

LGP news

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COMMERCIAL HUB DUBAI

The UAE as a Key Partner in the Energy and Economic Sector

EXPANDED EXPERTISE

New additions to LGP's pool of experts

EXPERT INTERVIEW

On the tri-state area in Southeast Europe

IMMIGRATION POLICY

Who needs whom in Austria?

ARTIFICIAL INTELLIGENCE

Copyright review for AI works

ISSUE 1 // 2023

8



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Editorial 4

IN FOCUS

LGP Group: A stable partner in the Arab world 6
The UAE as a new economic center for Europe 8
Investment Landscape in the United Arab Emirates 10
Establishment of crypto companies in the UAE 12
New regulation of double taxation agreement between Austria and UAE 14

UP TO DATE

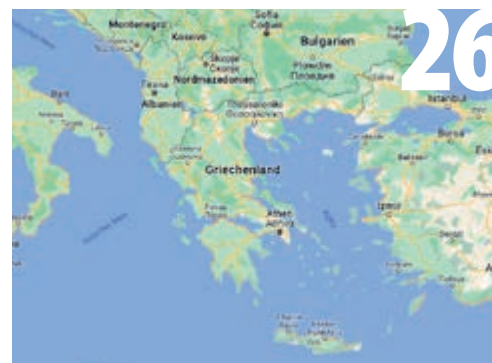
Certified brand efficiency with added value 17
Prominent new additions expand LGP expert pool 18
Kazakhstan focuses on new investment policy 21
New protections against non-member state subsidies 22
LGP Turkey – bridge between Europe and Asia 24
The Tri-State Area in Southeast Europe 26
EU pushes expansion of renewable energies 30



18



24



26



30



38



40

REPORTS FROM THE FIELD

EU holds big tech companies more accountable 32

NIS 2 Directive to enforce European cybersecurity 34

North Macedonia reforms Company Legislation 36

EU law in the making for Artificial intelligence 37

Who needs whom here? 38

Copyright in AI-authored works 40

ACTIVE

Welcome aboard! 44

Expert conference at the Juridicum 45

LGP opens new office in Prague 46

Save the date: LGP H2 Circle on 24 May 2023! 46

Western Balkans Round Table 47

ÖKG Event at LGP 47

LGP at the IBA Miami 2022 47



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Off to pastures new!

We decided to establish a sister company in the UAE just under a year ago. We are really enjoying this endeavour and we believe that it is also very forward-looking. Tragically, this was sparked, in part, by the war in Ukraine and the substantial upheavals that go along with this – both politically and economically. The world has already changed radically since 24 February 2022, with the flow of goods and services shifting in a way not seen since the end of the Second World War, at least here in Europe.

During a vote on a UN resolution last March condemning the war, it was not only Russia and China who contained their vote: they were also joined by India and 17 African states (all told, home to more than 3 billion people), not least due to their own colonial history. The number of states condemning key aspects of Western sanctions because of their impact on their economies, already battered by the pandemic, is far greater still. It is now clear that the world will split into several – largely separate – blocs, with the West (the EU, USA, UK, Australia, New Zealand, Japan, Korea, etc.) facing, in particular, the world of Russia and its partners (such as Belarus) and the world of China. In addition, there are economic areas that lean towards one bloc or the other, depending on the situation at hand (such as India, the South American states, Southeast Asia and Africa, which have roundly criticised the aspects of the sanctions that have an onerous impact on energy and food security). Contrary to what is often portrayed here, it is not the case that the European and US sanctions policies enjoy great support everywhere.

The Middle East region, and the United Arab Emirates in particular, have clearly come out well from these upheavals. The realignment of international trade flows, with trade intensifying between Russia, India, China and Africa on the one hand, as well as between the Middle East and Europe on the other hand, has bolstered the region significantly and thus also the commercial metropolis of Dubai and Abu Dhabi. One only has to look at local real estate turnover to see the scale of this boom: Dubai recorded transactions worth around USD 143 billion in this sector in 2022, as well as a price increase of around 9 – 12 % – truly a milestone for this emerging business hub in the Middle East.

For an internationally active Western law firm such as LGP, this means that we have expanded our sphere of activity considerably



to adapt to global changes with the necessary flexibility. In addition to our existing offices in Austria, Bratislava, Prague, North Macedonia and the rest of the Western Balkans, Kazakhstan and Turkey, we now also have a strong presence in the UAE. At our bases in Dubai and Ras Al Khaimah, we focus on providing our clients with orientation in the jungle of international sanctions law, and our reach now extends from the Caribbean islands to a number of EU countries, Switzerland, the UK and the Middle East. In addition, we are helping a number of selected Russian businessmen who have been, in our view, unfairly targeted by European sanctions to defend themselves against the sweeping measures before the European Courts.

A critical word is, however, very much appropriate at this point: with Art. 17 of Regulation 269/2014 and Art. 13 of Regulation 833/2014, the EU has given sanctions law a geographical scope of application that is evidently very limited. Transactions that take place outside the EU and are carried out without the involvement of EU citizens do not generally fall within the scope of EU



Reception and View at LGP Middle East

sanctions law and can therefore (even) be legally carried out by sanctioned persons. In this respect, it is misguided for the EU to repeatedly talk about the circumvention of EU sanctions law by India, China and the Emirates. Circumvention can only be applied to something that would, in principle (i.e. if the circumventing transaction were not carried out), fall under the circumvented norm. However, this only applies to transactions that have a minimum degree of connection to Europe. This is (unfortunately) no longer the case quite so often in view of the aforementioned

recalibration of international trade via the various shifts in trade flows and transactions.

Finally, it remains for me to emphasise that, beyond sanctions law, we also, of course, assist our European and international clients with their move into the Arab world in terms of corporate law and tax law, with the help of our colleagues and networks. If you are interested in this, please feel free to contact us in this regard.

Join us in reading our latest issue of LGP News, which provides an introduction to this highly exciting project.

Gabriel Lansky

Attorney-at-Law and Managing Partner

LGP Group: A stable partner in the Arab world

With its own branches and offices directly on site, LGP Middle East Legal Consultants advises and supports international clients in the Middle East with a focus on sanctions law compliance.

Spring 2022 saw an increase in corporate relocations as a result of global developments around the Ukraine war, with many entrepreneurs also setting up in the UAE. As a result, LGP has been asked by major international clients to advise them locally in the UAE. Consequently, LGP has opened its own offices directly on the ground and has since then been advising international clients in the Middle East with a focus on sanctions law compliance.

UAE AS AN INTERNATIONAL HUB FOR BUSINESS

The UAE has already steadily developed into one of the world's most sought-after destinations for companies and individuals in recent years.

When the Ukraine war broke out in 2022, the UAE largely maintained a role as a neutral state. This unbiased role of the UAE in the vacuum created between East and West has led to an increase in individuals not only moving their private lives to the neutral location of the UAE, but also increasingly channelled companies, labour, goods and capital to the Gulf state.

Due to the framework conditions in the UAE, especially the existing security and neutrality, the UAE has become even more important as an international hub for entrepreneurs from all over the world. As a result, more companies from the Emirates are doing business with international business partners and vice versa.

COMPREHENSIVE SANCTIONS EXPERTISE

The global events mentioned above did not only result in the relocation of companies. In 2022, there was also an increased need

for consultancy activities around sanctions, especially in the EU, the USA and the UK, which has also become more important for companies in their business practice. Even companies not subject to sanctions have since then been confronted with the need of compliance with provisions from a for them "new" area of law.

LGP provides comprehensive sanctions advice and leads the legal representation of numerous high-profile international sanctions compliance clients. In this context, clients require legal representation with appropriate sanctions law expertise which LGP delivers with a long-standing sanctions law practice and significant experience in this area.

INTERNATIONAL COMMERCIAL LAW ADVICE

In addition to the focus on sanctions law we also consult our clients in related areas of law, such as international tax law, capital markets law, banking and finance law and all issues of compliance.

LGP TEAM BUNDLES EXPERT KNOWLEDGE FROM ALL AREAS

We use the expert knowledge of our managing partners from the offices in Austria, Slovakia, Northern Macedonia and Kazakhstan in a wide range of legal areas. LGP's team also includes former judges of the European Court of Justice and the European Court of Human Rights, former ministers of various states, former diplomats, university professors, tax advisors and international lawyers and jurists. Thus, different perspectives can contribute to the development of solutions and experience values can be taken into account. At the same time, we rely on the expert knowl-

edge of the best cooperation partners from various fields all over the world.

PROJECT SOLUTIONS IN THE ARAB WORLD

LGP PROJECT SOLUTIONS MIDDLE EAST challenges the traditional industry of strategic communication, providing quality advisory and fact-based and analytically diligent consultancy services, stimulating the clients to challenge their own industries by becoming more innovative, compelling, and efficient.

We act as deal counsel on bridging the investors with their business development activities, who are benefiting from our network built up over decades and our in-depth knowledge of the market and practical experience in Central, South-Eastern and Eastern Europe, Turkey as well as in the Middle East.

Our neutral policy vis-à-vis the new global developments is another reason why we expand to the UAE. The socio-economic diversity, including the changes that the UAE is going through, and the industries and economic systems that are growing so fast make this region so exciting and attractive.

With the legal representation in the UAE, the establishment of LGP Project Solutions was also driven forward. LGP PS supports M&A projects of the newly settled clients from different industries and specializes in offering them a range of business solutions and strategic communication, covering various fields, from market research to establishing a new business. We provide full-service offerings as deal counsels and investment facilitators, assist investors with their business development activities, facilitate transactions and link them with project opportunities. ■

The UAE as a new economic center for Europe



The UAE has in the course of the last few years established itself as a hub for international trade and diplomacy as well as energy (both hydrocarbon and renewable). While Europe and the US are facing lacklustre growth prospects this year (if not recession), the GCC countries are expected to continue to grow this year and 2024 at the fastest rate since 2014.

Already before the Russian war of aggression against Ukraine, the UAE has been at the center of attention. The UAE's non-oil trade with the EU therefore amounts to EUR 51 bn. and approximately 250,000 Europeans live in the UAE. More than 4 million European tourists visit the country annually. The prominent role played by the UAE in the domain of energy and trade was further underlined at the recent ADIPEC conference, the world's largest energy event. The UAE's leadership has at many times expressed its willingness to step in and support its friends and partners in Europe to meet their energy-needs after Russia curbed its gas deliveries to Europe.

The first visit abroad of the President of the United Arab Emirates led Mohamed bin Zayed to France July 2022, where comprehensive cooperation also in the field of energy (supply of diesel) was announced. Soon after, the President visited Greece and various economic agreements were signed at that occasion too. The UAE is also now heavily investing in the exploration of gas fields, the export of LNG as well as renewable energy, such as hydrogen or solar power where the UAE can make important contributions given its geographic and climatic conditions. The growing interest in the UAE as a key partner with respect to energy and the economy is underlined by the frequency of incoming visits as well. The president of the European Council, Charles Michel, visited the UAE on September 8 2022. According to official media reports in the UAE following the visit, the aim was to strengthen cooperation in various areas, among them also tackling climate change. A key contribution will be made by the UAE by hosting the next UN Climate Change Conference COP 28 in November and December 2023 in Dubai. The UAE has at various occasions already emphasized its climate ambitions in the run-up to COP 28 with the goal of climate neutrality by 2050 and emphasis on its own efforts in the field of renewable energy sources, especially solar energy and hydrogen, as well as its own UAE climate diplomacy.

ESIA AGREEMENT SIGNED

On September 24 and 25 2022, following his trip to Saudi-Arabia, the German Chancellor Olaf Scholz paid a short visit to the UAE accompanied by a business delegation, during which he met with President Mohammed bin Zayed and Climate Change Minister Mariam Almheiri. During the visit, State Secretary Franziska Brantner and Minister of Industry Sultan Al Jaber signed an Energy Security and Industry Accelerator Agreement (ESIA). This intergovernmental agreement, prominently reported in the UAE press, in the form of a Joint Declaration of Intent includes projects in

the field of energy supply, decarbonization and climate protection. Chancellor Scholz emphasized to the press that it is important to rely on as many suppliers as possible for energy supply and that the current dependence on one large supplier, namely Russia, will certainly not be repeated.

As a concrete manifestation of the agreement, a contract was signed between RWE and the state-owned company ADNOC for the delivery of LNG to Germany as soon as possible, namely 137,000 cubic meters of LNG are to be delivered to the Brunsbüttel import terminal for the German market. Further LNG deliveries are scheduled to begin this year (in the form of a memorandum of understanding).

In addition, investments are planned by the state-owned renewable energy company Masdar in wind farms in the North Sea and Baltic Sea, which could generate up to 10 GW of renewable energy by 2030. Reference was also made to the cooperation with respect to hydrogen and the ammonia pilot projects with the German companies Steag GmbH and Aurubis AG concerning the supply of hydrogen in the form of ammonia. The Austrian Chancellor Karl Nehammer followed soon after with finance minister Magnus Brunner und energy minister Leonore Gewessler as well as OMV and OEBAG on October 27 2022 when they met President Mohamed bin Zayed to strengthen the strong bilateral bonds and the energy cooperation between both countries. In the course of the visit, two MoUs were therefore signed between OMV and ADNOC on the supply of one LNG cargo (1 TWh) for the coming winter 2023/24 and a “Joint Declaration of Intent” on cooperation at government level on energy and industrial issues as well as on climate protection based on the Strategic Partnership between Austria and the UAE signed in July 2021. Both sides will appoint “Focal Points” to identify projects for cooperation, such as in the fields of gas/ LNG, derivatives (diesel, etc.), Sustainable Air Fuels (SAF), in hydrogen and renewable energy sources.

In the meantime, the UAE has also been busy signing Comprehensive Economic Partnership Agreements (CEPAs) with other parts of the world too, such as Israel, India or Indonesia, some of the world’s largest and fastest-growing economies. Investments in the UAE therefore also open up new potential markets in other parts of the world and there is a strong interest in signing such agreements also with the European Union or European countries. Just recently negotiations on a CEPA have been started with Ukraine.

This all underlines the UAE’s desire to be at the forefront of action against climate change and invest in renewable energy in the UAE as well as in third countries. Further increasing trade ties also ranks high on the priorities of the UAE’s government as well as investing in new technologies, such as AI. This opens a variety of potential projects for cooperation for European governments and companies alike. ■



Dr. ETIENNE BURCHTOLD

has been Austrian Ambassador to the United Arab Emirates since August 2022. In the Federal Chancellery, he most recently worked as foreign and European policy press spokesperson for the Federal Chancellor. Prior to that, the law graduate worked for years as press spokesman for the Foreign Minister and as a staff member of the Permanent Representation to the EU in Brussels and one of the world’s largest energy companies in Austria.

Investment Landscape in the United Arab Emirates



The United Arab Emirates is a federation of 7 emirates (states) with Abu Dhabi and Dubai taking central stage in foreign direct investments. With over 100 new projects worth USD 8.7 trillion, the economy and trade are expected to grow massively over the next ten years.

Abu Dhabi and Dubai currently make very different contributions to their respective GDPs because the specific sectors targeting foreign direct investment (FDI) differ greatly. As for the other 5 emirates, they fill the economic gaps in between, be they in manufacturing, real estate, logistics, hospitality, trading, or free zones, taking advantage of their lower cost base in doing business, and offering more affordable cost of living. There have been various economic reforms over the past few years, both at federal level and at emirate(s) level, in order to facilitate the flow of capital and open up the economy to

more FDIs. The UAE recently implemented long-term residency visas called “golden visas” which are valid for ten years, and allow expats to live, work, and retire in the country. Registering companies has become easier, and many of the restrictions to setting up businesses, such as the pre-requisites to have a national sponsor or a partner, have been removed.

Furthermore, the UAE has taken deliberate steps recently to position itself as a safe haven for investment with a variety of measures to build confidence in attracting FDIs. This was clearly aided by the country’s brilliant pandemic response, particularly in Dubai. When the globe was shut for business, the UAE found a window to open the economy whilst still protecting

the population through a massive vaccination roll-out campaign. In January 2023, the emirate of Dubai announced a rather ambitious, yet well-articulated USD 8.7 trillion plan to double the size of its economy by spurring trade and investments over the next decade. As many as one hundred

transformative projects have been identified, with already more than 300,000 investors on board. The ultimate aim is to attract over USD 17 billion in FDIs annually for the next ten years. A series of privatization by Initial Public Offerings (IPO) of five successful public companies took place in 2022, raising USD 2.65 billion.

Sterling against the USD have resulted in less investments recently from EU countries and the UK.

While the UAE may prevail and beat expectations in the short term, a correction course, particularly in the real estate market is likely to happen as the UAE cannot be insular from adverse global events in the medium to long term. Over the span of one year until November 2022, Dubai residential market prices rose by 9.5%. Triggered by the war in Ukraine, the globe is most likely heading into a recession with many countries facing rising levels of unemployment, downturn in economic activity, negative GDP growth, massive inflation, falling retail sales, high interest rates, and contracting measures of income. That being said, the UAE remains a haven of stability, a welcoming destination, a safe environment, and offers a peaceful coexistence among its more than 150 nationalities.



UNITED ARAB EMIRATES (UAE)

Location: Arabian Peninsula

Capital: Abu Dhabi

Autonomous Emirates: 7

Languages: Arabic, English

Currency: 1 Dirham (AED) = 100 Fils

Area: 83.600 km²

Road network: 4.080 km

Airports: 10

Population: approx. 9.4 million

GDP: approx. USD 420 bn

Largest cities: Dubai, Sharjah, Ajman, Ras Al-Khaimah, Fujairah

Neighbour states: Oman, Saudi-Arabia

Climate: subtropical

The United Arab Emirates’ real estate market saw a gainful year despite a global slowdown, benefiting from the implemented reforms and the geopolitical events, particularly the Ukraine war. People have pointed to the UAE, where everyone was welcome, as a safe haven to invest, and a conducive place to live, work and do business. There is quite a lot of development going on at the luxury high end of the real estate market with frequent launches of new residential projects. Prices for this niche sector are quite resilient and can be rather inelastic. The mid-level or mid-tier real estate segment will face challenges in the medium term due to potential over-supply. Dubai boasts of having more than 140,000 hotel keys, and judging by the current ongoing hotel projects, this number will grow to 195,000 hotel keys by 2026. It is estimated that Dubai would need to have an additional five million tourists per year to maintain a 60% occupancy across all its hotels. The World Expo that was held in Dubai just after the pandemic was very successful and attracted a large number of visitors including investors, hotel operators and developers.

Interestingly, the demographics of FDI are changing in the UAE. Historically, there was a lot of money inflow from GCC countries, mostly Saudi Arabia and Qatar, and India. Less inflows came from countries of the MENA region, Eastern Europe, and Russia. In post pandemic times and during the war in Ukraine, most of the investments particularly in real estate are now coming from Russia, Ukraine and India, and to a lesser extent from China, Azerbaijan and their neighbouring countries. The devaluation of the Euro and the Pound



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IZZAT DAJANI

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Establishment of crypto companies in the UAE

The federal government of the UAE consists of the seven emirates of Dubai, Abu Dhabi, Sharjah, Ajman, Umm Al Quwain, Ras Al Khaimah and Fujairah. Each of the seven emirates has its own laws and guidelines for certain industries which sit outside the UAE's federal laws. There are also free economic zones (often referred to as "offshore UAE") in each emirate, which are independent of government and federal law to a limited extent. Some of the free zones, such as the Dubai International Financial Center ("DIFC"), Abu Dhabi Global Market ("ADGM") and the Dubai Multi Commodities Center ("DMCC") have established their own legal frameworks.

COMPANY FORMATION IN DUBAI AND ABU DHABI

Dubai, a city of superlatives, offers businesses and individuals the valuable advantage of 100% tax exemption. Dubai is currently tax-free; it has neither corporation tax for companies nor income tax for individuals. The only exception is 5% VAT for mainland companies. Dubai and Abu Dhabi have similar conditions for company formation. There are two types of company; one is established in the free zones, the other on the mainland, if it serves customers within the UAE.

ESTABLISHMENT OF A CRYPTO COMPANY IN THE DMCC FREEZONE

The DMCC Freezone provides a licence for certain activities related to "crypto" which are not regulated:

The United Arab Emirates is rapidly modernising its legal system to better compete with crypto-friendly countries such as Hong Kong and Singapore. In the free trade zones of Dubai and Abu Dhabi, entrepreneurs may hold their own licences for certain crypto activities.

- **"Proprietary trading in crypto-commodities"**: includes the buying and selling of cryptocurrencies developed on the basis of distributed ledger technology applications. Exchange activity, the provision of brokerage services, financial services, banking services, and payment processing is not included.
- **"Distributed ledger technology services"**: includes the provision of database management solutions and complementary services based on distributed ledger technologies such as blockchain. Companies engaged in these activities may not trade or establish an exchange for cryptocurrencies/commodities or provide financial activity services or brokerage services.
- **"NFTs e-marketplace provider"**: includes companies that provide an online platform for the buying and selling of third party digital assets (Non-Fungible Tokens or NFTs) and facilitate commercial interactions between buyers and sellers for commission or remuneration. The online platform cannot be used to trade or promote crypto assets, cryptocurrencies or NFTs covering regulated products or securities.
- **"Metaverse service provider"**: includes companies engaged in the development and hosting of digital virtual environments that enable simulated interactions between people. Companies engaged in this activity may not issue tokens that are traded on exchanges or trade in cryptocurrencies.
- **"Proprietary crypto mining"**: includes businesses engaged in verifying and adding new transactions to the blockchain (using methods such as proof-of-work and proof-of-stake) in order to generate crypto assets and trade those assets at a proprietary level on exchange platforms. This activity does not include providing services to third parties, acting as an exchange, providing brokerage services, financial services, banking services or peer-to-peer trading.



Activities other than the 5 defined above are not yet available in the DMCC. These are standalone licensing activities that are only permitted for new businesses and cannot be conducted alongside other activities by the same company. The DMCC Crypto Licence will only be granted to companies that are legally registered with the DMCC and have an established and experienced track record in trading, investing or developing blockchain technology. The minimum share capital is AED 50,000.00 and the licence takes approximately four weeks to obtain.

The DMCC has been awarded “Global Free Zone Of The Year” for the sixth year in a row. It is centrally located with easy access to two airports, road networks and transport. The DMCC has established a new centre for cryptocurrencies to serve as a central point for all blockchain-related activities in Dubai.

ESTABLISHMENT OF A CRYPTO COMPANY IN THE ADGM FREEZONE

A company can be established at the ADGM with a virtual asset activity licence. The following asset activities can be conducted at ADGM:

- purchase, sale or exercise of rights in recognised crypto-assets
- management of recognised crypto assets belonging to another person
- marketing of recognised crypto assets
- advising on the merits of the purchase or sale of recognised crypto assets or rights arising from such purchase or sale; and
- operating an exchange for crypto-assets or acting as a custodian of crypto-assets.

The ADGM is one of the world’s leading jurisdictions for the regulation of virtual asset activities. It also promotes itself as the first jurisdiction to develop a comprehensive set of rules for virtual assets.

The UAE is well on its way to becoming a modern pioneer in business and industry, with a very close focus on the cryptocurrency industry. The framework and laws for cryptocurrencies in the Dubai and Abu Dhabi Free Zones encourage crypto entrepreneurs to set up exchanges while

setting standards for ethical trading and consumer protection. In conclusion, the UAE holds great promise in the crypto space as a country with favourable tax regimes, dedicated financial free zones and government support for blockchain and DLT technologies. ■



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New regulation of double taxation agreement between Austria and UAE

Austria's double taxation agreement (DTA) with the United Arab Emirates (UAE) has recently been amended. According to information from the Federal Ministry of Finance, the exchange of the ratification instruments took place on 20 December 2022. The revised version of the DTA-UAE ("New DTA-UAE") entered into force as of 1 January 2023.

The double taxation agreement between Austria and the UAE dating from 2004 (Federal Law Gazette III No. 88/2004, "DTA-UAE"), was modified on 1 July 2021 by a separate protocol (see <https://www.parlament.gv.at/gegenstand/XX-VII/I/1030>). Pursuant to Article 9 (2), the Protocol shall enter into force on the first day of the third month immediately following the month of the exchange of instruments of ratification.

However, a distinction must be made between the temporal scope of application of the New DTA-UAE and the point at which it comes into effect. According to Article 9 of the Protocol, the new terms apply to withholding taxes (e.g. on dividends) on amounts paid after 31 December of the calendar year in which the exchange of instruments of ratification takes place. For all other taxes, the DTA applies to tax years beginning after 31 December of the calendar year in which the exchange of instruments of ratification takes place. De facto, the New DTA-UAE therefore applies from 1 January 2023.

OPERATING ACTIVITIES OF UAE-BASED CORPORATIONS

a) An important change applies to the **permanent establishment** of Austrian companies in the UAE. As before, the corresponding profit shares in Austria must be

included in the corporate tax base of the corporation according to national tax law. The change is that the method for avoiding double taxation according to Art 24 New DTA-UAE has switched from the exemption to the credit method. Since there is currently no income tax burden on permanent establishments of foreign entities in the UAE, nothing can be credited either. Profits generated by UAE permanent establishments of Austrian companies will therefore now be subject to corporate income tax in Austria, as if it were a business based in Austria.

b) The effect of an income tax shield can thus only be achieved by a **company domiciled in the UAE**, but not by a permanent establishment. As before, UAE companies are taxable solely in the UAE if they are comparable to an Austrian corporation, do not constitute a sham company and have their corporate headquarters in the UAE and not in Austria. Dividends are tax-exempt in Austria for the receiving corporation according to the general requirements of § 10 KStG, unless they constitute passive income as per § 10a KStG. In the case of natural persons, the preferential tax rate according to § 27a EStG (still) applies.

It should be noted that a **local corporate income tax** will be introduced in the UAE as of 1 January 2024, set at 9% of taxable profits.

The only exceptions are "**Qualified Free Zone Persons**", insofar as they have "**Qualifying Income**". The tax rate for those special income components of qualified persons is 0%.

According to Article 18 of the UAE Corporate Tax Act, the following applies:

Article 18 – Qualifying Free Zone Person

A Qualifying Free Zone Person is a Free Zone Person that meets all of the following conditions:

- a) *Maintains adequate substance in the State.*
- b) *Derives Qualifying Income as specified in a decision issued by the Cabinet at the suggestion of the Minister.*
- c) *Has not elected to be subject to Corporate Tax under Article 19 of this Decree-Law.*
- d) *Complies with Articles 34 and 55 of this Decree-Law.*
- e) *Meets any other conditions as may be prescribed by the Minister.*

The exact scope of corporate tax liability in the UAE is therefore still open, as the corresponding cabinet decision on the definition of "Qualifying Income" has not yet been issued. Rumours suggest this could



include a time-limited exemption of off-shore income, but whether this is actually the case remains to be seen.

STAFF SECONDMENTS

The taxation method has also switched from exemption to the credit method for employees posted to the UAE (including those who are exclusively employed in the UAE). However, according to Art 24 New DTA-UAE, this only applies to those persons who are “resident” in Austria.

This is not the case for employees who **move to the UAE entirely**, spend the entire year there and are no longer resident in Austria. Such employees are (still) only taxable in the UAE, which means that the new regulation does not result in any changes for them.

Conversely, the amendments are highly relevant for those employees who **remain resident in Austria and only occasionally work in the UAE**. Such individuals will in future have to pay full personal income tax on their UAE income in Austria. Since there is no income tax liability in Dubai, nothing can be credited, resulting in a considerable tax increase as compared to 2022.

What is more complex to analyse under the new Treaty-provisions is the case of a **person predominantly living and working in the UAE, who only occasionally returns to Austria and maintains a residence there**.

According to **Austrian law**, a person holding a residence in Austria qualifies as tax resident in Austria. More specifically, any residential accommodation that can be

used for overnight stays (even if it is not actually used for this purpose – see § 1 para 2 EStG) is considered sufficient to establish unlimited taxation in Austria.

Under **Treaty law**, however, the following applies:

Article 4(1) New DTA-UAE: For the purposes of this Agreement, the expression “a resident of a Contracting State” means:

- a) *in Austria: a person who, under Austrian law, is liable to tax there on the basis of his domicile, permanent residence, place of management or other similar characteristic, and shall also include that State and its territorial authorities; the expression shall not, however, include a person who is liable to tax in Austria only on income derived from sources in Austria;*

b) in the United Arab Emirates:(i) a natural person who is deemed to be a resident of the United Arab Emirates by virtue of his domicile, permanent residence or other similar characteristic under the laws of the United Arab Emirates;

If an employee has a UAE permanent residence permit and stays there for the majority of the year, this will in all likelihood establish residency in the UAE according to Art. 4(2)(b) New DTA-UAE. In addition, according to Art. 4(1) New DTA-UAE, residence would also exist in Austria (since a domicile is assumed to exist there).

In consequence, so-called “dual residence” exists, which means that the tiebreaker rule of Art. 4(2) New DTA-UAE must be observed:

*Article 4(2) New DTA-UAE: If, in accordance with paragraph 1, an individual is a resident of both Contracting States, the following shall apply: a) **The individual shall be deemed to be a resident only of the State in which he has a permanent home; if he has a permanent home in both States, he shall be deemed to be a resident only of the State with which he has the closer personal and economic ties (centre of vital interests);***

Therefore, anyone who moves the centre of vital interests to, for example, Dubai, is (only) “resident” in the UAE according to Art 4(2) New DTA-UAE, and not in Austria. “Residence” in Austria according to Art 4(1) (a) New DTA-UAE is superseded by its Art 4(2), whereafter the DTA subsequently only refers to the concept of residence arbitrated under DTA. Under Austrian law, residence (and thus unlimited tax liability) continues to exist in Austria, but under **DTA there is only one residence, namely in the UAE.**

With regard to the allocation of employee income taxation, Article 15 provides as follows:

*Article 15 (1) New DTA-UAE: Subject to Articles 16, 17, 18, 19 and 20, **salaries, wages and similar remuneration received by a resident of a Contracting State from employment shall be taxable only in that State unless the work is performed in the other Contracting State. If the work is performed there, the remuneration received therefor may be taxed in the other State.***

“Residence” according to Art. 15(1) New DTA-UAE refers to residency resulting from Art. 4(2) New DTA-UAE and not to national residency according to the Income Tax Act or Art. 4(1)(a) New DTA-UAE. The right of taxation for employment carried out in the UAE is thus (still) “only” attributed to the UAE.

In this case, the credit method of Art 24(2) New DTA-UAE introduced as of 1 January 2023 is not applicable, and therefore cannot have the negative effects of full taxation in Austria. This is so because the person in question is not “resident in Austria” according to New DTA-UAE, which, however, is a condition for the application of Art 24(2) New DTA-UAE. Article 24(1) New DTA-UAE does not lead any further either, since it concerns the allocation of the right of taxation for a resident of Dubai to Austria.

It therefore applies in this case that “only” the UAE may tax. The key word here is “only” in Art 15(1) New DTA-UAE, which ensures the exclusivity of taxation in the UAE. In contrast, Art 24(2) New DTA-UAE would apply if a person resident in Austria under New DTA-UAE worked in the UAE, which is not the case here.

In result, those employees who are resident in Dubai according to the tiebreaker rule of Art 4 New DTA-UAE continue to be exempt from personal taxation in Austria for employment carried out in Dubai accord-

ing to Art 15(1) New DTA-UAE, even if they are resident in Austria and sometimes return to Austria. Only work performed in Austria remains subject to taxation in Austria.

It remains to be seen whether the Austrian tax authorities will challenge the non-taxation of the corresponding income on the basis of the revised preamble, which states, among other things, that the New DTA-UAE should not provide “opportunities for non-taxation or low-taxation through tax avoidance or evasion (inter alia, through abusive arrangements with the aim of obtaining relief provided for in this agreement for the indirect benefit of persons resident in third countries)”. In my view, such an approach would not be legal, since the DTA-UAE, including in its new version, clearly regulates that a resident of the UAE is only taxable in the UAE for employee income earned there. The fact that such taxation is not provided for in the UAE is an inherent part of the regulation of Art 15 New DTA-UAE and has nothing to do with “abusive arrangements”. ■



Managing Partner
Univ.Doz. MMag. Dr. PHILIP GOETH, LL.M.
is a Barrister (England & Wales), as well as Attorney at Law, Chartered Accountant and Tax Advisor (Austria).

Certified brand efficiency with added value

The importance of brands has increased significantly since the coronavirus pandemic among consumers as well as company shareholders, investors and employees. It is therefore important to qualitatively and quantitatively value brands as key economic assets.

The famous slogan, “people buy brands not products”, has lost none of its relevance in our global communication society. Well-managed brands, which sometimes account for half of a company’s value, continue to operate at the intersection between customer emotions and management methodology. Many investors increasingly recognise the advantages of a strong brand because they associate it with increased profitability, lower risk as well as lower future cash flow volatility. Consequently, the holistic value of a brand as an intangible asset is an extremely important balance sheet indicator for potential investors. Periodic brand valuations are helpful in determining “return on brand investment” and subsequently evidencing marketing efficiency.

EBI AND LGP: CONCENTRATED BRAND EXPERTISE

The European Brand Institute (EBI), founded by Gerhard Hrebicek, is Europe’s leading institute for the valuation of intangible assets and the evaluation and certification of



Gerhard Hrebicek (EBI) and Gerald Ganzger (LGP)

brands. LGP Managing Partner Gerald Ganzger is part of the Advisory Board of the European Brand Institute as an expert in media law, intellectual property, trademark law and litigation PR. As a media lawyer and conflict resolution expert known throughout Austria, Gerald Ganzger understands the importance of effectively protecting trademarks. Only through registration the trademark, its associated functions, as well as the ideas of his clients are legally protected.

Gerhard Hrebicek is founder and president of the European Brand Institute with more than 25 years of experience in trademark and patent valuation. As a globally recognised independent brand valuation expert who developed the first global brand valuation standard in 2004, he and his partners are active in brand and patent valuation, brand- and IP-oriented corporate structuring,

brand- and IP reporting, and investments in brands and brand certification.

The European Brand Institute (EBI) focuses primarily on brand and patent valuation. EBI contributes to sustainable development worldwide and in Europe through ongoing research and participation in the international standardisation of brand and patent valuation – in particular the development of ISO standards for brand valuation – as well as advisory and consultancy services in the areas of corporate finance, balance sheet capitalisation, implementation of brand measurement and reporting as well as for investments in brands. EBI and its brand valuation company are the only organisations globally certified according to ISO 20671,10668:2010 and ÖNORM A 6800 and offer the “ISO Certified Brand” programme for companies, organisations and regions. ■

Prominent new additions expand LGP expert pool



LGP presents eight new “Senior Expert Counsel” from the fields of business, law and politics, whose specialist knowledge enriches the growing LGP expert pool in a flexible, competent and solution-oriented manner – an asset that pays off particularly well in projects in the United Arab Emirates.

They advise, provide ideas, actively accompany new processes and projects and make their professional experience, valuable contacts and worldwide networks available. Senior Expert Counsel have experienced many challenging situations in their long personal careers and have successfully solved complex problems thanks to their diverse competencies and practical skills.

What unites them is that each individual is highly qualified in his or her respective field, has worked in very different company sizes and structures, and is very well networked internationally. ■



**MARKO
ANDRONOV, Ph.D.**

He is Dean of the Faculty of Law at the University American College Skopje and teaches Corporate law, Financial law and Labour law to students as a full professor. His teaching and research areas include Securities law and legal aspects of investment funds. His extensive professional experience includes a supervisory position at the Securities and Exchange Commission.

Marko Andronov has been involved in the drafting of several bylaws deriving from the Securities Act, as well as a member of the working group preparing the Law on Investment Funds. In parallel with his academic career, Andronov successfully launched his advisory practice as an expert in Corporate and Labour law, which makes him particularly valuable to LGP as Senior Expert Counsel. He also serves as a non-executive board member in several companies in North Macedonia.



**Hon.-Prof. Dr. MARIA BERGER,
Federal Minister (ret.)**

With a doctorate in law, she is the contact person for questions on European law issues and thus an important member of our Senior Expert Council for LGP. Maria Berger was a judge at the European Court of Justice (ECJ) from 2009 to 2019. Prior to that, she was a Member of the European Parliament from November 1996 to January 2007 and from December 2008 to July 2009, as well as a member of the Committee on Legal Affairs. She held her position as Federal Minister of Justice between 2007 and 2008.

Maria Berger offers a broad portfolio and experience as a case officer for EU issues in the Federal Chancellery and Head of the Department for Integration Policy Coordination in the Federal Chancellery. She was significantly involved in the preparation of Austria's accession to the European Union. She was also a lecturer at the Institute for Public Law and Political Science at the University of Innsbruck and Vice-President of the Danube University Krems. Her work as a director at the EFTA Surveillance Authority in Geneva and Brussels further rounds off her profile.



**IZZAT
DAJANI, BSc, MPA**

He is Chief Executive of IMCapital Partners Ltd in Dubai, and Executive Vice Chairman of Istanbul-based Capital Compass, an investment, government, and corporate advisory.

Izzat Dajani was the former Chief Executive of the Investment & Development Office of the Government of Ras Al Khaimah in the UAE where he led multi-billion dollars of investments and completed some of the key milestone projects and initiatives that defined RAK until this date. He was also Head of Key Clients – Investment Management at the global investment bank Goldman Sachs, based in Dubai. Thereafter, he became Chairman & CEO of Citibank in Qatar.

He has extensive experience in corporate governance and advisory with several board representations in various sectors across multiple jurisdictions. He holds an MPA degree from Harvard University and spent more than 25 years in senior executive positions. As LGP Senior Expert Counsel, he will bring a wealth of experience on the intricacies of business and finance in countries of the GCC, the wider Middle East region, Turkey, and the Western Balkans.



**Prof. Dr. BORCE
DAVITKOVSKI, Ph.D.**

He is a professor of Administrative Law and Public Administration at the Faculty of Law of the University of Skopje and was Dean of this Faculty between 2008 and 2016. As an author of more than 180 academic articles, his work has been regularly cited and published in various journals in North Macedonia and abroad. From 1990 onwards, Davitkovski has participated for the Macedonian government in numerous working groups for the preparation of more than 170 different legislative texts.

He mainly deals with Administrative law with a focus on control of administration, relations between administrative bodies and citizens, judicial control of governmental bodies, organisation of state administration, local government, relations between public authorities (parliament, government, administration and judiciary), and privatisation of the public sector. His many years of experience and legal expertise are of great importance to LGP, which is why we are pleased to have him join our team as Senior Expert Counsel.



**MMag. Dr. IRENE GINER-REICHL,
Ambassador (ret.)**

She has been a member of the Austrian diplomatic service since 1982 and specialises in economic and social development, women's rights, environment, energy and development cooperation. Through her work as Austrian Director General for Development Cooperation and her multilateral work, she has been able to build up a strong international network and knows the development-policy realities in many parts of the world very well. She also contributes valuable input to the LGP Senior Expert Council through her profile.

Giner-Reichl was also Austrian Ambassador to the People's Republic of China and Mongolia (2012-2017) and to Brazil and Suriname (2017-2021). She has also taught at the Diplomatic Academy in Vienna for many years and is a honorary professor at the University of International Business Administration (UIBE) in Beijing as well as a member of the international advisory board for the Eco Forum Global Guiyang – China's only national conference on sustainable development authorised by the State Council.



**Dr. VASKO
NAUMOVSKI**

He served as Deputy President in charge of European affairs in the Macedonian government between 2009 and 2011 and was posted as Ambassador of the Republic of North Macedonia to the United States of America from 2014 to 2018. He is a full professor of international relations, European integration and diplomacy at the Faculty of Law of the University of Skopje, where he earned his BA, LL.M and PhD.

Naumovski also holds an MA degree in European Studies from the University of Bonn and completed a study visit on US foreign policy at the University of Florida. He is the author of several academic works in the field of European integration and international law. He has also participated in a number of international academic conferences.



**EVA
SHUKLEVA, MS**

She has in-depth knowledge of all aspects of the electricity sector in the South-East Europe region, which offers excellent investment opportunities for renewable and conventional energy projects. For LGP, the key issue of energy generation is of extremely high importance, so we highly appreciate her valuable contribution to our Senior Expert Council.

Over the course of her long career in the energy and electricity sector in the Western Balkans and beyond, Eva Shukleva has gained extensive experience in this critical infrastructure sector: As Deputy General Director and Chairwoman of the Board of Directors of the State Transmission System Operator in North Macedonia to working with private companies where she managed the project development, engineering, operation and maintenance aspects of transmission networks and power generators. She holds several degrees in electrical engineering, making her a key contact for the energy sector.



**Dr. VIKTOR
KREUSCHITZ**

He served as a judge at the Court of Justice of the European Union until most recently (2013 – 2022), before dedicating his expertise to LGP. His insight at the level of the European Union is very valuable for LGP. We are pleased to have him on our Senior Expert Council.

Kreuschitz began his professional career in 1980 as a research assistant at the Institute for Constitutional and Administrative Law at the University of Vienna. From 1981 to 1997 he was a civil servant in the Constitutional Service of the Austrian Federal Chancellery.

In 1997, he entered the service of the European Commission, which he represented as a member of the Legal Service in numerous cases before the Union Courts and the Court of Justice of the European Free Trade Association until 2013. He is a member of several organisations in the field of Union law.

Kazakhstan focuses on new investment policy

The Kazakh government adopted a new state investment strategy in July 2022, to be implemented by 2026. Global crises and massive geopolitical changes notwithstanding, Kazakhstan remains the Central Asian country with the most foreign, primarily commodity-related, investment.

Kazakhstan is currently stepping up its efforts to attract foreign direct investment in order to further consolidate this position. To this end, the focus in recent years has been on creating an optimal environment for investors, which is now based on the principles of the rule of law, fairness and justice, transparency, ESG and the green economy.

Priorities have been set for the implementation of the new investment policy. These include the creation of new export-oriented and high-tech production sites through gradual regionalisation in Kazakhstan, and through integrating products into regional and global supply chains, ensuring domestic food security and developing the domestic market. Greater focus will be given to the development of manufacturing, whilst support for the raw materials sector will continue. Projects using innovative technologies in accordance with OECD standards in existing production facilities to develop “green technologies” and alternative energy sources (including hydrogen) will also be pursued.

Foreign investments are protected by the bilateral investment protection treaties.

Such agreements provide a legal framework for cooperation by guaranteeing the rights of investors to conduct investment activities and help to improve the investment climate and further expand mutually beneficial trade and economic cooperation between countries. Austria and Kazakhstan concluded a BIT on 12 January 2021, which entered into force on 21 December 2012.

The forecasts for Kazakhstan’s future as a business location are optimistic: investments are expected from 59 multinationals from countries such as the United Kingdom, Germany, Italy, France, the USA, the PR China, the Republic of Korea, Japan, Turkey and the United Arab Emirates. Gross foreign direct investment is estimated to reach 25.5 billion USD by 2026.

LGP has been active in Kazakhstan since 2009 and advises both Kazakh and European multinationals. LGP’s areas of expertise in Kazakhstan include corporate law, M&A, antitrust law, tax law, construction law, European and sanctions law, and labour law. In 2013, LGP acquired an Astana-based subsidiary, Lansky, Ganzger & Partner Kazakhstan LLP. ■



Managing Partner

Dipl. iur. ANNA ZEITLINGER

is Managing Partner at LGP Kazakhstan and LGP Middle East. She specialises in corporate law, M&A, restructuring, the law of the Russian Federation and the CIS states, as well as international dispute resolution, including before international arbitration tribunals.



AINUR ZHUNUSSOVA

works in LGP’s Kazakhstan office as Senior Legal Counsel. She advises on Kazakh and Austrian law and handles cross-border projects in multiple areas.

New protections against non-member state subsidies

Subsidies by non-EU members can distort competition in the internal market. In contrast to subsidies granted by member states, thus far there is no EU instrument for controlling comparable subsidies by non-member states. A new EU regulation is set to change this and thus make an important contribution to the strategic autonomy of the Union.

Companies in the EU have been and continue to be exposed in many ways to unfair practices by non-member states and certain companies supported by them. This happens in particular when competitors receive interest-free loans, unlimited state guarantees, tax exemptions or reductions from non-member states. To ensure fair and free competition and an open internal market, the EU adopted the Regulation on Foreign Subsidies Distorting the Internal Market on 14 December 2022. It applies from 12 July 2023, with prior (notification) obligations applying from 23 October 2023. Special provisions are also standardised for some formal regulations.

This act complements trade policy instruments related to the EU's anti-subsidy legislation, which is limited to damages caused by the import of goods that have benefited from a non-member state subsidy. The new regulation takes a similar stance to the regulation on the review of foreign direct investment. In addition, the Commission has announced its intention to make the multilateral framework for subsidies even more effective. This shows a closer integration of state aid, merger-, and public procurement law.

The new regulation applies to all sectors of the economy, with special rules for the defence and security sectors. The regulations differentiate between three areas where distortive subsidies occur: concentrations (mainly mergers), procurement procedures and other market situations. Enforcement is carried out by the European Commission rather than by member states, similarly to state aid control. The Commission acts either ex officio or in response to a notification. The Commission has also been given wide-ranging powers for further implementation, in particular regarding the determination of procedural details and the adjustment of threshold values.

Three instruments are standardised in the new regulation for the examination of foreign financial contributions:

- Two prior authorisation tools to ensure a level playing field for the largest concentrations and bids in large-scale public procurement.
- A general market investigation tool to investigate all other market situations and lower-value concentrations and public procurement procedures.

The regulations are modelled on the regulation prohibiting (member) state aid. However, unlike the latter, it does not provide for a general ban on non-member state aid, only where the subsidy would result in the distortion of the internal market. These impacts will be measured by indicators, some of which are listed in the regulation as examples. Positive impact must also be taken into account in the assessment. The Commission has announced definitions of what constitutes distortion which should help with the interpretation of this regulation. Advantages attributable to a subsidy will be calculated based on "reference values" which will cover the sum of subsidies over the last three years.

Notification threshold values apply in the two core areas of concentrations and public procurement. For concentrations, this applies if one of the companies involved has a turnover of at least 500 million EUR in the EU and at least 50 million EUR of foreign financial contribution. For public procurement procedures, the threshold value equates to the value of the contract, starting at 250 million EUR. Such thresholds are intended to limit the mechanism to large transactions and to spare SMEs. Overall, SMEs benefit from this system, as it tends



to protect competitive companies exposed to large competitors supported by distortive subsidies.

The Commission can investigate if a company does not comply with notification or reporting obligations. Similarly to the case in antitrust law, the Commission can impose fines and decide on interim measures. As with (member) state aid procedures, a preliminary examination must first be carried out and a further “detailed examination” in certain cases – in addition, there is also a simplified procedure. The Commission may also examine ex post facto, i.e. after a concentration has already taken place or a contract has been awarded. Furthermore, the Commission may examine non-member state subsidies granted up to five years before the entry into force of the regulation causing distortions in the internal market after its entry into force.

If the assessment shows that the negative impacts outweigh the positive, the Commission will impose structural and non-structural redressive measures, in-

cluding the repayment of the non-member state subsidy. It may also accept commitments from the undertakings concerned to remedy the distortions caused. Similarly to merger control, it can require divestment, the granting of a licence or access to the infrastructure in question. The Commission can also impose information obligations on participation in future concentrations or award procedures. The most serious intervention is the prohibition and reversal of the concentration or the prohibition of the award.

To round off the Commission’s catalogue of competences, it is granted responsibilities typical of competition authorities, such as the ability to conduct market investigations or a “dialogue” with the relevant non-member state, as in trade policy. As with EU competition law, legal protection from the Commission’s acts is available through the European Union Courts (first the General Court, then the Court of Justice). It will be years before any meaningful case law emerges, if only due to the usual length of proceedings. However, considerable effects

on large concentrations and contract award procedures, including delays due to the Commission’s review processes, can be expected sooner. ■



Attorney-at-law

Univ.-Doz. Dr. Dr. ALEXANDER EGGER

is Head of EU, Regulatory, Public Procurement & State Aids at LGP. He specialises in European law, public procurement law, state aid law, antitrust law and constitutional law. He is also an author and editor-in-chief of the Zeitschrift für Beihilfenrecht (Journal of State Aid Law).

LGP Turkey – bridge

between Europe and Asia



Turkey is a key market with strategic importance, strong growth and good investment opportunities in the construction, energy, real estate and services sectors. A dedicated office has now been opened in Istanbul under the name “LGP Legal Tax Consultancy Danışmanlık Anonim Şirket” (LGP Turkey).

We live in a time of great challenges and multiple crises. Nevertheless, every crisis is always an opportunity for new solutions, a chance for new concepts and visions. Fast and big changes require big engagements as well, so when the changes in modern society and the pace of life are so dynamic and demanding, the need for greater availability and quick reaction is inevitable.

The new way of living thus imposes the need to be even closer to our clients, to provide fast and accurate solutions. That is why we are proud to announce that due to our growth over years, we have managed to ex-

pand our presence and further strengthen our field of action by opening our new LGP office in Istanbul.

Turkey is a key market with great economic potential, particularly through infrastructural and industrial expansion. This translates into abundant investment possibilities in many sectors such as construction, energy, real estate, and service sectors. With more than 85 million people and nominal GDP of USD 853 billion, Turkey is within the 25 largest economies in the World.

LGP has always paid close attention to the economic and political development of Turkey, as a bridge between Europe and Asia, and is offering professional legal services across all areas, building trust, and stimulating the value and position of its clients and their stakeholders. Additionally, the presence in Turkey strengthens our competitiveness in the global arena and contributes to the diversity of solving global challenges.

Drawing on resources and professional experience from our global network, LGP

Turkey aims to assist companies in realizing their vision of business transformation and upgrade and contribute to the standards of modern service providers in this region. The team of experienced experts are working interdisciplinary and helps clients as deal counsel or investment facilitator, assisting in economic, legal, and political questions all over the world. By collaborating with law firms in different jurisdictions, LGP Turkey offers the opportunity to expand horizons and support knowledge sharing.

LGP established a close cooperation with the leading Turkish law firm Breitegger – Develioğlu Lawyers, a Legal 500 listed law firm, comprised of skilled and dynamic lawyers and scholars. Our partner firm has vast experience and expertise in corporate and M&A law and provides top-quality consultancy dispute resolution services and provides extensive knowledge and experience in international deals. Att. Sezen Ergen Breitegger, LL.M. and Att. Burçin Yıldırım Develioğlu, LL.M., the two founding partners of the firm, lead every project and are

significantly involved in the execution of each.

Through its close cooperation with Breitegger – Develioğlu Lawyers, LPG's clients benefit several times over from its Turkish presence to successfully expand their business activities both in Turkey and the neighbouring markets, while the international LGP network makes it easier for Turkish clients to expand beyond the country's borders. ■

Breitegger – Develioğlu Attorneys

Partners & Team members

Founding Partner BD Lawyers

BURÇIN YILDIRIM DEVELIOĞLU, LL.M.

has extensive experience and a very strong academic background in international arbitration. She is also advising her clients regarding any legal questions about their investments and corporate law questions. She structured major deals regarding international joint ventures, M&A's and foreign investments in Turkey. Before establishing Breitegger-Develioğlu Law Firm, she was a key lawyer in a boutique law firm representing clients in arbitration, dispute resolution, corporate and intellectual property law matters..

Prof. Dr. Att. H. MURAT DEVELIOĞLU, LL.M.

is a professor of civil law with expertise in the law of obligations, family law, inheritance law, contracts law, property law, collaterals law and CISG. He has acted as head and party-appointed arbitrator and provided legal expert opinions in many arbitration cases before arbitration institutions such as ICC, CAS, ISTAC, İTO, İTOTAM. He also provides legal opinions for domestic and foreign court cases. He has been advising many companies and financial corporations on legal matters before becoming a managing partner at Breitegger-Develioğlu Law firm and continues to do so.



Founding Partner BD Lawyers
SEZEN ERGEN BREITEGGER, LL.M.

is advising international and local investors in mitigating their risks and optimizing their benefits. She is currently representing major foreign investors with their ventures in Turkey and represents clients in international arbitration matters before international arbitration institutions such as the Swiss Chambers' Association and ICC. Before founding BD Lawyers, she had been acting as the head of the Turkish Desk of a LPG providing legal consultancy to international investors as well as business people. She is also a member of the Foreign Investments Commission of the Istanbul Arbitration Center ISTAC.



Managing Partner
ARLIND ZEQRİ, M.A.

is Business Development Director at LGP Group. His areas of expertise include regional development, European Union economic systems, environmental policy, economic diplomacy, development and implementation of investment promotion strategies and economic reforms. As a former member of the government in North Macedonia, he was a strategic interface between companies, investors and state authorities. He advises in Albanian, Macedonian, English, German, Bosnian-Croatian-Serbian and Turkish

The Tri-State Area in Southeast Europe

The investment and business scene in Southeast Europe is flourishing and the Skopje office is also one of the fastest growing LGP offices. In this expert interview, Arlind Zeqiri, Dimitrios Droutsas and Vladimir Penkov discuss intraregional economic potential, new forms of cooperation, opportunities for EU integration and the status of international relations between Bulgaria, Greece and North Macedonia.

Philipp Freund (PF): Thank you all for taking the time for a conversation with LGP News. Mr. Zeqiri, how do you see the latest advances in the EU accession process of North Macedonia? Will the relations between Skopje and Sofia keep improving?

Arlind Zeqiri: First, let me stress how delighted I am that we are seeing a breakthrough in some of the last remaining impediments for opening the EU accession talks between Brussels and Skopje. Of course, the compromise reached between Sofia and Skopje with the assistance of Paris and Brussels is not perfect, but it opens a realistic pathway to eventual EU membership for North Macedonia.

I am convinced that common membership in the European peace project is the best precondition to overcoming any historical issues that might still burden the bilateral relationship. In addition, we are now seeing very concrete cooperation on matters of material importance between our countries, such as Bulgaria's pledge to export more electricity to North Macedonia ahead of this difficult winter season. So, I am very optimistic that our neighbourhood is coming together.

Arlind, you were Minister for FDI in Skopje and are now managing a thriving law and business consultancy firm. Where do you see the greatest potential for the future

economic development of North Macedonia, but also the region and the intra-regional trade?

Zeqiri: The greatest impediment for intra-regional trade and economic development – especially between Bulgaria and North Macedonia – is currently infrastructure. The distance from Sofia to Skopje is only 200 km yet it can easily take four hours to drive. You know the old adage: If you want trade, build roads. Therefore, I hope the work on the road and rail connections of Pan European Corridor VII – linking Skopje to the Black Sea at Varna and the Ionian Sea at Durres – and Corridor 10 connecting us to Thessaloniki and Belgrade – will continue swiftly.

Another important point is energy and energy infrastructure: gas interconnectors are planned between North Macedonia and Greece as well as Bulgaria. These would finally allow the gasification of Skopje, help alleviate pollution, and give us access to gas from the Caucasus region. Besides this, the entire region has enormous untapped potential for PV and wind energy, and I am happy to say that LGP Skopje has been successfully advising international clients in the field of green energy projects in the region.



“The greatest impediment for intra-regional trade and economic development is currently infrastructure.”

Arlind Zeqiri

Lastly, while an EU membership and the market access and freedom of movement

that comes with it is the ultimate prize, the Open Balkan initiative launched last year is also a significant opportunity for North Macedonia and the deeper integration of Western Balkans economies.

Mr. Droutsas, as former Foreign Minister and MEP, you have an intimate awareness of Greece’s neighbours and of the EU – how do you assess the progress in the international relations of the three countries and in the region’s EU integration?

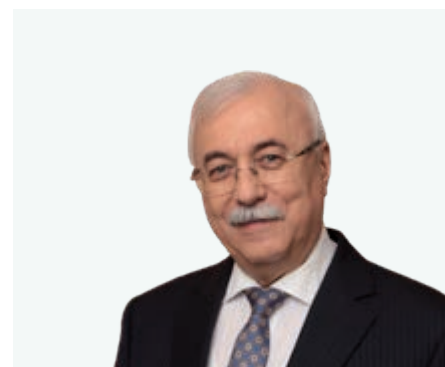
Dimitrios Droutsas: Opening the process for the region’s EU-integration contributed a lot to the overall development of the countries of the Western Balkans as well as their international relations – and I am proud of the role Greece was able to play, particularly through the “Thessaloniki Agenda” as a result of our EU-Presidency back in 2003.

We must be honest and acknowledge that, due to the hesitation shown by the EU and certain Member States in the past years, momentum is lost, and initial enthusiasm has been replaced by growing frustration among the peoples in the region. But this lost ground can and will be regained and the process accelerated – political will within the EU is increasing again, certainly enforced by the recent deployable developments in our continent.

Mr. Penkov, how do you see the political developments in Bulgaria and respectively between Sofia and its neighbouring capital of Athens?

Penkov: Unfortunately, the political situation in Bulgaria, for nearly two years now, must be characterized as unstable, since the political forces, despite stressing on the importance of a stable government, are not able to find the necessary consensus. Despite this situation, which in principle does not favour an improvement of the investment climate, the Bulgarian economy, surprisingly, has registered growth and a record low unemployment rate. One can only hope that after the forthcoming elections on

2 April 2023, there will be a proper government and a working parliament.



“Greek companies have been one of the largest investors in Bulgaria.”

Vladimir Penkov

Traditionally, the bilateral relations with Greece have been characterized by friendship and cooperation. The active political dialogue, the constantly expanding commercial-economic relations, the intensive educational and cultural exchange, as well as the common interests in the energy sphere are evidence for the strategic nature of these relations in the EU.

Bulgaria is an important trading partner of Greece within the Balkans and an important investment destination for their banks and companies. Greek companies have been one of the largest investors in Bulgaria

and are one of the most important economic partners in Bulgaria, participating in the privatization process. Their companies had key roles in the cement and glassware production in the country; even companies like Coca-Cola and Heineken entered the Bulgarian market through Greek companies.



“The deeper the regional and EU integration, the bigger the economic benefits for all partners involved.”

Dimitrios Droutsas

Greece is by far the strongest economic power amongst the three countries – what benefits could be reaped from a deeper regional integration?

Droutsas: Greece has traditionally been a strong economic partner for the countries in the region – for instance and despite the differences that have marked bilateral relations with North Macedonia, but belong to the past now, Greece has been for long the biggest investor in this neighboring country.

The deeper the regional and EU-integration, the bigger will also be economic benefits for all partners involved.

Mr. Penkov, how do you assess the future development of Bulgaria as a business and investment location? What are the sectors of interest for international investors?

Penkov: There are significant opportunities in the information and telecommunication technologies, the energy sector, industrial production, agriculture and food industry and, of course, the chemical industry and tourism. Various measures by the state for supporting investments have been legislated in Bulgaria, with the aim of better access to administrative services and the reduction of bureaucratic obstacles.

The swift and burdenless incorporation of trade companies under the Commercial Act, the e-registration of companies and the relatively well-functioning judicial system, especially with the recent ongoing measures to uphold the rule of law, all create an opportunity for investments. The establishment of a currency board and the connection of the Bulgarian Lev with the Euro, the financial stability and the foreign exchange reserve, are grounds for a positive forecast of business development in Bulgaria, and an admission into the Eurozone.

Extremely important in this regard is the admission of Bulgaria and Romania in Schengen, for which, unfairly, due to the disagreement of Austria and the Netherlands, the EU has upheld a negative standpoint. Since both countries observe all conditions for admission and make maximum efforts to uphold the rule of law, to reduce

the conditions for corruption through its effective prosecution, as well as the comprehensive strengthening of the border, I expect the Schengen admission to take place already in summer 2023. As for the adoption in the Eurozone – at the latest at the beginning of 2025, Bulgaria has fulfilled all the requirements- regarding public finances, exchange rate, the convergence of long-term interest rates, with the exception of average inflation.

Mr. Droutsas, given the economic and strategic importance of Turkey, do you see business opportunities which can result of such pivot and logically encompass the entire region?

Droutsas: No doubt, Turkey is an important economic player in the region – there are considerable common interests, and I would not hesitate to call business opportunities huge. Even within their sometimes-tense bilateral relations, in the last years Greece and Turkey have managed to multiply the outcome of economic exchange in various fields of common commercial interest – to a large extent due to the opening of Turkey’s EU-integration progress.

I am convinced that our whole region will see similar economic developments and benefits the deeper EU-integration will develop, both for the countries of the Western Balkans and Turkey.

How can our clients benefit from the full coverage of the entire region that LGP / Penkov, Markov & Partners are able to provide together with their strong partner firms in Greece?

Zeqiri: Our clients include very relevant international players from a wide range of sectors and industries such as mining, agriculture, energy, real estate development, construction, and others. In all these fields, North Macedonia is not the only location offering exciting investment opportunities and rewarding projects, so we are able to

offer market entry, business development, and legal services for an entire region as opposed to a per country basis. Our clients see this as a very significant added value of the structure that LGP is able to offer together with Penkov, Markov & Partners in Bulgaria and other similar partners in the countries of the region.

Penkov: There is no doubt that the excellent personal relations established within LGP, built as a result of the long-term co-operation serve as a strong background for

servicing clients on mutual projects in the three countries. Penkov, Markov & Partners Law Firm, being the only Bulgarian member of the largest association of independent law offices LEX MUNDI, adds further value to this partnership considering the excellent working relations we maintain with law firms in Greece. This way, a high international standard of rendered legal services is ensured, as well as practical assistance for a successful entry into the region and rapid implementation of joint projects of mutual interest.

Droutsas: We know the region and understand its particularities – our long-standing presence and experience, the dense network developed on all levels and the reliable partnerships established make us credible and efficient partners for and in the region. We can pave the way for emerging projects and even create and develop new business opportunities – simply, we can get things done in the region. ■

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Senior Expert Counsel

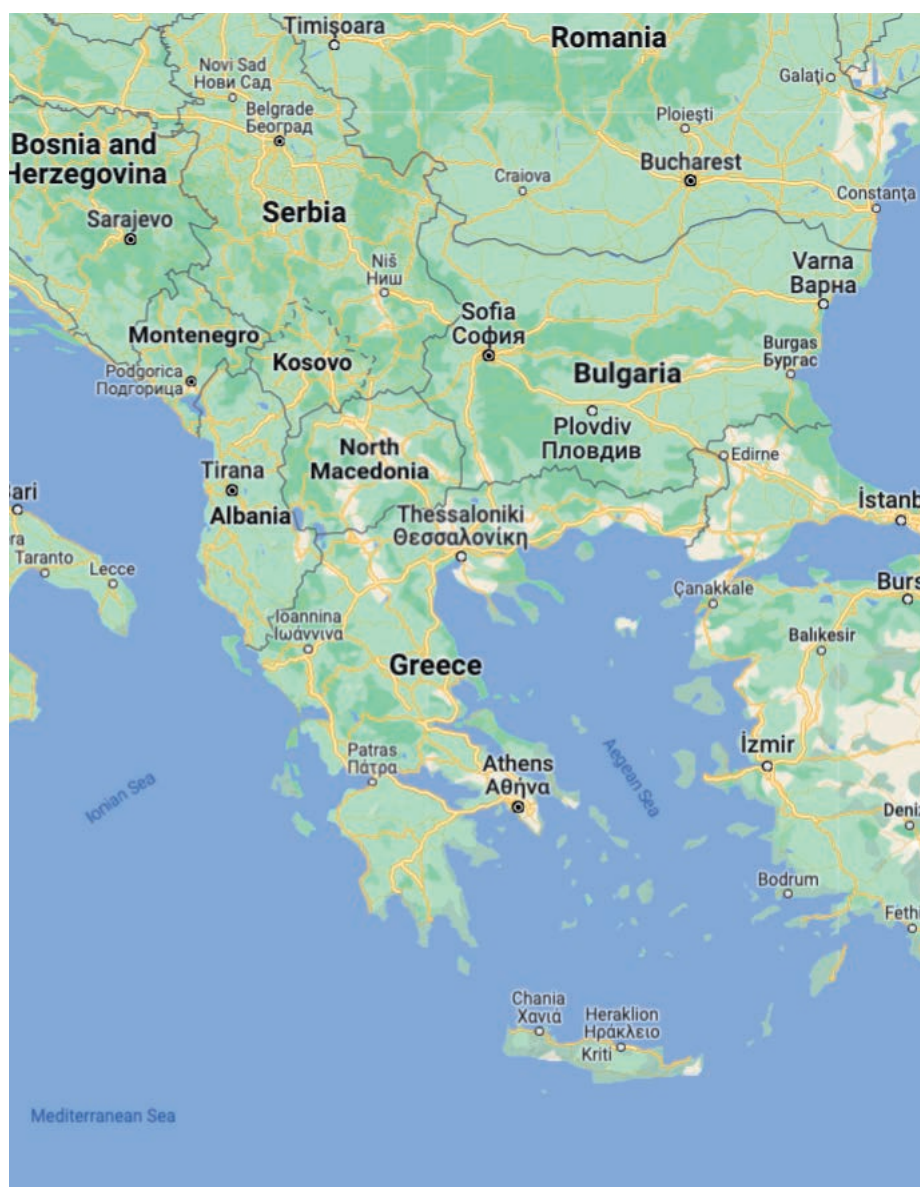
Mag. DIMITRIOS DROUTSAS

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EU pushes expansion of renewable energies

The EU aims to enable simpler and faster authorisation procedures for certain renewable installations by the end of June 2024 by establishing a framework for the accelerated development of renewable energy through the (emergency) Council Regulation (EU) 2022/2577 of 22 December 2022.

The EU regulation to accelerate the deployment of renewable energy projects (EU Acceleration Regulation) is intended both to compensate permanently for the loss of energy supplies from the Russian Federation, and also to give an urgently-needed boost to the expansion of renewable energy plants necessary for green energy transition, so that these can be used more quickly throughout the EU.

This ambitious goal is to be achieved mainly through the following measures:

- simplification and acceleration of the permit-granting process for certain renewable energy installations;
- simplification and acceleration of the permit-granting process for the repowering of plants for the generation of energy from renewable sources as well as the



- ex lege assumption that certain renewable energy installations are in the overriding public interest.

WHICH INVESTMENTS ARE FAVOURED?

The focus is on renewable energy technologies or on specific types of renewable energy projects that have the highest potential for quick deployment (Art.1).

Beneficiaries include:

- solar energy installations and co-located energy storage facilities, including building-integrated solar energy installations and solar energy installations on rooftops, on existing or future man-made structures, with the exception of artificial water surfaces, as long as the main objective of these structures is not the production of solar energy;
- solar energy installations, including self-supply renewable energy installations, with a capacity not exceeding 50 kW (small-scale installations);
- heat pumps;
- repowering projects.

Restriction to the technologies and project types mentioned is justified by the fact that these can be implemented quickly without the need for costly changes to national procedures and legal systems. The EU Acceleration Regulation thus (unfortunately) does not cover the expansion of hydrogen technology.

WHAT INSTRUMENTS ARE ENVISAGED TO SPEED UP PROCEDURES?

Short decision-making deadlines:

The EU Acceleration Regulation stipulates that the permit-granting process for eligible installations must be completed within a certain period of time:

- Approval procedures for solar installations must take no longer than three months (Art 4 para 1). Solar energy systems with a capacity of 50 kW or less are granted tacit authorisation, in which authorisation is deemed to have been granted if the competent authorities do not make a (negative) decision within one month of the application. A prerequisite of the tacit approval for small installations is that the solar energy installation's capacity must not exceed the capacity of the existing distribution grid connection.
- The procedure for granting permits for repowering projects – including any environmental impact assessments – must take no longer than six months. This also applies to the expansion of installations required for grid connection if repowering leads to an increase in capacity (Art 5). Where repowering leads to an increase in capacity of less than 15%, connection to the transmission or distribution grid must be approved within three months (after the application is submitted).
- The permit-granting procedure for the installation of heat pumps with an electrical capacity of less than 50 MW should take no longer than one month. The procedure for granting permits for ground source heat pumps should not exceed three months

Exemptions to environmental impact assessments:

- Solar energy installations are exempt from the requirement to determine whether a general or specialist environmental impact assessment is required for the project.
- Environmental impact assessments for repowering must not take longer than six months. Furthermore, only potentially significant impacts of the modification or extension compared to the original project are to be assessed.
- Member States may, under certain conditions, provide for further exemptions from the environmental impact assessment for renewable energy projects and energy storage and electricity grid projects necessary for the integration of renewable energy into the electricity system.

Assumption of overriding public interest

In cases where the licensing provisions (in particular exemption provisions) provide for a balancing of interests, it is assumed that when balancing legal interests in individual cases that the planning, construction and operation of plants and facilities for the generation of energy from renewable sources as well as their connection to the grid, the grid in question itself and the storage facilities are in the overriding public interest and serve public health and safety. This is par-

ticularly relevant for exemptions under the Habitats Directive and the Birds Directive. Member States may limit the application of these provisions to certain parts of their territories and to certain types of technologies or projects with particular technical characteristics.

PERIOD OF VALIDITY

The EU Acceleration Regulation entered into force immediately upon its publication on 29 December 2022 and is valid for a period of 18 months, i.e. until the end of June 2024. For companies planning such projects, the next 18 months are therefore the optimal time to submit them for approval. The legal fiction of overriding public interest is a particularly unique opportunity. It remains to be seen whether the Austrian EIA Act, which was announced by the government at the beginning of January 2023, will be simplified.

The LGP team is always available to assist you with the implementation of your energy transition project. ■



Attorney-at-Law

ANDREAS BAUER

heads the environmental and public commercial law practice at LGP. He specialises in commercial law, industrial and business premises law, construction and real estate law, regional planning law, infrastructure law, environmental and technology law, data protection law and administrative criminal law.

EU holds big tech companies

more accountable

In 2022 the European Union passed in one legislative package the Digital Services Act (DSA) and the Digital Markets Act (DMA), but they function as two distinct laws. Their aim is to prevent companies that have a dominant position in the digital world from abusing their monopoly position vis-à-vis competitors or customers, by forcing them to be more open and compatible. The DSA introduces new obligations for online platforms such as stricter content moderation and provision of more transparent information on how data is collected and used while the DMA directly centres on alleged anticompetitive behaviour of what it calls “gatekeeper platforms” such as Google, Amazon and Meta with its rules on digital advertising, app stores and online messaging. The common aim is that both laws call for Big Tech providers to be more accountable for what happens on their platforms.

The DMA’s noncompliance fines can be as much as 10% of a company’s yearly global revenue, or 20% for repeat offenses. The DSA has a maximum fine for an online platform or search engine of 6% of worldwide revenue.

DIGITAL SERVICES ACT (DSA)

The DSA is a breakthrough new set of EU rules which covers all digital services that connect consumers with goods, services, or content. It creates comprehensive new obligations for online platforms to reduce harm and combat risks in the online environment, introduces strong protections for users’ rights in the online environment and builds a unique new transparency and accounta-

The new laws, which make the European Union the biggest challenger to Big Tech today, have two goals: to create a safer digital space where the fundamental rights of all users are protected, and to establish a level playing field to support innovation, growth and competitiveness in the European Market and globally.

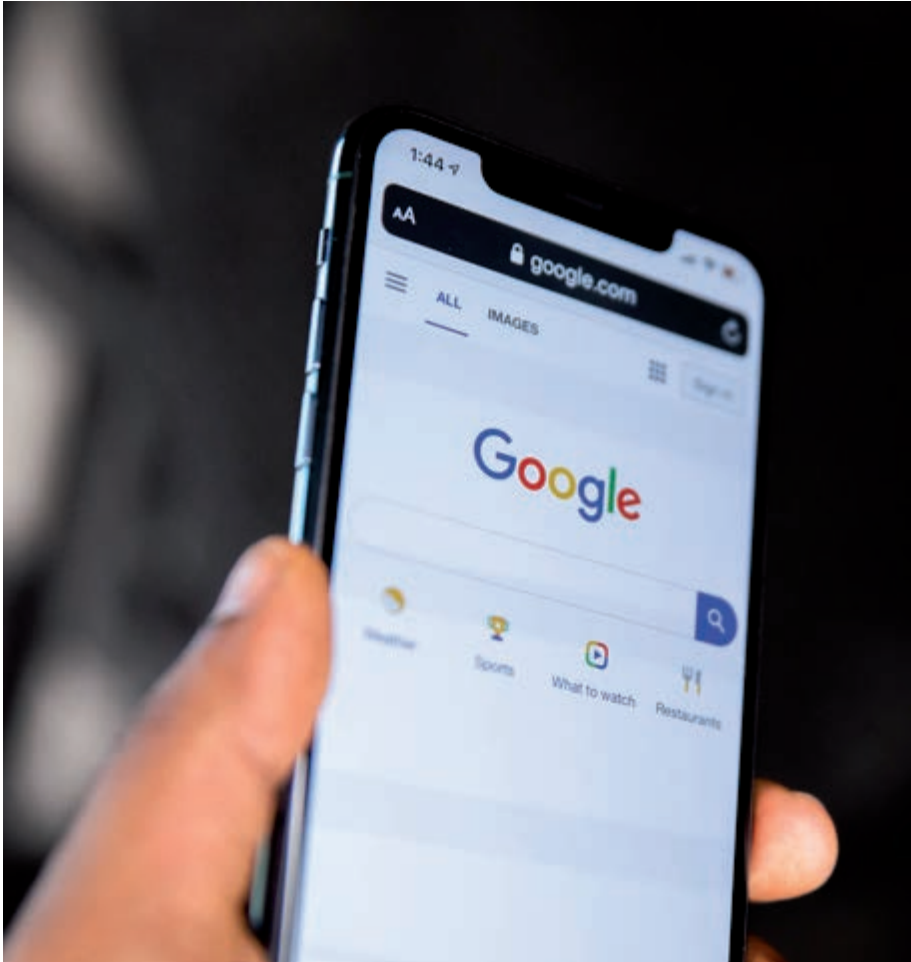
bility framework for digital platforms. The new rules include new obligations:

- to limit the spread of illegal content and products online;
- to increase protection for minors which covers bans on targeted advertising on online platforms by profiling children or based on special categories of personal data such as ethnicity, political views or sexual orientation;
- to randomly check by online market places against existing databases whether products or services on their sites are compliant;
- a ban on using so-called ‘dark patterns’ on the interface of online platforms, referring to misleading tricks that manipulate users into choices they do not intend to make;

- a new crisis response mechanism in cases of serious threat for public health and security crises, such as a pandemic or a war and others.

The obligations of the different online actors correspond to their role, size and influence in the online ecosystem. A new freedom of expression protection will limit the platforms’ decisions to arbitrarily moderate content and offer new opportunities for users by taking informed action against platforms where such moderation has taken place. The new rules also require that platforms’ terms of use are presented clearly and concisely and that the users’ fundamental rights are respected.

In addition, very large online platforms and search engines will have to carry out a comprehensive risk assessment that could threaten fundamental rights, including freedom of expression, protection of personal



data, freedom and plurality of the media in the online environment, as well as the rights of the child.

The Commission will have the power to directly supervise very large online platforms and very large search engines, i.e. platforms that have 10% of the EU population in their user base, which is around 45 million users, while other platforms will be under the supervision of Member States where they are established.

DIGITAL MARKETS ACT (DMA)

The aim of the new act is to put an end to unfair practices by companies that act as gatekeepers in the online platform economy. The DMA includes criteria for determining when a large online platform is considered as a “gatekeeper” and directly prohibits certain forms of their behaviour.

The Digital Markets Act applies to a company if it meets the following three main criteria:

- a size that impacts the internal market: if a company achieves a certain annual Union turnover and provides a core platform service in at least three Member States;
- control of an important gateway for business users towards final consumers: if the company provides essential platform services to more than 45 million monthly active end users established or located in the EU and to more than 10,000 yearly active business users established in the EU;
- an established and durable position: those instances when the company has met the second criterion during the last three years.

The DMA focuses on competition and prohibits tech giants from

- ranking their own products and services more favourably on their platforms than third-party products;
- preventing consumers from linking up to businesses outside their platforms;
- preventing users from un-installing any pre-installed software or app if they wish to;
- processing users’ personal data for targeted advertising. ■



JUDr. MÁRIA PORUBSKÁ TÖKÖLYOVÁ

joined LGP in 2015 as a state aid legal advisor and a consultant for public procurement including structural funds issues. She also advises on Competition law and Administrative law matters with a focus on Tax law.

NIS 2 Directive to enforce European cybersecurity

Following an evaluation of the Directive on Security of Network and Information Systems (NIS I Directive), the European Union has adopted the Directive (EU) 2022/2555 of the European Parliament and of the Council of 14 December 2022 on measures for a high common level of cybersecurity across the Union, amending Regulation (EU) No 910/2014 and Directive (EU) 2018/1972, and repealing Directive (EU) 2016/1148. A new approach, characterised by systemic and structural changes,

was created, based on a new policy concept and set of options and measures, and an impact assessment of the proposed changes.

A new directive is to protect network and information systems in Europe even better against hacker attacks. As soon as the revised EU directive enters into force as a new law, all 27 EU member states must transpose the requirements into national law.

By December 2024, Member States must adopt and publish the measures necessary to comply with the NIS 2 Directive.



Photo: unsplash.com

In general, the draft NIS 2 Directive provides as follows:

- a) introduces stricter supervisory measures for national authorities (retains the requirement to have a Computer Security Incident Response Team – CSIRT)
- b) contains stricter requirements for legal enforceability
- c) tightens cooperation and information sharing between Member States, including through the creation of a new body called the European Cyber Crises Liaison Organisation Network EU (CyCLONe) for the coordinated management of large-scale cybersecurity incidents and crises and to ensure the regular exchange of information between Member States and EU authorities
- d) includes strengthening the security requirements for the companies subject to the rules by providing a minimum list of basic compulsory security elements and introducing more precise incident response reporting requirements
- e) aims at harmonising sanctioning regimes across Member States (including fines of up to EUR 10,000,000 or up to 2% of a company’s total worldwide annual turnover) and
- f) extending the period for Member States to transpose NIS 2 into national law to two years (from 18 months).

Unlike the NIS 1 Directive, it is intended to cover a broader range of industries (sectors), depending on their importance to the economy and society. It also intends to cover all medium and large enterprises in selected sectors, while allowing Member States to identify other (smaller) enterprises that have a high level of security risk.

At the same time the NIS 2 Directive is intended to abandon the distinction between basic service providers and digital service providers. Entities are now to be classified according to their importance and subject to different supervisory regimes. The proposed NIS 2 Directive aims to abolish the distinction between operators of essential services and providers of digital services and to explore a new approach to classification based on the importance of the service. This would allow for a lighter regime for services that are categorised as “essential” rather than “basic”.

Finally, it also intends to address security requirements, for example by introducing a list of measures including incident response, crisis management, vulnerability resolution and detection, cybersecurity testing and the effective use of encryption. Cybersecurity of supply chains for key information and communication technologies is to be strengthened. The responsibility of company management for compliance and risk management in the area of cyber security is to be adjusted. The obligation to report incidents is to be simplified by clarifying the provisions on the reporting process, its content and timing.

It also introduces a size limitation, which will mean that only medium and large companies in selected sectors will be included in the scope of NIS2, while retaining some flexibility for Member States to identify smaller entities with a high security risk profile. However, this exclusion of smaller companies will not apply universally, for example if the provider of a basic or essential service is a provider of public electronic communications networks or publicly available electronic communications services.

The scope of jurisdiction of the NIS 2 Directive will continue to be determined pri-

marily by the Member State in which the provider has its main establishment, which will be considered to be the place where decisions are taken regarding cybersecurity risk management measures, rather than the place where the provider is established in the EU. If such decisions are not taken at any establishment in the EU, the principal establishment will be deemed to be the Member State in which the entities with the highest number of employees in the EU have an establishment; and if there are no such entities in the EU and the provider offers services in the EU, then a representative will need to be appointed for the purposes of the NIS. ■



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North Macedonia reforms

Company Legislation

LLC founders benefit from the low minimum share capital, the limited personal liability towards third parties, the unbureaucratic establishment procedure and the simple organisational structure of the company form. A simplified LLC is now also intended to serve small businesses as a legal form.

Of all forms of trade companies, the limited liability company is the most common. With the Amending Law of the Law on Trade Companies, published in the Official Gazette of North Macedonia no. 215/2021 of 16 September 2021, the legislator incorporates a so-called “sub-form” of the LLC – the Simplified Limited Liability Company (in continuation: SLLC). This step is intended to provide additional relief for founders, by minimizing the minimum share capital from 5,000 EUR to at least 1 EUR expressed in denar counter value. From a current point of view, within the Macedonian law on trade companies, two forms of LLCs exist which rest upon the same principles and concepts deriving from the contemporary law on trade companies.

Based on the comparative analysis of the relevant laws in Germany, Luxembourg and Croatia, one can recognise that, with minor deviations, these legal solutions for this form of trade company are identical as those implemented by the Amending Law of the Law on Trade Companies. In relation to the deviations mentioned above, unlike in Croatia, the Law on Trade Companies of the Republic of North Macedonia does not expressly prohibit the transformation of an LLC into a SLLC. The Macedonian law additionally does not limit the number of SLLCs where one person can be a shareholder, as is the case in Luxembourg.

This raises the question of the extent to which it was necessary to introduce a new sub-form of the LLC, whose share capital was reduced from 5,000 euros to 1 euro in denar equivalent. Taking into account all the facts and arguments, especially those that focus on the significance of the share capital as a guarantee for the fulfilment of obligations, the authors consider that a more adequate amendment to the Law on Trade Companies would be a provision by which the basic capital of an LLC

(or D.O.O.) would be reduced to 1 EUR in denar counter value, instead of introducing a “new form” of limited liability company. Nonetheless, the incorporation of the SLLC (or P.D.O.O.) in the Macedonian legal framework will contribute significantly towards the growth and development of entrepreneurship and facilitate the establishment of a greater number of small businesses which were previously restricted due to the financial burden.

However, the authors maintain that this particular feature puts the SLLC in a subordinate position in comparison to the regular LLC. For it is not guaranteed, that the business ventures of a LLC (or D.O.O.) will be more successful than those of a SLLC (or P.D.O.O.) and, in the case of the latter, that the fulfilment of the company’s obligations is permanently guaranteed. ■



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EU law in the making for Artificial intelligence

Artificial intelligence (AI) has become part of our everyday lives in recent years. Innovative programming options, software systems and robots simplify human life and make many work processes more efficient. The areas of application now include translations, search engines, autonomous driving, smart homes and even medical diagnostics.

AI-based programmes simulate human intelligence, combine new deep learning and data processing capabilities, and perform complex tasks virtually without human control or supervision. Because there are huge amounts of data to be processed, these systems rely on algorithms, so AI decision-making is often opaque. This also makes it much more difficult to predict the behaviour of an AI-equipped product and understand the possible causes of damage. In addition, AI products are inherently much more vulnerable to cyber threats.

Consequently, on 21 April 2021, the EU introduced its proposal for the Artificial Intelligence Regulation “EU AI Regulation”. Under the proposal, which will be directly applicable in EU Member States and will also have extra-territorial reach, developers and users as well as importers of AI systems shall be subject to major new obligations. The proposal also sets dissuasive fines of up to EUR 30 million for companies that breach the EU AI Regulation, or up to 6% of their global annual turnover in the previous financial year. The proposal is based on a risk assessment approach fol-

lowing the concept of “the higher the risk, the stricter the rule”, divides AI systems into four categories:

- a) Unacceptable risks:** Those AI-systems will be banned (e. g. a clear threat to the safety, livelihoods and rights of people, etc.)
- b) High risks:** Only will be allowed if AI complies with certain mandatory requirements (e.g., data management, documentation and record-keeping, transparency and provision of information to users)
- c) Low risks:** Will only be subject to specific transparency obligations (e. g. citizens must know that a machine is interacting with them on the other side)
- d) Minimum risk:** No specific obligations shall apply.

The process within the EU regarding the final wording of the said draft regulation is not finished, so it has not yet been adopted. Moreover, in September 2022, the EU introduced a new AI Liability Directive, with the purpose to improve the functioning of the

internal market by laying down non-contractual civil liability for damage caused by the involvement of AI systems. As the EU member states are waiting for the adoption of comprehensive rules concerning AI for the whole EU, they have not yet adopted any specific binding regulations for AI. However, in this regard, the Slovak Republic has already adopted Slovakia’s Digital Transformation Strategy 2030 accordingly and the follow-up Digital Transformation Action Plan for 2019-2022.

From the perspective of the Austrian political AI strategy, the Federal Ministry for Climate Protection, Environment, Energy, Mobility, Innovation and Technology has published the Artificial Intelligence Mission Austria 2030 plus Annex based on the EU Coordinated Action Plan on AI. ■



Associate

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has been a part of the LGP Bratislava team since 2018. Jakub has gained valuable experience in various legal areas and participated in significant client cases. He specializes in litigation, insolvency, civil and commercial law, as well as in real estate and IT law.

Who needs whom here?



Foreign nationals are confronted with numerous legal hurdles when acquiring Austrian residency and citizenship. These are not objectively justifiable and also not supportive of current demographic trends. This is a good moment to reflect on the immigration of well-off, qualified foreign nationals who are willing to integrate.

From the point of view of many foreign citizens, Austria is an attractive country in which they can imagine their personal and professional future. The topic of immigration is ever-present in the media, and xenophobic tendencies are unfortunately all too often evident. In my view, however, Austria's demographic problems are seldom addressed in this context: many "baby boomers" will retire in the next few years and it is predicted that the birth rate across all educational levels in society will continue to decline. It is interesting in this context that Austrian immigration policy is

not harnessing the advancing globalisation of the economy and the increasing standardisation of everyday cultures, but rather is trying to allow immigration only in a very limited way.

Obtaining Austrian residency is not easy for foreign nationals, even for those willing

to work and who have a good education. This also applies to rich foreign nationals who are willing to integrate and who wish to spend their lives in Austria without working or studying. This is because obtaining a quota place for the "residence permit – exempting gainful employment" ("Privatiers") is often difficult and rarely

possible without legal support. The quota has remained low for years, and changes are not in sight. Instead of relying on quotas, it would make more sense to change the criteria to allow the influx of – sometimes very young – independently wealthy people. Then, those who fit Austria’s demographic needs could come, as long as they are willing to integrate.

In Austria – unlike in most parts of the world – the principle of dual and multiple citizenship does not apply. Only those who meet the terms of an exemption clause have the chance of dual citizenship. Current thinking that Austrian citizenship would be devalued if acquisition criteria were loosened clearly shows that the trend does not exactly point to the acquisition of citizenship easing. From my point of view, in addition to asylum cases, which must be considered separately, states must of course establish certain criteria for the acquisition of residence permits and citizenship. However, these should also be tailored to the geopolitical and national demographic situation in a forward-looking way.

European competition for key workers, investors and other financially strong immigrants is increasing and many foreign nationals are therefore switching to other EU states where residency or citizenship is often easier to obtain than in Austria. In order for an investor to obtain residency in this country, Austria requires a financial contribution towards the preservation and creation of regional jobs, innovative technology or new capabilities. Investments of 3 to 4 million euros are quite realistic for such a project – in contrast, only 30,000 euros have to be raised when founding start-up companies.

In order to be granted citizenship by way of investment, investment alone is not enough – no one should be able to buy Austrian citizenship. According to Article

10(6) of the Citizenship Act of the Republic of Austria, citizenship can be conferred in the case of extraordinary achievements “in the interest of the Republic” – especially in the fields of science, culture, sports and business. Approximately 30 to 40 citizenships are granted every year via this route. Criteria elaborated by the Federal Ministry of the Interior for assessing the undefined legal concept of “special interest of the Republic” are commonly the main starting points for a successful application. Although the final decision formally lies with the settlement authority, the latter must – via the Federal Ministry of the Interior and the involvement of the competent ministries – obtain confirmation from the federal government of the existence of special interest status. Confirmation or rejection by the federal government is not formally binding for the settlement authority (usually MA 35), as they made the final decision regarding the application, but in reality the decisions are made in line with the federal government’s recommendation. Where citizenship is granted “in the interest of the Republic”, dual citizenship is possible as an exception.

In response to the strong labour market demand for key workers and skilled workers in shortage occupations, Austrian migration law contains a number of corresponding residence permits. The “Red-White-Red Card” is an umbrella term for the residence permits for generally qualified skilled workers, for highly qualified skilled workers, for young skilled workers with an Austrian university degree, for skilled workers in shortage occupations as well as for business investors. At the same time, the residence permit “EU Blue Card”, introduced to comply with an EU directive, offers special advantages for the applicant to establish eligibility. Most residence permits require a labour market check to be carried out, which reviews whether comparably skilled workers are currently seeking work in the

domestic labour market – the decision is not future-based. This review is now administered by the AMS, not the settlement authorities; the now shortened and somewhat simplified procedure nevertheless remains complicated and time-consuming. Obtaining a residence permit for employment in a shortage occupation, which was significantly simplified from October 2022 on, is also often more difficult in practice than expected. In various occupations, occupation-specific requirements are not recognised, which then triggers procedures to recognise foreign qualifications. Many immigrants also fail due to the income hurdle or the lack of financial resources.

Nevertheless, despite all this – well-meaning – criticism, it is generally true that Austria is dependent on immigration and is open to immigrants in general. Foreign nationals who are educated, willing to integrate (and also willing to invest) are given corresponding opportunities. We are happy to help you find your individual path to immigration. ■



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is a mediator and lawyer at LGP. He focuses on immigration law, insolvency law, civil law and civil procedure law. Another focus is on alternative dispute resolution (ADR). Valentin Neuser also advises in English and French.

COPYRIGHT IN AI-AUTHORED WORKS



Who is the legal author of machine-generated content? Does the input provider become the author? Or the AI programmer? And will AI outstrip humans in legal affairs? As always: it depends!

Austrian copyright law is a part of Austrian law that ensures the protection of intellectual property and the rights of creations in need of protection. It protects all works made by the creative effort of the author or inventor, including works of literature, music, visual arts, photography, film, software, computer games and others. It is the right of the author to decide on the use, distribution and publication of his work and copyright law is therefore essential for the protection of his interests.

In recent years, artificial intelligence (AI) has developed rapidly and is influencing how people live, work, and play. This new medium poses completely new challenges for copyright law, because AI systems can now produce self-created works. This raises the question of how to deal with these works and whether they can be protected.

AI is based on algorithms that enable machines to think, make decisions, and perform tasks like humans. This technology can be used in a variety of areas, including the development of autonomous vehicles, the automation of production processes, the recognition of patterns in large amounts of data, and the development of voice assistants. AI systems can analyse

images and videos to determine whether or not a work should be copyrighted. AI algorithms can also be used to detect and remove unwanted content such as copyright infringements.

Copyright is a legal form that protects creativity and intellectual property. Although there is no clear answer for AI-generated works, it is likely that they will be protected by copyright in certain cases. In principle, copyright applies to all types of works that can be considered creative and original. However, there is some ambiguity as to whether AI works are also eligible for protection. Since AI algorithms are based on human knowledge and intelligence, there is some debate as to whether they qualify as personal creations. It can be argued that AI works that produce a creative and original performance are in the protected category. These AI works can, for example, be images, music or texts generated by AI algorithms. However, the question of authorship is difficult to answer. Some experts argue that the author is the programmer who developed the AI's algorithms. Other experts argue that the AI itself is the author, since it performs the creative and original work.

You might be surprised to learn that this text was not created by a human, but by

an AI (artificial intelligence). AI is able to create content in a very short time that is in no way inferior to that produced by human authors in terms of quality and structure. This poses a major challenge for copyright law, because it is becoming increasingly difficult to distinguish machine-generated from human-generated content. Another problem is that no clear line can be drawn as to who is the legal owner of such a text. Should the AI itself be considered the author? Or the AI's creator? It is therefore important that regulations are created to govern the rights and obligations of AI content creation. This is an extremely complex challenge, but one we must face if we are to protect the creative freedom of all authors and the integrity of copyright.



Would you have noticed that the text above was written not by a “natural” but an “artificial” intelligence, the GPT-3 model “text-davinci”?

For clarity, the AI generated texts are shown in a different font. The “Generative Pre-trained Transformer” (GPT-3) makes it possible to create content in seconds that

is indistinguishable from human-created content. The example above makes it clear that this is plausible for general and superficial texts. But can the AI also write legal briefs or even negotiate? Will its explanations stand up to deeper legal – in our case copyright law – examination? Will artificial intelligence outstrip humans in legal affairs?

In addition to aspects of the legal profession that are obviously difficult for a machine to fulfil (just think of the tact required in family disputes or tactical considerations in litigation), the AI lacks depth in reasoning and legal precision. It is also sometimes simply factually wrong. This will be examined in more detail below using the above text as an example.

Perhaps after re-reading the first three paragraphs, some readers may now be inclined to recognise a certain soullessness compared to the work of human authors. This hindsight bias aside, the AI can hardly be accused of anything content-wise until the third paragraph. The explanations are – probably due to the comparatively primitive inputs – both semantically and syntactically faultless.

IS THE AI CAPABLE OF LEGAL REASONING? – IT DEPENDS!

It becomes more interesting when the first genuine legal assessment is demanded of the AI. The question of whether works created by artificial intelligence are protected by copyright apparently leads the AI to a manoeuvre that is also popular among its human colleagues: “It depends!” The AI is able to locate the crux of the worthiness of protection in the “creativity and originality” of a work and furthermore thinks it can recognise a difference of opinion as to who should be entitled to protection according to the Copyright Act (Urheberrechtsgesetz, UrhG). This is the first place that the limits of AI become clear.

According to § 1, the UrhG protects idiosyncratic intellectual creations. When the AI refers to “creative and original works” in the fourth paragraph, the algorithm does not really use precise legal terminology, but – with a pinch of salt – it is still possible to recognise a large degree of congruence in content between its statements and the wording of the law. This is in stark contrast to the subsequent statements regarding “some ambiguity” and “some debate” about

the classification of AI works as personal creations and the associated authorship of AI works. Even with much interpretative goodwill, these are incorrect. Unanimity dictates that a creative act by a natural person is required for copyright to be applicable. This can also result from the more or less concrete instructions (inputs) to the AI (see infobox).

In our case then, the copyright of the generated text (output) would belong to the author (input giver) on the basis of human input, which arguably constitutes a “peculiar intellectual creation”, not least due to the lack of special demands on the “height of the work”. In agreement with the Supreme Court, the situation would be different if “works are created without the intervention of a creative person”. In such a case, the creative work of a human being is missing and the protection of the UrhG does not apply. However, since an AI cannot (yet) program itself entirely, we can conclude from the above that – in addition to the aforementioned “input provider authorship” – the programmer of the AI is also entitled to the copyright of AI works. This renders co-authorship of the input provider and the programmer conceivable.

Although the AI raises this issue, it does not go any further into the background of this debate (which is well worth having) or into its fundamentally correct “it depends” dogmatism with regard to peculiar intellectual creations. Rather, in the last sentence of the fourth paragraph, it strays into a blatant misunderstanding of the legal situation. Instead of discussing the relevant questions (under what conditions does the input provider/programmer become the author), the AI sees authorship of the AI itself as a counter-opinion to “programmer authorship”. However, this no longer has anything to do even peripherally with legally viable argumentation. De lege lata, authorship can only be attributed to natural persons. Opinions to the contrary are philosophical at best.

Two findings can be derived from what has been discussed so far, which somewhat de-

GPT-3 model “text-davinci”

GPT-3 is a language processing model developed by the American non-profit organisation OpenAI. It uses deep learning to create, summarise, simplify or translate texts.

After trying out various test versions at length, the author decided to use the beta version of OpenAI. (<https://beta.openai.com/playground>). The input for the AI was as follows and was partly split due to the “tokens-limit” of the beta version:

“First write an introduction about Austrian copyright law, which works are protected and who is entitled to protection. Then describe in detail how artificial intelligence has developed in recent years. Discuss whether works of artificial intelligence are protected by copyright. Surprise the reader of this text with the fact that even the text in question was not created by a human being but by artificial intelligence. Illustrate how difficult it will be in the future to distinguish human works from machine-generated works and what consequences this may have for the copyright of such works”.



tract from the initial magic of the AI phenomenon. On the one hand, AI does not seem to be able to make direct use of a legal text, which is surprising given the optimal prerequisites of laws as a source (easy accessibility, structured composition). On the other hand, it does not shy away from making factually incorrect statements, and it would be quite interesting to know where the AI obtained this quite obviously incorrect information.

Finally, in the last paragraph, the AI proves once again how advanced the technology already is. It recognises or at least seems to have recognised the intention behind the input for the last paragraph. Even if the wording could have been more pointed, I think that the inclusion of this element of surprise is successful. And even if the AI once again references its supposed authorship of the text, this touch of irony once again succeeds in underlining what was said in the last paragraph. If, in the future, machines can adapt and use nuances (such as a “plot twist”) that

were previously considered thoroughly human, they will assume a predominant role in almost all areas of our lives. Essays for homework or seminar papers or even theses will, with precise instruction, become doable by the AI and thus become absurd.

THE HUMAN LAWYER IS (STILL) IRREPLACEABLE

In some industries, this has long been the norm. While, marketing departments and news agencies have been using artificial intelligence for several years to produce product descriptions and short reports, it is clear, at least from this example, that AI cannot currently replace a lawyer. Apart from the indispensable interpersonal aspects, it still lacks the necessary legal depth and reliability of argumentation when it comes to drafting pleadings.

In conclusion: It is important to continue to observe technological developments cautiously, to classify them with the existing

(copyright) legal tools and, if necessary, to wait for legislative tightening. Because AI is definitely right about one thing: “AI is a complex challenge, but it’s one we have to face!” ■



Legal assistant
SIMON WEBER, LL.B., B.Sc.
 is currently completing his LL.M at the Vienna University of Economics and Business Administration before starting a postgraduate Master’s in Politics in London from summer 2023. He joined LGP at the beginning of 2021, focusing on data protection and media law.

Photo: freepik.com, Simon Weber

Welcome aboard!

The Austrian-Israeli Chamber of Commerce (AICC) is pleased to welcome Diana Hayat as its new Head of Business Development. The dynamic networker talks to LGP about her multicultural background, concrete plans for the AICC's future, and collaboration with other institutions.

You are quite new to your role: can you briefly introduce yourself and describe your relationship to the AICC??

Diana Hayat: Of course. I was born in Vienna, the middle child of three. My parents moved from the former Soviet Union via New York and Israel to Austria, where they eventually found a new home. The cultural diversity in my family means I speak five languages – German, English, Russian, Spanish, and Hebrew. I studied law, have worked for several law firms and also hold an LL.M. in housing and real estate law.

Then, in November 2022, I took over business development for the AICC in order to work with people internationally. I am really looking forward to strengthening Israeli-Austrian relations, networking with interesting people and organising innovative events!



Diana Hayat has been Head of Business Development at AICC since November 2022.

Which institutions does the AICC work with?

The AICC regularly works with LGP, benefiting from the building's modern amenities and organising various meetings and networking events. These can take the form of business breakfasts, after-work gatherings, receptions, and conferences. The AICC also works closely with the Israeli Embassy, organising joint events. Additionally, the AICC is hoping to be a co-organiser of the Green Peak Festival in September 2023.

What highlights are planned for 2023?

The opening of LGP's new office in Dubai next March is a definite highlight, the organisation of which the AICC will actively support. It is also very important to mention that we will celebrate the State of Israel's 75th anniversary in May! We are planning our own event for this occasion, possibly in partnership with the Israeli Embassy in Vienna.

Another very special highlight for me is our upcoming delegation to Israel in June 2023, for which AICC's board will invite about ten people and organise a diverse cultural programme. It will be a mix of tourism, interesting lectures by speakers and exciting excursions. Visits to Yad Vashem and the Knesset are part of the agenda. ■

Expert conference at the Juridicum

On 24 January 2023, the conference “EU Sanctions against Russia and the Rule of Law” took place at the University of Vienna’s Juridicum. It offered high-ranking representatives from academia and practice a forum for an exchange of ideas to discuss the significance of the European value system in the context of the current conflict.

In the area of personal sanctions, the Council of the European Union now has particularly broad discretion regarding who is and is not sanctioned, following the extension of the sanction criteria of Regulation (EU) 269/2014 made in March 2022 and the underlying Decision 2014/145/CFSP. There are now 1,267 persons on the “EU sanctions list”, ranging from Russian politicians and those involved in the acts of war to oligarchs and other wealthy Russians.

Through these selectively imposed measures, the EU has also targeted people who (even according to the Council’s own assessment) have no independent connection to the acts of war, who have lived in Europe for decades, hold European citizenship and at best maintain loose relations with Russia. On the other hand, various high-profile oligarchs within the closest circle of the Russian business elite are not sanctioned. The procedure within the EU Council leading to sanction decisions is kept deliberately opaque in order to leave room for the particular interests of individual member states.

This raises the question of the rule of law in the Union’s approach to the dispute with Russia. Can such broad state discretion be reconciled with the principle of predictability of state action? Do the en-



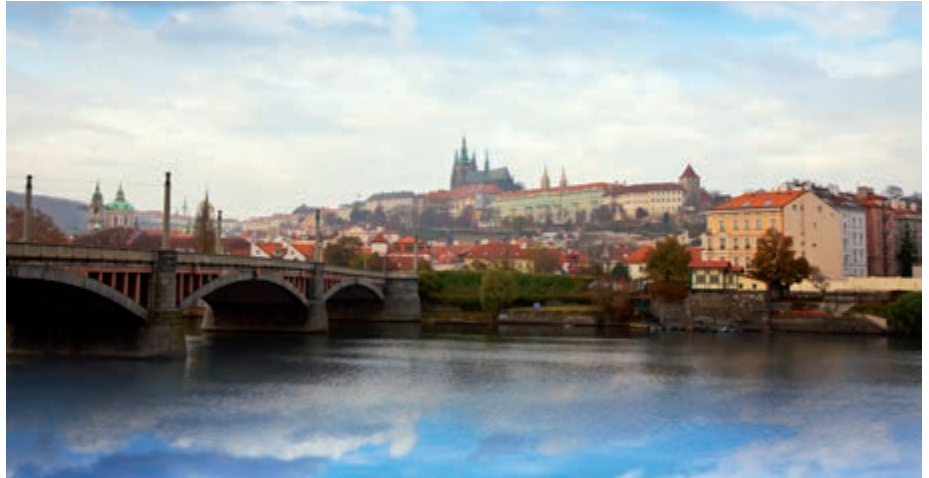
At the invitation of the LGP Sanctions Law Team, experts discussed in the Juridicum on the importance of the European system of values.

croachments on the fundamental rights of the persons affected by the sanctions comply with the principle of proportionality? And is the discussion that has arisen in the meantime about expropriating private individuals in order to finance the reconstruction of Ukraine supported by EU primary legislation? Or is the EU acting in a

similarly contradictory way in the current conflict as the USA did in 2001, when US institutions imposed substantial restrictions on democratic freedoms through the Patriot Act and the Homeland Security Act in response to the terrorist attacks of September 11, in order to defend those very freedoms? ■

LGP opens new office in Prague

Under the name Lansky, Ganzger, Jacko & Partner, s.r.o., advokátní kancelář, we have our own office in the Czech capital Prague since 2022. The managing partner is JUDr. Martin Jacko, who actively supports us in our further expansion in Europe and in providing targeted advice to our clients.



LGP Prague is the natural continuation of LGP Bratislava, based on the strong connection and affinity of the Slovak and Czech markets. From the new LGP Prague office, we can now better serve the activities and interests of our clients, as some of them are from the Czech environment or have business activities in the Czech Republic. The managing partner of the Prague office is JUDr. Martin Jacko, who still has a very close relationship with his home country, understands the Czech mentality and knows the

entire region like the back of his hand. His clients currently include many Czech clients who are among the leaders in their sector.

LGP Prague's geographical location offers many new opportunities for our clients, especially when it comes to entering European markets or finding potential business partners. Especially in the automotive,

plant engineering/smart factory and electrical/electronic/mechatronic sectors, the Czech Republic has been experiencing a continuous upswing for years, despite various crises. Due to this economic security and our local know-how, the Czech Republic is therefore also one of those countries where we can guarantee our customers the best possible advice. ■

Save the date: LGP H2 Circle on 24 May 2023!

Green energy, sustainability and hydrogen: on this range of topics, the "LGP H2 Circle" discusses the legal, scientific and, in particular, SME opportunities for Europe and its south-eastern neighbourhood, which stretches from Slovakia across the Balkan Peninsula to Turkey.

The emphasis on France takes account of and pays homage to its leading role in the development and incentives of hydrogen, and strong position as a reliable energy provider for Europe. The LGP H2 Circle will bring together regulators, policymakers and investors to provide a comprehensive

overview of global deployment, investment momentum and overcoming cost, technology and infrastructure barriers to make hydrogen solutions competitive.

The aim of the event is to help discover both R&D and business opportunities between

France, one of the world's leaders in hydrogen usage and development, and regions that are geographically and traditionally close to Austria and LGP's international network. The mission is to contribute to the development and deployment of pan-European value chains for safe and sustainable hydrogen technologies and to strengthen their competitiveness through international cooperation. A focus will be done on the support of SMEs and, in general, on facilitating the market entries.

If you are interested in the event, please contact us at events@lansky.at. ■

Western Balkans Round Table

On 12 December 2022, leading political, diplomatic, and business representatives discussed the current opportunities and challenges of the turbulent Western Balkans region at LGP's offices.

LGP has had a strong presence in the region for years and this time was able to host Christopher Hill, the decorated US Ambassador in Belgrade, for a highly informative lecture in front of a select audience. Hill presented his personal experiences of political negotiations in the Western Balkans region, where, among other things, he was co-negotiator of the Dayton Agreement to end the Bosnian war as well as part of the Troika negotiating team during the Kosovo crisis. Following on, Birgit Niessner, Director of the Economic Analysis Department

of the Austrian National Bank, gave a fascinating insight into important economic developments in the Western Balkans.

The event was moderated by LGP's Senior Expert Counsel, Balkans expert and former Ambassador Wolfgang Petritsch, who

also played a leading role in the negotiations around the Dayton Agreement and the Kosovo peace talks. Under "Chatham House Rules", all participants were able to exchange views on the latest plans and strategies of local and international actors in the region with refreshing openness. ■



Arlind Zeqiri, Christopher Hill, Birgit Niessner, Wolfgang Petritsch, Gabriel Lansky (from left to right)

ÖKG Event at LGP

The Austrian-Kazakh Society hosted 30 guests for a lecture on "The Ukraine-Russia Conflict" at the LGP Lounge on 28 November 2022.

Retired Ambassador and Special Envoy of the OSCE Martin Sajdik discussed the current situation and its impact on the post-Soviet space. Around 30 guests accepted the invitation to the premises of the law firm. ■



LGP at the IBA Miami 2022

In autumn 2022, the International Bar Association Annual Conference 2022 (IBA) took place in Miami. LGP was present to further expand its international network, make contacts and initiate new partnerships.

The annual International Bar Association (IBA) is the world's leading conference in which lawyers exchange ideas on the most important legal topics of the year, educate themselves and meet international colleagues. LGP was represented by Managing Partners Roland Frankl and Gabriel Lansky. The conference focused on global sustainability and its impact.

The topics included class actions on climate change, implementation of ESG criteria, and climate change and human rights. Lironer Barber, former editor of the Financial Times and presenter of topics such as geopolitics, technology and economics, was the keynote speaker at the launch event. Barber is also an investor and senior advisor to The New European newspaper. ■

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