the political climate and a growing polarisation between the governing and opposition parties” (Fallend 2001: 245). Representatives from the SPÖ and the Greens had first welcomed the EU14’s protest and had actively attempted to justify the sanctions threat. In addition, they saw in it a reason for Schüssel to withdraw from leading political positions, although he still held the post of Foreign Minister, and would probably become Austria’s next Chancellor (Gehler 2002: 183). By February, the new party chairman designate of the SPÖ, Alfred Gusenbauer, made clear that the punishing of Austria was counterproductive.\(^\text{139}\) Therefore, “he recommended that

\(^\text{139}\) Viktor Klima had decided to step down after the failed government negotiations with the ÖVP in January 2000. Alfred Gusenbauer formally became the new SPÖ leader on 29 April.
the confrontation with Haider be contained inside the country” (Fallend 2001: 246).

Turning to the FPÖ, Haider resigned as party chairman on 28 February in favour of Susanne Riess-Passer (Happold 2000: 957; Pick 2000: 189). Along with Finance Minister Karl-Heinz Grasser, she was known as a competent politician and a ‘moderate’ representative of the FPÖ. Therefore she was seen as less controversial in her political performance than her ‘mentor’ Haider. Besides being the Vice-Chancellor in the FPÖ-ÖVP coalition government with responsibility for issues concerning women, sport, and the civil service, she would serve as Haider’s watchdog; ensuring that the FPÖ ministers would not make outrageous comments. Riess-Passer would also try to keep in check Chancellor Schüssel, a vital role given that the allocation of cabinet portfolios would make a power struggle inevitable. To take one example, the ÖVP got economics while the FPÖ got finance.

Although Haider was no longer the leader of ‘his’ party, he remained its spiritual head and pulled the strings from his post as Landeshauptmann (governor) in Carinthia. However, there were signs that Haider was challenged from ‘within’, by more moderate elements aware of the compromises needed in a coalition government. Even as an ‘ordinary party member’, Haider remained a member of the influential coalition committee. One should not forget that the ÖVP was interested in integrating Haider to prevent him from criticising the coalition’s policies from the outside (Fallend 2001: 245). That said, “nobody was left in any doubt that his lieutenants in the federal coalition would take their cues from him” (Pick 2000: 189; cf. Happold 2000: 957; Wistrich 2003: 177). To conclude, that was why the EU14 “dismissed his resignation as a meaningless ploy and pledged to continue their boycott” (Happold 2000: 957).

Conclusions: norm crisis and norm collision

It should not be controversial to claim that norm crises are a major driving force for the development of the European integration process. Beneath the surface of consensual integration rhetoric, there is a stream of norm crises resulting from opposing views from the Member States’ or the EU institutions’ side on the aims and purposes of the integration process. Such crises are often a source of irritation for the Member States and the EU institutions as they usually have a negative influence on efficiency and rhythm in the decision-making process. A norm crisis simply increases the risk of a ‘slow down’ in these respects. Taking this view, one may also claim that norm crises are an everyday phenomenon, and sometimes norms in crisis

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140 The formal election of Riess-Passer as the new FPÖ leader took place at a party congress on 1 May (Fallend 2001: 244; Rotter 2003: 385).
collide with other norms. This study argues that the transition from a norm crisis to a norm collision is conditioned on the access to ‘rational taming strategies’ having, precisely, a taming effect on the actors’ behaviour and actions at the time of the collision. Established codes of conduct could thus prevent the crisis situation from escalating into a collision. With an eye to the case in question, the ‘sanctions article’, Article 7 TEU, is a clear example of a code of conduct. However, the EU14 could not use this procedure because there was no evidence of violations of EU fundamental values from the FPÖ-ÖVP government’s side.

In the following, the norm which was in a state of crisis in the EU14-Austria crisis is examined. EU fundamental values tying the Member States together are not encapsulated in a cocoon, but they may constantly be challenged. Accordingly, they are not as ‘unobjectionable’ as they may appear on the outset and there is a risk of serious breaches with them. Thus, norm crises may also involve ‘unobjectionable’ norms, just as in the example of the EU14-Austria crisis. That said, the status of Article 6(1) TEU was in a crisis situation because of the expressly racist, xenophobic and anti-Semitic content in the FPÖ’s party programme, equally to be found in speeches and statements by some FPÖ representatives. In the context of the EU14’s ‘diplomatic whipping’ of the FPÖ-ÖVP government, one may argue that Chancellor Schüssel was accused of breaching with the informal norm of keeping right-wing extremist/populist parties at arm’s length. On the other hand, Haider, with his controversial statements about the Nazi era and immigrants, among other things, was accused of violating EU fundamental values expressed in Article 6(1) TEU. However, it was not possible to advance the latter accusation after the new Austrian government had taken office on 4 February, since neither the EU14 nor the ‘wise men’ were able to make such observations on the part of the government. To conclude, different charges of Austrian ‘deviances’ thus laid the ground for the crisis situation for Article 6(1) TEU.

This study argues that the norm in question was exposed to different kinds of pressure stemming from the actors (the EU14 and the FPÖ-ÖVP government) and the structural environment (time pressure). It is important to observe that its resilience, support, and legitimacy among these actors were tested over a certain period of time. After the breakdown on 21 January in the government talks between the SPÖ and the ÖVP, the ÖVP then turned to the FPÖ in order to negotiate a government programme. At this stage the indirect meaning of Article 6(1) TEU was openly challenged, namely the tacit understanding between the Member States that right-wing extremist/populist parties should be kept at arm’s length (also labelled an informal norm in this study). When the new Austrian government took office on 4 February, the crisis situation for EU fundamental values was definitively obvious.

This section takes a closer look at the norm collision in the EU14-Austria crisis with the following question in focus: Which is the superior norm – respect for norms embedded in the model for (West) European representative democracy on the one hand, or defending EU fundamental values on the
other? Maintaining the elevated status of Article 6(1) TEU requires two things. First, trust in the functioning of democratic-procedural norms for the existence of representative democracy in the individual Member State. Second, pronounced expectations of compliance with the Treaty article in question. The EU14-Austria crisis clearly illustrates what happens when democratic-procedural norms about free and fair elections are disregarded or simply overtaken by a collective of states seeking to ‘redress’ the outcome of a democratic election in an individual Member State. It should be emphasised that the EU14 claimed that in taking action they had in mind the common good of the Union. A line of argument went that it lay in the European public interest to send a warning to Austria, which in addition aimed at informing the candidate countries that ‘we keep an eye on you, too’ (Wilde d’Estmael 2000: 166). However, there is a principal, problematic aspect with the EU14’s ‘diplomatic whipping’ of the FPÖ-ÖVP government. What if the Austrians were convinced that the change of government took place in the name of the common good of the country? Then who were the EU14 to disapprove of this political change brought about by a democratic procedure? Is it not possible to claim that the EU14’s protest in fact undermined (although unintentionally) procedural norms about free and fair elections enabling the formation of a new government in a representative democracy?

To conclude this discussion, the EU14-Austria crisis opened up for the question whether during the twenty-first century a new European order for the approval of new governments has started to gain ground. Happold (2000: 963) claims that it is an order where, to a certain extent, “the legitimacy of governments in Europe is beginning to be judged by international norms which look beyond whether procedural democratic standards are complied with”. Happold underlines that in such cases “a distinction remains to be made between legitimacy and legality” (ibid.). Accordingly, when the EU14’s diplomatic sanctions measures interrupted “established interests and identity-based concerns” in Austrian politics, they also interfered with the concept of democracy, which covers “procedures based on deontological norms” (Eriksen 2000: 44). In other words, the EU14 missed out on a “popular-democratic concept of legitimation” recognised by the Austrians, too, “because only affected parties can decide what is fair treatment of equal and unequal cases, what is in the public interest, and what is the common good” (ibid.). The problem for the EU14 to handle was that the Austrians had expressed their interests and identity-based concerns in political terms when voting for a change of government in October 1999.

It is a widespread view that the modern democratic state is ‘democratic’ from the fact that laws originate from and are implemented by individuals, who in free and fair elections are designated by other individuals as representatives of a political community. This is what ‘representative democracy’ is about, which “offers the possibility of combining effective government with popular sovereignty” (Held 1995: 151 in Wheatley 2002: 245). What many Austrians simply wanted in October 1999 was a new and effective government pointing a new direction for Austria. In February 2000, the ar-
gument was raised that the EU14 impinged on the popular sovereignty of Austrian politicians like Jörg Haider. The EU14 on their side legitimised their protest by referring to the need to safeguard EU fundamental values. The question one may ask is whether this was justified by evoking a popular-democratic concept of legitimation. At the end of the day, how many Austrians were either aware of or cared about Article 6(1) TEU as the primary source for the ‘diplomatic whipping’ of the FPÖ-ÖVP government (cf. Schneider 2003: 156)?

Analysing the implementation phase in the EU14-Austria crisis from constructivist and rationalist perspectives

To make valid the claim on complementarity when analysing the separate stages in the EU14-Austria crisis, it is apt to turn to Schimmelfennig’s concept of ‘rhetorical action’ for the implementation stage. To understand this concept it is necessary to provide its empirical context. Schimmelfennig (1999: 2) approaches the enlargement process as “the organization of a European, liberal international community and in which enlargement is understood as the inclusion of countries that have come to share its liberal values and norms”.¹⁴² Put differently,

“international socialization in the [EU] is best explained as a process of rational action in a normatively institutionalized international environment. Under these conditions, rational state behaviour is constrained by value-based norms of legitimate statehood and proper conduct” (Schimmelfennig 2000: 109).

Schimmelfennig (1999: 24) takes rationalism as “a good starting point for the analysis of the decision-making process as it gives a plausible explanation of the actor preferences, the bargaining behavior of the “brakemen” and the initial responses of the EU to the CEE demands for full membership”. What is remarkable is that “somehow the normative intersubjective structure of the EU must have intervened in the process and “distorted” the outcome predicted by the constellation of interests and capabilities” (ibid.). The crux is thus to account for “how a process predominantly characterized by rational action resulted in a normatively determined outcome” (Schimmelfennig 1999: 2). This is where the idea of ‘rhetorical action’ enters the stage. It works as an intervening mechanism between egoistic preferences and normative collective outcomes. Put differently: “Rhetorical action is the instrumental use of arguments to persuade others of the validity of one’s selfish claims” (Schimmelfennig 2000: 129). However, this presupposes both rational actors and an institutional environment:

¹⁴² For a more elaborated discussion, see Schimmelfennig (2002).
“In an intersubjectively structured environment, rational political actors need legitimacy and must take into account common values and norms but manipulate them through the strategic use of arguments. Thereby they are able to modify the collective outcome that would have resulted from constellations of interests and power alone” (Schimmelfennig 1999: 2).

To transpose this discussion to the EU14-Austria crisis, immediately after the announcement of the diplomatic sanctions measures by the Portuguese Presidency on 31 January, not only prime ministers from the EU14 but also cabinet ministers hurried to make the case clear about the reasons for this warning. One cannot help wondering whether the EU14 had not anticipated harsh criticism of their reaction, and therefore sought to curb this risk by defending the ostracism policy even before it was implemented. Somehow there seemed to be a need give it a slant of righteousness by repeating the mantra ‘the Union is a community of values, and any Member State having once adhered to these values should respect them for ever’. The EU14 thus bolstered their arguments on commitment and compliance by invoking normative arguments about defending the alleged ‘unobjectionable’ status of EU fundamental values. Furthermore, the demonstration of a united front against allegations of ‘moral panic’ or ‘panic diplomacy’ reinforced symptoms of groupthink.

On the subject of individual agency, Checkel (1998: 19) claims that ‘norm entrepreneurs’ are particularly successful in turning individually held ideas into broader normative beliefs when so-called ‘policy windows’ are open. The EU14 were confronted with a pressing norm crisis that had no clear answer in late January. It is fair to say that some of the ‘front-runners’ or ‘norm entrepreneurs’ acted in line with the ‘logic of consequences’ (March and Olsen 1998: 949-951); they advanced their own priorities by using the ‘diplomatic whipping’ of the FPÖ-ÖVP government as a lever to send warning-signals to their constituencies and right-wing extremist/populist parties in the respective domestic arena. The ‘followers’ on the other hand took action based on the ‘logic of appropriateness’ (March and Olsen 1998: 951-952). They merely reasoned in moral and normative terms on the basis of the need to defend EU fundamental values.

After 4 February, when the FPÖ-ÖVP government took office, the EU14 began to implement the diplomatic sanctions measures in words and deeds. It is fair to say that argumentative persuasion, meaning claims and counterclaims on the theme of defending the ‘unobjectionable’ status of EU fundamental values, was often in the air. Moreover, they reached out to the European and international media. For example, in Brussels on 14 February, Austria’s ÖVP Foreign Minister Benita Ferrero-Waldner pleaded for a less tough stance from the EU14’s side (cf. Appendix 9). With reference to Judt’s article appearing in The New York Review of Books on 23 March 2000, she also “emphasized her government’s democratic credentials and its many statements of humanitarian intent”. However, “[t]he Portuguese foreign minister waved her aside; the statements emanating from Vienna constituted
“overbidding,” he declared. If the Austrians say nothing about minority rights and European values, they arouse suspicion. If they say too much, they are “overbidding.”
CHAPTER FIVE

The EU14-Austria crisis: the crisis escalation phase

As mentioned in the previous chapter, as soon as the FPÖ-ÖVP government took office on 4 February, the EU14 started implementing the diplomatic sanctions measures. In the following months, Austria faced several sorts of protests, ranging from impolite behaviour to cancellation of official visits. Despite the EU14’s ostracism policy, members of the Austrian government were wary of acting obstructively. Time passed and the EU14 did not give any sign of changing their position. Disappointment spread in the FPÖ-ÖVP government, who finally decided to act ‘tit-for-tat’ towards the EU14. It was not until late spring, when the negotiation climate in the Council of Ministers had become worryingly unconstructive, that Austrian representatives took a more aggressive course and threatened to use Austria’s veto right. Turning to the EU14, the ‘diplomatic whipping’ of the FPÖ-ÖVP government gradually produced a more general dissatisfaction with its risks and inconveniences. However, dissatisfaction was not aired publicly as ‘false’ consensus and group pressure continued to prevail along the lines of “either you are with us or you are with the FPÖ-ÖVP government”. Arguably, nobody in the group wanted to break ranks publicly and risk being singled out as the FPÖ’s friend.

The chapter first raises the growing scepticism about the EU14’s protest. Next, effects of the EU14’s ‘diplomatic whipping’ on the FPÖ-ÖVP government are examined. The subsequent sections present two examples of Austrian countermeasures to make the EU14 reconsider the ostracism policy: first, the threat to delay Austria’s contribution to the EU’s budget, and second, the referendum threat, which perhaps was the ultimate reason for seeking a solution to the stalemate situation. The next section explains the expectations after the Santa Maria da Feira summit 19-20 June as ‘the beginning of the end’. Then, the focus is shifted to the EU14’s preference profiles in the crisis escalation phase, now grouped as ‘normalisers’, ‘followers’, and ‘defenders’. It is followed by a short summary of the EU14-Austria ‘chicken race’. The chapter concludes with an analysis of the crisis escalation phase in the EU14-Austria crisis from constructivist and rationalist perspectives.
Growing scepticism about the EU14’s ‘diplomatic whipping’ of the FPÖ-ÖVP government

From the EU14’s side, it was said that relations with Austria’s new political leadership would not be ‘business as usual’. However, representatives of the FPÖ-ÖVP government tried to work in the Council of Ministers in a “business as usual”-like manner, at least in the beginning (Fallend 2001: 247; Gehler 2002: 204). Accordingly, an ‘empty chair’ policy à la President Charles de Gaulle in 1965-1966 was not an option for the Austrians.\textsuperscript{143} That said, after the launch of the EU14’s ‘diplomatic whipping’ in early February, the FPÖ-ÖVP government was “quite careful to send the right signals” about present and future political actions (Ménendez 2000: 1). Nevertheless, Austrian government representatives pointed out that the EU14’s ostracism policy “created problems for the preparation of Austrian positions” in the Council of Ministers, which “thereby could slow down the EU decision-making process” (Fallend 2001: 247). In other words, “[t]he government, which was seen as politically incorrect, behaved highly correctly in Brussels. And this was the more disturbing for the EU 14” (Gehler 2002: 204).

During February and March, the more or less ridiculous behaviour of representatives of the EU14 at summits and meetings in the Council of Ministers thus contrasted with the ‘normal’ behaviour of Austrian government representatives.\textsuperscript{144} As mentioned in the previous chapter, the implementation of the EU14’s ostracism policy ranged from cold-shouldering Austrian colleagues to the cancellation of school exchange programmes. This peculiar mix of protest reactions was a contributing factor to the growing criticism of the EU14’s wider interpretation of the diplomatic sanctions measures. Complicating the matter for the EU14 was the fact that Austrian opinion polls indicated that the ‘sanctions’ had rather “led to a rally-round-the-flag effect and to widespread anti-EU sentiments in the country” than a weakening of the FPÖ-ÖVP government (Merlingen et al. 2001: 73). According to some opinion polls, as much as nine out of ten Austrians disapproved of the EU14’s protest. Moreover, the turnout at anti-Haider demonstrations was decreasing.

At a plenary session in the European Parliament on 14 April, President Klestil was given the opportunity to express his thoughts on the EU14’s ‘diplomatic whipping’ of the FPÖ-ÖVP government. Attending the session, the MEP Andrew Duff from the ELDR observed that “[o]nly a small number of MEPs, almost all French, left the chamber in protest” (Duff 2000: 14). According to Duff, the Austrian President was diplomatic in his formal speech, referring to the EU14’s ostracism policy as “unpleasant and heavy with consequences” for both Austria and the EU (\textit{ibid.}). President Klestil also said: “There are still no obvious signs that Austria has moved away from the road of parliamentary democracy and European values. I would

\textsuperscript{143} This was pointed out by an anonymous high-ranking Austrian government official at the Permanent Representation of Austria to the EU, during an interview in Brussels 8 May 2003.

\textsuperscript{144} \textit{Ibid.}
therefore urge you to seek and to find with me, with us together, a way out of this situation” (Duff 2000: 15).145

In the face of growing criticism from Austria as well as within the ranks of the group, some Member States started worrying that the ‘sanctions’ had in fact become counterproductive. As a result, the consensus supporting the joint protest slowly started to dissolve. One should also bear in mind that the EU14 could not continue to impose political sanctions on the FPÖ-ÖVP government without the more or less tacit approval of the European Commission and the European Parliament. Evidently, it started to wane during spring. It is also worth pointing to Italy, awaiting a general election in 2001 and “the possibility of a right-wing victory” (Duff 2000: 14). Arguably, the Italians realised that the EU14’s ostracism policy “might not stop at the Austrian border” (ibid.).

After the successful European Council meeting on “Employment, Economic Growth and Social Cohesion” in Lisbon 23-24 March, the Portuguese Prime Minister sought to benefit from the positive spirit to initiate a discussion on lifting the ‘sanctions’, but it fell on deaf ears.146 This attempt was partly a result of Chancellor Schüssel’s previous vain attempts to make his EU colleagues start to reconsider the ostracism policy. Furthermore, Prime Minister Guterres was aware of the risk of diplomatic incidents that could trigger a difficult negotiation climate between the EU leaders and the FPÖ-ÖVP government. This, in turn, would prove untenable in the long run for smooth negotiations in the Council of Ministers.147

Note that Mr Guterres described the behaviour of the Austrian government as “very cooperative and constructive” during spring. His statement thus marks a contrast with some of the other heads of state and government’s criticism of the FPÖ-ÖVP government. When asked about his experiences of the summits during the Portuguese Presidency, Mr Guterres confirmed that he had observed the reserved attitude between representatives of the EU14 and their Austrian counterparts. Witnessing social shunning on the part of certain ministers and heads of state and government, it was Guterres’s personal opinion that such expressions of ostracism were an embarrassment for the Union.148 The stalemate situation in the Council of

145 It is also Duff’s observation that when President Nicole Fontaine welcomed the Austrian President, she “skillfully drew attention to his own opposition to the formation of the new coalition government. But in off-the-cuff comments later, and in a closed meeting with the leaders of the political groups, Fontaine did not disguise the fact that she shared the general French hostility towards Austria. That gave Kestil the opportunity to be more blunt about the need to defuse the crisis. He also complained about the petty and exaggerated actions of certain Member States, notably Belgium, which had sought to ban school exchanges with Austria and to boycott Austrian artists” (Duff 2000: 15; cf. Schneider 2003: 148).

146 Note that the EU14-Austria crisis was not formally on the agenda since it was not a straight EU-Austria crisis. This is why the issue was discussed at a dinner attended by all EU heads of state and government (“Lipponen: No need for tightening of “Austracism””, Helsingin Sanomat (International Edition), 15 February 2000.

147 Interview with Mr António Guterres in Lisbon 24 July 2002.

148 Ibid.
Ministers had to be solved, there was no doubt about it. However, this was about waiting for the ripe moment to reach an agreement on how to dismantle the sanctions measures. The crux was that the French had repeatedly indicated that they would not work actively for it. It would then be a delicate task for the Swedish Presidency to handle in January 2001. Another problem for the EU14 concerned how to get concrete evidence of the alleged controversial nature of the Austrian political leadership, and to be able to predict what would happen next. What if Haider were to watch his tongue and there should be no more provocative statements at odds with the solemn declaration he had co-signed with Schüssel in February? How, then, would the EU14 know the right timing for lifting the ‘sanctions’?

**Effects of the EU14’s ‘diplomatic whipping’ on the FPÖ-ÖVP government**

Clearly, the EU14’s implementation of the ostracism policy towards the Austrian government was uneven and did not always correspond with the declaration of 31 January. It is therefore fully understandable that the, at times extraordinary, sanctions measures became the main topic in Austrian politics. The new government qualified them as “unjustified”. To a great extent Austrian media pursued this opinion, which resulted in the silence of pro-sanctions supporters, predominantly in the opposition parties. At Haider’s request and with the support of FPÖ Minister of Justice Dieter Böhmdorfer, those expressing dissenting views were pursued in the courts (Gärtner 2002: 348).149

Gehler (2002: 197) claims that the EU14’s diplomatic sanctions measures were “counterproductive” because they gave rise to a strengthening of Schüssel’s “domestic stature”. Obviously, this was positive for Schüssel as it enabled him to free himself from Haider. It is fair to say that Haider accepted disadvantages with regard to the appointment of ministers. Schüssel was the winner in the government coalition talks. The FPÖ got the portfolios that were less popular with the public (finance, social services, and defence), while the more popular ones with public appeal (interior and foreign affairs) went to the ÖVP. As Gehler puts it, the FPÖ “left the foreign policy damage control up to the “Europe party,” the ÖVP” (ibid.). Letting Benita Ferrero-Waldner speak for Austria in the world “brought about an improvement of the domestic image” (ibid.), as her European colleagues respected her.150 A sign of this came at the informal meeting of EU Foreign Ministers in the Azores on 5-7 May. As reported in *Time Europe magazine*,

“Splashed across the pages of national [Austrian] newspapers, it showed the country’s petite Foreign Minister, Benita Ferrero-Waldner, taking shelter […] under the umbrella of German Foreign

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149 Denounced as *Vernaaderer* (slanders), the process against Professor Anton Pelinka is one example.

150 By then, Ferrero-Waldner had become one of the most popular politicians in the government (Gehler 2002: 197). In 2004, she was nominated the external affairs Commissioner.
Minister Joschka Fischer while her French counterpart Hubert Vedrine stood nearby.\textsuperscript{151}

Benefitting from the improving atmosphere, Ferrero-Waldner raised the idea of a council of ‘wise men’ as a possible means of ending the ‘sanctions’. At the same time she demanded their suspension, and indicated that Denmark, Finland, Greece, Ireland, Italy, and Spain showed signs of wanting a normalisation of Austria’s relations with the EU14 (Schorkopf 2001: 40). However, this was rather ‘whistling in the wind’ than the beginning of a new turn in the EU14-Austria relations.

To sum up, the new government team was virtually cemented by the insistent pressure from abroad and the continuing mass demonstrations, especially in Vienna, in February and part of March. In other words, the EU14’s ‘diplomatic whipping’ and international protests “bonded this government together, leaving shortcomings, unprofessional conduct, and weak points in the cabinet in the background” (Gehler 2002: 199).

The threat to delay the contribution to the EU budget: a means to make the EU14 reconsider the ostracism policy

It is clear that the nature of the EU14’s ostracism policy was a source of irritation for Austrian government representatives in the Council of Ministers. This gave rise to tensions which overshadowed its daily work. On 17 April, the European Commission warned the FPÖ-ÖVP government that any delay in budget contributions would be met with tough action. The warning came after FPÖ Finance Minister Karl-Heinz Grasser had threatened to delay EU payments and block decision-making unless the EU14 put an end to their political isolation of the Austrian government. Grasser was often in the spotlight during spring. He did not hesitate to criticise the EU14 whenever opportunity was given, and not just in the Ecofin Council. Becoming Finance Minister at the age of 31, and securing himself a flying start with the framing of a budget within weeks of taking office (including tough deficit reduction measures), Grasser enjoyed a solid reputation from the domestic arena and was also respected by his European colleagues, much owing to his ‘moderate’ profile as FPÖ member.\textsuperscript{152}

On one occasion, Grasser said: “I do not want to push it so far that we could be condemned for violating the [EU] treaties. But there could be delays in the payment of our contributions. Being unpunctual, we can do that”, he informed the \textit{Kurier} (a newspaper). A senior EU source speaking on behalf of the European Commission said: “We take such statements extremely seriously. People are playing with fire”. The same source claimed that Austria would be brought before the ECJ for breaking the Treaty, in

\textsuperscript{151} “Warming Things Up. Austria’s government hopes to end the E.U.’s ostracism of its officials”, \textit{Time Europe Magazine}, 22 May 2000.

In this case, Article 3 or Article 10 TEU. In addition, the source made clear that EU money was sent to Austria through the European Commission “and it would be strange if it did not cross our mind to review that”. Other commission sources excluded the idea of suspending payments to Austria, coming mostly in the form of structural aid for poorer regions. Still, they agreed that court action would be on the agenda should the situation deteriorate.  

The referendum threat: the ultimate reason for seeking a solution to the ‘sanctions impasse’

On 5 May, the FPÖ-ÖVP government put together an action plan to deal with the EU14’s ‘diplomatic whipping’ (Rotter 2003: 397-399). The last of a total of 18 points was about a consultative referendum. To put pressure on the EU14 in general and the Portuguese Presidency in particular to work out a solution to the stalemate situation, the FPÖ demanded a referendum about the ‘Austria sanctions’. Note that it would not be realised if the EU14 proposed a dismantling of the sanctions measures before the French took over the EU Presidency on 1 July. Immediately, the EU14, the Austrian opposition parties, the media, and even some ÖVP politicians decried the action plan as ‘counterproductive’ (Fallend 2001: 247). The most powerful lever for the Austrian government against the EU14 was to endanger the enlargement process by using its veto to block necessary institutional reforms enabling this historic change in Europe’s contemporary history.

Accordingly, on 19 June at the Santa Maria da Feira summit, government representatives warned that the ‘sanctions’ could affect decisions on constitutional reform and the accession of new Member States to the Union. As decisions related to the enlargement process require unanimity, a possible Austrian ‘no’-vote drawing from a ‘protest referendum’ would thus mark a serious disruption in the integration process. The question facing the EU14 was whether the FPÖ-ÖVP government was bluffing or whether it really would block progress on the enlargement issue. It is argued that one

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154 As Rotter (2003: 397) writes: „Denn im genannten Aktsplan wird ausdrücklich hervorgehoben, dass die Volksbefragung nur dann stattfinden wird, wenn bis zum Ende der portugiesischen Präsidentschaft ‘kein konkreter Plan für die Aufhebung der Sanktionen vorliegt’“.
156 It should be said that the proposed ‘voting package’ included other issues as well, but in a European perspective the enlargement issue was the most important.
clue lay in the continuing disagreement at the summit over an EU tax harmonisation package. It leaked out from the negotiations that Austria was the main objector. Through Finance Minister Grasser, Austria demonstrated its resolve to act ‘tit-for-tat’ when it blocked the adoption of a controversial directive in the Ecofin Council on a withholding tax on savings. The reason for this obstruction was said to be “constitutionally founded”, but it was widely assumed that the reaction was a retaliation against the EU14’s continuous ostracism policy towards the FPÖ-ÖVP government.\textsuperscript{157}

Expectations after the Santa Maria da Feira summit
19-20 June: ‘the beginning of the end’?

Despite the FPÖ-ÖVP government lobbying hard to end the EU14’s ostracism policy, coupled with more or less overt signals of ‘enough is enough’ from some of the sanctioning EU Member States, Prime Minister Guterres appeared unable to close the gaps. Or perhaps the time was not quite ripe for a conciliatory move? On 6 June, the German and French political leaders stated that they would not work in favour of lifting the ‘sanctions’ at the Santa Maria da Feira summit. The frozen climate between representatives of the FPÖ-ÖVP government and government members of the EU14, which had overshadowed all EU summits since February, could therefore impede decisions from being taken on vital issues such as institutional reform with a view to the eastern enlargement. Chancellor Schüssel hoped that the summit would mark the ‘beginning of the end’ of his government’s isolation. The message from the EU14 was that, at most, they could agree on a date to review the diplomatic sanctions measures, probably early 2001, and then ask the European Commission to report on the situation, thereby providing an exit strategy.\textsuperscript{158}

The first substantial discussion on lifting the ‘sanctions’ took place at the European Council meeting in Santa Maria da Feira 19-20 June, preceded by yet another ‘veto warning’ from Austrian government representatives (Hapbold 2000: 957). Clearly, this was a ‘gift’ to the media at the summit, following how Austrian politicians lobbied hard for the EU14’s ostracism policy to come to an end. Obviously, it overshadowed the topics on the Presidency’s agenda. Nearly everything the Austrians said attracted immediate attention among the hordes of journalists. One journalist reported:\textsuperscript{159}

“On the first day, there was a “fairness for Austria” bus parked near the summit site, emblazoned with Austrian and EU colours. At one point, the scene took on a fairground atmosphere when Foreign Minister Benita Ferrero-Waldner gave a press conference in an open tent, speaking raucously into a microphone in a string of languages.”

\begin{flushleft}
\textsuperscript{157} See “EU losing race to end Austrian sanctions”, \textit{The Guardian}, 29 June 2000.
\textsuperscript{158} “EU split by sanctions row”, \textit{The Guardian}, 17 June 2000.
\textsuperscript{159} “Austria Sanctions Overshadow Summit”, \textit{Radio Free Europe, Radio Liberty}. Available at http://www.rferl.org/nca/features/2000/06/F.RU.000620135438.html
\end{flushleft}
According to the journalist, the Foreign Minister announced that Austria expected the EU to find a compromise and stop the ‘diplomatic whipping’ by the end of the Portuguese Presidency, meaning within the next ten days. Moreover, the FPÖ-ÖVP government tried to promote itself with chocolate bars bearing the message “Fairness for Austria”, Sachertorte, beer, and wine. It is even said that the Foreign Minister remarked that Sachertorte was not poisonous, but as nice as the Austrians (Gärtner 2002: 348).

Behind the scene, Denmark acted as the constructive initiator to work out an exit from the deadlock between Austria and its EU partners (Merlingen et al. 2001: 73; Nehring 2000: 47). The Danish government was particularly eager to put an end to the ‘diplomatic whipping’ of the FPÖ-ÖVP government for a domestic reason, namely the referendum on membership of the European Monetary Union (EMU) scheduled for September. This is why the Danes proposed a solution of so-called ‘wise men’ to assess the political situation in Austria as it was affected by diplomatic sanctions measures, but also to examine the political nature of the FPÖ and the state of democracy in the country. At a later stage, the other thirteen Member States approved of the Danish proposal. Eventually, the issue was delegated to the Portuguese Prime Minister with the instruction to go ahead with the plan.

The EU14’s preference profiles in the crisis escalation phase in the EU14-Austria crisis

The figure below (see figure 5.1) presents the EU14’s preferences profiles at the crisis escalation stage in the EU14-Austria crisis. A similar figure was presented in the previous chapter, where the groupings were ‘front-runners’, ‘followers’ and ‘sceptics’. Addressed in the context of crisis escalation, the EU14 are divided into three groups labelled ‘normalisers’, ‘followers’, and ‘defenders’. The reason for making a comparison of preferences at different points in time is to highlight that in some cases they had changed, whereas in others they remained the same after the near-deadlock in the Council of Ministers. The figure thus illustrates that there was no longer a united front on keeping the diplomatic sanctions measures at almost any cost. However, it would take time before concrete steps were actually taken to dismantle the joint protest. Or, for that matter, to turn one consensus into another consensus.

On 23 May, the Portuguese Prime Minister announced that he was consulting his fellow leaders on the issue of ending the ostracism policy towards the FPÖ-ÖVP government. He underlined that just as a consensus between

160 Ibid.


162 The former Danish Foreign Minister, Niels Helveg-Petersen, interviewed in Copenhagen on 21 February 2003, also provided this information.
the EU14 had been necessary to launch the diplomatic sanctions measures, so a consensus would be necessary to end them. Still, there is no evidence of a unilateral action with the aim of dismantling the ‘sanctions’. However, it is not an educated guess to assert that the individual heads of state and government knew that a breaking with the consensus principle would undoubtedly jeopardise the image of the joint protest (cf. Merlingen et al. 2001: 73). It is clear that among the EU14 there was a tension between a pragmatic end to the ‘diplomatic whipping’ as represented by the idea of using ‘wise men’, and the more true-to-principle stance of some European political parties demanding the FPÖ’s exit from the coalition government. The pragmatic side held that the ostracism policy should end because Europe was at a crossroads, particularly with the prospect of the eastern enlargement. Continuation of the stigmatisation of Austria would disrupt this sensitive process. In the poisoned setting, the FPÖ-ÖVP government might have used its veto power generously on any and all crucial EU votes. The harsher stand of principle was to demand that the FPÖ should resign from government before there could be any lifting of the ‘sanctions’.

Figure 5. 1: The EU14’s preference profiles in the crisis escalation phase in the EU14-Austria crisis.

<table>
<thead>
<tr>
<th>‘Normalisers’: Critical of the effects of the EU14’s ‘diplomatic whipping’ on the working climate in the Council of Ministers, and eager to normalise the EU14’s relations with the FPÖ-ÖVP government.</th>
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<tbody>
<tr>
<td>Denmark</td>
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<td>Finland</td>
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<td>Greece</td>
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<td>Ireland</td>
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<td>Italy</td>
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<td>Spain</td>
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<tr>
<th>‘Followers’: Not taking any initiative in either direction, but supporting the stance taken by the ‘normalisers’.</th>
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<tbody>
<tr>
<td>Britain</td>
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<tr>
<td>Luxembourg</td>
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<td>Portugal</td>
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<td>The Netherlands</td>
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<tr>
<th>‘Defenders’: Hesitant about the idea of dismantling the EU14’s protest against the FPÖ-ÖVP government within the very near future.</th>
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<tbody>
<tr>
<td>Belgium</td>
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<td>France</td>
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<td>Germany</td>
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<td>Sweden</td>
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‘Normalisers’

Denmark, Finland, Greece, Ireland, Italy, and Spain supported the development of an exit strategy from the ‘sanctions impasse’ (Sperl 2000: 63; Wilde d’Estmael 2000: 167). For example, at the informal meeting of EU Foreign Ministers on the Azores 5-7 May, Finland’s Foreign Minister Erikki Tuomioja had publicly declared it “desirable” that the EU14’s ‘diplomatic whipping’ of the FPÖ-ÖVP government come to an end before the French took over the EU Presidency (Gehler 2003: 33). Shortly before, he however made clear that Finland alone could not push for it. During debate in the Irish Parliament on 27 June, John Bruton, representing the political opposition, argued:

“It is regrettable that this matter has not been finally sorted out by the Portuguese Presidency. I have some confidence in Prime Minister Guterres, and his ability to solve this problem because he is a man of good will [. ] I have no confidence at all, however, in President Chirac’s ability to deal with the matter. He has been playing domestic politics with the issue from the beginning. His approach to this has nothing to do with Austria or with concern for the rights and interests of Austrian citizens. It had everything to do with pursuing a domestic political agenda. The Belgian Government has pursued the same approach in regard to domestic politics and the Vlaams Blok in Flanders, although perhaps with some greater worthiness. Both countries, however, are pursuing domestic politics and using the European Union as a vehicle for that pursuit. That is wrong.”

The Italian government had been hesitant to “meddle in Austria’s domestic politics” (cf. the statement by Prime Minister Massimo D’Alema at the Holocaust conference in Stockholm 26-28 January) (Gehler 2002: 189; 2003: 25). Now, Italy again proved this cautious standpoint when giving its support for lifting the ‘sanctions’ through Foreign Minister Lamberto Dini. An important explanation for this support was the increasing pressure from the Right on the centre-left government (Gehler 2002: 192; 2003: 33). Turning to Spain, having taken a tough stance immediately after the FPÖ-ÖVP government formation, Aznar by that time expressed a more understanding attitude towards Austria (Gehler 2002: 190). As the stalemate situation in the Council of Ministers became increasingly awkward, “Spain […] fell in with the group of countries that was looking for a way out” (Gehler 2002: 192; 2003: 33).

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Just as the stakes were high for Belgium and France, pushing the respective governments to take the lead in the joint protest against the political development in Austria, the same reasoning applies to the Danish interest in seeking a quick exit from the ‘sanctions impasse’. In 2000, the Danish government had every reason to worry about reactions from the general public, interpreting the EU14’s ‘diplomatic whipping’ of the FPÖ-ÖVP government as a “disproportionate reaction against a small state” (Ménendez 2000: 1). The underlying reason was the third referendum about Danish membership of the EMU on 28 September (Gehler 2003: 70; Hummer 2000: 42; Nehring 2000: 46).166 In other words, when Prime Minister Paul Nyrop Rasmussen was questioning the effects and needs of the diplomatic sanctions measures he had this crucial referendum in mind.167

Knowing the widespread scepticism about the euro, the Social Democratic government waited for the ripe moment to introduce the idea of a referendum on EMU membership. During autumn 1999 and winter 1999/2000 opinion polls indicated a steady rise for a ‘yes’ to the euro. Then came the EU14’s ‘diplomatic whipping’ of the FPÖ-ÖVP government and slowly, but steadily, opinion polls on the support for EMU membership indicated a rise for the ‘no’ votes. Logically, Prime Minister Nyrop Rasmussen would enjoy more peace of mind in the run-up to the EMU knife-edge referendum if he did not have to worry about unpleasant repercussions in the domestic arena from the punishing of Austria (Pat Cox in The Irish Times on the Web, 22 July 2000). On several occasions Nyrop Rasmussen urged the Portuguese Prime Minister to initiate an end to the ‘diplomatic whipping’ of the FPÖ-ÖVP government. Moreover, he lobbied hard to persuade ‘hawkish’ Member States, especially Belgium and France, to lift the ‘sanctions’ unconditionally. It is even said that

“[h]is efforts at the European Council in Feira in June 2000 were crucial in making the call for a ‘wise men’ report acceptable to the other 13 EU governments. Once the report had been submitted to the French Presidency [...] Nyrop Rasmussen urged his colleagues to act quickly on the recommendation to lift the sanctions, indicating that Denmark was ready to act alone in this matter” (Merlingen et al. 2001: 73; cf. Nehring 2000: 47).

On Wednesday 24 May, the Portuguese Presidency sent the clearest signal so far: Prime Minister Guterres said he had started “a range of contacts to define the position [on Austria] at an EU level”. Officials in Copenhagen had confirmed during the previous evening that the Portuguese Prime Min-

166 The Danes voted ‘no’ to EMU membership with 53.1% against and 46.9% for.
167 A further headache for the Danish Prime Minister was that the Social Democratic government’s reporting to the Parliament (Folketinget) on its actions in the run-up to the EU14’s ‘diplomatic whipping’ of the FPÖ-ÖVP government had unleashed strong criticism. Moreover, the opposition parties sought to use the embarrassing situation as a means to challenge the government, hoping to provoke its resignation (Nehring 2000: 47).
ister had spoken to his Danish counterpart about ending the EU14’s ostracism policy on the Austrian government.\footnote{168}

\textbf{‘Followers’}

In Britain, several politicians were anxious to end the ‘diplomatic whipping’, having been bounced into the original decision by Prime Minister Blair’s direct contacts with other heads of state and government, against the advice of the Foreign Office. For example, the Foreign Minister Robin Cook recalled that 70\% of the Austrians had never voted for the FPÖ.\footnote{169} Whether there was a tension between Blair on the one hand and Cook and possibly other cabinet members on the other is difficult to find out. According to Gehler,

``[a]lthough Great Britain officially stood for the “sanction” measures, it deliberately hesitated and represented a position in the middle […] The British policy toward Europe under Foreign Minister Cook had been strongly involved in the judgment against the FPÖ participation in the government. After several weeks, however, London realized the counterproductive effects: the conservative and Eurosceptic press began to use Haider in his role as a Europhobe. It treated him as “a useful stick” with which “the EU donkey could be beaten”’’ (Gehler 2002: 192; 2003: 32).

At an early stage of the EU14’s ‘diplomatic whipping’ of the FPÖ-ÖVP government, the Luxemburg Prime Minister Jean-Claude Juncker claimed that the reaction was “exaggerated”. Against the background of a stalemate between the EU14 and Austria, the Luxembourgois government “acted with cautious hesitance, appearing to be amenable to an exit strategy” (Gehler 2002: 191). For obvious reasons Portugal took a neutral stance while occupying the Presidency chair. The Netherlands, led by the Social Democrat Wim Kok, did not raise its voice (Gehler 2003: 32).

\textbf{‘Defenders’}

In mid-spring, Belgium and France argued forcefully for the retention of the ostracism policy towards the Austrian government (Merlingen et al. 2001: 73). They were backed up by Germany and Sweden. The Swedish Social Democratic government supported the diplomatic sanctions measures, although they were a point of contestation even within the party (Gehler 2002: 193; 2003: 34). Turning to Germany, Chancellor Schröder and Foreign Minister Fischer stood fully behind the French position.\footnote{170} However,

\footnote{168 “Portuguese leader raises prospects of an end to EU sanctions against Austria”, \textit{The Guardian}, 24 May 2000.}
\footnote{169 “EU losing race to end Austrian sanctions”, \textit{The Guardian}, 29 June 2000.}
\footnote{170 See for example extracts from „Bundesminister Fischer in der Aktuellen Stunde zur Haltung der Europäischen Union zur neuen österreichischen Regierung am 16.02.2000 vor dem Deutschen Bundes-
their stance went against public opinion, which opposed the EU14’s ‘sanctions on Austria’. It is Gehler’s (2002: 191) analysis that “the German government […] put itself in a position of being a ‘political hostage’ of France’s policy on the Austrian government”, which implies that the handling of the FPÖ-ÖVP government in the EU “also touched on the question of rank and prestige in the relations between Paris and Berlin”. On one occasion, Chancellor Schröder and the Bavarian Prime Minister Edmund Stoiber from the Christlich Soziale Union (CSU) had a sharp verbal exchange in the Parliament because of ‘the Jörg Haider dilemma’.

Chancellor Schröder, who underlined that Haider must not become “a German problem”, feared that Stoiber, just like Haider, could exploit the ‘Europe theme’ for the election (ibid.). Finally, the Germans also started to have doubts about the effects of the EU14’s ‘diplomatic whipping’ of the FPÖ-ÖVP government. According to Gehler,

“Chancellor Schröder officially remained in favour of the “sanctions”, but word soon came from government circles that the measures would not hold up any longer. Joschka Fischer publicly pleaded for “reflection”. But Germany could not be expected to take a trail-blazing role in the matter of an abatement of the “sanctions”, since the historical responsibility still weighed too heavily” (Gehler 2002: 192-193).

Succeeding Portugal in the Presidency chair on 1 July, France would receive the report of the three ‘wise men’ in early autumn. This implied that President Chirac and Prime Minister Jospin would run the exit phase of the EU14’s ‘diplomatic whipping’ of the FPÖ-ÖVP government. Taking into account the domestic ‘mini Haiders’, meaning several FN mayors in southern Provence, such as in Orange and Toulon, the political leaders were perhaps tempted not to react swiftly when The Wise Men Report dropped through the Presidency’s letterbox (Pat Cox in The Irish Times on the Web, 22 July 2000). A supporter of Jörg Haider’s FPÖ, the leader of the FN, Jean-Marie Le Pen, raged against the EU14’s idea of monitoring Austria through ‘wise men’. Their decision was “scandalous”, and the EU14 were “trying to claim a prerogative which was never agreed upon in any European treaty – that is, to censor a people’s opinion”.

At an early stage, the Minister for European Affairs Pierre Moscovici and Foreign Minister Hubert Vedrine showed talent in forging a link between the political identity of the Union and the diplomatic sanctions measures

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171 It is interesting to note that during autumn 1999 Stoiber had already recommended the formation of the FPÖ-ÖVP coalition government. In parallel with the deep crisis in the Christlich Demokratische Union (CDU) at the end of 1999 and the beginning of 2000, his recommendation gave rise to a certain apprehension that “the spark could leap over to Germany and a populist party could be established there alongside the [CDU]” (Gehler 2002: 190).

against Austria’s new government. In parallel, they also strived to strengthen their own position in the domestic political landscape when legitimising the EU14’s protest with the help of Article 6(1) TEU, used as a lever not only against the FPÖ but also the FN (cf. Merlingen et al. 2001: 68). With the backing of public opinion, the government declared that the FPÖ’s access to government office in an EU Member State constituted a breach of the values forming the basis for French “Republicanism” and the European integration process (Pelinka and Gehler 2002: 8). Hence, one may argue that prominent politicians saw themselves at the forefront in leading a ‘mission’, namely to promote the idea of defending EU fundamental values.

It is clear that the political leadership strongly opposed a lifting of the ‘sanctions’ unless the FPÖ changed its politics and was given less influence in the coalition government with the ÖVP. Furthermore, the French position was to send no government representative to Vienna, and Chancellor Schüssel would be met only in Brussels during its EU Presidency term (Gehler 2002: 192). This was the reason why Austrian politicians in late spring started pressing harder the EU14 to work out a smooth exit from the stalemate situation before the hand-over date. It is worth mentioning that Chancellor Schüssel had declared that he was ready to accept monitoring of the coalition government’s activities and programmes by the more neutral European Commission, provided that the EU14 stopped the ostracism policy immediately. To put it clearly, when the French took over the reins there was a fear that they would exploit the room for manoeuvre to advance national interests when being in the Presidency chair (cf. Svensson 2000: 28). In other words, they would have liked the ‘diplomatic whipping’ of the FPÖ-ÖVP government to continue, thereby leaving it up to the Swedes to handle the lifting of the ‘sanctions’. Known as one of the ‘hardliners’, there was a growing apprehension in the group of the EU14 and in Austria that unless agreement was reached before the hand-over date, status quo would apply for the next six months. Undoubtedly, a status quo between the EU14 and Austria would have negative effects on the Nice summit scheduled for early December, where important decisions on institutional reforms in readiness for the eastern enlargement needed to be made.

Conclusions: the EU14-Austria ‘chicken race’

In late spring, the FPÖ-ÖVP government played a high-stakes game of chicken with the EU14, and neither side flinched. One should not forget that the media had a vital role to play in the ‘chicken race’ between Austria and the EU14. Through the media, views on both sides were transmitted to public opinion in Austria and elsewhere in Europe and the world. For example, the headline of The Guardian of 27 June read: “Act now, before the French gain the European Union’s presidency”. As mentioned before, there was a widespread apprehension that the French would put the EU14-

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Austria crisis ‘on ice’. Ever since the launch of the EU14’s ‘diplomatic whipping’ of the FPÖ-ÖVP government, France was a staunch defender of the joint protest. The following snapshot summarises French unwillingness to change attitude, despite the signals from some of the EU14 that the ‘sanctions’ ought to be lifted.

At the joint press conference given by President Chirac and Prime Minister Jospin on 20 June at Santa Maria da Feira, one journalist asked President Chirac to comment on the beginning of dismantling the ‘sanctions’.174 He replied, however, that a possible initiative by the Portuguese Presidency, before its time in the chair was over, had not been discussed between the heads of state and government:

“We were not scheduled to do so. In fact it was not on the agenda. Consequently, nothing has changed in the current situation. The Portuguese government is thinking of an initiative which would of course be agreed between the EU14. And we are all willing to receive the Portuguese Presidency’s proposals. We will see, when the time comes and if need be, what we think of them.”

Thus, it was clear that the French had no intention to lift the ‘sanctions’ while in the Presidency chair. This implied that the hopes lay with the Swedish Presidency which would take over in January 2001. Sweden was assumed to be keener on the issue than France, and a possible trick was to leapfrog over the French by recommending or even indicating that during the Swedish Presidency the ‘sanctions’ would be lifted.

To conclude, by the time it was clear that the EU14’s ‘diplomatic whipping’ of the FPÖ-ÖVP government had become self-defeating. Certainly, the reaction against the government formation in February was not wrong, but it simply was no longer right. The crux was that the EU14 indeed were short of time concerning how to find an exit from the stalemate situation. That said, the ostracism policy, which once had expressed widely shared European ideals, immediately had to be removed from “the grip of narrow national politics”, that is, the interests of notably Belgium and France. The question was, as one journalist put it, whether the EU14 could mobilise enough diplomatic skills in time to “stop a spiralling diplomatic calamity” and preventing “a piece of genuine supranational idealism from being destroyed, ironically, by national politics”.175

Analysing the crisis escalation phase in the EU14-Austria crisis from constructivist and rationalist perspectives

The past four Treaty changes have underlined that the integration process is increasingly about endeavours based on normative, moral, and ethical considerations. This development was motivated by the desire to counterbalance the predominant economic integration of the Union, strengthened not least by the common currency. Asking what is the glue that binds the Member States together, apart from rational, fixed interests and cost-benefit considerations, it makes sense to argue, as Eriksen and Fossum (2000: 257) do, that “[a] modicum of non-egoistic commitment is necessary for community cooperation to come about”. A deliberative perspective on the integration process facilitates the understanding of this kind of commitment as it emphasises the importance of arguing. As deliberation is about exchanging viewpoints, “arguing is the glue of the integration process” (ibid.). Put differently, “integration can be brought about by adherence to legal and argumentative procedures” which, in turn, “unleash the force of normative reason that is required to override national interests” (ibid.).

According to Eriksen and Fossum, this is the context of their thesis on integration through deliberation. While “integration can take place through strategic bargaining and through functional adaptation” (ibid.), these processes are not complete unless there is a metaphysical ‘container’, which is a concern with normative arguments referring to what is good or right, which, in turn, provide stability and security to the dealings with ‘integration’. As a consequence, there is no stability without this claim for metaphysical validity (ibid.). In other words, it is important to study deontological norms that in themselves command respect, such as democratic procedures or human rights.

By adopting a legal-constructivist approach to the EU14-Austria crisis, one is able to explore the role of legal institutions, namely Articles 6(1) and 7 TEU. Moreover, one can make more concrete and operational the claim that “the EU has an obligation to promote human rights and democracy both internally and externally, even if this means interfering in states’ domestic affairs” (Merlingen et al. 2000: 5). Obviously, a certain normative argumentation supported the EU14’s reaction against the political development in Austria in late January. It was not desirable in the EU-family with a member of a right-wing extremist/populist party at the negotiation table. That is why the EU14 primarily accused Chancellor Schüssel of breaching a behavioural and informal norm, that of keeping right-wing extremist/populist parties away from government power. The thorny issue was the new Austrian government’s commitment to EU fundamental values expressed in Article 6(1) TEU. Reckoned as a belief system or normative Gemeinschaft, where the sharing of particular institutions (or sets of norms) is a precondition for the full integration of a system of social interactions, the FPÖ in government position challenged this belief system and thus the norms giving breath to the integration process.
To sum up this discussion, the normative requirements that were raised in conjunction with the FPÖ-ÖVP government’s alleged non-compliance with Article 6(1) TEU reveal a metaphysical stream underlying the integration process, which also hedge in the Member States in a democratic political order. Still, one may ask what it is that sustains this order. Here, one could turn to procedural aspects legitimising a particular democratic, political order. If little or low legitimacy is associated with democratic procedures (such as elections), it equals a failure in incorporating and dealing with interests and values. That said, “[i]t is the procedure itself, and how it fosters democratic processes, that bears the burden of legitimation in a modern state, and this also applies to the EU” (Eriksen and Fossum 2000: 257). Drawing from Eriksen and Fossum’s argument, one may criticise the EU14 for questioning the legitimacy arising from a democratic procedure, on the one hand, and punishing the outcome of this procedure, on the other.

This chapter demonstrates that criticism of the EU14’s ‘diplomatic whipping’ of the FPÖ-ÖVP government grew stronger during the escalation phase to the point that concrete measures had to be taken to escape from the stalemate situation. The chosen strategy from the Austrian side was to deepen the crisis by indicating that a referendum on the legitimacy of the ‘sanctions’, among other things, would be organised unless the EU14 made a conciliatory move. However, the EU14 did not back down from their position. That is why the FPÖ-ÖVP government became even more convinced that there was no other option than to act ‘tit-for-tat’ towards the EU14.

To anchor this discussion theoretically, it seems that the rationalist approach has more to tell about the crisis escalation phase than the constructivist approach as both the EU14 and the FPÖ-ÖVP government held on to their national interests rather than taking action based on ideational/normative concerns with relevance for the image of the Union. The fundamental rationalist assumption is that “states act egoistically and instrumentally”, by which is meant that “they choose the behavioural option which promises to maximize their own utility” Schimmelfennig 2000: 112). Pursuing Innenpolitik in the EU political arena was simply rational behaviour, in line with domestic interests. This claim holds true for the FPÖ-ÖVP government (threatening to hold a referendum that undoubtedly would worsen the crisis with the EU14), as well as the ‘defenders’.

As mentioned earlier, Schimmelfennig’s research agenda highlights the role of rhetoric and discursive strategies in the negotiation game between the EU and the former eastern enlargement countries. One could argue that such strategies may also include bolstering of and paying lip service to EU fundamental values. With an eye to the case in question, the EU14 used Article 6(1) TEU to satisfy their own needs at different stages in the EU14-Austria crisis. Hence, the ‘diplomatic whipping’ of the FPÖ-ÖVP government was an example of advancing domestic interests disguised as ideational/normative concerns, or, for that matter, a clear example of ‘rhetorical action’ as rational action (cf. Schimmelfennig 2000: 129). Schimmelfennig’s concept of ‘rhetorical action’ is good for analysing the attempt by the ‘push
agents’, that is, the Belgian and French governments, to remind their ‘lukewarm’ partners about the normative validity of the joint protest at the time when the more or less united group began to dissolve. Clearly, the EU14 experienced a collective action problem and a threat to the consensus-reflex caused by the ‘normalisers’, who publicly declared that the ‘sanctions’ ought to be lifted within the near future. Naturally, this stance captured the media and the Austrian government’s ears.
CHAPTER SIX

The EU14-Austria crisis:
the crisis de-escalation phase

The previous chapter demonstrated how strained relationships between the EU14 and the FPÖ-ÖVP government led to an escalation of the crisis during late spring. In the face of a complete deadlock in the Council of Ministers and an Austrian veto threatening vital decisions with a bearing on the enlargement process, the EU14 agreed on a crisis de-escalation strategy by calling on a group of so-called ‘wise men’. This chapter focuses on the exit phase of the EU14-Austria crisis, where ‘wise men’ played a significant role. The first section summarises the need for a smooth exit from the stalemate situation. Focus is then shifted to the preparatory steps. It is followed by a short note on the role of ‘wise men’ in dismantling the protest. In the subsequent section, the work of the ‘wise men’ is examined. Then, after an account of the contents of the Wise Men Report, there follow comments on the EU14’s reactions to it and Austrian reactions to the lifting of the ‘sanctions’. After concluding remarks on the ‘wise men’ as a wise solution to the ‘sanctions impasse’, the chapter ends with an analysis of the crisis de-escalation phase in the EU14-Austria crisis from constructivist and rationalist perspectives.

On the need for a smooth exit from the ‘sanctions impasse’

At the end of June, the Portuguese Presidency faced a ‘race against time’ to work out an exit from the stalemate situation in order to avoid paralysis in decision-making among the EU leaders. On 27 June, the exit strategy with ‘wise men’ in focus was announced in Brussels, and it was formally accepted by the EU15 on 29 June. At that stage, the Portuguese Presidency had not secured agreement on a date to lift the ‘sanctions’. On 29 June, Chancellor Schüssel underlined that Austria’s continuing diplomatic isolation was “a dead-end street” and he criticised the EU14 for failing to set a date for putting an end to their protest. Nevertheless, he referred to the Portuguese exit proposal as “progress which we recognise”.176 It is important to observe that any agreement suggested by the EU14 would have to be endorsed by the FPÖ-ÖVP government. In other words, consensus by the EU15 was required, which could create additional difficulties.177

On 5 July, the FPÖ-ÖVP government ‘raised the stakes’ in its response to the EU14’s ostracism policy by unveiling plans for a national referendum, despite repeated pleas from the European Commission, the European Parliament, and the Member States not to go ahead with it. Chancellor Schüssel announced the decision after six hours of deliberation by a special committee including Haider, among others. The referendum should pose six questions. The first question would ask: “should the federal government… ensure by all means that the unfairly imposed sanctions on Austria be lifted immediately?” The ensuing questions would ask about the future shape the EU should take and whether it was acceptable that larger countries could ignore the will of the smaller.178 Note that the referendum threat implied that the report of the three ‘wise men’ had to deliver an exit strategy for the EU14 before the trigger date for the referendum.

Following this crisis escalation, Schüssel was “at pains to rule out words such as threat, blackmail and veto and, though asserting Austria’s rights, he insist[ed] there was no intention to deliberately slow things down” (Pat Cox in *The Irish Times on the Web*, 22 July 2000). On one occasion, he said: “The topics covered by the questions won’t end in a blockade, but quite the opposite […] We only want to change the Union in a positive way”. Schüssel put forward two possible dates on which the referendum might be held: 29 October and 26 November.179 The parliament would make the final decision on Tuesday 11 July.180 At the same time, the government announced that the referendum would be abandoned if the EU14’s ostracism policy came to an end before the referendum took place (Happold 2000: 958).

Despite Austrian opinion polls indicating that 52 % of the population considered the referendum a bad idea, Chancellor Schüssel pursued this threat. It is fair to say that he was under pressure from the FPÖ to warn against the risk of a negative referendum in autumn, unless the ‘wise men’ finished their report or the EU14 lifted the ‘sanctions’ within reasonable time (Fallend 2001: 247-248). Accordingly, there was a strong element of ‘the shadow of the future’, which the EU14 had every reason to worry about. If the ‘diplomatic whipping’ of the FPÖ-ÖVP government continued, it would pose a threat to the enlargement process. The key strategic priority of the French Presidency was to steer through a successful reform of the treaties at the summit in Nice in early December. However, the

French could not escape the problem how to solve the stalemate situation. The worst scenario was an Austrian veto. If the government turned down reforms of the EU’s institutions and decision-making procedures necessary with a view to the eastern enlargement, then it would cause a tangible break in the integration process. On the other hand, one may ask whether the FPÖ-ÖVP government would be able to continue governing if burdened by that sort of guilt.

Faced with this scenario, besides growing criticism in the media of the ‘diplomatic fiasco’, the EU14 saw no option but to work out a solution that hopefully would also mitigate this criticism. As the reaction to the presumed FPÖ-ÖVP government was swift and emotional in character, conditions for the ‘sanctions’ to be lifted were not contemplated in full in late January. To many observers, including some of the government representatives of the EU14, the protest should have been based on law and not on transient emotions. One recurring argument went that it was not proved that the FPÖ-ÖVP government actually had violated any fundamental values of the Union, yet the EU14’s diplomatic sanctions measures took effect as soon as the new government had taken office on 4 February (Nergelius 2000: 374). Furthermore, the principle of *audiatur et altera pars* was not applied by the EU14, that is, Austria was not given the right of a fair hearing. Not a single representative of the FPÖ and the ÖVP parties was allowed to face the charges before the EU14’s protest took effect. Hence there was a situation of *fait accompli*. This was clear both to all parties involved and to the political opposition in the sanctioning Member States, as is reflected in the following extract taken from the debate in the Irish Parliament on 27 June, with John Bruton, representing the political opposition, speaking:

“The Heads of Government, including the Taoiseach [Prime Minister Bertie Ahern], agreed by telephone to impose sanctions on a sovereign, democratic member of the European Union without putting the case to that country or giving its Prime Minister the opportunity to answer on behalf of his country. Diplomatic sanctions were imposed on a sovereign, democratic member of the European Union behind its back and without it being allowed to be heard.”

### Preparing the exit: the first steps

Note that “there was no unilateral breaking of the ranks” among the EU14 when the support for the ‘diplomatic whipping’ of the FPÖ-ÖVP government began to wane (Merlingen *et al.* 2001: 73). A unilateral action, a breach of the consensus-reflex, would certainly have jeopardised the image of the joint protest. Nevertheless, it is possible to identify a specific actor who

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181 For further comments, see for example Busek (2003: 11); Fischer (2003: 264); Johnson (2000: 16); Regan (2003: 372, 376); Schauer (2003: 200).

proposed the solution of using ‘wise men’ as a way out of the stalemate situation. Various sources point to the Danish Prime Minister Nyrup Rasmussen as the brain behind the idea.\textsuperscript{183} The crux for the Portuguese Presidency team was then how to co-ordinate the exit. Time was running out and the French assumption of the Presidency approached. In this context, telephone diplomacy was used again to initiate an end to the EU14’s ostracism policy. Mr Guterres confirmed that he had had some busy days calling the thirteen heads of state and government to get their approval of his choice of appointing judge Luzius Wildhaber, the President of the ECHR in Strasbourg who, in turn, would be given free hands to appoint the ‘wise men’ he preferred.\textsuperscript{184} On 29 June, the EU15 approved of the plan drawn up by the Portuguese Presidency. On the same day, following discussions with Prime Minister Guterres, Mr Wildhaber accepted the role of appointer (see Appendix 10).\textsuperscript{185}

Speculations in the media named more or less the same prominent ex-politicians as suitable candidates for the role of ‘wise men’. Among others, former Swedish Prime Minister Carl Bildt, former Belgian Prime Minister Jean-Luc Dehaene, former European Commission President Jacques Delors, former Spanish Prime Minister Felipe Gonzales, the Finnish human rights envoy Elisabeth Rehn, and former European Parliament Speaker Simone Veil.\textsuperscript{186} Finally, on 12 July, Mr Wildhaber announced the three \textit{rapporteurs}, whose political and judicial skills were well-known, namely previous Finnish President Martti Ahtisaari, former Spanish Foreign Minister and European Commissioner Marcelino Oreja, and the leading German lawyer Jochen Frowein (Rotter 2003: 394).\textsuperscript{187}

In other words, the three ‘wise men’ received a mandate from the EU14 through the President of the ECHR. Concerning this process, Mr Guterres expressed his satisfaction with the way Mr Wildhaber had carried out his task. The bilateral nature of the EU14’s protest and the importance of leaving the \textit{acquis communautaire} ‘untouched’ excluded the ECJ from playing an active role. Hence, there was no other alternative but to turn to the ECHR, which, as Mr Guterres explained, has particular competence in issues concerning human rights, racism, and xenophobia.\textsuperscript{188}

Concerning the time frame, there was a pressure on the ‘wise men’ that the sooner their conclusions were presented, the better for everybody involved in the EU14-Austria crisis. If the report concluded that Austria was

\textsuperscript{183} Interviews with Mr António Guterres in Lisbon 24 July 2002 and Mr Niels Helveg Petersen in Copenhagen 21 February 2003.

\textsuperscript{184} Interview with Mr António Guterres in Lisbon 24 July 2002.

\textsuperscript{185} Interview with the President of the ECHR Luzius Wildhaber in Strasbourg 26 March 2002.

\textsuperscript{186} See “Martti Ahtisaari asked to take role as Austria monitor”, \textit{Helsingin Sanomat} (International Edition), 11 June 2000.

\textsuperscript{187} See Appendix 11 for the press release on the appointment of the ‘wise men’.

\textsuperscript{188} It should be said that both Mr Guterres and Mr Wildhaber confirmed their smooth relationship during the exit phase. Interviews with Mr António Guterres in Lisbon 24 July 2002 and Mr Luzius Wildhaber, President of the ECHR, in Strasbourg 26 March 2002.
complying with EU standards of human rights and democratic governance, then the EU14’s ostracism policy would come to an end, though probably not until the beginning of 2001 when the EU Presidency had passed from France to Sweden. It is also important to observe that Chancellor Schüssel reluctantly agreed to the proposals in the ‘exit package’ (but what else could he do?), while representatives from the FPÖ called them unacceptable.\(^{189}\)

**On the role of ‘wise men’ in dismantling the protest**

The problem for the EU14 was *where* to look for an exit from the ‘sanctions impasse’. When the Portuguese Presidency announced the imposition of diplomatic sanctions measures against the new Austrian government, nothing was said about the criteria or means necessary for ending the ‘boycott’. How, then, did the EU14 finally break the uneasy «impasse diplomatique» (Dauvergne 2000: 5, cf. Vitali 2000: 633)? As mentioned previously, it was decided to call on ‘wise men’.\(^{190}\) One may argue that appointing ‘wise men’ corresponds with the creation of purpose-built “epistemic communities”. An epistemic community is a network composed of professionals, often lawyers, economists, political scientists, former ministers or heads of state and government. What is particularly interesting about ‘wise men’ are the assumptions of expertise, independence, qualified judgements and other qualities along these lines that seem to characterise the designated individuals in relation to their mandate. With their recognised diplomatic skills, and sometimes even specific competence in the issue at stake, the ‘wise men’ can help define problems, identify compromises, and supply ‘expert’ arguments to justify political choices. That said, they are often seen as ‘credibility-promoters’ for the way the dilemma or crisis will be resolved as they are charged with prospective tasks, among others to recommend alternative ways (procedures, rules) of reacting, proceed with problem-solving, and the like.

In the context of the EU14-Austria crisis, one may ask whether the solution of appointing ‘wise men’ was anything more than a subterfuge and a typical EU face-saver that made the situation even more farcical than before (Vitali 2000: 633). Perhaps even more important, was not the *Wise Men Report* a means of covering up actual disagreement between the Member States on the issue of lifting the ‘sanctions’? It is clear that the French were reluctant in this respect, whereas the Danes wanted a swift de-escalation of the crisis between Austria and the EU14. One may also ask *why* it was considered unthinkable to put an end to the ostracism policy by simply issuing a joint statement. The obvious reason is the triumph this would bring to the FPÖ and Haider himself. Moreover, it would reveal the failure of retaining a

\(^{189}\) With reference to Rotter (2003: 395): „Ich habe die Prozedur der drei Weisen nie akzeptiert, aber ich kooperiere mit ihnen“, this was Chancellor Schüssel’s comment during an interview with the newspaper *Kleinen Zeitung* on 27 July 2000.

protest backed-up by numerous arguments that would suddenly be seen as quite shallow. Summing up, one may claim that the solution to ask for an independent report preserved the credibility of the EU14’s ‘diplomatic whipping’ of the FPÖ-ÖVP government, while it also saved the face of the sanctioning political leaders (Merlingen et al. 2001: 73).

The work of the ‘wise men’

On 20 July, the ‘wise men’ met in Helsinki to discuss working methods. On the basis of their proposals, the Austrian government arranged a series of meetings to be held in Vienna from the evening of 27 July until the evening of Sunday 30 July. In meetings with members of the FPÖ-ÖVP government, political parties, and representatives from civil society (among others non-governmental organisations (NGOs), representatives from churches and the Jewish community), the ‘wise men’ collected relevant information about Austria’s political climate (Schorkopf 2001: 195-199). These meetings were a solid foundation for a thorough investigation of the government’s term in office as well as the effects of the EU14’s diplomatic sanctions measures on its performance. As stated in the press release from the ‘wise men’ following the meetings in Vienna 28-30 July:

“During the last three days we had extensive discussions, which forms [sic!] a good basis for the continuation of our work. We are waiting for additional information to be sent to us. No further visits to Vienna are being planned at the moment.”

At a later stage, on 29 August at the Max-Planck-Institute for Comparative Public Law and International Law in Heidelberg, at the request of the Platform of European Social Non Governmental Organizations, the ‘wise men’ met representatives of Austrian NGOs who presented information concerning areas mentioned in the mandate. In the afternoon, the ‘wise men’ met, at her request, the party leader of the FPÖ and Vice-Chancellor Susanne Riess-Passer (cf. Wise Men Report, preamble). She even told journalists: “In the morning there were guests here who do not give a very positive view of Austria. I wanted to balance that”.

It should be pointed out that the perhaps most important actor in the EU14-Austria crisis was not included in the list of meetings: Haider himself. As a matter of fact, the ‘wise men’ had received an invitation to visit Carinthia, but they decided to turn down Haider’s proposal. Careful about maintaining a strictly neutral profile, the ‘wise men’ refused to accept gifts from FPÖ representatives such as a CD of folk songs, a promotional video of

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191 See Appendix 12.
193 See Appendix 13.
Haider’s rule in Carinthia, and even the “Jörgi bear”. Meeting Chancellor Schüssel, he emphasised that in the field of human rights and the protection of minorities Austria had one of the best records (high standards) in Europe. As indicated in the meeting schedule, the ‘wise men’ also met the leader of the SPÖ, Alfred Gusenbauer. While raising strong personal criticism of the FPÖ, denouncing it as “an unchanged rightwing populist party”, thereby sending a signal to the ‘wise men’ to take this aspect into account in their report, Mr Gusenbauer also advised them to recommend a dismantling of the ‘sanctions’.195

What was said in the Wise Men Report?

During their visit in Vienna, the ‘wise men’ found evidence of how the perception among many Austrians that the country had been attacked had fuelled a nationalist backlash. An argument repeated by FPÖ and ÖVP politicians was that alleged breaches of EU fundamental values had led to an EU-orchestrated violation of Austria’s fundamental right as a sovereign state freely to elect its own government. In an obvious nod to the ‘sanctions impasse’, the Wise Men Report recommended the “introduction of preventive and monitoring procedures into Article 7 of the EU Treaty, so that a situation similar to the current situation in Austria would be dealt with within the EU from the very start” (Wise Men Report, point 117).196 The next chapter takes a close look at the amendments to Article 7 TEU, as the EU14-Austria crisis gave rise to a more elaborated sanctions procedure in the event that an individual Member State is about to deviate from standards of behaviour as a member of the EU-family.

The ‘wise men’ underlined that the diplomatic sanctions measures had served a useful purpose and had led to a “heightening sensibility” about civil rights, both in Austria and in the rest of the EU. However, they were critical of the haste with which they had been introduced. That is why the report recommended lifting the ‘sanctions’, which certainly had “energized the civil society to defend [EU fundamental] values”, but which “if continued, would become counterproductive” as they had “stirred up national feelings” (Wise Men Report, points 115-116). It is remarkable that the ‘wise men’ recommended the abolition of the sanctions measures because they would be “counterproductive”. Representatives of the Austrian opposition parties had, in fact, pointed out during visits abroad in April and May that the ‘sanctions’ were already ”counterproductive” (Gehler 2002: 204). Still, the ‘wise men’ did not qualify the EU14’s ostracism policy on the FPÖ-ÖVP government as unnecessary or excessive. As Ménendez (2000: 2) points out, their evaluation was more along the lines of “an experience from which the Union should learn”.

196 For an elaborated legal analysis of the Wise Men Report, see Adamovich (2001).
With the support of their dual mandate, the ‘wise men’ concluded that the Austrian government’s policies on strengthening the rights of minorities, refugees and immigrants conformed well with EU fundamental values. Their evaluation of the political nature of the FPÖ was much less benign; the FPÖ remained a party which favoured and instrumentalised xenophobic feelings (cf. Hummer 2000: 40-41; Ménendez 2000: 2). Accordingly, a large share of the report concerned the political nature of the FPÖ. As Gärtner (2002: 349) puts it, “[n]ot surprisingly, the Austrian government got off lightly, and not surprisingly, too, the FPÖ was criticized seriously (though in a very diplomatic way)”. For example, it was said that the FPÖ ministers had “by and large worked according to the Government’s commitments” (Wise Men Report, point 113). However, the FPÖ was described as a “right wing populist party with radical elements”, which had “exploited and enforced xenophobic sentiments in campaigns” and thereby “created an atmosphere in which openly expressed remarks against foreigners became acceptable” (Wise Men Report, point 110). In particular, the ‘wise men’ commented on the continuous use of “ambiguous language” by leading members of the FPÖ (Wise Men Report, point 88).

Furthermore, attempts by prominent FPÖ politicians “to silence or even to criminalise political opponents if they criticise the Austrian Government” were pointed out as problematic, that is, “the frequent use of libel procedures against individuals” (Wise Men Report, point 93). The FPÖ Minister of Justice, Dieter Böhmdorfer, was the only member of the government to be mentioned critically in the report (cf. Wise Men Report, point 104). He had not sufficiently defended EU fundamental values when Haider had suggested prosecuting members of the opposition denounced as Vernaderer (‘traitors to Austria’) (Gehler 2002: 205; Puntscher-Riekmann 2003: 121). Böhmdorfer attributed this to “the very skilled propaganda of some participants in public life”, meaning various NGOs critical of the government. He also said that he had offered additional information but that the ‘wise men’ had refused, just as they had refused to talk to Haider (Gehler 2002: 205).

Perhaps the most important conclusion from the Wise Men Report was the shared positive assessment of the FPÖ-ÖVP government’s attitude to “Europe’s common values” (Wise Men Report, point 108). Its credible commitment in this regard was seen as a sufficient basis for the unconditional lifting of the ‘sanctions’. It was said in the report that “respect in particular for the rights of minorities, refugees and immigrants is not inferior to that of the other European Union Member States” (ibid.). On the contrary, Austria’s treatment of minorities “can be considered to be higher than those [standards] applied in many other EU countries” (ibid.).

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197 Cf. Wise Men Report, point 103: “It can only be concluded that the systematic use of libel procedures to suppress criticism of ambiguous statements gives rise to very serious concern in the context of the political debate pursued by the FPO in Austria, in particular after the FPO forms part of the Federal Austrian Government”.

198 Recognised minorities are (presented according to size): Croats, Slovenes, Hungarians, Czechs, Slovaks, and Roma.
The ‘wise men’ also found that “the standard of the activities by the Government in order to effectuate a self-critical scrutiny of the past and to combat the obscuring of the crimes of the National Socialist regime and any kind of direct or indirect discrimination and xenophobic prejudices reflect common European values” (Wise Men Report, point 109). Evidence of this is that in August, the parliament passed a law that would regulate financial compensation for forced workers during World War II (Fallend 2001: 247). Moreover, negotiations had opened to regulate the grant of compensation to Jews, whose properties had been confiscated in the Nazi years (ibid.).

The EU14’s reactions to the Wise Men Report

The Wise Men Report was published in Paris on 8 September. It thus fell to the French to announce the lifting of the ‘sanctions’. This was somewhat ironic, as French politicians had persistently taken a harsh stance against the FPÖ-ÖVP government. Now, they had to be in the lead when it came to the climb-down. Thus, the minister for European affairs Pierre Moscovici declared on 11 September that the ‘diplomatic whipping’ would end as soon as consultations with the heads of state and government concerned were completed. Just as in the warning phase, when the decision on diplomatic sanctions measures against the expected FPÖ-ÖVP government was taken, telephone diplomacy was again used “during the week-end of September 9 and 10” (Gehler 2002: 206). It is said that the British were ready to lift the ‘sanctions’ at once and Prime Minister Blair were one of those trying to persuade President Chirac to accept the recommendation of the ‘wise men’ (ibid.).

Evidently, the reactions among the EU14 varied as to the content of the Wise Men Report and what practical consequences it might lead to. Diplomats had leaked to the media that the EU14 were likely to create a mechanism to monitor the future behaviour of the FPÖ. Another rumour concerned the idea of facilitating the use of Article 7 TEU for preventive action in situations of a Member State’s alleged non-compliance with EU fundamental values.

The Belgian Prime Minister and Foreign Minister called for a prolonged monitoring of the political situation in Austria in return for agreeing to lift the ‘sanctions’ (Franck 2000: 18). However, it fell on deaf ears in the EU14, especially after Schüssel’s warning that the much feared referendum would take place if the EU14 decided to include some sort of monitoring mechanism in their dealings with Austria. The Danish government, facing a crucial referendum on the euro on 28 September, were pressing for a speedy ‘exit’. It was hoped that a smooth lifting of the ‘sanctions’ would ease the

200 Ibid.
feeling of some Danes that the EU14 had bullied Austria on an internal matter. Luxembourg’s Prime Minister had already declared that an overwhelming majority of the EU14 wished to see an end to the ‘sanctions’. The German government, however, remained silent. The only message from Chancellor Schröder and Foreign Minister Fischer was that the Wise Men Report would be examined, whereas the CDU and the FDP (Freien Demokratischen Partei) qualified the EU14’s ‘diplomatic whipping’ of the FPÖ-OVP government a “foreign policy Waterloo” and a “disgrace”. Furthermore, these two opposition parties demanded that the political leadership should apologise for having participated in the punishing of the Austrian government. This was something that Fischer was not at all prepared to do (he is said to have replied in the parliament, “Like hell I will!”), as the ‘sanctions’, according to him, had been justified (Gehler 2002: 206).

It is Gehler’s (2002: 206) analysis that “[a]s a result of pressure from the smaller and middle-sized states (Luxembourg, Denmark, Finland, Greece, and Italy) and through the mediation of Great Britain, the […] driving forces behind the “sanctions” (Belgium, Germany, and France) finally had to give in”. On 12 September at 7:00 p.m., the EU14 announced the immediate abolition of the sanctions. The communiqué by the French Presidency stated that the EU14 had taken note of the report (see Appendix 14). It also declared that the EU14 considered the diplomatic sanctions measures to have been useful but that they could now be lifted, as it would be counterproductive if they were to be applied any longer. The FPÖ-OVP government had not violated EU fundamental values, but the communiqué expressed a reservation concerning the development of the FPÖ, which was deemed to be uncertain. This uncertainty, in addition to the political nature of the party, was a reason for serious concern. Therefore, it was recommended that great vigilance should be maintained in respect of the FPÖ and its influence on the government. Finally, it was hoped that the recommendation from the ‘wise men’ to introduce an ‘early warning’ procedure to prevent similar ‘Austria cases’ in the future, would lead to further reflections along these lines.

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202 Marlene Wind, Copenhagen University, argued that the fear of a possible ‘no’ to the euro worried the other political leaders from the EU14 to the point that finally, no formal, continuous monitoring of the FPÖ-OVP government was mentioned. Were it not for the Danish EMU-referendum, Belgium and France would certainly have pressed for a monitoring mechanism to be applied. See “Østrig-sagen: Dansk euro-ja vigtigst”, Jyllands-Posten, 14 September 2000.

203 It is worth mentioning that the Bavarian Premier Edmund Stoiber from the CSU, who had demanded an end to the EU14’s ‘diplomatic whipping’ and demonstratively backed Austria, received a friendly welcome in Vienna on 7 September and was awarded a medal for his “support in difficult times”. This was the first official visit by a high-ranking politician from an EU Member State since the ostracism policy was launched in early February (Gehler 2002: 204).
Austrian reactions to the lifting of the ‘sanctions’

On the very evening of 8 September when the ‘wise men’ made public their report, the FPÖ-ÖVP government demanded a rapid abolition of the EU14’s ostracism policy. If this did not take place, it would pass a government resolution launching the referendum, *inter alia* on the legitimacy of the diplomatic sanctions measures. As it turned out, the ‘sanctions’ were lifted on 12 September. Especially from the opposition parties’ side there was a certain longing for the ‘return of domestic politics’ (Fallend 2001: 248). The FPÖ’s former but still *de facto* leader Haider welcomed the upcoming lifting of the ‘sanctions’ by making another controversial statement on immigration. Speaking at the Zagreb autumn fair, he lived up to his reputation as an agitator by issuing warnings that cheap labour from Eastern Europe would flood Austria and then the rest of Western Europe. At the same time, President Klestil appealed to President Chirac to initiate an upgrading of the EU14’s relations with Austria, whereas politicians from the opposition parties urged outside observers to keep an eye on Haider.204

Conclusions: ‘wise men’ as a wise solution to the ‘sanctions impasse’

It is clear that the EU14’s ostracism policy was problematic because it contained no means of exit, once this issue had been placed on the negotiating table in the European Council (Busek 2003: 11; Fischer 2003: 265). To quote Falkner (2001: 13), “its open-ended character and the lack of an exit option other than a breakdown of the Austrian centre-right government was striking”. In late spring, the stalemate situation in the Council of Ministers was an indisputable fact. To counter the EU14’s ‘diplomatic whipping’, the FPÖ-ÖVP government threatened to use Austria’s veto to block more or less vital decisions in the Council of Ministers. A serious threat was directed against the institutional reforms necessary in preparation for the eastern enlargement. In June, it was obvious that the EU14 were in need of a smooth exit. To arrive at a de-esclation of the crisis, the Portuguese Prime Minister contacted the President of the ECHR Luzius Wildhaber, who was willing to appoint so-called ‘wise men’. Their mission was to determine whether the time was ripe or not to dismantle the diplomatic sanctions measures after a period of evaluation and assessment. In mid-July the EU14 and the Austrian government accepted judge Wildhaber’s choice of Martti Ahtisaari, Jochen Frowein, and Marcelino Öreja as ‘wise men’. Later in July, the ‘wise men’ interviewed a large number of Austrian representatives from the political parties, various organisations, and religious communities. On 8 September, the ‘wise men’ handed their report to President Chirac, as France had taken over the Presidency chair on 1 July. The overall conclusion of the report stated that the problem was not the government as a whole, but the “ambiguous language” used by the FPÖ, among others. It

204 “EU ready to drop its sanctions on Austria”, *The Guardian*, 12 September 2000.
also pointed out that the EU should continue to be vigilant concerning the political development in Austria. Furthermore, the ‘wise men’ argued in favour of dismantling the sanctions measures and criticised their nature. Certainly, the ‘sanctions’ had raised the sensitivity towards EU fundamental values in Austria and elsewhere in Europe, but their retention would not produce a positive effect since it would “awaken nationalistic sentiments in Austria”.

After intensive telephone diplomacy during the week-end 9-10 September, the heads of state and government finally decided to lift the ban on Austria unconditionally on 12 September. It is fair to say that the Wise Men Report provided the EU14 with a ‘way out’ of the stalemate situation without losing face. According to Gehler (2002: 202), the appointment of ‘wise men’ was “the expression of a failed policy and of the increasing helplessness of the EU 14, which was now at a complete loss”. He even claims that the EU14 “indirectly admitted their failure by relying on […] elder statesmen to help them find a way out of the hopelessly muddled situation” (ibid.).

**Analysing the crisis de-escalation phase in the EU14-Austria crisis from constructivist and rationalist perspectives**

Why the pressure to lift the ‘sanctions’ against the FPÖ-ÖVP government? On the basis of empirical evidence, it seems that the rationalist approach is more valid than the constructivist approach in explaining in theoretical terms the shift from crisis escalation to crisis de-escalation.

To answer the question above, the principal answer from the rationalist perspective is that the EU14’s ‘diplomatic whipping’ was getting too costly in political terms for some of the sanctioning capitals, most notably Denmark. Domestic interests thus became more important than defending the ‘unobjectionable’ status of EU fundamental values. Another pressure was the Austrian resolve to act ‘tit-for-tat’ towards the EU14. This was intensified because it took a long while before there was a clear sign from the Portuguese Presidency that a solution to the stalemate situation was in the making. It should be underlined that the Austrians repeatedly reminded the EU14 that they were to blame for the awkward situation. For example, Vice-Chancellor Riess-Passer said in an interview with the magazine Format: “if the sanctions are not removed or are only temporarily lifted by the Biarritz summit, a referendum will be carried out”.205 The EU14 eventually agreed on a solution that, according to Gehler (2002: 209), was an instance of “intergovernmentalization through the backdoor”. It is clear that appointing ‘wise men’ is not an institutionalised process, that is, there is no specific procedure at play. Rather, it happens *ad hoc* and puts individuals in

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focus. Furthermore, the appointment is steered by the Member States, who need to rely on the consensus-reflex for any decision being made.

To sum up, it makes more sense to approach the crisis de-escalation phase in the EU14-Austria crisis from the rationalist paradigm. Thus, the constructivist perspective recedes in the background as rational interests and ‘real’ (not imagined) time pressure outweighed ideational/normative concerns whether the ‘sanctions’ ought to be retained for the sake of defending the ‘unobjectionable’ status of EU fundamental values.
CHAPTER SEVEN

The EU14-Austria crisis: the consequences phase

The Wise Men Report criticised the political discourse of the FPÖ as well as the EU14’s rushed protest against the development in Austrian politics in late January. After its publication, the EU14 realised that they could not include democratic-procedural question marks regarding their protest as a point on the IGC agenda for the Nice summit in early December. Issues of institutional reform and the EU’s eastern enlargement were much more important than discussing ways to prevent a future ‘EU14-Austria crisis’. Nevertheless, there was a need for reviewing the existing sanctions procedure expressed in Article 7 TEU, as the EU14 were strongly criticised by the FPÖ-ÖVP government, the political opposition in the sanctioning Member States, and the media, among others, for not taking action in line with that Treaty article. Consequently, this was addressed at the informal meeting of the European Council in Biarritz 13-14 October.

This chapter argues that the mixed experiences from the EU14’s ostracism policy on the FPÖ-ÖVP government contributed to the revision of Article 7 TEU (cf. Schauer 2003: 207-211). Ante-Nice, Article 7 TEU was more of a final step. What the crisis between the EU14 and Austria revealed was the need for an Alarmmechanismus addressing the situation of potential norm violation (Höll 2000: 31). Accordingly, there were calls for a warning mechanism that could be used in a more progressive way; an escalation and de-escalation procedure coupled with an exit strategy.

The chapter begins by summarising different proposals from Austria, Belgium, the European Commission, and the Portuguese Presidency on how to amend Article 7 TEU. It is followed by a comparison between Article 7 TEU in the Amsterdam and Nice Treaty versions. Next, the role of ‘wise men’ in the revised Article 7 TEU is examined. In addition, the focus is put on changes of importance for the European Commission in relation to the Treaty article. The subsequent section summarises the ‘cleaning up’ negotiation in Biarritz. The chapter ends with an analysis of the consequences phase in the EU14-Austria crisis from constructivist and rationalist perspectives.

Different proposals for revising Article 7 TEU

The Presidency can be described as the engine driving the IGC. Its responsibilities include setting the overall pace of work, planning and organising the agenda, producing discussion papers and brokering compromises. While
other Member States, the European Commission, and the European Parliament produce papers clarifying their positions in general terms or on specific points, it is the Presidency working papers which constitute the negotiating basis for the IGC. During the IGC 2000, the French representatives in the Presidency chair were said to behave arrogantly, seeking to demonstrate France’s power in determining the future shape of the integration process (Costa et al. 2003). This also concerned the amendments to Article 7 TEU at the Biarritz summit 13-14 October. When discussing possible amendments to the article, France, as Presidency, nonetheless repeatedly took its departure from its own national proposal although there were several others on the table (Schauer 2003: 209).

In the framework for the IGC 2000, four proposals were presented for inserting an additional provision into Article 7 to establish an early warning procedure for determining the existence in a Member State of a risk of a serious breach of EU fundamental values. It started with the Belgian “Proposal for an amendment to Article 7 of the TEU” delivered on 2 May (see Appendix 15). On 6 June, the Portuguese Presidency presented a “Draft new paragraph to be added at the beginning of Article 7 of the TEU” (see Appendix 16). One day later, on 7 June, Austria’s representative Gregor Woschnagg submitted to the Group of Representatives of the Governments of the Member States at the IGC a draft amendment to Article 7 TEU (see Appendix 17). It also included a list of reasons for revising Article 7 TEU (see Appendix 18). In short, the Austrian proposal was in favour of giving a stronger role for the European Commission to monitor the Member States’ compliance with EU fundamental values. On 4 October, the European Commission adopted a proposal for amending Article 7 TEU (see Appendix 19). In the press release the French Commissioner Michel Barnier said:206

“Earlier this year I already mentioned that it would be useful to add a preventive mechanism to Article 7 of the Treaty on European Union. This Article currently makes it possible only to penalise collectively violations of fundamental rights, but does not permit collective action to prevent such violations. I firmly believe that the Member States of the Union should collectively be given the means to engage in a preventive political dialogue.”207

There were two issues where the Member States held different opinions: the question of the procedure for making a determination of norm violation, on the one hand, and the possibility of judicial review of any decision taken by the European Council, on the other. On the first point, the French Presidency and Belgium, among others, favoured qualified majority voting (QMV) (Schauer 2003: 209). However, the majority of the Member States

206 Mr Barnier was European Commissioner (1999-2004) with responsibility for regional policy and the reform of the EU institutions.
207 See “Intergovernmental Conference: the Commission proposes an addition to Article 7 of the Treaty on respect for democratic values”, IP/00/1116, Brussels 4 October 2000.
deemed QMV inappropriate for fundamental decisions of this sort for which each Member State’s vote should count equally. 208 Those Member States initially reluctant to contemplate the inclusion of such a provision argued that, in any case, a more stringent voting procedure should be used, without resorting to the QMV principle. A compromise was found on the basis of four-fifths of the members of the European Council, an idea originally proposed by the Portuguese Presidency. This reinforced majority means that in a Union comprising more than 21 Member States, a determination requires a minimum of unanimity minus three (including the targeted Member State).

As far as judicial review was concerned, the FPÖ-ÖVP government’s approval of the revised Article 7 TEU was conditioned on the acceptance of its proposal for an amendment to Article 46 TEU. 209 Henceforth, Article 46 TEU extend the jurisdiction of the ECJ to cover the purely procedural stipulations in Article 7 TEU, with the ECJ acting at the request of the targeted Member State within one month from the date of the determination by the European Council provided for in that article.

A comparison between the trigger mechanisms for Article 7 TEU in the Amsterdam and Nice Treaty versions

Against the background of the four proposals for amending Article 7 TEU, the Ministerial Conclave of the IGC were asked to give their opinion on the following questions at the Biarritz summit 13-14 October: 210

(i) Principle: Should Article 7 of the Treaty include a provision allowing for the determination of the existence of a threatened breach of the fundamental principles?

(ii) Activation procedure: need for a prior report? Origin of the initiative? Procedures for taking a decision to determine that there is a threat of a breach?

(iii) Recommendations: should the Council be able to address recommendations to the Member State concerned?

(iv) Rights of the State concerned: should the concerned Member State’s ability to be heard and offer its observations be expressly provided for?

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209 See CONFER 4748/00.

210 See CONFER 4782/00.
(v) Possible amendment to the current provisions of Article 7: do other current provisions of Article 7 need to be amended?

It is clear that these questions were taken into account in the final wording of Article 7 TEU. The following section presents a comparison between Article 7 TEU in the Amsterdam (see Appendix 20) and Nice (see Appendix 21) Treaty versions, with an eye to the trigger mechanisms for launching the sanctions procedure.211

Figure 7.1: Article 7.1 TEU in the Amsterdam and Nice Treaty versions.

<table>
<thead>
<tr>
<th>Article 7 Treaty of Amsterdam</th>
<th>Article 7 Treaty of Nice</th>
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<tr>
<td>1. The Council, meeting in the composition of the Heads of State or Government and acting by unanimity on a proposal by one third of the Member States or by the Commission and after obtaining the assent of the European Parliament, may determine the existence of a serious and persistent breach by a Member State of principles mentioned in Article 6(1), after inviting the government of the Member State in question to submit its observations.</td>
<td>1. On a reasoned proposal by one third of the Member States, by the European Parliament or by the Commission, the Council, acting by a majority of four–fifths of its members after obtaining the assent of the European Parliament, may determine that there is a clear risk of a serious breach by a Member State of principles mentioned in Article 6(1), and address appropriate recommendations to that State. Before making such a determination, the Council shall hear the Member State in question and, acting in accordance with the same procedure, may call on independent persons to submit within a reasonable time limit a report on the situation in the Member State in question. The Council shall regularly verify that the grounds on which such a determination was made continue to apply.</td>
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With the Amsterdam Treaty of 1997 a new Article, Article 7 TEU, was created. By spelling out a sanctions procedure, it aimed to ensure Member States’ compliance with the values of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, which constitute the foundation of the political Union. The procedure was triggered by a unanimous determination of the European Council meeting in the composition of heads of state or government, as to the existence of “a serious and persistent breach” by a Member State of Article 6(1) TEU (Dashwood 2001: 232). As a second step, the European Council acting by a qualified majority (disregarding the vote of the Member State in question) could suspend certain

of the rights (the right to give a vote) deriving from the application of the Treaty to the Member State in question (cf. Article 7(2) TEU).

In comparison with the ‘old’ Article 7 TEU, the amended article adopted at the Nice summit enables the Member States to take preventive action when there is a “clear risk” of violations of Article 6(1) TEU. This implies that it is not up to the protesting Member States to present any evidence of a clear breach of the ‘unobjectionable’ norm. The accused Member State, in other words, has the burden of proof to show that it is innocent. Not just a “breach” but a merely threatened breach is enough to unleash the sanctions procedure. The crux is that nobody seems to know what constitutes a “clear risk”. One may argue that this should not be determined arbitrarily by the Member States themselves. The problem is how to determine objectively the kind of circumstances in which the early warning procedure should be activated. After all, punishing a Member State is very sensitive in political terms because the costs could actually be higher than the actual gains, for example, growing unpopularity of government representatives in the domestic arena.

Today, the prescribed procedure is that, on a “reasoned proposal” by one third of the Member States, the European Parliament or the Commission, the European Council will act by a majority of four-fifths of its members, after obtaining the assent of the Parliament. Before such a determination is made, the Member State concerned must be given a hearing, and the European Council may (by the same procedure) call on “independent persons” to submit to it, within a reasonable time limit, a report on the situation in that Member State (Dashwood 2001: 232). Dashwood (2001: 233) argues that the criterion of a “reasoned proposal” is a unique feature of the ‘new’ Article 7 TEU. The normal requirement for regulations, directives, and decisions in accordance with Article 253 TEU is that, in their definitive form, those acts must state the reasons on which they are based.212 Dashwood claims that in the case of Article 7 Treaty of Nice, it seems as if the proposal as such must be formally reasoned: an explanatory memorandum of the kind that accompanies Commission proposals would not do.

Another novel feature of Article 7 TEU is that the European Council can be seized of a proposal directly by the European Parliament (Schauer 2003: 210; Schmitt von Sydow 2001: 302). In other words, the European Parliament has the right “to initiate proceedings against a Member State in addition to its existing powers under the Treaty of Amsterdam to give or withhold assent, always acting by a qualified majority of two-thirds” (Duff 2000: 16).

With the wording of the ‘old’ Article 7 TEU, the pressure for consensus among the Member States was considerable, demanding a majority of 14

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212 Article 253 TEU says: “Regulations, directives and decisions adopted jointly by the European Parliament and the Council, and such acts adopted by the Council or the Commission, shall state the reasons on which they are based and shall refer to any proposals or opinions which were required to be obtained pursuant to this Treaty.”
against 1 to unleash the sanctions procedure. After the Nice summit, the new provisions enable measures to be taken with a smaller majority. As a consequence, even if the deviant state has two friends in the European Council it will not be saved. Today, one third of the Member States can ask for actions to be taken and a majority of four-fifths can launch them.

It is Dashwood’s argument that the ‘old’ article certainly had the merit of demonstrating, particularly for the benefit of the candidate countries where the rule of law was not fully implemented, that the Union is serious about upholding its fundamental values. However, the requirement of unanimity at the highest level of decision-making in the EU was likely to stand in the way of a determination of an actual breach of EU fundamental values. The reason is that “any member state in the dock should have been able to find at least one friend willing to condone its behaviour” (Dashwood 2001: 233). On the grounds of these flaws, Dashwood welcomes the amended article 7 TEU. He takes a positive stance not only because prevention is better than cure, but also because there could be a realistic prospect of securing the requisite four-fifths majority for a determination of a serious “risk” of breach in a well documented case. In view of the circumstances in which the procedure might be activated, its unusual features appear justifiable, Dashwood claims (ibid).

The role of ‘wise men’ in the revised Article 7 TEU

It is clear that the EU14’s protest against the political development in Austrian politics was launched without any viable exit provided for. This important lacuna meant an additional source of trouble over and above the already debatable nature of the sanctions measures. Against this background, it should not be surprising that the Wise Men Report had a significant impact on the precise wording of the ‘new’ article 7 TEU. This report recommended an “introduction of preventive and monitoring procedures into Article 7 of the EU Treaty, so that a situation similar to the current situation in Austria would be dealt with within the EU from the very start” (Wise Men Report 2000: 34; cf. Schauer 203: 208). Today, there is an option to commission a committee of independent experts, that is, ‘wise men’. Their task is to interview significant actors, provide evaluations, and draw conclusions from the current state of politics in the Member State being investigated. Thus, the EU14-Austria crisis created a precedent by including the role of ‘wise men’ as an option for joint problem-solving in the Union when one of its Member States allegedly deviates from compliance with EU fundamental values. Accordingly, in the ‘new’ Article 7 TEU, the European Council is given formal authorisation to obtain an independent report on the situation in the ‘deviant’ Member State before it takes action. As Dashwood (2001: 233) points out, this could prove a useful device in cases where opinions within the European Council are sharply divided, and especially if the European Parliament has taken the initiative.

However, one may have doubts about the exclusive right of the European Council to decide on ‘wise men’ for analysing the political situation in
the ‘deviant’ Member State (Cramér and Wrange 2001: 58-59). Article 7 TEU leaves scope for individuals to act as ‘guards’ of presumed ‘unobjectionable’ norms, although in collaboration with the Council of Ministers, the European Council and the European Commission. This study demonstrates that the use of ‘wise men’ is a deft, and perhaps also the preferred, intergovernmentalist exit strategy from a politically expensive stalemate situation. Arguably, it was not on the grounds of the report itself that all Member States agreed to entrust the scrutiny of compliance with EU fundamental values to the judgement of a group of independent persons. An anonymous source pointed out that the French, in particular, had high stakes in the appointment procedure. They strongly favoured, and even suggested, Jacques Delors (the former President of the European Commission) as their candidate for one of the three places in the committee.213 Against the background of the EU14-Austria crisis, one may assume that the use of ‘wise men’ could imply a greater risk that considerations of personal prestige might predominate over Union-wide concerns.

To round off this discussion, one may doubt whether the potential appointment of ‘wise men’ in the future will prove to be as wise a solution as it was in the Austrian case (Schauer 2003: 211). Is there not a risk that some ‘wise men’ might be considered ‘wiser’ than others when it comes to investigating such a sensitive issue as the respect for Article 6(1) TEU on behalf of the Union? What if the question of appointment should develop into a conflict in which political prestige and alleged (in)appropriateness are in focus? Arguably, this conflict would take place at two levels. First, in the domestic arena various factors such as political preferences, sex, and international experience might be important. Second, in the EU arena there might be rivalry between Member States, for example, small versus big Member States, old versus newly-joined Member States, et cetera. Obviously, such a challenge is even more difficult for the heads of state and government to handle in the enlarged Union of twenty-five Member States.

The European Commission and the revised Article 7 TEU

Throughout the EU14-Austria crisis, the Commission President Romano Prodi did little to hide his frustration over the EU14’s flagrant sidestepping of ‘his’ institution, leaving it as no more than a reactive actor to the initiatives launched by the Member States and co-ordinated through the Portuguese Presidency. It therefore makes sense to argue that the European Commission was bound to have a strong incentive to leave its fingerprints on the outcome of the EU14-Austria crisis.

According to Gehler (2002: 209), the EU14’s chosen exit strategy was an instance of “intergovernmentalization of EU policy through the backdoor” because the European Commission was sidestepped. Among others, its task of serving as the ‘guardian of the treaties’ was ignored (Leidenmühler 2003: 213 Anonymous source.)
Against this background, it is striking that the Nice Treaty has weakened the European Commission’s mission to supervise the Member States’ compliance with Article 6(1) TEU. Here, it is worth noticing that the Austrian proposal put forward during the IGC 2000 would have strengthened the role of the European Commission, generally considered as a neutral observer. As it turned out, anxious about avoiding a supranational monitoring mechanism, the fifteen Member States opted for a partly new framework (the role of ‘wise men’), *ad hoc* in nature and based on intergovernmental premises partly outside the EU’s institutions. Cramér and Wrangel (2001: 58) argue that this was part of an ongoing trend where the European Council sought to strengthen its position in relation to the European Commission and the European Parliament.

**Conclusions: ‘cleaning up’ negotiation in Biarritz**

Critical observers, including some government representatives of the EU14, shared the view that the EU14’s ostracism policy on the FPÖ-ÖVP government should have been based on law and not on emotions of the day. From the very start, the EU14 should have included an exit strategy in their package of sanctions measures. Instead of acting outside the Treaty, the EU14, in collaboration with the European Commission and the European Parliament, should have spelled out a policy of strict monitoring of the Austrian government. That would have been a means to ensure that the FPÖ’s policies were not given the chance to influence the coalition, to the extent that human rights were at risk, and that policies incompatible with EU fundamental values would not be pursued. Furthermore, the EU14 should have waited until the FPÖ-ÖVP government actually did something wrong instead of adopting the ‘Wild West cowboy mentality’, which Rotter (2003: 395) describes as „erst zuschlagen und dann fragen“.

Straightforwardly, the Biarritz summit in October included a ‘cleaning up’ negotiation after a failed attempt to set an example; the FPÖ-ÖVP government was still in office. Hence, the purpose of amending Article 7 TEU was to reach an agreement on “a “never again Austria clause” rather than a “yes to more Austria-cases clause”” (Nehring 2000: 50). To put it simply, the European Commission appeared as ‘loser’ and the European Parliament as ‘winner’, because the latter has a greater say in the sanctions procedure laid down in Article 7 TEU *post*-Nice than in the original formulation in the Amsterdam Treaty. However, the real ‘winner’ was the European Council (cf. Nergelius 2002: 466), having secured the final say on triggering the sanctions procedure. This gain should not come as a surprise when taking into consideration the institutional balance in the Union at the time. That said, the reality of the situation was that the Member States were in a stronger position than the EU institutions, notably the weakened European Commission,
as exemplified not the least by the resignation of the Santer Commission in 1999 (Nergelius 2002).214

Analyzing the consequences phase in the EU14-Austria crisis from constructivist and rationalist perspectives

Analyzing the consequences of the EU14-Austria crisis from a legal-constructivist perspective helps to anchor theoretically the claim that the consolidation in legal terms of Article 6(1) TEU was an outcome of the EU14’s mixed experiences with their policy of ostracising the FPÖ-ÖVP government. In particular, arguments on norm negotiation are useful to shed light on the amendments to Article 7 TEU. However, the purpose of this study is to examine the outcome of the process of norm negotiation rather than to theorise about the process itself.215 Elgström (2005: 33) argues that “norm resistance is typically played out in text negotiations”. This implies that

“[i]n any legal text, norms have to be defined and interpreted in the concrete policy context. Often, the scope of new rules has to be delimited and rules of application decided upon. The text is penetrated paragraph by paragraph and the exact wording is carefully examined” (Elgström 2005: 33).

This was the situation at the Biarritz summit 13-14 October in discussions between the Member State delegations on the subject of rewriting Article 7 TEU. As Elgström remarks:

The fact that norm advocates are often internally divided, and that this may lead to interpretative negotiations, can be utilized by norm objectors. They can support the not-so-radical norm entrepreneurs in the internal struggle to have their less far-reaching standpoints reflected in the text. At this stage, persuasive efforts and debate are clearly linked to both norm internalization and to cost-benefit analyses among reluctant actors” (Elgström 2005: 33-34).

Evidently, some of the key players were well aware of their interests in the future wording of Article 7 TEU. Arguably, they were guided by the assumption that once Member States agree to set up new institutions or to revise those already established, for example in the shape of amendments to a Treaty article, they also ‘run the risk’ of creating norms, roles, and stalemate,

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214 See chapter eight for a more elaborated discussion of the institutional balance in the Union in relation to the EU14’s crisis management.

215 A recommendable study of norm negotiation is Björkdahl (2002). Another interesting study by Finnemore and Sikkink (1998) investigates the different stages of a norm’s ‘life cycle’, captured as ‘norm emergence’, norm acceptance or ‘norm cascade’, and finally, ‘internalisation’ of the norm. Through this process, the norm gets ‘harder’ over time.
which all act as intervening variables between preferences, power and outcome. The position of the Danish government is interesting in this respect. Whereas it had been “quite active with regard to lifting the sanctions, this was anything but the case when the discussion centred upon a new “early warning clause”. Even at the Biarritz summit […] Denmark […] was the only Member State to deny the necessity of having such a mechanism” (Nehring 2000: 47-48). This chapter demonstrates that when the EU15 negotiated the revision of Article 7 TEU, there clearly were divergent views about how to change the Treaty article.

The analysis of this phase is strengthened when the amendments to Article 7 TEU are framed as an ‘institutional change’. As a consequence, one has to accept the new institutionalists’ claim that norms can take the form of institutions. The March-Olsenian institutionalist perspective defines institutions as

“a relatively stable collection of practices and rules defining appropriate behavior for specific groups of actors in specific situations. Such practices and rules are embedded in structures of meaning and schemes of interpretation that explain and legitimize particular identities and the practices and rules associated with them. Practices and rules are also embedded in resources and the principles of their allocation that make it possible for individuals to enact roles in appropriate way and for a collectivity to socialize individuals and sanction those who wander from proper behavior” (March and Olsen 1998: 948).

It is fair to say that the perspective above highlights what is ‘new’ in new institutionalist theories, for example the incorporation of a wide range of formal and informal procedures, practices, relationships, customs, social norms, and moral precepts having the power to influence decisional outcomes (cf. March and Olsen 1998: 949). The March-Olsenian perspective is often referred to when exemplifying how institutionalists reason about interest formation and negotiation processes. In short, institutionalists assert that institutions matter in the negotiation process in the sense that they regulate how deliberation or bargaining is actually carried out in practice. Furthermore, institutions have the capacity to produce a number of formal and informal rules, which may also modify the role of power in determining the outcome. This reasoning is embedded in a legal-constructivist approach to the process of reviewing Article 7 TEU.

Next, one should ask: When does an institutional change take place? Historical institutionalists have argued that “[i]t happens most obviously at the branching points associated with critical junctures”, which “alter the disposition of institutions” (Bulmer and Burch 2001: 94; cf. Gorges 2001: 156). There are numerous conditions that can lead to critical junctures in institutional design: at times of major European policy change, as a response to step-changes in European integration, or in connection with a domestic government or coalition change. According to Gorges (2001: 156), “crises
can bring on abrupt institutional change”, as “they present leaders with an opportunity to enact new plans and realise new ideas by embedding them in the institutions they establish”. Here, one may argue that the ‘new’ Article 7 TEU was an example of this, embedded in the institutional and normative framework for the Union. Furthermore, the embeddedness was a form of institutionalisation that also appeared as judicialisation, which, in turn, produced a consolidation of EU fundamental values expressed in Article 6(1) TEU.

Pierson (2004: 144) argues that “there are two broad reasons why political institutions tend to be designed to be change resistant”. The first one derives from the observation that “political actors often bind themselves, restricting their own freedom in order to achieve some greater goal” (Pierson 2004: 144-145). Put differently, actors deliberately allow themselves to be constrained by rules, norms, or principles that limit their freedom of action. One may argue that the “greater goal” for the EU15 was to arrive at a more solid defence of the ‘unobjectionable’ status of EU fundamental values expressed in Article 6(1) TEU. Second, Pierson (2004: 145) argues that “those who design institutions and policies may wish to bind their successors”, for example, future political leaders of the Member States. It is possible to draw a parallel with the revision of Article 7 TEU. It can be claimed that one hope on the EU15’s side was that, in the future, there will be a greater appeal to take action in line with the Treaty article, rather than neglecting the legal framework for the Union, as was the case with the EU14’s ‘diplomatic whipping’ of the FPÖ-ÖVP government.

To continue on the theme of constitutional/institutional change in the EU, it is Ikenberry’s (1998: 152-153) analysis that

“in a constitutional order, [...] rules and institutions are in a fundamental sense entrenched in the wider political system and not easily altered. Constitutional struggles happen only rarely, and once they are settled, politics is expected to take place within these parameters. The expectation is of infrequent historical junctures of constitutional change and settlement — political crisis triggers struggle and debate within a society; a set of constitutional principles and rules are crystallized; within this new constitutional framework day-to-day politics takes place until the next constitutional opening. In other words, there is a notion of political ‘path dependency’ in arguments about constitutions and constitutional change.”

To sum up, a legal-constructivist approach is appropriate for anchoring theoretically the analysis of the legal and political consequences of the EU14’s ‘diplomatic whipping’ of the FPÖ-ÖVP government, manifested in

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216 Goldstein et al. (2000: 393) advance a similar argument: “Governments and domestic groups may also deliberately employ international legalization as a means to bind themselves or their successors in the future. In other words, international legalization may have the aim of imposing constraints on domestic political behavior.”
amendments to Article 7 TEU. In this phase, the rationalist approach recedes into the background, because the focus was on discussion about safeguarding the normative pressure of norms. One may argue that evidence of socialised behaviour and processes of socialisation was implicit in the conversations around the negotiation table. That said, national interests and preferences finally gave way to a compromise that reflects a stronger belief in the normative foundation of the Union.

Having process traced the ‘norm journey’ of Article 6(1) TEU both empirically and theoretically, the next chapter assesses the EU14’s crisis management and its effects on the institutional balance in the Union.
CHAPTER EIGHT

Assessing the EU14’s crisis management and its effects on the institutional balance in the Union

This chapter assesses the EU14’s crisis management and its effects on the institutional balance in the Union. In order to do so, it is necessary to establish what characterised the very management. This study identifies a consensus-reflex and different manifestations of time pressure. The chapter begins by presenting the EU14’s consensus-reflex. Then, the concepts of group-think and ‘tele group-think’ in relation to the EU14 are addressed. Next, the focus is shifted to a trend in international politics where heads of state and government turn to ICTs for decision-making. First, changing conditions for diplomatic activities owing to developments in ICTs are discussed. Second, comments are offered on the consequences of employing ICTs in political life, especially in crisis situations. Third, group-think and ‘tele group-think’ in the EU14-Austria crisis are highlighted. Finally, the EU14’s crisis management as a threat against the institutional balance in the Union, especially the Member States’ relationship with the European Commission and the EU Presidency, is discussed.

The EU14’s consensus-reflex

It is fair to say that over the years, the EU has developed a ‘culture of consensus’. Heisenberg (2005: 68) argues that negotiations are more ‘personalised’ in the EU than in other multilateral contexts. The reason is that “the frequency of meeting is so much higher and many of the Member State elites have had the opportunity to interact in earlier positions” (ibid.). Consequently, the high intensity of interactions between government representatives in the Council encourages the prevalence of a ‘common frame of reference’ by which to understand the issues on the table (Heisenberg 2005: 69 referring to Lewis 1998). According to Lewis, the Member States’ decision-making style is characterised by “diffuse reciprocity, thick trust, mutual responsiveness, a consensus-reflex, and a culture of compromise” (Lewis 2000: 261 in Heisenberg 2005: 69).

The virtue of consensus decision-making is that it facilitates negotiations and “keeps the ‘nationalistic’ out of the public’s eye” (Heisenberg 2005: 82). However, there is nothing to be gained by clinging to national preferences, and that increases attention to solutions that are of interest for the entire Union. Moreover, relying on consensus does not make it apparent who are the ‘losers’ in the decision-making process, as is the case when applying the
principles of unanimity voting and QMV. It is important to note that consensus is not the same as unanimity. This implies that, when a decision has been taken by consensus, dissenting views may have been disregarded. This was the case in the warning phase as regards Greece’s open dissatisfaction with the sanctions decision. To put it differently, the actors are expected to yield to the majority’s wish when the consensus-principle is applied.\(^{217}\) However, one means to assure consensus is to base the decision on the lowest possible common denominator appearing in the negotiation. On this point, one may argue that the Portuguese Presidency was not entirely successful in the preparations for the EU14’s declaration of 31 January.

This study claims that owing to the consensus-reflex, the EU14’s task, first in dismantling their protest and then in drawing lessons from the overall experience of punishing an individual Member State by means of diplomatic sanctions measures, became an exercise in self-healing. There was a willingness to repair, somehow, both the damage that the ‘diplomatic whipping’ of the FPO-ÖVP government had done to the relationship between the Member States (which affected decision-making in the Council of Ministers) and the damage that it had inflicted on the sensitive institutional balance in the Union, through its weakening of the European Commission and its exploitation of the EU Presidency. (More on this will follow further ahead.) One may argue that this healing process was initiated by the consensus decision (including the Austrians) to appoint so-called ‘wise men’ to pave the way for a dismantling of the ‘sanctions’. Finally, the way the EU14 worked with Article 7 TEU at the Biarritz summit testifies to the readiness to work constructively, meaning for the good of the Union, not just the individual Member State.

That the consensus-reflex played a vital role in the EU14-Austria crisis is supported by Prime Minister Guterres’s statement of 23 May. In his role as ‘President of the EU’ during the first half of 2000, Guterres then announced that he was consulting the EU13 on the issue of ending the policy of ostracising the FPO-ÖVP government. He underlined that just as a consensus between the EU14 had been necessary to launch the diplomatic sanctions measures, so a consensus would be necessary to end them.\(^{218}\) Nevertheless, the same procedure for making a crucial decision had to be applied in order to arrive at an agreement. This proved true with a consensus among the EU14 to lift the sanctions unconditionally on 12 September, with no further monitoring of the political situation in Austria. However, it is clear that the consensus-reflex was threatened during the crisis escalation phase. A unilateral action from one of the Member States aiming at breaking the political

\(^{217}\) On this note, Heisenberg (2005: 83) offers the following reflection: “It may be that a culture of making decisions by consensus rather than QMV accords greater power to the EU’s large states at the expense of the small states”. She also adds that “the rights of small Member States are less protected under a system of consensus decision-making than in voting. However, the decision-making process obscures this reality to the public” (ibid.).

\(^{218}\) See “Portuguese leader raises prospects of an end to EU sanctions against Austria”, The Guardian, 24 May 2000.
isolation of the FPÖ-ÖVP government would obviously constitute a breach of the sensitive consensus decision.

An introductory note on time pressure and groupthink

This study argues that the way the EU14 managed the crisis with Austria contributed to the consolidation of EU fundamental values expressed in Article 6(1) TEU. A central concept, besides the consensus-reflex, is time pressure. However, time pressure in the EU14-Austria crisis was manifested in different ways. Furthermore, it cannot fully be accounted for by arguments drawn from the constructivist and rationalist paradigms. This claim is valid in particular for the presence of ‘tele groupthink’, which consists of two concepts; groupthink and telephone diplomacy, that exist in the field of foreign policy-making. Therefore, a specific strand in the foreign policy analysis literature will be used, where focus is put on what impact the decision-making process itself has on the outcomes. Nevertheless, the way in which foreign policies are initiated, supported and implemented is fundamental here, which chimes with the process tracing research design for the study of the EU14-Austria crisis.

It is said that at the “highest level of responsibility, foreign policymaking is made up of a set of moving relationships, played out within the limits laid down by institutions, precedents, personalities, and the structure of the issue at the moment” (Hill 1991 in ‘t Hart et al. 1997: 26). This study argues that the EU14’s ‘diplomatic whipping’ of the FPÖ-ÖVP government consisted of fourteen co-ordinated ‘domestic’ foreign policy actions. The following quotation by Nehring clarifies this stance.

“The former German Chancellor Helmut Schmidt once stated that EU-policy should not be regarded by governments as foreign policy but as European domestic policy. Following this logic, the sanctions represented an odd mix of domestic policy goals [defending EU fundamental values] and foreign policy means [bilateral diplomatic sanctions measures]” (Nehring 2000: 50).

A fundamental claim in this study is that ‘tele groupthink’ is a consequence of time pressure. Snyder et al. (1962: 6) argue that “foreign policy-makers function at the intersection of several basic pressures or forces”. Hence, “the foreign policy machinery mediates among internal and external demands and needs and among decision-makers themselves” (ibid.). It is a widespread understanding that crucial definitions and sudden new orientations in foreign policy-making are often tested in small groups marked by interpersonal trust and informality. In many cases, they subsequently evolve into a concrete foreign policy decision (‘t Hart et al. 1997: 4-5).

219 The perhaps most famous example of this literature is Graham Allison’s (1971) Essence of Decision: Explaining the Cuban Missile Crisis.
One of the core claims of the decision-making approach to foreign policy is that individuals participating in the small group display certain frequent features and behavioural patterns that can be studied thoroughly (t’ Hart et al. 1997: 8). The application of this claim obviously requires a situation where the scholar is able to cite evidence of a group that has been “at the apex of the policy-making process” (ibid.). Turning to the EU14-Austria crisis, the group of fourteen heads of state and government was “the ultimate decision unit” (ibid.).

The reason why a decision-making approach to foreign policy is relevant lies in the possibility to identify the link between the particular foreign policy decision and the nature of the state’s foreign policy in general (t’ Hart et al. 1997: 8). Put differently,

“small group analysis is particularly pertinent to describe and analyze the origins of those watershed policy episodes that are sufficiently consequential, controversial, or precedent-setting to generate an intrinsic interest as to how they came about. It is these kinds of decisions that we study to learn more about the core values and operating logic of the system as a whole, and the quality of those who are in charge of it at a particular juncture in history” (t’ Hart et al. 1997: 8).

t’ Hart et al.’s reasoning strengthens the argument why the EU14’s policy of ostracising the FPÖ-ÖVP government merits a study in its own right. They also claim that a good means to arrive at “fine-grained reconstruction and explanation of why certain major, puzzling, often controversial policy initiatives occurred” is to apply the method of process tracing (t’ Hart et al. 1997: 8), which is the case with this study.

Janis’s theses on groupthink

Applying the concept of groupthink to the analysis of foreign policy decision-making, it is perhaps first and foremost Victims of Groupthink: A Psychological Study of Foreign Policy Decisions and Fiascoes (1972) by Janis that comes to mind. With the focus on American foreign policy, Janis draws conclusions on groupthink from the analyses of a few case studies that he qualifies as ‘fiascos’.220 Concerning the label ‘fiasco’, he argues (1972: 10): “the fiascos that I selected for analysis deserved to be fiascos because of the grossly inadequate way the policy-makers carried out their decision-making tasks”.

220 They were the Japanese attack on Pearl Harbor (1941), which took the Americans by surprise; the escalation of the war in Korea (1950); the Bay of Pigs drama (1961) where the Cubans discovered the US-led attempt at ousting Fidel Castro; and finally how President Johnson’s administration (1964-68) contributed to the situation that American troops became inescapably stuck in Vietnam.
Above all, Janis identifies the phenomenon of groupthink in the ‘fiasco’ examples. Groupthink is “a mode of thinking” (Janis 1972: 9) that reflects situations “in which a defective decision was made in a series of meetings by a few policy-makers who constituted a cohesive group” (Janis 1972: 10). The decision was “defective” because it was the result of “decision-making practices of extremely poor quality” (ibid.). This could be exemplified by the group members’ “strivings for unanimity overrid[ing] their motivation to realistically appraise alternative courses of action” (Janis 1972: 9). Elsewhere, Janis (1972: 119) argues that it is the “[s]triving for consensus […] which helps the members achieve a sense of group unity and esprit de corps” and this is “the psychological basis for all the symptoms of groupthink”.

A word of caution is in place here: groupthink is a nebulous concept and no crystal-clear definitions of it are available. In general, groupthink is qualified as a kind of logic of action or a mechanism that sometimes distorts the decision-making process. When socio-psychological characteristics (so-called cognitive factors, cf. Janis 1972: 113) in the individual’s psyche are confronted with time pressure (which may be both imagined and ‘real’), there is a risk that groupthink could be one of the by-products of the decision-making process. Besides the aspects of stress and deadlines, the size of the decision-making group is another important factor. Groupthink is more likely to occur in tight, informal networks than in large organisations, for example.

Returning to Janis’s study, in some of the ‘fiasco’ examples the crucial decisions had been taken by the American President and his well trusted, closest advisers. Reconstructing the initiation of these decisions, Janis finds that there had been much pretence. Dissenting views were neglected, in favour of quick decisions. As a consequence, there was only ‘one game in town’. Hence, information was left out that could have altered the policy orientation or decision in one way or another. The insistence on one ‘game’ also implied that the small group became almost immune to criticism from outside forces, despite obvious signs of a nascent policy failure (’t Hart et al. 1997: 10-11).

To round off this discussion, the popularity of the concept of groupthink is problematic. For example, the concept is sometimes used sweepingly, thus “betraying the enormous variety of groups and group processes that play a part in foreign policy-making” (’t Hart et al. 1997: 11-12). As ’t Hart et al. (1997: 11) underline, one should not use groupthink and group decision-making as interchangeable analytical categories. Groupthink should be addressed as a “contingent phenomenon, rather than as a general property of foreign policy decision making in high-level groups” (ibid.).

221 In relation to these examples, Janis (1972: 9) writes: “I was initially surprised to discover the pervasiveness of symptoms of groupthink”.

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Were the EU14 victims of groupthink in Janis’s terms?

To answer the question whether the EU14 were victims of groupthink in Janis’s terms, the analysis starts from his thesis on “major defects in decision-making” that all “contribute to failures to solve problems adequately” (Janis 1972: 10). First, it is problematic if the group’s discussions are limited to a few alternative courses of action without a survey of the full range of alternatives. In the context of the EU14-Austria crisis, one must ask whether the diplomatic sanctions measures were merely a second best solution. If so, what would have been the ideal one? Second, it is a flaw if the group members make little or no attempt to obtain information from experts who can supply sound estimates of losses and gains to be expected from alternative courses of actions. This can be compared to the fact that the EU14 in some cases bypassed their respective Ministries of Foreign Affairs and senior diplomats. Third, it is a problem when selective bias characterises the way the group reacts to information and relevant judgments from experts, the mass media, and outside critics such as the academic community. With regard to the EU14-Austria crisis, it is fair to say that the EU14 showed interest in facts and opinions that supported their policy of ostracising FPÖ-ÖVP government representatives, but they tended to ignore facts and opinions that did not. Fourth, the group is in trouble if it fails to work out emergency plans to cope with predictable setbacks that could endanger the initial success of the chosen course of action. As regards the case in question, the EU14 were taken by surprise when the FPÖ-ÖVP government threatened to block vital decisions during the IGC 2000, which addressed issues that were of relevance to the EU’s eastern enlargement.

Another important question concerns whether there was an “illusion of unanimity” in the problem-solving network including fourteen heads of state and government. To Janis,

“when a group of people who respect each other’s opinions arrive at a unanimous view, each member is likely to feel that the belief must be true. This reliance on consensual validation tends to replace individual critical thinking and reality testing, unless there are clear-cut disagreements among the members. The members of a face-to-face group become inclined, without quite realizing it, to prevent latent disagreements from surfacing when they are about to initiate a risky course of action. The group leader and the members support each other, playing up the areas of convergence in their thinking, at the expense of fully exploring divergences that might disrupt the apparent unity of the group” (Janis 1972: 38-39).

It is fruitful to match this reasoning with the extraordinary circumstances preceding the declaration of the Portuguese Presidency on 31 January. Numerous sources demonstrate that the sanctions decision was not a unanimous decision but a consensus decision, which is not the same thing. It is plausible that there was a suppression of personal doubts among some of the leaders of the EU14, although they most likely would not admit this
even today. An alternative answer would perhaps go: “I accepted the position taken by practically everyone else” (Janis 1972: 72). With this in mind, maybe it was the case that some of the EU leaders were talked into agreement by their colleagues? t’ Hart et al. make a similar point:

“The need to project and maintain dominant beliefs and values also plays out in the group setting itself. It may act as a normative constraint upon [...] political game playing between group members with different views and interests. It may, however, also be used as an instrument of power for group leaders and majorities to squash internal dissent” (t Hart et al. 1997: 22).

It should not be controversial to assert that the fourteen heads of state and government realised that a great deal was at stake not just for the Union but for their own power bases in the domestic arena. One may even claim that to some of them, the EU14-Austria crisis presented a crucial moment in the individual career as a statesman. Should he then choose the wrong course of action, this could have serious consequences: He might “lose his status, face public humiliation, and suffer a profound loss of self-esteem” (Janis 1972: 114). To put it differently, “[g]overnment policy-makers [...] hesitate to object to a policy if they think their forthright stand might damage their personal status and political effectiveness” (Janis 1972: 33). Focusing on the EU14-Austria crisis, one may wonder what made it worth the cost of risking reputation and status. To put it bluntly, politicians are ‘vain creatures’ and, given the outcome of the Austrian general election in October 1999, heads of state and government of all political colours saw their chance to present themselves as staunch defenders of EU fundamental values, although they had no clear idea about what a policy on this subject would look like.

What is then the answer to the question whether the EU14 were victims of groupthink or not? It is Janis’s (1972: 199) conclusion that “[a] high degree of group cohesiveness is conducive to a high frequency of symptoms of groupthink, which, in turn, are conducive to a high frequency of defects in decision-making”. The most obvious reasons for the emergence and persistence of group cohesiveness in the EU14-Austria crisis are the consensus-reflex and the time factor, which was reflected in the repetitive talk about time pressure. Time pressure was a source of stress for the EU14 on several occasions. Take for example the warning phase. Nobody actually knew when the new Austrian government would be presented officially, and this was in itself a form of time pressure. The problem is that it is difficult to prove this claim on the grounds of the secretive nature of the initiation of the sanctions decision. For example, how does one know for sure that the fourteen

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222 The most obvious example is Belgium’s Foreign Minister Louis Michel, but one may also add other political leaders in the group of ‘front-runners’.
heads of state and government had only had a few days to make their decision?223

According to Janis (1972: 13), “[t]he more amiability and esprit de corps among the members of a policy-making in-group, the greater is the danger that independent critical thinking will be replaced by groupthink”. Empirical evidence supports the claim that this is valid for the problem-solving network of fourteen heads of state and government. This study therefore argues that the EU14’s ‘diplomatic whipping’ of the FPÖ-ÖVP government was an example of a miscalculated policy decision that partly could be attributable to groupthink mechanisms (Janis 1972: 10). Among other things, the miscalculations from the EU14’s side concerned the Austrian counter-strategy, in particular the threat to use its veto to block vital decisions in regard to the EU’s eastern enlargement. It is also possible to argue that the EU14 misjudged the expected ‘normative deterrence’ effect from their declaration of 31 January. As it turned out, the threat about launching diplomatic sanctions measures, should the ÖVP form a coalition government with the FPÖ, had no effect on Schüssel’s determination to go ahead with his plan.

It is Janis’s (1972: 118) argument that “setbacks induce a policy-maker to doubt the wisdom of past decisions in which he has participated”. At the same time, if the members of the group feel that loyalty to the group requires firm support of the group’s past policy decisions, the recurring tendency to bolster past commitments is reinforced (ibid.). In the context of the EU14’s policy of ostracising the FPÖ-ÖVP government, the EU14 obviously had problems in dealing with Austrian countermeasures. Another problem was the tough questions from the political opposition in the sanctioning Member States, the Austrian government, the media and the academic community on its nature and substance. That said, the fourteen heads of state and government were indeed “ego-involved” in maintaining their commitment to any important decision during the EU14-Austria crisis (Janis 1972: 117).

Based on the above, one may conclude that the EU14 actually were victims of groupthink. However, they were also victims of ‘tele groupthink’. To justify this claim, it is necessary to observe some contemporary changes in the field of foreign policy decision-making and diplomacy. These changes and their implications will be addressed in the following sections.

Foreign policy decision-making in the era of information and communication technologies

According to Berridge (2002: 14), ‘direct-dial diplomacy’ is nowadays a widespread phenomenon. One of the consequences is that the Ministry of

223 On the other hand, one may ask: Was it not the case that the EU14 actually had had the time to meet on several occasions between October 1999 and late January 2000 to discuss the development in Austrian politics? Could they not have anticipated the FPÖ-ÖVP government scenario, and launch preparations for a joint reaction should the political development take a turn such as it eventually did in late January 2000?
Foreign Affairs “can no longer aspire to be the state’s ‘gatekeeper’ or ‘international operator’” (Berridge 2002: 15; cf. Kurbalija 1999: 171). A plausible explanation for the fact that Ministries of Foreign Affairs nowadays appear as losers in comparison with other political actors such as heads of state and government, besides particular ministries, can be attributed to the increasing popularity of telephone diplomacy. As international and European communications networks allow governments to centralise their decision-making apparatus, this trend gives more influence to a tight network of top-level political leaders. However, the centralisation of political decision-making authority does not automatically translate into sound, efficient problem-solving emanating from capitals. This argument is particularly relevant when turning to the EU14-Austria crisis. Drawing from written records as well as interviews, it appears that ‘classic’ diplomacy, including a major role for expertise within the Ministry of Foreign Affairs, was suddenly replaced with intense, direct communication between heads of state and government. Obviously, this kind of ‘instant decision-making’ has its drawbacks. For example, one could mention the risks of being talked into agreement or simply run over by other Member States.224

It is fair to say that much diplomacy today is ‘virtual’ diplomacy, an expression referring to a world where face-to-face interactions decrease and individuals interact more through pictures, electronic voices, and data bits. What are the implications, then, of this technological revolution for the structure and interactions of diplomatic activities? Generally speaking, there is a ‘speeding up’ of diplomatic activities as ICTs help to eliminate time constraints (Jönsson 2002: 217). Among other things, ICTs provide key decision-makers not only with direct knowledge about faraway events, but also with direct authority and responsibility for interactions with them. Put differently,

“the pace of politics at all levels of community has accelerated to the extent that reactions to events occur roughly at the same time as the events themselves, leaving actors as always in a mode of seeking to catch up with the consequences of decisions to which they were also parties” (Rosenau 1999: 295).

That is a far cry from claiming that the widespread use of new technologies leads to a revolution in how international relationships are constructed. Nevertheless, the EU’s heads of state and government can be studied as members of a communication and decision-making network. It is worth commenting on the quasi-eradication of language barriers in this context (Gustavsson in Sverenius 2001: 333-334). Nowadays, it is taken for granted that heads of state and government are able to engage in more substantial exchanges than merely official conversations conducted for the media. This

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224 For example, the Greek government was openly sceptical of the idea of “meddling in Austria’s internal affairs”, but its stance had no effect on the Portuguese co-ordination of the EU14’s reaction (cf. Gehler 2002: 189).
also contributes to stronger interpersonal relations between state leaders, a point to be elaborated further below.

As the EU’s underlying regulative and procedural structures connect a wide range of individuals, these structures are “actively and constantly being recreated, making permanent participation necessary due to the risk of exclusion” (Ekengren 1998: 77). When a Member State government representative is missing at the prescribed moment for making a decision, it is almost impossible for him/her retroactively to have an influence on its substance. This leads Ekengren to advance the concept of “on-linification” in which, in my slightly modified interpretation, the political leaders of the EU constantly need to be “on-line” in the EU telecommunication network “in case something should turn up” (Ekengren 1998: 121). Concerning political crisis situations, one may argue that the more intense the crisis, the more accurate, concise, and timely information is needed. This leads to the question: What are the consequences of employing ICTs for direct dealings between heads of state and government and their ministers in crisis diplomacy situations? This aspect is examined in the next section.

**The risks of telephone diplomacy in political crisis situations**

Moïsi (2000: 625-626) addresses a warning against a ‘new’ kind of diplomacy in the ICT era, which he labels « une diplomatie sans diplomates ». He claims that it could lead to confusion between morality and demagogy, electoral tactics and political strategies. One may argue that telephone diplomacy also forms part of this ‘new’ diplomacy. It seems as if telephone diplomacy has become a routine and perhaps even a standard operating procedure when the EU faces political crises in which swift, collective action is needed. Obviously, it may facilitate “‘bouncing’ the party at the other end of the line into an agreement that further reflection might have cautioned against”, which also means that “an advantage for the former is a disadvantage for the latter” (Berridge 2002: 99).

Returning to Moïsi’s concept of « une diplomatie sans diplomates », what is the analysis in relation to the EU14-Austria crisis? First, one may argue that the EU14’s ‘diplomatic whipping’ of the FPÖ-ÖVP government was an example of fighting domestic battles disguised as a co-ordinated foreign policy in defence of EU fundamental values. This reasoning takes its roots in the harsh criticism from notably the Belgian and French political leaders of the politics of the VB and the FN (Gehler 2002: 188).

A second problematic aspect concerns the role of the political leadership in the individual Member State. The increasing demands associated with EU membership, participation in international organisations, the media’s 24/24 hours coverage of ‘political events’, and a more intensive focus on security issues following 11 September 2001, together contribute to a reinforcement of ‘presidential’ features of the European premiership. It seems like Member
States with strong traditions of a parliamentarian system have accepted this development of more ‘presidential’ heads of government. Such a development affects not only the quality of party politics, which becomes less clear and reduced to a ‘one man show’. More importantly, the bypassing of legal-procedural requirements attached to foreign policy-making – such as keeping the Ministry of Foreign Affairs informed, and informing party leaders from the political opposition about extraordinary foreign policy situations – is a politically sensitive and costly consequence of this ‘new’ diplomacy. Arguably, the price to be paid is symptoms of (tele) groupthink and an increase in the voters’ distrust of the political leadership.

The third argument claims that practical aspects of the ‘new’ diplomacy in political crisis situations have important repercussions on the relationship between the Member States and representatives from the European Commission and European Parliament. It is quite plausible that telephone diplomacy in such situations leaves these representatives behind, as it would be natural for the heads of state and government to anchor a joint (re)action in their own group in the first place, and then as a second step contact the respective presidents of these EU institutions. That is why the ‘new’ diplomacy in Moïsi’s terms may give rise to ‘information asymmetries’ and increase the risk of fait accompli situations, which was the case in the EU14-Austria crisis. Moreover, it may jeopardise the sensitive institutional balance in the Union, to be commented on further ahead.

### Groupthink and ‘tele groupthink’ in the EU14-Austria crisis

Certainly, the EU14-Austria crisis is unlikely to repeat itself. However, the EU will in the future undoubtedly face similar challenges of co-ordinating a swift, joint reaction to a political crisis, whether within the EU or in the international arena. This study argues that the initiation to the EU14’s ‘diplomatic whipping’ of the FPÖ-ÖVP government is emblematic of a trend in which heads of state and government turn to telephone diplomacy in order to co-ordinate foreign policy actions that are particularly sensitive to various constraints, such as deadlines and legal-procedural requirements laid down in the respective constitutions of the Member States.

It is fair to say that one will continue to witness a migration of traditional meeting points to in-camera settings; the internet (e-mail, chat-rooms), video-conferences and mobile telephones. There is no doubt that this development encourages and facilitates immediate reactions from political leaders to major political events around the globe. Very often these reactions produce ‘instant decision-making’. For example, telephone diplomacy

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225 Here, one could mention Britain and Sweden. For the Swedish example, see the article by Olof Ruin, “Ny karriär hämmar statsministern” in Dagens Nyheter, DN Debatt, 20 April 2003.

226 The President of the European Commission, Romano Prodi, was exposed to this situation (cf. Merlingen et al. 2001: 60).
is widely accepted as an effective procedure for communicating and coordinating crisis diplomacy situations with narrow time horizons and where swift, collective action is needed (Berridge 2002: 91-92). This attitude towards telephone diplomacy probably will not change in the future. The growing phenomenon of “the intimisation of politics” (Gustavsson in Sverenius 2001: 333-334), where actions are supported by interpersonal trust, testifies to this development.

Certainly, the use of telephone diplomacy (and mobile telephone diplomacy in particular) could make it easier to strike when the time is considered ripe for action and could thus pave the way for a successful outcome. As mentioned previously, part of the attraction of telephone diplomacy lies in that it prevents some political channels and actors from influencing the line of action that is preferred at the highest level of decision-making. Excluding possible objections and keeping information within a network or group facilitates ‘instant decisions’. Turning to the case in question, this explains why the EU14’s decision to protest against the political development in Austria could be taken within a very short time span. However, it also appears that in political crisis situations, the risk of jumping into uncharted territories increases. Taken together, this reflects the phenomenon of ‘diplomacy without diplomats’ (cf. Moïsi 2000: 625-626) of which the EU14’s diplomatic sanctions measures against the FPÖ-ÖVP government are an example. The EU14 did not display vigilance about the possible risks inherent in their protest (cf. Janis 1972: 157). Moreover, it appears that there was very little time during the round of telephone calls orchestrated by the Portuguese Presidency over the week-end 29-30 January – in fact, only a few hours – for the individual head of state or government to “express any idea that might embody a useful proposal and to help spell out all the drawbacks as well as the good consequences” (Janis 1972: 175) of the protest against the presumed Austrian government.

This study demonstrates how foreign policy decisions in crisis situations are sometimes formulated at the expense of democratic-procedural principles. It is well documented that the EU14 bypassed normal procedures in foreign policy-making when turning to hectic telephone diplomacy during the course of a few days. This highlights aspects of deliberation, legitimacy and accountability in the era of network- and ICT-based diplomacy. It appears that some of the heads of state and government did not inform senior diplomats or political opposition parties about the planned protest against the political development in Austria in late January.227 In general, it is the task of the head of state or government to transmit information that might be relevant to the Ministry of Foreign Affairs, otherwise its staff cannot take part in negotiations in the way that is expected of it. A senior Swedish dip-

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227 To my knowledge, this was the case in Denmark, Finland, and Sweden. This was one of the reasons why Prime Minister Göran Persson, Foreign Minister Anna Lindh, and State Secretary in the Office of the Prime Minister Lars Danielsson were asked extremely detailed questions in the Standing Committee on the Constitution 11 and 14 April about the timing of co-ordinating a joint protest in order to respond to the anticipated formation of the FPO-ÖVP government.
lomat argues that a large number of heads of state and government are ‘sinners’ in this respect. This is not only a trend when official visits take place, but even more when it comes to direct telecommunication between top-level politicians and officials in European capitals (Örn 2002: 116).

Returning to the EU14-Austria crisis, a high-ranking official from one of the sanctioning Member States’ Ministry of Foreign Affairs qualified the EU14’s handling of the FPÖ-ÖVP government as “indeed, a ‘Chefssache’”. His observation from meetings in the Council of Ministers and European Council during spring was that “the majority of the EU14’s Foreign Ministers seemed just as happy not to have their fingers caught in the sticky jam pot.”228 To put it simply, the rushed agreement between the EU14 had the character of “those who are not with us are against us”. It is nevertheless plausible that hesitant Member States feared being ostracised from the problem-solving network.

The EU14’s crisis management as a threat against the institutional balance in the Union

Article 7 TEU ante-Nice provided a comprehensive roadmap to follow when a Member State obviously had violated fundamental values expressed in Article 6(1) TEU. In late January, the EU14 apprehended the outcome of the lengthy talks between Schüssel, Haider, outgoing Chancellor Klima, and President Klestil. However, the EU14 could not turn to Article 7 TEU for guidance, as the expected government was not in office yet. That said, there was no clear evidence of violations of Article 6(1) TEU giving the ‘green light’ for action (Mitten 2002: 205). The crux was that the wording of the article did not cover preventive action, which is what would obviously be at issue. As a result of these legal and political constraints, the EU14 decided to take action outside the framework of the EU institutions. To put it another way, the EU14 preferred a purely intergovernmental ad hoc solution to an EU ‘domestic’ political crisis. Nevertheless, their chosen line of action had repercussions on the decision-making process in the Council of Ministers. During spring, representatives from the FPÖ-ÖVP government threatened to stall agreement on vital issues for the Union, among others, institutional reforms in view of the eastern enlargement. Consequently, the EU14’s ostracism policy quite soon became synonymous with a negative political climate for negotiations between individual Member State representatives. In addition, relations with the European Commission soured because the EU14 had deliberately sidestepped its President, Romano Prodi. The Commission President repeatedly emphasised that it was the role of the European Commission to act as ‘guardian of the treaties’. This duty was clearly ignored by the EU14. Hence, the European Commission was merely a spectator during the EU14-Austria crisis.

228 Interview with a high-ranking official at a Ministry of Foreign Affairs, 20 October 2003.
Until the EU14-Austria crisis arose, never before had an ‘insider’ become an ‘outsider’ overnight, as a result of a policy of ostracism. Thus, the heads of state and government could not find any guidance from an established script when shaping their joint protest against the anticipated FPÖ-ÖVP government. It is important to observe that the EU14’s reaction to the political development in Austria was not an EU action. In strictly legal terms the protest was a co-ordinated policy, co-ordinated by the Portuguese and the French Presidencies. This policy was then successively implemented through fourteen separate stances. In other words, the EU14 ‘performed’ in accordance with classic bilateral diplomacy, while they legitimised their performance by invoking the need for defending EU fundamental values expressed in the Treaty text. This circumstance has been a source of criticism. It was not crystal-clear to outside observers who actually ‘owned’ the protest – the individual Member States, the European Council or even the European Union – as representatives of the Portuguese Presidency often commented. To add to the already somewhat confusing situation, the European Commission and the European Parliament, and even the Committee of Regions, issued statements in which the new Austrian government was criticised, if not overtly condemned.

Based on empirical evidence, it is clear that the EU14-Austria crisis reflected an atypical co-operation between the EU institutions and the Member States. With reference to Jones (2001: 9), the crisis “highlight[ed] the tension between the Community method, on the one hand, and the network of bilateral relations between member states, on the other hand”. The fact is that the EU14 did not base their protest on provisions in the Treaty text. More importantly, they misused the co-ordinating function provided by the EU Presidency (see further ahead).

This study argues that the EU14-Austria crisis illustrates the sensitive nature of relationships between the EU institutions and the Member States (acting in the Council of Ministers and the European Council), where the former attentively protect their institutional prerogatives and seek to uphold the balance of power between the institutions, and between the institutions and the Member States. Principles and rules sustaining this order are embedded in legal texts. That is why it is relevant to comment on the reactions from the European Commission and the European Parliament to the EU14’s declaration of 31 January. To repeat, the sensitive nature and vulnerability of the institutional balance in EU political crisis situations is reflected in the EU14-Austria crisis. This study puts in focus some of the problems that may arise when Member States start playing with this balance. When a group of Member States take action outside the legal framework for the Union, the risk is that they will have to pay a high price for ‘cleaning up the mess’ should things ‘go wrong’. It is likely that considerable time then has to be spent on explaining the reasons for action, refuting accusations and allegations, avoiding loss of political prestige, and so forth.

Against the background of the EU14-Austria crisis, Nergelius (2002) claims that it is imperative that the Union as a whole recognises the primacy of the Treaty texts over the EU political agenda. In other words, the func-
tioning of the fundamental institutional balance must be guaranteed despite EU ‘domestic’ political crises. Otherwise, the European integration process will find itself in a deep political and institutional crisis. A similar argument was voiced by Duff while the EU14-Austria crisis still was an unresolved crisis:

“What matters now is that the next step forward in the constitutional development of the European Union entrenches and protects the orthodoxy of the Community method. Austria’s support is badly needed if this battle is to be won against the forces of old-fashioned, secretive, intergovernmental diplomacy” (Duff 2000: 16).

To sum up, the EU14-Austria crisis added to a preoccupying turn in the integration process, a stance that was primarily taken by legal scholars. There is a tendency for Member States successively to abandon the heritage of legal-constitutional procedures and traditions in decision-making to try new routes for collective action, for example with the help of ICTs. Nergelius (2002: 444) qualifies this development as a shift “from legal formalism to increased political pragmatism”, which, in essence, accords more political power to the Member States at the expense of the EU institutions (Nergelius 2002: 466). In the EU14-Austria crisis, the Member States’ desire to set an example, when opportunity for this gained momentum in late January, simply overruled the traditional formalism or legalism, which until then had shaped the overall development of the European integration process (Nergelius 2002: 445). Nergelius (2002: 466) identifies two driving forces behind this trend. First, the growing “lack of faith in and respect for the Treaty articles”, and second, “a new willingness within the EU to let political considerations outweigh legal ones”.

On the theme of jeopardising the EU institutional balance, the two following sections elaborate in greater detail on the EU14’s relationship with the European Commission and the EU Presidency.

The European Commission

This section asks whether the EU14’s ‘diplomatic whipping’ of the FPÖ-OVP government damaged the rightful interest of the European Commission to fulfil its duties under the Treaty (cf. Cramér and Wrange 2001: 46). The Treaty says: “The Union shall be served by a single institutional framework which shall ensure the consistency and continuity of the activities carried out in order to attain its objectives…” (cf. Article 3 TEU). On a critical note, by taking action outside the EU’s legal framework, the EU14 weakened the Union structure.

At an early stage in the crisis, the Commission gave itself a distinct independent role of safeguarding the continuous functioning of the Union. Ac-

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229 It is pertinent to quote Zellentin’s (2003: 186) conclusion on this matter: „Die Vierzehn sind aus dem integrativen Rechtsramen der EU mit einem Salto rückwärts ins Machtpolitisch-Moralische gesprungen, zum Schaden der europäischen Einigung und der politischen Kultur in der Europäischen Union“.
accordingly, Romano Prodi made clear on 3 February that “[w]hen one of its members is in difficulty, the whole Union is in difficulty. It is the duty of a strong supranational institution not to isolate one of its members, but instead to keep it firmly in the fold”. At the same instance Prodi underlined, with address to the FPÖ-ÖVP government, that when a state becomes a member of the Union it “accepts its fundamental principles without reservation and forever”.230 It is widely known that Prodi was one among many others who had doubts about the EU14’s ‘diplomatic whipping’ of the FPÖ-ÖVP government from the very start.

Gehler (2002: 208) claims that “[t]he relapse into the rule of stronger nations within the EU has probably caused damage to the Union. The institutions of the EU did not have the final word, but the individual nation states did”. To continue Gehler’s reasoning:

“Actions of mediation by the Commission were rejected by Belgium and France. The result was clearly negative. The “sanction” measures showed that decisions had been made without adequate consideration, that decision makers did not plan enough and reacted spontaneously, and that there was a low level of professionalism in dealing with the problem. For a long while, the EU 14 had no idea how to find their way out of a burdensome dilemma which they had created for themselves and Austria. The appointment of the three “wise men” weakened the position of the Commission, which could have reported on Austria too” (Gehler 2002: 209).

Against this background, one may conclude that the EU14’s chosen exit strategy from the ‘sanctions’ was evidence of “intergovernmentalization of EU policy through the back door” (ibid.). Ludlow argues that the European Council in 2000 contained a significant number of leaders for whom instant approval, not only by the domestic media but also by “international opinion”, was an all-important guide to “good policy”. He even claims that the EU14’s reaction to the inclusion of the FPÖ in the Austrian government could be studied as “an act of collective populism, comparable with the behaviour of many individual members of the Council on their home territories”.231 The following remark by Ludlow from 7 February 2000 constitutes another example of criticism of the EU14’s sidestepping of the European Commission.

“The best that can be hoped for is that the member states will align themselves behind the legitimate warning already given by the Commission that the Austria government’s actions and words will be closely scrutinised – while quietly resuming formal or informal con-

230 See Bulletin Quotidien Europe, no 7647, p. 3 in Cramér and Wrange (2001: 47).
231 “Europe's righteous indignation: Over-reaction to Austria’s new coalition government has brought the risk of an embarrassing climbdown”, Financial Times, 7 February 2000.
The EU Presidency

Recalling the five stages in the crisis, the Portuguese Presidency (1 January-30 June 2000) covered the following phases: *warning*, *implementation*, *crisis escalation*, and *crisis de-escalation*. Although Portugal is a small Member State with little weight and impact on so-called ‘grand bargains’ in the integration process, the efforts by Prime Minister Guterres and his closest colleagues to coordinate an unprecedented event in the history of the European integration process should not be forgotten. The French Presidency (1 July-31 December 2000) was active to a lesser extent than Portugal during the exit phase, but had to continue the dialogue with the ‘wise men’ as their report was not published until 8 September. Finally, the French took care of the legal and political consequences of the EU14-Austria crisis in conjunction with the Biarritz summit 13-14 October.

It is said that the Presidency “has a platform in the decision-making process that clearly makes it an actor to be reckoned with in its own right” (Svensson 2000: 207). Svensson (2000: 28) argues that the Presidency should be approached as an important nexus for influence, guided by two questions: (a) to what extent can the Presidency actually exert leadership? and (b) to what extent can the office-holder advance national priorities?. Furthermore, she claims that the ‘influence privilege’, that is, the opportunity to steer the EU’s political agenda, stems from four distinct sources of informal power associated with the Presidency, namely (a) a control over organisation, (b) a problem formulating prerogative, (c) a solution formulating prerogative, and (d) an advantage of serving as a nexus for information (Svensson 2000: 24). Recalling the EU14-Austria crisis, it is fair to say that the Portuguese Presidency had little problems in dealing with points (a) and (d), whereas point (b) was partly driven by Belgium and France, and point (c) was initiated by Denmark.

Clearly, the Presidency is a functional asset in the decision-making process in the Council of Ministers. Being “manager, agenda-setter, and consensus-builder” (Svensson 2000: 20-21) the Presidency could be described as “a sort of gateway that initiatives must pass through” (Svensson 2000: 180). An important task for the ‘President’ is “trying to balance national objectives and Community perspectives” (Svensson 2000: 28). Expectations of a smooth relationship with acclaimed informal norms of ‘good’ manners in the chair lay the ground for a positive assessment of the individual Presidency term. It is fair to say that the qualities of ‘honest broker’, ‘compromise seeker’, and ‘consensus builder’ must in all reason be of even greater importance in times of sudden political dilemmas or crises in the Union. It is clear that the Portuguese Presidency faced challenges on these fronts, especially when it came to co-ordinating an exit from the ‘sanctions’.

232 Ibid.
On the EU14’s misuse of the Presidency’s roles, Gehler offers a negative comment:

“[t]he EU 14 can be accused of deliberate coquetry and shadow boxing, and of intentionally giving the impression that the EU 14 was the entire Union. In Austria the EU 14 members also made believe that they represented all institutions of the European Union. There was much pretense. The Portuguese spoke “in the name of the 14,” which caused irritation in British diplomatic circles. They could only speak in the name of all members or in their own name. […] On the one hand, the attempt was made to feign that the measures had come from “the Union”; on the other hand, in case of legal objec-
tions, only the bilateral level of the procedures was emphasized without making reference to the full EU” (Gehler 2002: 187-188).

It is perhaps not surprising that this led the Austrian government to accuse the EU14 of bolstering national interests and party politics, while at the same time acting as a “sovereign” against a member of the EU-family and exploiting the EU Presidency chair (Gehler 2002: 210). This was an important point of criticism; that the Presidency was not in the service of the Union (cf. Svensson 2000), but rather in the hands of a few Member States, notably the ‘front-runners’ or ‘hardliners’.233

Having assessed the EU14’s crisis management and its effects on the institutional balance in the Union, it is now time to draw conclusions from the process tracing of the ‘norm journey’ of Article 6(1) TEU in empirical and theoretical terms.

CHAPTER NINE

Concluding discussions

Conclusions from process tracing the ‘norm journey’ of Article 6(1) TEU

When launching diplomatic sanctions measures against the FPÖ-ÖVP government on 4 February 2000, the EU14 embarked on a risky course. First, there was no tested choreography matching the intention of their protest, namely, to prevent the coalition from coming into being. Second, the EU14 had not worked out any strategy for handling potential problematic consequences, in both legal and political terms, which might follow. Against this background, it is a paradox that EU fundamental values expressed in Article 6(1) TEU should actually have been consolidated after experiences of norm crisis and collision with other norms, interests and preferences. To understand this paradox, it is argued that Article 6(1) TEU travelled through five stages in the EU14-Austria crisis, labelled warning, implementation, crisis escalation, crisis de-escalation, and consequences. A central claim is that process tracing the journey of Article 6(1) TEU in empirical and theoretical terms makes it possible to explain and understand why it eventually became consolidated. The definition of norm consolidation in this study is inspired by Abbott et al.’s (2000: 401) concept of legalisation which contains three criteria: the degree to which rules are obligatory, the precision of those rules, and the delegation of some functions of interpretation, monitoring, and implementation to a third party. The amendments to Article 7 TEU reflect this process of consolidating EU fundamental values, which occurs through institutionalisation and judicialisation of precise rules and degree of obligation related to that Treaty article.

During its ‘journey’, Article 6(1) TEU was exposed to exogenous pressure that could have resulted in two outcomes: either Article 6(1) TEU would become more consolidated or there would ensue a weakening in its prescriptive function: its significance as a norm in the ‘ought’ sense. In retrospect, it is clear that consolidation of EU fundamental values in the shape of amendments to Article 7 TEU was an important outcome of the EU14-Austria crisis. The challenge is thus to find out what made possible the consolidation of Article 6(1) TEU. This study argues that the EU14’s instrumental use of EU fundamental values to satisfy domestic interests coupled with a consensus-reflex and time pressure, taking the form of ‘tele groupthink’ and more general symptoms of groupthink, intervened in the course of events. This study demonstrates how time pressure bolstered individual perceptions of a crisis situation. Empirical evidence shows that on more than one occasion the time horizon loomed large among the EU14. Three
examples illustrate the point. First, when the ‘norm journey’ began in late January 2000 with hasty talks on the recent development in Austrian politics, through telephone diplomacy in the problem-solving network of fourteen heads of state and government. Second, the perceived need on the part of some sanctioning capitals to reach an agreement on the exit strategy from the stalemate situation between Austria and the EU14 before the French ‘hardliners’ assumed the EU Presidency on 1 July. Third, the agreement shared by the fifteen Member States that the question marks following the EU14’s ‘diplomatic whipping’ of the FPÖ-ÖVP government had to be addressed before the Nice summit in December 2000, when more vital issues for the Union were to be discussed. To conclude, not only had time pressure a direct effect on the actors’ actions in the EU14-Austria crisis, but also an indirect effect on the norm in focus during its ‘journey’ through the different stages, which eventually triggered the change in its status qua norm. That is why evidence of groupthink in conjunction with telephone diplomacy, among other things, is analysed.

In retrospect, one may argue that the EU14’s ‘diplomatic whipping’ of the FPÖ-ÖVP government did not lead to a consolidation of the norm in focus in political terms, but in legal terms, which arguably is an important step towards securing compliance with EU fundamental values. That said, Article 6(1) TEU today enjoys a firmer legal protection in the shape of the revised sanctions procedure expressed in Article 7 TEU. With the old wording, Article 7 TEU provided a framework for action in situations where a policy orientation in a Member State had violated the elevated status of fundamental values underpinning the European community. In late January 2000, the EU14 could not turn to Article 7 TEU for guidance as at that stage they merely anticipated the formation of the FPÖ-ÖVP government. Hence, the absence of predictable management from the EU14’s side of the ‘Austrian problem’ was a major source of criticism. Partly influenced by the Wise Men Report but also by media criticism that there had been a ‘diplomatic fiasco’, the EU14 and the Austrian government agreed on substantial amendments to the trigger mechanisms for Article 7 TEU at the informal European Council meeting in Biarritz 13-14 October. In what follows, three aspects of this Treaty change are highlighted.

First, according to the Treaty of Amsterdam, the precondition was the existence of a serious and persistent breach of EU fundamental values expressed in Article 6(1) TEU. Under the new paragraph (1) of Article 7 Treaty of Nice, the European Council has power to take preventive action. The Treaty now makes provisions for the EU to declare that a Member State is at risk of violating Article 6(1) TEU. In other words, the accused Member State has the burden of proof to show that it is not a ‘deviating’ member of the European community. Put differently, a threatened breach of EU fundamental values is enough for launching the punishment procedure. Obviously, sanctions measures may go further than diplomatic embarrassment. The European Council may suspend the right to give a vote deriving
from the application of the Treaty to the Member State in question.\textsuperscript{234} However, one may wonder whether there will be an agreement in advance between the Member States on what constitutes a ‘clear risk’. Arguably, this should not be determined arbitrarily by the Member States themselves, but should include assessments by the European Commission and the European Parliament.

Second, the prescribed procedure today post-Nice is that, on a reasoned proposal by one third of the Member States, the European Parliament or the Commission, the European Council may act by a majority of four-fifths of its members, after obtaining the assent of the Parliament. Before such a determination is made, the targeted Member State must be given a hearing, and the European Council may call on “independent persons” (‘wise men’) to submit to it, within a reasonable time limit, a report on the situation in that Member State.

Third, as the EU14 launched their protest against the expected FPÖ-ÖVP government without attaching an ‘exit procedure’, this important lacuna meant an additional source of trouble over and above the already debatable nature of the sanctions measures. It should therefore not be surprising that the Wise Men Report had a significant impact on the precise wording of the ‘new’ article 7 TEU. This report recommended the “introduction of preventive and monitoring procedures into Article 7 of the EU Treaty, so that a situation similar to the current situation in Austria would be dealt with within the EU from the very start” (Wise Men Report, point 117). Accordingly, the ‘new’ Article 7 TEU formally authorises the European Council to obtain an independent report on the situation in the ‘deviant’ Member State, before it takes action. However, one may have doubts whether the possible appointment of ‘wise men’ in the future will be as wise a solution as it proved to be in the Austrian case. For example, this ‘independent’ committee could increase the risk that considerations of political prestige and domestic politics will prevail over Union-wide concerns. Nevertheless, the use of ‘wise men’ is a smooth exit strategy from a politically risky stalemate situation, as this study has shown. What seems problematic in the ‘wise men’ solution is that the European Commission – the guardian of the treaties – is still left without a voice in the monitoring of respect for the values expressed in the Treaty text.

**Observations from applying the theoretical framework to the EU14-Austria crisis**

This study elevates the idea of parallelity in theoretical arguments when approaching a research problematic where the interplay between norms and actors are in focus. This is in line with Herrmann and Shannon’s (2001: 650) argument that “to understand the operation of norms in the international

\textsuperscript{234} There was no amendment on this point which implies that the wording is exactly the same for Article 7(2) Treaty of Amsterdam as Article 7(3) Treaty of Nice.
system we must link together structural and agent-based theories”. Indeed, the EU14-Austria crisis is a suitable case to illustrate their thesis. To put it clearly, the ‘norm loop’ and ‘norm continuum’ metaphors (cf. chapter one) coupled with (social- and legal-)constructivist and rationalist arguments help to explain and understand the ‘norm journey’ of Article 6(1) TEU and why, at the end of the day, the crisis between the EU14 and Austria resulted in norm consolidation.

A central claim is that one does not have to take either a ‘thin’ or a ‘thick’ stance on the role of norms in the case in question. As a consequence, this study is not predisposed towards any of the scientific paradigms. Rather, the analysis has much to gain from adopting a ‘moderate’ stance on both rationalism and constructivism as scientific paradigms. Therefore the question “Should I stay constructivist or go rationalist?” or vice versa does not impose itself in this study. A process tracing research design enables this position. To put it simply, process tracing is useful to explore a complex chain of events and situations that can be approached from a variety of theoretical springboards.

To sum up, a limited variety of theoretical arguments matched with the method of process tracing are the cornerstones in the chosen dramaturgy for telling the story about the EU14-Austria crisis. It is exemplified how what many would describe as ‘rival’ theoretical arguments leave “distinct empirical “trails”” in the analysis of the case in question (Jupille et al. 2003: 16). To repeat, constructivism and rationalism, as they are taken in this study, co-exist and they are related to each other in a ‘more or less’ manner along a continuum, that is, the temporal dimension in the crisis. Nevertheless, both approaches are useful in order to analyse the warning phase in the EU14-Austria crisis. However, the rationalist approach can better explain the shift from the crisis escalation to the crisis de-escalation between the FPÖ-ÖVP government and the EU14, whereas it has little relevance for analysing the consequences phase in the case in question, where legal-constructivist arguments are more apt.

The following sections present the two large pictures that emerge from the examination of the EU14-Austria crisis through constructivist lenses on the one hand, and rationalist lenses on the other. Starting with the latter, a ‘moderate’ rationalist approach to the EU14-Austria crisis embraces agency-based explanations for the chain of events. The actions and behaviour of the fifteen heads of state and governments’ side are in focus. Furthermore, the role of domestic politics is elevated, for example the rise of right-wing populist/extremist parties in Belgium and France. Applying a rationalist approach implies that norms are seen as ‘thin’ in the sense that they could easily be exploited by actors that have a relationship with them. Thus, EU fundamental values were exploited as a strategic instrument by the EU14 to counter the FPÖ-ÖVP government. Put differently, they were overtaken by imagined and ‘real’ time pressure, domestic politics, opinion politics, and political prestige. The Member States were the ‘masters of the game’, not norms of any kind. For rationalists, the characteristics of norms change because of exogenous pressure. Thus, the consolidation of Article 6(1) TEU
was not caused by endogenous needs but it was triggered by ‘outside’ forces. That explains why there was an agreement among the EU15 to revise Article 7 TEU. Nonetheless, there are no convincing arguments drawn from empirical findings that could demonstrate how norms actually had an autonomous influence on the actors’ behaviour. Time pressure was used as a strategic effect to bolster the alleged crisis situation. Hence, time pressure became a source of manipulation along the lines of “we have to act now before it is too late”. To put it clearly, it was a means to mask preferences having a relationship with domestic interests. To conclude, with a rationalist approach to the EU14-Austria crisis follows the tracing of self-maximising behaviour and strategic calculations among the EU14.

From a ‘moderate’ constructivist perspective, the EU14 protested above all in defence of the Union’s fundamental values. The focus is put on the norm embracing these values, namely Article 6(1) TEU. It is said to have had an autonomous influence on the foreign policy actions of the EU14. This norm not only justified the EU14’s ‘diplomatic whipping’ of the FPÖ-ÖVP government, but it also made for the presence of argumentative persuasion among the EU14. Both social constructivists and sociological institutionalists assume that ideational/normative concerns can take the form of norms and become institutionalised in a legal framework, which was the case with Article 6(1) TEU. This also means that they accepted such conditions under which norms actually constitute actors.

According to Herrmann and Shannon (2001: 651), “[w]hen we introduce cognitive variation at the agent level to our understanding of the operation of norms, we must also introduce the possibility that in-group biases and other psychological inclinations will affect enactment decisions”. It is clear that the importance of norms was bolstered by psychological factors, such as groupthink, within the EU14. The argument on cognitive factors tilting the problem-solving group of fourteen heads of state and government in one direction or another is one to which constructivists subscribe. The reason is that constructivists elevate the role of socialisation processes and situations of persuasion as explanations for the outcome of a particular decision or event.

This study also demonstrates that a particular variant of the constructivist paradigm, namely legal-constructivism, is valuable in tracing concrete implications of the EU14’s diplomatic sanctions measures for Article 7 TEU (cf. Merlingen et al. 2000; 2001). A legal-constructivist approach to the study of the EU14-Austria crisis provides a structuralist explanation. Norms are seen as entrenched and the expected compliance with a fixed structure, the *acquis communautaire*, which gives the Union meaning, is of particular interest. A central claim is that the Member States have to act in accordance with embedded norms regulating their actions and behaviour *qua* Member States, otherwise they will face sanctions measures. This is in line with Goldstein et al.’s (2000: 387) claim that “[t]he relationship between law and politics is reciprocal, mediated by institutions”. With a legal-constructivist approach it is possible to explore the properties of legal norms (Articles 6(1) and 7 TEU). Moreover, this approach facilitates the understanding of why actors some-
times prefer to reinforce normative consensus with legalised institutions (cf. Goldstein et al. 2000: 393), as in the case of the revised Article 7 TEU.

Envoi

The EU14’s 'diplomatic whipping' of the FPÖ-ÖVP government in 2000 was influenced by the increasing focus on developing the political side of the EU, visible in the debate on the Charter of Fundamental Rights of the European Union. It is thus fair to say that the EU14 protested in defence of the Union's political identity and fundamental values. Besides, the formation of the FPÖ-ÖVP government was flagrant evidence of a breach of taboo in not keeping right-wing extremist/populist parties at arm’s length. That is why the EU14 justified and bolstered their reaction with the help of normative and moral arguments. However, the idea of 'normative deterrence' failed. As Gehler (2002: 209) points out, “[w]ith regard to the original intention of preventing the formation of the ÖVP-FPÖ government, the “sanction” measures had already failed on February 4”. After all, the FPÖ-ÖVP government continued governing despite the EU14’s diplomatic sanctions measures. A major factor explaining this failure was the half-heartedness with which the agreed sanctions measures were applied by the EU14. The reason for this mixed picture was the existence of ‘false’ consensus, group pressure and argumentative persuasion among the EU14. These factors obviously played a significant role when elaborating a common standpoint against the expected FPÖ-ÖVP government formation, and maintaining the ostracism policy during spring.

Drawing on empirical evidence, one may claim that the EU14’s ‘diplomatic whipping’ of the FPÖ-ÖVP government endangered the institutional reforms that were necessary in view of the EU’s eastern enlargement. The political instability in the Union caused by the strained relationship between Austria and its EU partners thus threatened the pace of major decisions of general principle that needed be made. Consequently, the EU14 (as well as the FPÖ-ÖVP government) were (co-)responsible for jeopardising the enlargement process, because they had no means to prevent the Austrian government from using its legal right to ‘hi-jack’ its precondition, since unanimity between the EU15 on institutional reforms was still required.

This study demonstrates that the EU14-Austria crisis did not turn out as a rupture in the integration process. Paradoxically, the outcome of ostracising an individual Member State was the consolidation of EU fundamental values expressed in Article 6(1) TEU. The Union took another step in the direction of tighter monitoring of the Member States’ compliance with its constituent values. This step was reflected in the amendments to Article 7 TEU. The EU14-Austria crisis, as presented in this study, thus illustrates the claim that Union-wide crises can work as an ‘injection’ for the integration process and have a positive effect on its normative foundation.

It is often said that the values underpinning the European community have a direct impact on inclusion in the community. Following the end of communist rule, the aspiring CEE states faced a high level of conditionality
established in the 1993 Copenhagen criteria in relation to their membership applications (Laffan 2000: 10). Since then, the challenge has been how to make these conditionalities ‘living’ conditionalities. The EU14-Austria crisis was part of this development, which hopefully will strengthen the normative/political integration process in the long-term perspective. To continue on this note, on the subject of justification, it is said that when intervening for normative ends there is little pressure to account for final policy outcomes. Whatever happens in the targeted state facing sanctions measures, it can be alleged to be better than non-interference. This is why the belief that there would have been an even deeper EU ‘domestic’ political crisis without the EU14’s ‘diplomatic whipping’ of the FPÖ-ÖVP government provides a hypothetical post facto justification that is difficult to prove wrong (cf. Chandler 2003: 309). With the EU14-Austria crisis in mind, one may argue that normative interference is important because it is central to the EU’s moral conception of itself. In this context, what is essential about normative interference is an idea or even an obligation, rather than a practice (cf. Chandler 2003: 311).

Arguably, there is still a problem of credibility for the EU Member States in making Article 6(1) TEU a genuinely ‘living’ norm. An examination of the examples of governments and their policies in Italy 2001 and Denmark 2001 and 2005 would support the claim that such an ambition is lacking in rigor, which is perhaps due to the mixed experiences with the ‘diplomatic whipping’ of the FPÖ-ÖVP government in 2000. Hence, one may conclude that the idea of defending EU fundamental values has not been applied consistently by the Member States after the EU14-Austria crisis, despite the existence of a more elaborated legal procedure (Article 7 TEU) for undertaking a scrutiny of the Member States’ compliance with Article 6(1) TEU. One plausible reason is that norm misuse is a simple reality in the Union. Perhaps one may even claim that the misuse of norms makes it impossible to apply them consistently and systematically. Whether that is equivalent to accepting that the rationalists are right in their assumption that “norms are what states make of them” (Shannon 2000), and that the normative pressure of norms is mostly void of any concrete influence on the actors’ behaviour is, however, a subject for another study.
Fax from José de Freitas, diplomatic counsellor to Prime Minister António Guterres, to the thirteen Heads of State and Government, 27 January 2000

Subject: Austria

I hereby enclose to you both a letter from Prime Minister Guy Verhofstadt and Foreign Minister Louis Michel and a press statement issued this morning by Prime Minister António Guterres.

We would appreciate to have your reaction regarding the initiative forwarded to the Presidency by the Prime Minister of Belgium.

Best regards
José de Freitas Ferraz

Note to the press.

I want to express my deep concern regarding the possible political evolution in Austria.

The European Union is not only a single market or a single currency. It is also a Union based on a set of values and rules and on a common civilization.

All EU member states Governments should clearly share those values and rules, and that common civilization.

Lisbon, 28th January 2000.

António Guterres
Prime Minister
Today, Monday 31 January, the Portuguese Prime Minister informed both the President and the Chancellor of Austria and the Portuguese Minister of Foreign Affairs notified his Austrian counterpart of the following joint reaction agreed by the Heads of State and Government of XIV Member States of the European Union in case it is formed in Austria a Government integrating the FPÖ.

Governments of XIV Member States will not promote or accept any bilateral official contacts at political level with an Austrian Government integrating the FPÖ; there will be no support in favor of Austrian candidates seeking positions in international organizations; Austrian Ambassadors in EU capitals will only be received at a technical level.

The Portuguese Prime Minister and the Minister of Foreign Affairs had already informed the Austrian authorities that there would be no business as usual in the bilateral relations with a Government integrating the FPÖ.

Lisbon, 31 January 2000
Commission statement on Austria, 1 February 2000

IP/00/93

Brussels, 1st February 2000

The Commission notes the agreed joint view expressed by 14 Member States of the Union on January 31st and shares the concerns which underlie that decision.

The Commission will continue to fulfil its duty as guardian of the provisions and values set down in the Treaties, which provide that the Union is founded on the principles of liberty, democracy, respect of human rights and fundamental freedoms and the rule of law, as set out notably in Articles 6 and 7 of the Treaty on European Union.

At this stage the working of the European institutions is not affected. In this context the Commission, in close contact with the Governments of the Member States, will follow the situation carefully, maintaining its working relations with the Austrian authorities.
EU Commissioner Dr. Franz Fischler

Personal statement about the formation of the new government in Austria

I am well aware of the immense responsibility resting on me, as both a convinced European and an Austrian citizen, as a result of the inclusion of the Austrian Freedom Party in Austria’s new national government. I share the concern expressed by the Commission in its statement. The Commission has a duty as guardian of the EU Treaties and is determined to exercise that role to the full, remaining watchful and quick to reprimand the slightest breach of EU law.

However, it is not the Commission’s place to isolate a member country. On the contrary, our duty is to prevent any country cutting itself adrift from the rest of Europe. This is why the Commission must and will maintain its working relationship with Austria.

One part of my responsibility is and always has been to convey the present international concern to my countrymen and to explain that the European Union is not turning against Austria as a country or a people. The Union has made clear that its basic values—tolerance, solidarity, respect for human rights—have to be automatic for every Member State. No Austrians who are attached [to] their country will want to disagree with me on this.

But another part of my responsibility, as I see it, is to help defend Austria’s well-deserved reputation abroad. Austria is not a stronghold of fascism, of intolerance, but a functioning democracy. My fellow-countrymen, as the sovereign people of an independent state, naturally have every right to make up their own democratic mind. That is what has taken place, whether one likes the results or not. What would not be acceptable is any policy running counter to the essential and fundamental values of the European Union.

I personally expressed myself clearly in December towards the head of the Freedom Party when I said that nationalism, anti-foreign feeling and intolerance have no place in our common Europe. I still stand to what I said then and would not take back a single word. My own membership of the Austrian People’s Party, whose values are the same as those of all Christian-Democrat parties in Europe, is a reflection of this.

It goes without saying that I would be the first to reconsider my membership in the Austrian People’s Party, if these principles would not be upheld. I have read the introduction of the programme put out by the new coalition government very thoroughly and have found no passage in it which would clash with these high requirements. It contains a definite ‘no’ to discrimination, as well as to xenophobia and intolerance. It also contains a clear com-
mitment to eastward enlargement, to European integration in general and to shared responsibility among Austrians for the darkest chapter of our history, the holocaust. This is an important step towards gaining international acceptance which I welcome.

I can only hope that this is an unambiguous signal that the Freedom Party has broken with its past. But words alone are not enough. This Austrian Government, as no other, will be judged by its deeds.

Dr. Franz Fischler
Appendix 5

European Parliament resolution on the result of the legislative elections in Austria and the proposal to form a government between the ÖVP (Austrian People’s Party) and the FPÖ (Austrian Freedom Party).
3 February 2000.

The European Parliament,

having regard to Article 6 of the Treaty on European Union, which recalls the principles of freedom, democracy and respect for human rights as the foundation for a modern, democratic, open and tolerant Europe,

having regard to Article 7 of the Treaty on European Union whereby certain rights of a member of the Union may be suspended in the event of a serious and persistent breach of the principles mentioned in Article 6,

having regard to the principles recognised in the European Convention for the Protection of Human Rights,

having regard to the result of the legislative elections in Austria on 3 October 1999 and the proposal of 1 February 2000 to establish a coalition government between the ÖVP and the FPÖ,

having regard to the statement made by the Portuguese presidency on behalf of 14 Heads of State and Government on 31 January 2000,

having regard to the statement made by the Commission on 1 February 2000;

whereas the objectives of peace and reconciliation have, in the aftermath of the Second World War, led to the emergence and achievement of the political project of the European Union,

considering the very strict conditions imposed on candidate states as laid down in the conclusions of the European Council of Copenhagen in June 1993, according to which candidate states must meet political criteria on the existence of stable institutions guaranteeing democracy, primacy of the rule of law, human rights and respect for and protection of minorities,

whereas the EU cannot demand of candidate states standards which are not seen to apply with equal force to Member States,
insisting on the promotion and defence of European democratic values on the part of EU and its institutions and recognising the integrity of the democratic rights and constitutional prerogatives of the Austrian people and state,

Condemns all the insulting, xenophobic and racist statements issued by the leader of the Austrian Freedom Party, Jörg Haider, over many years;

Believes that the admission of the FPÖ into a coalition government legitimises the extreme right in Europe;

Believes that such sentiments can play no part in the evolution of the political relations between Austria and the EU and in particular alerts Mr Schüssel, as leader of ÖVP, to his profound political responsibility to ensure that any government which he might lead must respect the spirit and the letter of the fundamental principles of the Treaty;

Welcomes the timely political intent of the statement of the Portuguese Presidency in so far as it reiterates Member States’ common concern to defend common European values as an act of necessary heightened vigilance;

Trusts in the large majority of the Austrian people who did not vote for the FPÖ, and calls on the Council and Commission to give their full support to activities in Austria organised to counter racist, xenophobic and anti-immigrant views;

Welcomes the timely political intent of the statement of the Commission in so far as it reiterates Member States’ common concern to defend common European values as an act of necessary heightened vigilance;

Calls on the Commission and the Council, together with the Parliament, to monitor developments especially regarding racism and xenophobia in Austria and throughout Europe;

Calls on the Council and Commission to be prepared, in the event of the existence of a serious and persistent breach by whatever Member State of principles mentioned in Article 6 (1) of the Treaty on European Union, to take action under Article 7 of this Treaty and, following Parliament’s assent, to suspend that State’s rights deriving from the application of this Treaty;

Instructs its President to forward this resolution to the Austrian President and Government, the Council and the Commission.
Dear fellow Austrians all over the world!

Today I have sworn in a coalition government formed by the Austrian People’s Party and the Austrian Freedom Party.

The formation of this government was preceded by stormy internal and external political debates which are for me a cause for worry and concern.

Several months of efforts to bring about a stable and personally renewed coalition between the Social Democratic Party and the People’s Party failed—not least due to the wear and tear of a partnership which had existed already for 13 years.

The People’s Party and the Freedom Party have a majority of seats in Parliament. This must be respected in a democracy. Therefore, the intention of the two parties to form a coalition has to be accepted in a democratic state based on the rule of law.

The new government which today starts its work means a profound political change for Austria, a change which is desired by many people but which also meets with skepticism or even objection with many others.

The reactions to the formation of this government are so strong that great efforts will have to be made at home and abroad to refute prejudices and unjustified criticism.

At my request, the party chairmen of the People’s Party and of the Freedom Party yesterday signed a declaration containing a clear commitment to the European Union and its fundamental values.

This declaration states:

“The Federal Government is committed to the European peace project. Cooperation between the coalition parties is based on a commitment to Austria’s membership in the European Union. The Federal Government is bound by the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law. Austria’s future, too, lies in the deepening of integration and the enlargement of the Union. Austria’s history and geopolitical situation represent a special responsibility to further the process of integration and to anchor the European idea even more firmly in everyday life.”

The declaration also states:

“The Federal Government stands for respect, tolerance and understanding for all human beings irrespective of their origin, religion or weltanschauung. It condemns and actively combats any form of discrimination, intolerance and demagoguery in all areas. It strives for a society imbued with the spirit of humanism and tolerance towards the members of all social groups.”
“The Federal Government is committed to the protection and promotion of human rights as well as to their unconditional implementation at national and international level. This also makes an important contribution to the prevention of wars and domestic conflicts which result in violations of the rights of people, who may find themselves displaced or even forced to leave their home country.”

I will convey the complete text of this declaration with a personal letter to all heads of state and government of the European Union and to the Presidents of the United States and of Israel.

Yesterday, I made it clear to Mr. Schüssel and to Mr. Haider that any disregard of the commitments to Europe and the rule of law in Austria as enshrined in the declaration will have serious domestic and external political consequences.

Dear compatriots,
Austria is a stable democracy, a country with a functioning state under the rule of law, which, over decades, has earned the respect of the international community. It is now imperative we all work together to preserve and promote this respect.

I therefore ask all political forces in our country, all Austrian women and men, as well as our partners in the European Union and in the world to give the new Federal Government a chance and to judge it on its work.

To the members of the Federal Government I appeal to act in the spirit of the European values and to work with all their strength so that Austria will find the kind of international acceptance and recognition it deserves.

I promise you that I shall see to it that there are no developments in our country which contradict the values of the European Union and of the international community.

I shall also make use of all my international contacts in order to ensure that our country will not suffer any lasting damage. I shall argue convincingly that Austria is a good country with good people and a future generation with an open mind for the world, a generation which should be encouraged, not ostracized. Austria deserves to be recognized as a reliable partner in the European Community and in the world.

I ask you, dear fellow Austrians, for your support and your trust in this great task.

Dr. Thomas Klestil
Appendix 7

“Responsibility for Austria – A Future in the Heart of Europe”
(Declaration inserted in the Preamble to the Programme of the new Austrian Government)

The Federal Government reaffirms its unswerving adherence to the spiritual and moral values which are the common heritage of the peoples of Europe and the true source of individual freedom, political liberty and the rule of law, principles which form the basis of all genuine democracy.

The Federal Government stands for respect, tolerance and understanding for all human beings irrespective of their origin, religion or Weltanschauung. It condemns and actively combats any form of discrimination, intolerance and demagoguery in all areas. It strives for a society imbued with the spirit of humanism and tolerance towards the members of all social groups.

The Federal Government works for an Austria in which xenophobia, anti-Semitism and racism have no place. It will take vigorous steps to counter every way of thinking which seeks to denigrate human beings, will actively combat the dissemination of such ideas and is committed to full respect for the rights and fundamental freedoms of people of any nationality – irrespective of the reason for their stay in Austria. It acknowledges its special responsibility as regards the respectful treatment of ethnic and religious minorities.

The Federal Government supports the Charter of European Political Parties for a Non-Racist Society and commits itself to work for the exemplary realisation of its fundamental principles in Austria.

The Federal Government is committed to the protection and promotion of human rights as well as to their unconditional implementation at national and international level. This also makes an important contribution to the prevention of wars and domestic conflicts which results in violations of the rights of people, who may find themselves displaced or even forced to leave their home country.

The Federal Government is committed to the principles of pluralistic democracy and the rule of law common to all members of the European Union, which are also anchored in the Austrian constitution and form the precondition for membership in the Council of Europe. The rights and freedoms enshrined in the European Convention on Human Rights, which are
constitutionally guaranteed in Austria, are a clear expression of this commitment.

The Federal Government is committed to the European peace project. Cooperation between the coalition parties is based on a commitment to Austria’s membership in the European Union. The Federal Government is bound by those principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, which under Article 6 of the Treaty of the European Union are common to all member states of the European Union. Austria’s future, too, lies in the deepening of integration and the enlargement of the Union. Austria’s history and geopolitical situation represents a special responsibility to further the process of integration and to anchor the European idea even more firmly in everyday life. The Transatlantic Partnership will have a special significance in order to assure peace and stability during the 21st century.

The European Union as a community of values corresponds to a definite concept for the future development of European integration. This includes, in particular, work on the Charter of Fundamental Rights of the European Union. Austria supports further work towards combating all forms of discrimination according to Article 13 of the EU Treaty.

A living culture of democracy and the rule of law demands a relationship between state and citizens that creates new areas of freedom and responsibility for the individual. In a modern efficient state there are functions which can best be carried out by the individual or by non-state actors.

The Federal Government is, however, committed with all emphasis to the maintenance in solidarity of the state welfare services for every citizen who needs state help and support. This applies especially to those people who are unable to take advantage of the opportunities induced by modernisation which are increasingly dominating our lives.

The principle of solidarity also means that consideration must be shown towards the needs and expectations of future generations in order to ensure fair chances for all members of society and their plans for the future.

The Federal Government desires to strengthen Austria’s position as a performance and competition oriented economic location. That is the basis for securing existing employment, creating new jobs and ensuring prosperity in our country. Austria’s accession to the European Union and an assured participation in the European Monetary Union were and remain important preconditions for the future of the economy and employment in Austria.

Austria’s social partnership has proved itself as an important instrument for the location of industry and jobs in Austria, and has contributed thereby to the maintenance of social peace. The Federal Government is committed to
comprehensive cooperation with the social partners, but at the same time recommends the necessary readiness to reform the social partnership, for example in respect of the social security structures including the election of representatives of the insured, and strengthening the service character of the social partnership institutions.

The Federal Government is aware that the Austrian people must energetically continue to build on their great achievements of the past and develop Austria’s strengths still further.

Austria accepts her responsibility arising out of the tragic history of the 20th century and the horrendous crimes of the National Socialist regime. Our country is facing up to the light and dark sides of its past and to the deeds of all Austrians, good and evil, as its responsibility.

Nationalism, dictatorship and intolerance brought war, xenophobia, bondage, racism and mass murder. The singularity of the crimes of the Holocaust which are without precedent in history are an exhortation to permanent alertness against all forms of dictatorship and totalitarianism.

The European Union’s project for a broad, democratic and prosperous Europe, to which the Federal Government is unconditionally committed, is the best guarantee against a repetition of this darkest chapter of Austrian history.

The Federal Government is committed to a self-critical scrutiny of the National Socialist past. It will ensure unreserved clarification, exposure of the structures of injustice, and the transmission of this knowledge to coming generations as a warning for the future. As regards the question of forced labour under the National Socialist regime, the Federal Government will endeavour to arrive at objective solutions in the light of the intermediate report by the Austrian commission of historians, while having regard to the primary responsibility of the companies concerned.

The government parties are committed to a new form of government and cooperation. They desire to solve problems, deal with challenges and make consistent use of opportunities, because they are committed to Austria’s future in Europe. Austria, as a stable and reliable country, will make her contribution in partnership for a peaceful and secure life together in Europe and the world.

Vienna, 3rd February 2000

Dr. Wolfgang Schüssel Dr. Jörg Haider
Appendix 8

Personal statement about the formation of the new government in Austria by Federal Chancellor Dr. Wolfgang Schüssel

The greater part of the Austrian public estimated the result of the elections from October 3, 1999 as failure of the Social Democrats, who had provided the chancellor for the past 30 years: They forfeited 5 percent of their former votes and lost 6 mandates in parliament. The smaller party of government, the Conservative Party, managed to keep its number of mandates, while the oppositional Freedom Party caught up with the Conservatives and contrived a surplus of 415 votes at an equal level of 52 mandates (out of 183) per party.

With this rejection not only of the great coalition between Social Democratic and Conservative Party that had lasted for 13 years, but of out-dated structures and antiquated political, economic and social systems in Austria as well, the voters apparently demanded a new political orientation in our country.

Our negotiations with the former co alition partner were doomed to failure because of the lack of assent to a common government programme from among the Social Democrats. When it became apparent that the minority government introduced by the Social Democrats would not dispose of a stable majority in parliament, I decided, with all possible support from my party and the approval of the Federal President, to start negotiating with the Freedom Party—in the interest of Austria’s stability and its European duties. This Freedom Party represents as democratic party more than 1.2 million voters in parliament.

This action of the Conservative Party has to be seen in the light of the long tradition of its work for Austria; a tradition where the party has always proved itself willing to put the country’s interests before its own. Having granted democracy, freedom, human rights, market economy and western values since 1945 as well as having led Austria into the EU in its duty as European Party, the Conservative Party now commits itself to a responsible course to complete the integration of our country in the community of western values on all levels. This sensible course is unconditionally shared by the Freedom Party.

We have negotiated an ambitious government programme in cooperation with our coalition partner; a part of which we have already realized satisfyingly in these first weeks since our inauguration. We have resolved to discuss one important topic every other week and to pass a resolution about the elaborated results instantly.
The public perception and the medial coverage in Austria are at the moment dominated by the international wave of protest and the demonstrations against the new government. The greatest part of the international resentment alludes to the person of Jörg Haider and his public utterances. The attacks—especially the indignation of the EU Foreign Ministers—also aim at the Republic of Austria. The assailants impute to our country the refusal to consider human rights, democracy and racist tendencies adequately. Especially these arguments are unfounded and can be broached by the following facts:

1. Austria can boast the largest quota of foreigners within the EU;
2. Austria as a small country has also proved its willingness to incorporate refugees in emergency situations in the past (e.g. the crises in Hungary, Czechoslovakia, Bosnia and in the Kosovo);
3. Austria can globally be counted to the nations with the readiest benefactor and donors—a clear indication for its solidarity and compassion;
4. Austria seldom has to deplore attacks on foreigners (in comparison to other countries that are at the moment condemning us);
5. Austria has established one of the most rigorous legislations concerning the prevention of re-emerging national socialistic activities;
6. Austria holds a good place in international comparison with regard to the respect of human dignity and human rights (e.g. Amnesty International);
7. Austria has a functioning democracy with one of the highest voting rates worldwide;
8. Austria does not have a considerable, politically active right-wing radicalism compared to other countries;
9. International comparative studies show that Austria’s share of xenophobia and antisemitism is not higher than those of the other Western European democracies. Beyond that this share is in a process of decrease;
10. The official negotiations concerning the Eastern Expansion of the EU have been initiated during the Austrian EU presidency. Many of the critics now assailing Austria because of their fear of our delaying this process then criticized our breakneck speed.

We can ascertain with satisfaction not only that many of our European friends and partners are cooperating with us in an unchanged manner, but that the formerly broad front of refusal is now receding slowly in some nations of the EU as well.

It is our declared aim to continue our renewing efforts for a future-oriented development of our country quietly and calmly.

In this sense we ask all our fellow-countrymen and also all the foreign observers to analyse the work of the new government with fairness and judge it in relation to the realisation of its plans.
Appendix 9

Press statement by Austrian Foreign Minister
Benita Ferrero-Waldner
at the General Affairs Council meeting,
Brussels 14 February 2000

I would have wished that my first attendance of a meeting of the General Affairs Council as Minister for Foreign Affairs had taken place under different circumstances.

During the last week much has been said and written which is in sharp contrast to the reality in Austria and I would like to invite you to draw a more factual and concrete picture of Austria. The questions and values at stake are far too important to be drawn in black and white and it would be unfair against the people of Austria to try to reduce their European patriotism to a black-and-white photo.

But I welcome the opportunity to inform the European governments, European public, the applicant countries and especially you from the press about the values and convictions of the newly formed Austrian government.

Brussels is a place where representatives of 15 European governments discuss positions of their governments. I would therefore like to address the people of Europe in this press conference:

Austria has been taken aback by the declaration by 14 EU member states, dated 31 January. The reasons for our surprise are well known to you: The procedure chosen is not covered by the EU Treaty. The declaration stands in clear contradiction to the sincere commitments of the Austrian federal government. The fact that Austria has not been informed or consulted in advance, contradicts the very spirit of the EU Treaty, which is based on the principles of solidarity and cooperation between the partners of the Union. I do not wish to elaborate on further points. However, just think of the impact the declaration of the 14 has on the substantial pro-European majority of Austria’s population.

Austria is determined to pursue its policy of European integration in the spirit of the Treaties. We will continue to cooperate with you within all EU institutions in a constructive and committed manner but this can only be achieved if Austria can fully participate, also in the future in the “courant normal” of EU affairs, not only here in Brussels, but also in the capitals of our EU partners.
You know the outcome of the last parliamentary elections in Austria and the following difficult period. The only way out of this impasse was the formation of the present Austrian coalition government. As you probably know the FPÖ is a party that has existed for 50 years and is, at present, represented in 6 of the 9 regional governments.

I would like to emphasize that Mr. Haider is no member of the federal government but remains governor of Carinthia. In the new government the key portfolios for European integration, namely the Federal Chancellery and the Ministry for Foreign Affairs, remain in the hands of Austrian People’s Party.

According to the Austrian constitution, there are only 3 officers of state who can represent Austria abroad: The Federal President, the Federal Chancellor and the Foreign Minister. I trust, that the people of Europe will listen to those, who are entitled to speak for Austria, and not to the word of a Carinthian governor.

With a populist opposition party like the Freedom Party you in fact have only two options:

The one option is to isolate them successfully and permanently. This we have tried at the federal level for the past 14 years. The only effect was that the Freedom Party gained ever increasing support by continuing their populist opposition. The other option is to convince them to share responsibility for necessary and sometimes unpopular political measures and to bring them back on a pro-European path.

I believe that the Working Programme of the Austrian Government which was signed by the FPÖ has achieved this purpose.

Let me assure you: We take the concerns expressed by our partners in the Union very seriously. Also for Austria, the European Union, stands for more than a mere common market or a mere common currency. We also understand the Union as a community, which stands for common values and common principles and shares a common concept of civilisation. Federal Chancellor Schüssel made it very clear: Austrian People’s Party is under no circumstances prepared to maintain the present coalition if the respect of these principles cannot be ensured.

Our government program clearly expresses our unchanged and positive attitude towards the European Union, towards its deepening as well as towards its enlargement. Our positions on enlargement but also as regards the intergovernmental conference are therefore clear, predictable and marked by continuity.
Let me also remind you that the FPÖ was originally opposed to the common currency. It has now accepted a programme of massive budget and economic reforms that pursue one major objective: to ensure that Austria continues to fulfill the Maastricht convergence criteria.

You all know me. I have spent my political life campaigning for the European values of democracy, openness, tolerance and the solidarity of all mankind. Austria is noted for her high humanitarian standards. Let me remind you: Victims of political repression, war and expulsion have always found hospitality in my country – in 1956 and 1968 during the crisis in Hungary and Czechoslovakia and again during the 1990s when more than 100 000 refugees from the Balkans found a new home in Austria.

Once again, we respect our partners’ concerns. However, I would like to ask all of them once more – as it was also alluded to by the Commission in its statement of 1 February – to judge us on the basis of the concrete actions of the Austrian federal government.

We are now facing a new and difficult situation which is without precedent in the history of European integration. I appeal to everyone involved to proceed with good judgement and circumspection.

I am now open for questions.
Appendix 10

Press release issued by the Registrar. No. 491.
29 June 2000. President of the European Court of Human
Rights to appoint three personalities under Portuguese
EU Presidency Mandate

The President of the European Court of Human Rights, Mr Luzius Wild-
haber, today received a letter from the Portuguese Prime Minister, Mr António Guterres, informing him of the following:

“The Prime Minister of Portugal received a mandate to ask the President of the European Court of Human Rights to appoint three personalities who would deliver, on the basis of a thorough examination, a report covering:

- the Austrian Government’s commitment to the common European values, in particular concerning the rights of minorities, refugees and immigrants;
- the evolution of the political nature of the FPÖ.

Based on the conclusions of this report the XIV will re-examine their bilateral relations with the Austrian Government.”

In response to the request communicated by the Portuguese Prime Minister, the President answered in the following terms:

“Dear Prime Minister,

I write in response to your letter of today’s date in which, in accordance with the mandate you received, you ask that, as President of the European Court of Human Rights, I should appoint three personalities to draw up a report on certain aspects of the current situation in Austria, notably the Austrian Government’s commitment to common European values and the evolution of the political nature of the FPÖ.

I note that you have informed all the member States of the European Union of this initiative and I understand that, although the text and the mandate were agreed by fourteen of the Governments, all fifteen Governments have agreed to my exercising this function. On that basis I am prepared to accept this responsibility. You will recall that in our discussions I told you that I would not be in a position to appoint a sitting Judge of the European Court of Human Rights as one of the personalities and that otherwise my choice of the persons concerned should be completely free. It is also clear that no
time-frame has been established for this exercise and that accordingly I will make a recommendation to the persons appointed that they should submit their report as soon as is feasibly possible. In all other respects I would stress that my responsibility will be confined to appointing the personalities and will not entail any involvement in the substantive aspects of their work.

Finally, I am naturally aware that this task has been entrusted to me in recognition of the independent and impartial character as a judicial institution of the Court over which I have the honour to preside.”
The President of the European Court of Human Rights, Mr Luzius Wildhaber, has informed the French Minister of Foreign Affairs, Mr Hubert Védrine, representing the State currently holding the Presidency of the European Union, that, in accordance with the request made to him by the Portuguese Prime Minister, Mr. António Guterres, he has appointed three persons to carry out the task of drawing up a report on certain aspects of the situation in Austria.

The three persons appointed are (in alphabetical order) Mr Marti Ahtisaari, former President of Finland, Professor Jochen Frowein, Director of the Max-Planck Institute at Heidelberg, former member and Vice-President of the European Commission of Human Rights, and Mr Marcelino Orja, former Spanish Minister of Foreign Affairs, former Secretary General of the Council of Europe, former member of the Commission of the European Communities.

President Wildhaber’s role in this matter is now at an end. The three appointees will report directly to the State holding the Presidency of the European Union.

* * * * *

Mr Ahtisaari was born in 1937. He was President of Finland from 1994 to 2000. Since 1 March 2000, he has been active in several international institutions and foundations. He is, among other things, Co-chair of the New York based EastWest Institute and Chair of the Brussels based International Crisis Group. Previous posts include United Nations Commissioner for Namibia, Under Secretary General at the United Nations and Special Adviser to the International Conference on the Former Yugoslavia, Secretary of State at the Ministry of Foreign Affairs.

Professor Frowein, who was born in 1934, has been Director of the Max-Planck Institute for Comparative and Public Law and International Law in Heidelberg since 1981. He was a member of the European Commission of Human Rights from 1973 to 1993 and its Vice-President from 1981 to 1993. He has held numerous academic appointments and is President of the German Association of Public-Law Teachers.

Mr Ortega was born in 1935. From 1976 to 1980 he was Spanish Minister of Foreign Affairs. From 1984 to 1989 he was Secretary General of the Council of Europe. From 1994 to 1999 he was a member of the Commis-
sion of the European Communities and in 1996 he represented the Euro-
pean Commission at the Intergovernmental Conference on the amendment
of the Maastricht Treaty.
Appendix 12

Programme for the meetings in Vienna 28-30 July 2000 between the ‘wise men’ and Austrian NGO representatives

Friday, 28 July 2000:

10.00 – 11.00  
Wolfgang Schüssel, Federal Chancellor

11.00 – 12.00  
Herbert Scheibner, Minister of Defense, representing Deputy Chancellor Susanne Ries-Passer

12.00 – 13.00  
Ludwig Adamovich, President of the Austrian Constitutional Court

15.00 – 17.00  
Elisabeth Gehrer, Minister of Education, Science and Culture  
Ernst Strasser, Minister of the Interior  
Dieter Böhmdorfer, Minister of Justice  
Benita Ferrero-Waldner, Minister for Foreign Affairs

17.00 – 17.45  
Ombudsmen Christa Krammer, Ingrid Korosec, Horst Schender

18.00  
Thomas Klestil, Federal President of the Republic of Austria

19.30 – 20.30  
Ariel Muzikant, President of the Jewish Community of Vienna

Saturday, 29 July 2000:

10.00 – 11.00  
Heinz Fischer, First President of the Austrian Parliament

11.00 – 12.10  
Alexander Van Der Bellen, Chairman of the Green Parliamentary Group and Federal Spokesperson of the Austrian Green Party  
Ulrike Lunacek, Member of Parliament  
Karl Öllinger, Member of Parliament

12.10 – 13.15  
Peter Westenthaler, Vice-chairman of Freedom Party and Chairman of Freedom Party’s Parliamentary Group

15.00 – 16.00  
Fritz Verzetnitsch, President of the Federation of Austrian Trade Unions, Member of Parliament
Günter Weninger, Vice-President of the Federation of Austrian Trade Unions, Member of Parliament
16.00 – 17.00
Christoph Leitl, President of the Austrian Chamber of Commerce
Peter Mitterbauer, President of the Austrian Federation of Industries
17.00 – 17.45
Delegation of the Austrian Catholic Church:
Klaus Küng, Bishop, representing the Conference of Austrian Bishops
Gregor Henckel-Donnersmarck, Abbot of Heiligenkreutz
Franz Küblerl, President of Caritas
17.45 – 18.30
Delegation of the Protestant Church:
HERWIG STURM, Bischof der Evangelischen Kirche AB und Vorsitzender des Evangelischen Oberkirchenrates A.u.H.B.
Peter Krömer, Präsident der Synode A.b. und Generalsynode der Evangelischen Kirche A.u.H.B.
Michael Chalupka, Direktor der Diakonie Österreich

Sunday 30 July 2000:

9.00 – 10.00
Alfred Gusenbauer, Chairman of the Austrian Social Democratic Party and chairman of the Social Democratic Parliamentary Group
10.00 – 11.00
Anas Schakfeh, President of the Islamic Community in Austria
Carla Amina Baghajati, Medienreferat
Omar Al-Rawi, Integration Koordinator
10.45 – 11.50
Barbara Heilige, Präsidentin der Richtervereinigung
12.30
Working lunch with Chancellor Schüssel
Appendix 13

Meeting of the ‘wise men’ and representatives of Austrian NGOs at the Max-Planck-Institute for Comparative Public Law and International Law in Heidelberg, 29 August 2000

08:00-10:30
Herr Eugene Sensenig-Dabbous, GenderLink, Salzburg
Frau Jasmina Jankovic, ANAR (Austrian Network Against Racism), Salzburg
Herr Di-Tutu Bukasa, MigrantInnenforum, Wien
Herr Kurt Krickler, Wien, Hosi (Homosexualeninitiative)
Frau Dorothea Brozek, Selbstbestimmt-Leben-Österreich
Frau Rubia Salgado, Armutskonferenz, MAIZ (Autonome Migrantinnen Intergrationszentrum), Linz
Herr Hubert Mittermaier, Wohnplattform Linz/Bundesarbeitsgemeinschaft Wohnumhlslosenhilfe
Herr Willhelm Mohaupt, Österreichischer Seniorenbund
Frau Veada Stoff, Ausländerbeirat Graz/ISOP (Innovative Soziale Projekte)
Herr Oscar Azocar, Wiener Integrationskonferenz
Herr Mümtaz Karakurt, BAMM (Bundesarbeitsgemeinschaft Multikulturelle Mitbestimmung), Linz
Frau Manuela Vollmann, ABZ (Arbeit – Bildung – Zukunft), Wien
Herr Andreas Oechsner, Österreichische Arbeitsgemeinschaft für Rehabilitation

10:45-13:00
Herr Max Koch, SOS Mitmensch
Herr Doron Rabinovici, Demokratische Offensive
Frau Sivel Sahan, Jugendprojekt „Echo“
Herr Yavuz Kuscu, Präsident des Dachverbands der türkischen Vereine in Österreich
Herr Birol Kilic, Generalsekretär des Dachverbands der türkischen Vereine in Österreich
Herr Tsehay Sintaheyu, EU-Migrantenforum und AHDA (afrikanische Gemeinde)
Herr Dieter Schindlauer, Ludwig-Boltzmann-Institut für Menschenrechte
Herr Valentin Sima, Slowenische Minderheit in Kärnten
Frau Angelika Hödl, Interessengemeinschaft der Kulturinitiativen in Kärnten
Frau Anny Knapp, AsylKoordination Österreich

13:00-15:30
Frau Susanne Riess-Passer, Vizekanzlerin und Vorsitzende der FPÖ
Appendix 14

Communiqué issued by the French Presidency on 12 September 2000
Communiqué des XIV suite au rapport remis par les trois Sages au sujet de la situation autrichienne

1. Les XIV ont pris connaissance du rapport remis par les trois Sages au sujet de la situation autrichienne.

2. Ce rapport aboutit pour l’essentiel à quatre conclusions :
   - les mesures mises en œuvres par les XIV se sont avérées utiles.
   - le gouvernement autrichien n’a pas méconnu son engagement envers les valeurs communes européennes.
   - les mesures adoptés par les XIV iraient, si elles ne cessaient pas, à l’encontre de leur objectif.
   - le FPÖ peut être qualifié de parti populiste de droite aux caractéristiques extremistes et son évolution est incertaine.

3. En se fondant sur les conclusions de ce rapport, les XIV ont procédé à nouveau à l’examen de leurs relations bilatérales avec le gouvernement autrichien, conformément à la procédure convenue à la fin du mois de juin.

4. Ils ont approuvé les conclusions suivantes :
   - les mesures mises en œuvres par les XIV ont été utiles. Elles peuvent maintenant être levées.
   - la nature du FPÖ et son évolution incertaine restent un motif de sérieuse préoccupation. Les XIV considèrent qu’une vigilance particulière doit être exercée à l’égard de ce parti et de son influence sur le gouvernement auquel il participe. Ils sont convenus d’exercer cette vigilance en se concertant.
   - il convient de poursuivre la réflexion au sein de l’Union européenne sur la manière de prévenir, suivre, apprécier et agir dans des situations analogues. Les recommendations contenues dans le rapport des trois Sages sont une contribution utile à cette réflexion.
Appendix 15

Proposal for an amendment to Article 7 of the TEU submitted by the Belgian delegation

1. In order to prevent a serious and persistent breach by a Member State of the principles mentioned in Article 6(1), the Council, acting by a qualified majority on a proposal by one third of the Member States or by the Commission, may determine the existence of a threatened breach of those principles in a Member State and address the appropriate recommendation, if necessary accompanied by appropriate measures, to the Member State in question, after inviting the Government of that Member State to submit its observations on the subject. The President of the Council shall inform the Parliament of the recommendation and of any other measures.

2. The Council, meeting in the composition of the Heads of State or Government and acting by a qualified majority, on a proposal by...
Appendix 16

Draft new paragraph to be added at the beginning of Article 7 of the TEU.

In order to prevent a breach by a Member State of the principles mentioned in Article 6(1), the Council, acting by a majority of nine tenths* of its members on a proposal by one third of the Member States or by the Commission may, after obtaining the assent of the European Parliament, determine the existence of the threat of such a breach in a Member State and make an appropriate recommendation to the Member State in question, after inviting the Government of that Member State to submit its observations on the subject.

* In a Union comprising up to 20 Member States, this voting rule is equivalent to unanimity less 2 (including the Member State concerned) and, in a Union comprising 21 States or more, to unanimity less 3 (including the Member State concerned).
Appendix 17

Draft amendment concerning Article 7 TEU submitted by the Austrian delegation
CONFER 4748/00. Brussels, 7 June 2000

1. In order to avoid any serious and persistent breach by a Member State of principles mentioned in Article 6(1), the following procedure, in which the Member State in question must be involved at all stages, shall apply:

   If in the view of the Commission or one third of the Member States there is an objectively demonstrable risk of such a breach by a Member State, the Council shall at their request discuss the matter on the basis of a report from the Commission and with the involvement of the Member State in question.

   Thereafter, the Council in the composition of the Heads of State or Government acting by unanimity, on a justified proposal by the Commission or by one third of the Member States, and after hearing the Member State in question and obtaining the assent of the European Parliament, may when necessary determine that there is a risk of such a breach. The grounds for such a determination shall be regularly reviewed by the Council.

   The Council, acting by a qualified majority at the request of the Commission or one third of the Member States and after hearing the Member State in question, may subsequently make appropriate recommendations to that Member State.

2. If in the view of the Commission or one third of the Member States there exists an objectively demonstrable breach by a Member State of principles mentioned in Article 6(1), the Council shall at their request discuss the matter on the basis of a report from the Commission and with the involvement of the Member State in question.

   Thereafter, the Council in the composition of the Heads of State or Government acting by unanimity on a justified proposal by the Commission or by one third of the Member States, and after hearing the Member State in question and obtaining the assent of the European Parliament, may where necessary determine that a serious and persistent breach by a Member State of principles mentioned in Article 6(1) exists. The grounds for such a determination shall be regularly reviewed by the Council.
Where such a determination has been made, the Council, acting by a qualified majority at the request of the Commission or one third of the Member States and after hearing the Member State in question, decide to suspend certain of the rights deriving from the application of this Treaty to the Member State in question, including the voting rights of the representative of the government of that Member State in the Council. In doing so, the Council shall take into account the possible consequences of such a suspension on the rights and obligations of natural and legal persons. Such decisions must also be proportionate to the accusations prompting such determinations.

The obligations of the Member State in question under this Treaty shall in any case continue to be binding on that State.

3. Grounds must be given for determinations, recommendations and measures pursuant to this Article.

4. Member States shall only produce determinations, recommendations and decisions relating to serious and persistent breaches of principles mentioned in Article 6(1) under the procedure laid down in this Article.

5. The Council, acting by a majority of its members and at the request of the Member State in question, the Commission or one third of the Member States, shall determine that the risk referred to in paragraph 1 or the breach referred to in paragraph 2 no longer exist.

Under the same procedure, recommendations made or measures taken under paragraph 2 shall be varied or revoked. Before the Council takes such decisions, it shall give the Member State in question and the Commission the opportunity to submit their observations, which must be done within an appropriate period of time.

6. For the purposes of this Article, the Council shall act without taking into account the vote of the representative of the government of the Member State in question. Abstentions by members present in person or represented shall not prevent the adoption of decisions. A qualified majority shall be defined as the same proportion of the weighted votes of the members of the Council concerned as laid down in Article 205(2) of the Treaty establishing the European Community.
Appendix 18

Reasons for the Austrian proposal for Article 7 TEU
CONFER 4748/00. Brussels, 7 June 2000

- The aim of rewording Article 7 is to avoid the risk of a breach of the principles laid down in Article 6 or, where a breach occurs, jointly and as quickly as possible to re-establish a situation in accordance with the Treaty in the Member State in question.
- To that end distinct procedures for these two cases are proposed with a particular view to ensuring the principle of a fair hearing: any Member State facing such serious accusations must be given the possibility of explaining its position to all the other Member States at all stages in the procedure. To achieve this, it will in any case be necessary for the Council first to hold a joint debate.
- The actual procedure can in each case be initiated by request from two sources: the Commission as Guardian of the Treaties and one third of the Member States.
- This must be accompanied by a general obligation to give reasons: any accusations must be supported by demonstrable facts and a general reference to some undefined “risk” or “breach” is not sufficient.
- For reasons of political democracy, determination of the existence of a risk or breach must be subject to the assent of the European Parliament.
- While the most serious determinations (that there is a risk or existence of breach of the Treaty) will in any case have to be made at the highest level (Heads of State or Government), “implementing decisions” and preparatory or accompanying debates can be conducted at Council level.
- If necessary, the Council may where there is a risk of breach of the Treaty make recommendations to the Member State in question. Only if it has been determined that a breach of the Treaty exists can more stringent measures be imposed. It is in any case necessary to lay down a procedure resulting in a regular review of determinations made and in the suspension of recommendations or measures.
- In the case of any recommendations and measures, moreover, it is necessary to ensure that they are appropriate or proportionate.
- All Member States will undertake to act solely within the framework of Article 7.
- The whole process of applying this mechanism must be subject to control by the EU Court of Justice in order to ensure the rule of law.
Appendix 19

**Article 7 of the TEU, Commission text**  

The Council, acting by a majority of two thirds of its Members following a proposal from one third of the Member States, the European Parliament or the Commission may determine the existence of a threat of a breach by a Member State of the principles mentioned in Article 6(1) and address an appropriate recommendation to the Member State concerned after inviting the government of that Member State to submit its observations on the subject.
Appendix 20

Article 7 TEU, Treaty of Amsterdam version

1. The Council, meeting in the composition of the Heads of State or Government and acting by unanimity on a proposal by one third of the Member States or by the Commission and after obtaining the assent of the European Parliament, may determine the existence of a serious and persistent breach by a Member State of principles mentioned in Article 6(1), after inviting the government of the Member State in question to submit its observations.

2. Where such a determination has been made, the Council, acting by a qualified majority, may decide to suspend certain of the rights deriving from the application of this Treaty to the Member State in question, including the voting rights of the representative of the government of that Member State in the Council. In doing so, the Council shall take into account the possible consequences of such a suspension on the rights and obligations of natural and legal persons.

The obligations of the Member State in question under this Treaty shall in any case continue to be binding on that State.

3. The Council, acting by a qualified majority, may decide subsequently to vary or revoke measures taken under paragraph 2 in response to changes in the situation which led to their being imposed.

4. For the purposes of this Article, the Council shall act without taking into account the vote of the representative of the government of the Member State in question. Abstentions by members present in person or represented shall not prevent the adoption of decisions referred to in paragraph 1. A qualified majority shall be defined as the same proportion of the weighted votes of the members of the Council concerned as laid down in Article 205(2) of the Treaty establishing the European Community.

This paragraph shall also apply in the event of voting rights being suspended pursuant to paragraph 2.

5. For the purposes of this Article, the European Parliament shall act by a two-thirds majority of the votes cast, representing a majority of its members.
Appendix 21

Article 7 TEU, Treaty of Nice version

1. On a reasoned proposal by one third of the Member States, by the European Parliament or by the Commission, the Council, acting by a majority of four – fifths of its members after obtaining the assent of the European Parliament, may determine that there is a clear risk of a serious breach by a Member State of principles mentioned in Article 6(1), and address appropriate recommendations to that State. Before making such a determination, the Council shall hear the Member State in question and, acting in accordance with the same procedure, may call on independent persons to submit within a reasonable time limit a report on the situation in the Member State in question.

The Council shall regularly verify that the grounds on which such a determination was made continue to apply.

2. The Council, meeting in the composition of the Heads of State or Government and acting by unanimity on a proposal by one third of the Member States or by the Commission and after obtaining the assent of the European Parliament, may determine the existence of a serious and persistent breach by a Member State of principles mentioned in Article 6(1), after inviting the government of the Member State in question to submit its observations.

3. Where a determination under paragraph 2 has been made, the Council, acting by a qualified majority, may decide to suspend certain of the rights deriving from the applications of this Treaty to the Member State in question, including the voting rights of the representative of the government of that Member State in the Council. In doing so, the Council shall take into account the possible consequences of such a suspension on the rights and obligations of natural and legal persons.

The obligations of the Member State in question under this Treaty shall in any case continue to be binding on that State.

4. The Council, acting by a qualified majority, may decide subsequently to vary or revoke measures taken under paragraph 3 in response to changes in the situation which led to their being imposed.

5. For the purposes of this Article, the Council shall act without taking into account the vote of the representative of the government of the Member State in question. Abstentions by members present in person or represented
shall not prevent the adoption of decisions referred to in paragraph 2. A qualified majority shall be defined as the same proportion of the weighted votes of the members of the Council concerned as laid down in Article 205(2) of the Treaty establishing the European Community.

This paragraph shall also apply in the event of voting rights being suspended pursuant to paragraph 3.

6. For the purposes of paragraphs 1 and 2, the European Parliament shall act by a two-thirds majority of the votes cast, representing a majority of its members.
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