

# Austrian Permanent Neutrality in the Legal Framework of the EU: A Normative-Legal Analysis from Accession in 1995 to Contemporary Security Crises

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## ABSTRACT

*The paper examines how Austria's membership in the EU from 1995 to 2025 has reshaped the constitutional and legal institution of permanent neutrality. Applying a normative-legal approach, it compares the key provisions of the Austrian Constitution with the primary and secondary law of the EU, particularly Article 42(7) of the TEU and Article 222 of the TFEU, as well as with the practice of the CSDP. The findings show that neutrality has retained its formal prohibitions on joining military alliances, hosting foreign troops and participating in combat operations, but has been functionally adapted to contemporary security challenges through instruments of "constructive abstention", logistical and humanitarian contributions and participation in PESCO and UN/EU peace missions. The Lisbon Treaty and the security crises in Kosovo (1999) and Ukraine (since 2022) have strengthened the practice of interpret-*

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*ing neutrality in accordance with EU law, whereby Vienna avoids automatic defence obligations but accepts political solidarity with the victim of aggression. The paper concludes that Austrian neutrality has evolved into a dynamic, EU law-conditioned concept whose effectiveness depends on a flexible interpretation of the constitutional law and the continuous redefinition of national security interests.*

**KEYWORDS:** *Austria, neutrality, European Union, defence, law*

## Introduction

The institutional status of Austria's permanent neutrality is founded on the Constitutional Law of 26 October 1955 (*Bundesverfassungsgesetz über die immerwährende Neutralität Österreichs*), adopted immediately after the conclusion of the State Treaty (*Österreichischer Staatsvertrag*), by which the Allied Powers committed to withdraw their troops stationed on Austrian territory after the Second World War. Neutrality is normatively defined by the following prohibitions: accession to military alliances and the stationing of foreign armed forces on Austrian territory, accompanied by the positive duty to defend neutrality that is, the obligation of non-participation in armed conflicts arising from international law. Although not formalised by a multilateral treaty, this constitutional and legal institution functioned during the bipolar order as a mechanism for preserving the sovereignty and territorial integrity of the Republic of Austria.

The transformation of the European security architecture after 1989 and Austria's accession to the European Union in 1995 raised the question of the compatibility of the traditional neutral status with new forms of collective security. Austria's gradual involvement in United Nations peacekeeping operations, the Partnership for Peace programme and projects of the EU's Common Security and Defence Policy (CSDP) demonstrates that neutrality is operationalised flexibly, adapting to the functional requirements of international cooperation.

Russia's invasion of Ukraine in 2022 further revitalised the debate on the scope of Austrian neutrality. Vienna supports sanctions against the Russian Federation and provides humanitarian assistance but refrains from direct military engagement, seeking to reconcile constitutional obligations with the prin-

principle of European solidarity. Austrian neutrality is therefore today regarded as an evolving legal concept whose practical application is continuously reassessed in light of changing security circumstances.

## **Methodological Approach and Aim of the Paper**

The methodological framework of this paper is based on a normative-legal approach. The legal implications of Austria's permanent neutrality within the law of the European Union from 1995 to the present are examined through a systematic review, comparison and critical synthesis of relevant secondary professional and academic literature. Primary normative acts (the Constitutional Law on Permanent Neutrality, the Treaty on European Union, the TFEU, and related EU decisions) are cited indirectly, insofar as they have already been referenced and interpreted in those sources, while the analytical focus remains on the interpretative patterns and lines of argumentation developed by academic doctrine, commentaries, and official legal manuals.

The research centres on doctrinal analysis of the primary and secondary law of the EU, above all the provisions of the Treaty on European Union (42(7) TEU), the Treaty on the Functioning of the European Union (Art. 222 TFEU), the system of the CSDP, and relevant Council decisions, in correlation with Austria's Constitutional Law on Permanent Neutrality of 1955 and its subsequent constitutional amendments (e.g. Art. 23j B-VG). The method relies on a doctrinal-analytical review of relevant secondary literature in which legal norms are examined systematically, teleologically and historically, indirectly complemented by a comparative analysis of international customary law on permanent neutrality, with the aim of identifying legal collisions between the principle of solidarity in EU law and Austria's constitutional prohibitions on participation in military operations, joining military alliances, and hosting foreign armed forces. Particular attention is devoted to official doctrines, and practical applications (e.g. constructive abstention in financing military assistance to Ukraine), which illustrate the dynamic yet legally grounded reinterpretation of neutrality.

The aim of the paper is to determine, in normative terms, to what extent and in what way membership in the European Union has altered the legal nature

and scope of Austria's permanent neutrality, and whether given contemporary security challenges and the clauses on collective defence and solidarity it can still be considered fully effective, or rather a form of neutrality that is *de iure* preserved but *de facto* conditioned by Union law.

The central research questions are as follows: How have the normative content and legal effects of Austria's permanent neutrality changed, from its accession to the EU in 1995 to current security crises, under the influence of obligations arising from EU law, particularly in the area of the Common Security and Defence Policy, and what legal mechanisms does Austria employ to reconcile its constitutional neutrality with the European clauses on solidarity and collective defence?

## **Austria's neutrality in historical perspective**

Austria's permanent neutrality is younger than Switzerland's: it emerged during the Cold War and is less deeply rooted in the consciousness of citizens and the international community. With the Moscow Memorandum of 1955, Austria committed itself to a neutrality declaration similar to Switzerland's, with some differences, and sought recognition from other states. This commitment was confirmed by the Constitutional Law of 26 October 1955, by which Austria "of its own free will declares its permanent neutrality". Neutrality was not based on an international treaty but on domestic legislation (Grić Radman, 2004).

After liberation from Nazi rule in 1945, Austria came under four-power occupation. By November 1945 it had a democratically legitimised government, though still under strict Allied control. Neutrality was seen as a way out of bloc division and a means to speed up the State Treaty. Negotiations in the 1950s stalled, as the Western powers avoided risking wider conflict. After Stalin's death in 1953, the USSR adopted a softer approach but demanded continued troop stationing until the German question was resolved and a neutrality clause giving the Allies, especially the USSR, a supervisory role. Only in February 1955 did the USSR drop the German question, insisting instead that Austria not join a Western military alliance (Luif, 2017).

The Soviet fear of a renewed German-Austrian alliance led Vienna to view neutrality as a safeguard of independence and protection against another Anschluss. Chancellor Raab told Ambassador Wallinger that neutrality resolved

the Anschluss issue, arguing that a neutral Germany lacked credibility and made a new Anschluss impossible. Like the Swiss, Raab saw neutrality as strengthening Austrian identity, while critics such as Adenauer viewed it as neutralism, and a second-class status with limited identity value (Gehler, 2005).

At the 1954 Berlin Conference, the USSR proposed banning foreign bases and military alliances in Austria; Vienna issued a similar declaration, but no State Treaty followed. After renewed Soviet proposals and consultations in February–March 1955, the Moscow talks (12–15 April 1955) produced the Moscow Memorandum of 15 April 1955 (Kunz, 1956).

The USSR, the United States, France, and the United Kingdom recognised the Memorandum (Verdross, 1956). Austria thereby committed itself, through a special law, to declare permanent neutrality, adopted on 26 October 1955 stating it was undertaking this status “of its own free will” (Novaković, 2011; Grlić Radman, 2009).

The political practice of neutrality is legally codified, and its main foundation lies in the rather outdated 1907 Hague Conventions V and XIII on the Rights and Duties of Neutral States and Persons in Case of Land and Naval War, the 1949 Geneva Conventions, as well as the First and Second Additional Protocols of 1977. This legal characteristic distinguishes neutrality from most other foreign and security policies (Goetschel, 1999). From this it follows that neutral states have specific legal obligations toward belligerents. First, they are required to maintain abstention, meaning they must not favour either party in an armed conflict. This prohibition entails not supporting the armed forces of any side, not granting or guaranteeing loans to the belligerents, and not providing protection to their military units or warships within neutral territory. Second, neutral states have a duty of prevention, obliging them to prohibit any activities by belligerents on their soil, such as recruitment, preparation for war operations, or the conduct of hostilities. Finally, they are bound by the principle of acquiescence, which requires them to accept the legality of certain actions taken by belligerents against the commercial activities of their nationals and legal entities, provided such actions comply with the laws of war. This includes, for instance, the seizure of merchant vessels flying the neutral state’s flag if they transport contraband, violate a blockade, or otherwise provide hostile support, as well as recognition of the prize court decisions of belligerents concerning those vessels and their cargoes (Degan, 2011).

Austria legally prohibited joining military alliances and hosting foreign bases, and informed all states with which it had diplomatic relations about its new status, thereby securing international legal recognition of its neutrality. Some states explicitly recognised this neutrality, while others merely noted it. Permanent neutrality is governed by both international and Austrian constitutional law and was a political, though not legal, precondition for the State Treaty; its interpretation and possible termination remain Austria's sovereign prerogative. Unlike Switzerland, Austria viewed neutrality as compatible with UN membership and joined the organisation in December 1955, although it had applied as early as 2 July 1947 (Zemanek, 1961).

Austrian legal scholars formulated the “Verdross Doctrine,” which holds that Austria has a special passive status in implementing UN collective sanctions (Grić Radman, 2009). Upon Austria's UN admission in 1955, the permanent Security Council members accepted that it would not participate in coercive measures in order to preserve its neutrality (Verdross, 1960). In the 1970s, this “active neutrality” enhanced Austria's international standing, but by the mid-1980s it shifted to “realistic neutrality,” marked by reduced engagement and a stronger focus on European integration. In 1989, Vienna applied for European Community membership, explicitly underscoring its perpetual neutrality (Popławski, 2020).

## **Austria's Path to Membership in the European Union**

In the second half of the 1980s, amid the expansion of Western European integration, Vienna oriented its foreign policy toward full membership in the European Community (EC). The Austrian People's Party (ÖVP) led the initiative, soon joined by the Social Democratic Party of Austria (SPÖ). Foreign Minister Alois Mock and Chancellor Franz Vranitzky drafted a proposal committing Austria to adopt all EC obligations while preserving neutrality, which was subsequently approved by parliament. The negotiation mandate included clauses stipulating that integration must not endanger employment, social policy, or high environmental standards, and foresaw joint negotiations with the EEC. Opposition was led by the Greens, who feared the loss of sovereignty in defence matters and proposed closer cooperation with Czechoslovakia, Poland, and Hungary as an alternative, while the Communist Party

(KPÖ) protested, citing Soviet opposition and Article 4 of the State Treaty<sup>2</sup>. A broad extra-parliamentary coalition of former diplomats, certain politicians, academics, artists, environmentalists, and trade unionists shared these reservations (Polačková, 2007).

The collapse of the bipolar order and the crises in Iraq and the former Yugoslavia forced Vienna to redefine neutrality, now linked with solidarity, supporting the UN against Saddam Hussein and assisting Slovenia and Croatia during the breakup of the SFRY. At the same time, the Council of Europe and the EC Commission examined how to reconcile Austria's integration with the preservation of neutrality, while the dissolution of the USSR removed the principal obstacle to EC accession. The EC already regarded Austria as integrated, with a developed economy that would strengthen the Union. The political issue thus became the redefinition of neutrality within the framework of the future Common Foreign and Security Policy (CFSP).

In the 1993 negotiations, Austria was asked to participate actively and collectively in the CFSP, in accordance with the Maastricht Treaty. In its Foreign Policy Report 1993, Vienna stated that EU membership would contribute to: (1) international economic cooperation; (2) the resolution of issues concerning the environment, criminal law, migration and drugs; (3) the prevention of crises and conflicts in Europe; and (4) the creation of mechanisms for collective defence, while noting that the future relations between the EU, NATO and the WEU could not yet be foreseen (Ibid).

Austria's accession negotiations lasted from 1 February 1993 to 1 March 1994. The constitutionally required referendum was held on 12 June 1994, and a broad consensus – SPÖ, ÖVP, LIF, major interest groups, Sozialpartnerschaft and most media supported accession, while FPÖ, the Greens and KPÖ opposed it (Gehler & Kaiser, 1997: 96). With a turnout of 82.4%, 66.6% of voters supported membership, while 33.4% voted against (Falkner, 2016).

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<sup>2</sup> Article 4 of the Austrian State Treaty (1955) prohibits any political or economic union between Austria and Germany, as well as the promotion of such a union.

## Neutrality in the Context of European Security Policy

With its accession to the EU on 1 January 1995 and to NATO's Partnership for Peace (PfP), Austria redefined its neutrality according to the principle of "three no's": no participation in wars, no joining of military alliances and no stationing of foreign troops (Brix, 2016). To enable full participation in the CFSP, Article 23f (now 23j<sup>3</sup>) was added to the Constitution. The 1997 Amsterdam Treaty incorporated the "Petersberg tasks" into the CFSP (Schmidl, 2013); Article 17(2) of the Treaty on European Union (TEU) includes humanitarian, rescue, peacekeeping and combat crisis management operations (van Staden et al., 2000). Austria subsequently amended the Federal Constitution accordingly (Schmidl, 2013).

Austria's accession to the EU prompted debates about joining NATO, and for a time even senior Social Democrats supported the idea while maintaining neutrality. However, on 17 April 1998, the SPÖ and ÖVP failed to agree that the *Optionenbericht*<sup>4</sup> should even mention NATO, although neutrality had already been limited by EU membership and the Amsterdam Treaty (1997/1999). The neutral status was difficult to explain abroad: during the Kosovo crisis in 1999, Austria politically supported NATO's air campaign but closed its airspace in accordance with the 1907 Hague Convention V (Schmidl, 2013). The Kosovo crisis demonstrated how difficult it is to maintain neutrality when large-scale military operations are needed to stop killings and ethnic cleansing. In 1999, NATO bombed Serbian forces without UN Security Council authorisation, prompting Vienna to ban overflights across Austria and forcing NATO aircraft to detour, meaning that Austria actively "obstructed" the operation. At the same time, Chancellor Viktor Klima, within the EU framework, supported the view that the military action had been "necessary and justified" (Luif, 2017). Vienna then sought to participate in stabilisation missions in the Balkans, Alba (1997), KFOR (since 1999), SFOR/EUFOR in Bosnia and Herzegovina, and EUFOR Concordia in Macedonia (2003), believing that stopping the violence was in the regional interest. The majority of citizens supported these missions, and the Constitutional Court upheld the legal amendments allowing the deployment of troops abroad (Gressel, 2021).

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<sup>3</sup> Article 23j B-VG is a foreign and security policy clause that empowers Austria to participate in the EU's CFSP/CSDP.

<sup>4</sup> The *Optionenbericht* was a planned report by the Austrian Federal Government on all further options in the field of security policy. The document was never adopted.

At the Cologne Summit (June 1999), despite the reservations of neutral member states, the EU appointed NATO Secretary-General Javier Solana as its first High Representative for the CFSP, signalling its ambition to further strengthen the common security policy. Austria's ban on NATO transit during the Kosovo crisis marked the culmination of a series of refusals in 1998-1999: in September 1998, Vienna denied France permission to transport tanks along the Danube, and in March 1999 blocked the passage of Czech, Hungarian, and Polish troops en route to the "Adventure Exchange 99" exercise in northern Italy, a move approved by the Social Democratic Interior Minister but criticised by ÖVP ministers (Luif, 2017).

After the formation of the government in February 2000, the SPÖ and ÖVP reached only a minimal agreement: Austria would remain neutral until the EU's CFSP became effective; the SPÖ would then reconsider, and the ÖVP would abandon neutrality only if the EU established a new security system. Due to the failure of the joint *Optionenbericht* in 1998 to produce a common position on NATO membership, expectations for a unified stance had significantly declined. Austria therefore focused on a "Petersberg + PfP" combination: it participated in Implementation Force (IFOR) and Stabilisation Force (SFOR) in Bosnia and Herzegovina, and by 1999 had over 1,000 troops deployed in 13 peacekeeping operations; since 1960, a total of 40,000 soldiers had taken part in more than 30 missions. Although it maintains neutrality, Austria is not a "free rider": in the absence of a major threat, it does not need collective guarantees, yet through PfP, EAPC, and observer status in the WEU it can participate in crisis management and peacekeeping activities. Its International Peace Support Command trains civilian and military personnel for such operations (Luif, 2016).

The 2001 Doctrine described Austria as "non-aligned," signalling political readiness to distance itself from neutrality, although neutrality remained constitutionally enshrined and was "rediscovered" in 2003 when Austria banned overflights of coalition aircraft bound for Iraq. During the negotiations on the European Constitution, Vienna supported the "Irish clause," and in 2003 Chancellor Schüssel proposed the formula "solidarity within Europe, neutrality in wars outside Europe", thereby declaring collective European defence compatible with neutrality. This was confirmed by the ratification of the Lisbon Treaty in 2008 and the 2004 defence reform, which transformed the Armed Forces into expeditionary troops capable of performing the full range of Petersberg tasks, rendering neutrality only a marginal principle of security policy (Rickli, 2016).

Only the security obligations under Article 5 of the North Atlantic Treaty are incompatible with Austria's Neutrality Act. The concept of neutrality is suffi-

ciently flexible to allow Austria's participation in the "Petersberg" tasks or the PfP without formal membership in NATO or the WEU (Gaertner & Hoell, n.d.).

Luif (2016) points out that Austria is not permitted to join a defensive military alliance, one containing a collective defence clause, such as Article 42(7) of the Lisbon Treaty<sup>5</sup> or Article 5 of NATO, nor to consent to the establishment of foreign military installations on its territory.

In the same context, it is also important to mention Article 222 of the TFEU<sup>6</sup>, which likewise contains a solidarity clause but has no clear implications for defence, unlike Article 42(7) of the Lisbon Treaty (Duić, 2018).

But does the EU constitute a military alliance? Hussain (1979) defines a military alliance as an agreement between two or more states with the purpose of mutual defence in the event of an attack on a member state, a joint attack on third states, or both of these objectives. Müller (2023) argues that the EU meets the key criteria of a military alliance. Specifically, there is an explicit agreement among the Member States on mutual assistance in the event of armed aggression, and the Union has established military structures, including the European Union Military Staff (EUMS), the Military Planning and Conduct Capability (MPCC), and battle groups that, by 2025, are expected to become operational forces with at least 5,000 troops. However, the EU does not possess centralised and permanent military headquarters, and most Member States rely primarily on NATO for their collective defence. The EU therefore functions more as a defence union with elements of a military alliance than as a classical military alliance.

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<sup>5</sup> The Lisbon Treaty introduces the solidarity clause in Article 42(7) of the Treaty: "If a Member State is the victim of armed aggression on its territory, the other Member States shall have towards it an obligation of aid and assistance by all the means in their power, in accordance with Article 51 of the United Nations Charter. This shall not prejudice the specific character of the security and defence policy of certain Member States". Commitments and cooperation in this area shall be consistent with commitments under the North Atlantic Treaty Organisation, which, for those States which are members of it, remains the foundation of their collective defence and the forum for its implementation (European Union, 2012).

<sup>6</sup> "The Union and its Member States shall act jointly in a spirit of solidarity if a Member State is the object of a terrorist attack or the victim of a natural or man-made disaster. The Union shall mobilise all the instruments at its disposal, including the military resources made available by the Member States." This provision refers only to the Member States, but it is clear that such situations also represent a threat to the Union as a whole. This is further confirmed not only by the introductory clause stating that "the Union and its Member States shall act jointly in a spirit of solidarity", but also by the fact that the Union plays a central role in such efforts when the affected Member States demonstrate that they are unable to manage the situation on their own (Hilpold, 2015).

Furthermore, the Irish clause ensures that neutral states can preserve the specific provisions of their security policies, distinguishing the EU from traditional military alliances. This normative-legal framework is also confirmed by Article 42(2) of the Treaty on European Union, which states that “the common security and defence policy shall include the progressive framing of a common Union defence policy. This will lead to a common defence, when the European Council, acting unanimously, so decides.” This means that, without amending the Treaties, a single unanimous decision of the European Council could establish a common defence, that is, a defence union, but only under the condition of respecting the “constitutional requirements” of the Member States.

This implies that Austria, before such a decision, would have to abolish its constitutional neutrality. The so-called “Irish clause” in Article 42(7) TEU allows exemptions, as it “shall not prejudice the specific character of the security and defence policy of certain Member States”. Moreover, the same article acknowledges that NATO “for those States which are members of it, remains the foundation of their collective defence”. Müller therefore argues that the EU represents a defence union, an *ad hoc* military alliance, or a military pact weakened by the Irish clause, “without a central and permanent operational headquarters”, “whose military institutionalisation is still evolving”, and overshadowed by NATO, which most Member States regard as “the foundation of their collective defence”. Given that most Member States consider their security and defence guaranteed within NATO, and that the creation of a European army remains difficult to imagine in the near future, the EU does not constitute a military alliance in the strict sense. Nevertheless, it is emphasised that with the gradual development of a common defence union, the provisions on neutrality and non-participation in military alliances are being increasingly called into question (Müller, 2023).

It is important to note that the Lisbon Treaty threatens neutrality to a much greater extent than the Nice Treaty. While the Nice Treaty stated that the CSDP may lead to a common defence, the Lisbon Treaty explicitly declares that the common defence policy shall lead to common defence when the European Council so decides. At the same time, it is indisputable that common defence is incompatible with neutrality, regardless of how neutrality is interpreted (Popławski, 2020). However, it should be emphasised that Article 42(7) of the TEU does not explicitly mention military means, which makes it acceptable even to EU Member States<sup>7</sup> with neutral status. Nevertheless, the absence of any reference to military means does

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<sup>7</sup> The most prominent example is Denmark, which until 2022 opted out of the adoption and implementation of decisions with military and defence implications (Pedersen et al., 2023).

not imply that the article excludes military assistance, as that would contradict the very meaning of the solidarity clause. Furthermore, the duty of assistance under Article 42(7) TEU is defined by two relationships: the relationship with NATO and the “specific character of the security and defence policy of certain Member States” (Duić, 2018). In this context, the Treaty, which provides for an obligation of collective self-defence, does not take into account that two EU Member States (Austria and Malta) have an international legal status of permanent neutrality, meaning that their participation in fulfilling that obligation would place them in conflict with international law. However, since both states are members of the United Nations, whose Charter under Chapter VII contains a similar obligation, the practice of the European security and defence policy allows them a comparable position to that which they have within the UN, namely, an exemption from active participation in the implementation of the aforementioned obligation (Lapaš, 2009).

It should also be emphasised that the policy of military neutrality of EU Member States does not absolutely exempt those states from their legal obligation to provide assistance but allows them to choose means of assistance that are not incompatible with their status or domestic legal requirements (Duić, 2018).

In the case of the Lisbon Treaty, Austria invoked its specific safeguard clauses. First and foremost, these clauses include the possibility of abstaining from voting, in connection with the so-called second Irish clause, which ensures protection for the specific nature of the security and defence policy of the Member States. However, this clause is sometimes interpreted as allowing the complete exclusion of neutral states from the provisions relating to alliances. This is not only an overly far-reaching simplification but also inconsistent with the intentions of those countries, particularly Austria, which consistently advocated for the inclusion of such provisions. Undoubtedly, a more favourable interpretation for Austria is the concept of so-called asymmetric alliance obligations, which create rights for neutral states and obligations for other EU members. This interpretation appears closer to reality. Therefore, in specific cases, neutral states are expected to show “neutral” solidarity, but not “blind” solidarity. Such expectations can be formulated based on the opening words of Article 42(7), which refer to providing assistance “by all the means in their power”. Obligations arising from neutrality may, in this case, represent a limitation on freedom of action. The 2013 National Security Strategy advocates a comprehensive approach and European solidarity, but its implementation has been hampered by chronic underfunding: in 2009, the defence budget fell well below 1% of GDP, and by 2014, with an addition of only 0.5% of GDP, it was stated that the army was on the verge

of bankruptcy. The third ÖVP/FPÖ government then announced plans to restore neglected defence capabilities while simultaneously strengthening engagement in the CSDP and crisis management (Popławski, 2020).

An assessment by the interim government in 2018 concluded that the Austrian Armed Forces would require an additional €16 billion and a budget increase to at least €3.3 billion ( $\approx 1\%$  of GDP) to cope with hybrid threats; participation in defence operations under Article 42(7) would require even greater investments. Austria chronically lacks key capabilities, for instance, aircraft to support ground forces – so extensive additional training would be necessary to achieve even minimal interoperability. In practice, only the Jagdkommando special forces are sufficiently trained and ready, but they would be overstretched in any scenario other than an isolated terrorist attack (Gressel, 2021).

The Austrian Armed Forces<sup>8</sup> are currently participating in CSDP military operations in Bosnia and Herzegovina, Mali<sup>9</sup>, Mozambique, and the Mediterranean (with staff stationed in Italy), as well as in a civilian mission in Georgia. From 2009 to 2024, Austria provided the Force Commander for the EUFOR Althea operation in Bosnia and Herzegovina, and in the first half of 2022 it provided the Mission Commander for EUTM Mali. Austria primarily supports civilian missions in Kosovo, Georgia, Ukraine and Libya by deploying police officers (Federal Ministry for European and International Affairs, n.d.).

It is important to note that Vienna lost interest in high-intensity missions after several EU and NATO operations shifted away from the Balkans. The deployment of one company of special forces to EUFOR Chad in 2007–2008 marked the peak of Austria's contribution to robust EU missions. This deployment provoked harsh criticism from both the left and the right, such as: “How can the government dare expose soldiers to combat risk?” (Gressel, 2021). After it became publicly known that Austrian soldiers had fired upon and killed insurgents (in a legitimate act of self-defence), no Austrian defence minister ever again attempted to propose participation in a demanding military operation (Ibid.).

Austria is *de iure* neutral but has *de facto* integrated into the core mechanisms of the EU's common security policy. The Union recognises its neutrality but expects active engagement when common security is threatened. As Höller (2024)

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<sup>8</sup> Note: As of 13 October 2025, the official website of the Federal Ministry for European and International Affairs had not been updated, and does not reflect subsequent changes in the status of individual CSDP missions.

<sup>9</sup> Mission's mandate ended on 17 May 2024.

notes, constitutional neutrality and EU integration obligations coexist in Austria, with the latter legally overriding the old Constitutional Law on Neutrality. In cases of conflict, courts and authorities implement EU decisions, such as sanctions or missions, before the traditional interpretation of neutrality (Janik, 2022). As long as the EU does not wage war, this arrangement works; however, if the Union were to become directly involved in a conflict, Austria would have to choose between complete passivity and suspending neutrality. For this reason, legal experts argue that Austria's position regarding support in the event of activation of the EU defence clause should be defined in advance. A 2023 Austrian Institute for European and Security Policy (AIES) survey found that 86% of respondents believe it is necessary to clearly specify what kind of assistance Austria would provide to an attacked Member State, and 72% believe that the long-term tension between the EU's deepening defence solidarity and Austrian neutrality is unsustainable (Höller, 2024).

## **The Austrian Neutrality after the Russian Invasion on Ukraine**

Following the Russian invasion of Ukraine, Austrian authorities emphasised that the country's neutrality was not in question. Chancellor Karl Nehammer stated in early March 2022 that Austria “was, is, and will remain neutral”, declaring the debate closed (“Nehammer erklärt Neutralitätsdebatte für ‘beendet’”, 2022). SPÖ leader Pamela Rendi-Wagner also rejected joining NATO and called for strengthening national defence and European security cooperation (“Nehammer: Österreich bleibt neutral, Diskussion beendet”, 2022).

By adapting its neutrality to the new circumstances, Austria fully supported the EU's sanctions against the Russian Federation (as economic measures do not affect the “military” dimension of neutrality) but refused to send weapons to Ukraine. Instead of vetoing the European funding of armaments, it applied the principle of “constructive abstention”: when the decision was made to use EPF funds for the purchase of weapons, Austria formally abstained, negotiating that its contribution be allocated to humanitarian aid, logistics, demining and reconstruction. This preserved the principle that Austria does not directly finance war while not obstructing Member States willing to supply arms. Analysts therefore argue that neutrality functions more as a political stance than a legal barrier; had the EU Council's decision been unanimous, Vienna would have been obliged to implement it, but the domestic message was clear, “our

money is not going for rifles”. A similar strategy was applied by Ireland. Austria provided Ukraine with non-lethal aid (helmets, body armour, fuel) and accepted tens of thousands of refugees, stressing, in the words of President Alexander Van der Bellen, that “being neutral does not mean being unsolidary”. Alongside EU humanitarian initiatives, Vienna also allowed the transit of weapons through its territory, interpreting joint European actions aimed at preventing humanitarian catastrophes as compatible with neutrality. This was enabled by an amendment to the War Material Act of 2002, introduced after the 1999 Kosovo experience, which permits exceptional transit for international operations aimed at preventing serious human rights violations. In this way, Austria seeks to ensure that its neutrality does not become an obstacle to common European action in the face of clear aggression (Janik, 2022).

Austria supports sanctions and logistical and humanitarian assistance to Ukraine but rejects direct military engagement: it did not block the establishment of the EU Military Assistance Mission in support of Ukraine (EUMAM) at the end of 2022 but decided not to send instructors or engineering units, since, in the government’s view, even demining could draw a neutral state into the conflict (Kirez, 2023).

The war in Ukraine prompted Vienna to accelerate defence reforms: the defence budget is to rise to 1.5% of GDP by 2027, with the armed forces undergoing modernisation (e.g., transport aircraft, air defence systems) and stronger participation in European projects (Gressani, 2024). Austria joined Germany’s “European Sky Shield”<sup>10</sup> initiative along with about ten other countries; critics see this as a deviation from neutrality, while the government argues that cooperation with NATO does not violate neutrality, as each launcher battery remains under national command. The same logic applies to other PESCO projects and the future EU Rapid Deployment Capacity: Vienna participates in development phases and exercises but decides independently on the use of its troops. Austria is among the nine countries that have contributed troops for the first joint exercises, and legal experts warn that any actual combat deployment of the EU force could cross the line of neutrality; as long as activities are limited to exercises and readiness, neutrality is formally not breached (Höller, 2024).

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<sup>10</sup> The European Sky Shield Initiative (ESSI) is a NATO-coordinated initiative aimed at building a layered, ground-based European air and missile defence system through joint procurement, standardisation, and networking of national systems (ranging from short to very long range), with the goal of strengthening interoperability, accelerating capability development and reducing costs.

## Conclusion

It can be stated that Austria's permanent neutrality, from its accession to the European Union in 1995 to the present security crises, has gradually transformed from a firm, almost dogmatic institution of international law into a legal status that is ultimately conditioned by the obligations of Union law in the area of the CFSP/CSDP and by the constitutional basis of Article 23j of the BVG. This has created a hybrid, functional model of neutrality. On the one hand, Austria *de jure* still maintains the legal "shield" of 1955, with its three classical prohibitions: participation in wars, joining military alliances and the stationing of foreign troops. On the other hand, the state *de facto* accepts the binding effects of Article 42(7) of the Treaty on European Union and Article 222 of the TFEU, participating in solidarity mechanisms through constructive abstention.

The first step in this transformation was the act of joining the Union itself, which required constitutional adjustments, now consolidated in Article 23j B-VG to enable Austria's participation in the CSDP. The 1997 Amsterdam Treaty and, even more so, the 2009 Lisbon Treaty expanded this binding framework. Although the so-called *Irish clause* nominally protected neutral states, the new obligation to provide assistance "by all the means in their power" relativized the traditional interpretation of neutrality. Vienna responded with the doctrine of "solidarity within Europe, neutrality in wars outside Europe", shifting the focus from passive non-participation to the active fulfilment of European obligations through non-military instruments.

The reconciliation of these two normative layers developed gradually. Constructive abstention, for instance, in the 2022 decision on financing arms for Ukraine, allows Austria not to block majority decisions while redirecting its own contribution toward humanitarian and other purposes. A similar approach is applied in PESCO, the EUMAM mission and the development of the EU Rapid Deployment Capacity. Material constraints, however, long limited the scope of military engagement: the defence budget remained below 1% of GDP until the most recent wave of reforms triggered by the 2022 Russian invasion, which aims to raise it to 1.5% by 2027 (subject to annual budget approvals).

The war in Ukraine demonstrated the operational nature of neutrality. Austria unreservedly implements EU sanctions, since economic measures do not undermine its neutral status, permits the transit of weapons as a contribution to collective security, but refuses to send instructors or combat units, focusing instead on logistics and humanitarian aid. Neutrality, therefore, has not yielded to solidarity; rather, the imperative of solidarity defines its limited yet still

relevant modes of action. It is no coincidence that 86% of experts in the AIES survey call for Austria to clarify in advance what forms of assistance it could provide in the event of activation of Article 42(7).

The answer to the central research questions are thus as follows: Austrian neutrality has evolved from a unilateral, permanent and absolute obligation into a relative status conditioned by Union law. Constitutional reforms, legal adjustments regarding the transit of arms and Austria's participation in the CFSP, PfP, PESCO and other mechanisms demonstrate that neutrality no longer prevents humanitarian, peacekeeping and crisis-management operations, but only excludes automatic collective defence. Reconciliation is achieved through constructive abstention, selective financing, asymmetric alliance obligations and the teleological interpretation of the Constitutional Law in accordance with the principles of *lex posterior* and *lex specialis*, while political communication persistently promotes the formula "neutral but in solidarity", thereby preserving domestic legitimacy.

If the European Union's defence integration deepens, Austria's neutrality will require targeted constitutional and statutory clarification to clearly define the mechanisms of solidarity, or an explicit constitutional decision, potentially through a referendum, should the Union take a decisive step towards a common defence, and if such a form of common defence were to require constitutional amendment. Such forward-looking planning is a prerequisite for preserving a neutrality that remains credible domestically, and reliable within the Union.

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# Austrijska trajna neutralnost u pravnom okviru EU: normativno-pravna analiza od pristupanja 1995. do suvremenih sigurnosnih kriza

## SAŽETAK

*Rad istražuje kako je članstvo Austrije u EU od 1995. do 2025. godine preoblikovalo ustavnopravni institut trajne neutralnosti. Primjenom normativno-pravnog pristupa uspoređuju se ključne odredbe austrijskog ustava s primarnim i sekundarnim pravom EU, osobito člankom 42(7) UFEU-a i člankom 222. UFEU-a, te praksom ZSOP-a. Nalazi pokazuju da je neutralnost zadržala svoje formalne zabrane pristupanja vojnim savezima, stacioniranja stranih trupa i sudjelovanja u borbenim operacijama, ali se funkcionalno prilagodila suvremenim sigurnosnim izazovima kroz instrumente „konstruktivnog suzdržavanja“, logističke i humanitarne doprinose te sudjelovanje u PESCO-u i mirovnim misijama UN-a i EU-a. Lisabonski ugovor te sigurnosne krize na Kosovu (1999.) i u Ukrajini (od 2022.) dodatno su učvrstile praksu tumačenja neutralnosti u skladu s pravom EU-a, pri čemu Austrija izbjegava automatske obrambene obveze, ali prihvaća političku solidarnost sa žrtvom agresije. Rad zaključuje da se austrijska neutralnost razvila u dinamičan, pravom EU-a uvjetovan koncept čija učinkovitost ovisi o fleksibilnom tumačenju ustavnog zakona i stalnom redefiniranju nacionalnih sigurnosnih interesa.*

**KLJUČNE RIJEČI:** Austrija, neutralnost, Europska unija, obrana, zakon