LGP news

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LGP RECHTSANWÄLTE / ATTORNEYS

BALANCING ACT

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The world belongs to the brave

Europe is lurching from crisis to crisis, politicians seem increasingly helpless, the war in Ukraine is omnipresent. What we need urgently now is a functioning rule of law that creates a secure framework with comprehensible and acceptable rules in order to be able to meet the current multiple challenges in the best possible way. In his contribution, Alexander Schall, an experienced corporate lawyer and trained psychoanalyst, explores the fascinating role that law plays in society's tightrope walk between violence, aggression and joie de vivre, and to what extent the law can contribute to society's ability to change and develop despite enormous disruptions. More on this from page 4.

We live in a time when we must ask ourselves how brave we are today. A look at the advancing climate change and the dramatic rise in energy prices shows that we still have a long way to go towards a climate-neutral society. The much-cited "ecological turnaround" probably has by far the greatest potential to become a sustainable game-changer for the whole of Europe. In his guest commentary, France's "Monsieur Hydrogène" Michel Delpon reports on how the path to a green hydrogen society could look and what enormous future potential this emission-free energy carrier has for the economy, industry, and agriculture.

Managing Partner Ronald Frankl takes us into the fascinating virtual universe of cryptocurrencies, blockchain & co. He examines smart contracts from a legal perspective, analyses the advantages of the new DLT Pilot Regime Regulation for trading with security tokens and explains why moving out of Austria as of 1 March 2022 no longer prevents cryptocurrencies from being taxed under Austrian tax law.

Conversely, an amendment to the Foreign Nationals Employment Act has brought some important changes since 1 October 2022, which decisively facilitates access to the labour market in Austria for highly qualified professionals from third countries. Managing Partner and immigration law expert Valentin Neuser explains in his article how these legal adjustments affect the current labour market situation and the acute lack of skilled workers in shortage occupations.

We wish you an exciting and informative read

Gabriel Lansky, Gerald Ganzger

Ronald Frankl, Philipp Goeth, Julia Andras, Valentin Neuser

Martin Jacko, Anna Zeitlinger and Arlind Zeqiri

Photo: LGP

Security of the rule of law put to the test

The rule of law forms the basis of our coexistence by guaranteeing the autonomy and peace of self-determined individuals. What role does the law play in society's tightrope walk between violence, aggression, and joie de vivre?

A current example of how quickly a constitutional state can falter was given by the last chaotic days of Donald Trump's presidency. The concept of truth had been reinterpreted by Trump over many years; his reality became the ideal, everything else was 'fake news'. Twitter communication supported by 80 million followers and media sympathetic to the president made it possible to conjure up and sustain supposed dangers, which his supporters were convinced they had to fight. Trump had rebelled against the establishment as a representative of the people, he had established himself as a strong man and thereby awakened a longing for control among many citizens. A part of the American population apparently identified so strongly with Trump and his questioning of the election results that a group of supporters even set about storming the Capitol and thus rebelled against the constitution. This also had a strong symbolic meaning. Psychoanalysts find parallels here with the secret desire for patricide described by Freud in his treatise "Totem and Taboo". The hero, in this case the father state, which originally brought us peace, is identified by Trump supporters as the culprit in the sudden suffering of the people and is punished through rebellion.

THE MEANING AND ACCEPTANCE OF RULES

Why do we follow rules in the first place? It begins in childhood, when parents teach us which behaviours are desirable and which are not. Prohibitions and corresponding rules on the one hand and adherence to commandments, desired behaviour, including rewards, on the other. Just as a child is given free space, a healthy constitutional

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state and legal system creates space for the individual and his or her cultural development. Functioning rule of law depends on several factors, of which there are three important categories. First: rules function and are observed if we can identify ourselves in the law that is set and it is clear to us that these rules make sense. Second: if rules are not respected, sanctions must be imposed. Thirdly: the rules must apply equally to everyone. Wherever corruption or totalitarian forms of government prevail, the gap between law and justice is obvious. Personal power is then given higher priority than a functioning legislature, judiciary and executive. In corrupt systems, money and power have a higher value than the rule of law. Corruption is the enemy of the rule of law and democracy and returns us to a chaotic environment where blood feuds were the guiding principle of human society. People can only live together in an orderly manner if it is clear to everyone which 'rules' are being played by – and if all people abide by these sensible and sanctioned rules.

A HEALTHY CONSTITUTIONAL STATE ENSURES DIGNITY AND PEACE

In the epilogue to the series "Guilt" by the German writer and criminal lawyer Ferdinand von Schirach, the protagonist says: 'A person's guilt is hard to weigh. We strive for happiness all our lives. But sometimes we lose ourselves and things go wrong. Then only the law separates us from chaos. A thin layer of ice, underneath which it is cold and you die quickly.' This sentence describes the role of law. That fine line between a stable life of peace and harmony on the one hand and chaos on the other. Through this quote it becomes clear how susceptible we humans are to conflict and disturbances that can throw us off track and how important the stable wall of a functioning rule of law is for every individual and their dignity. The concept of dignity has a prominent meaning in Article 1 (1) of the Basic Law: 'Human dignity is inviolable. It is the duty of all state authority to respect and protect it'.

The correspondence between Albert Einstein and Sigmund Freud from 1932 is about the understanding and meaning of law in the sense of a peace phenomenon. In it, Freud says: 'Law is the power of a community.' Freud sees law as an essential building block in the cultural development of humanity. Only law gave people the possibility to rely on a stable external structure. The handling of conflicts entered a new civilised phase when the blood vengeance of humans was replaced by the introduction of the court. The peaceful management of conflicts was henceforth an achievement in which humanity could rely on jurisprudence as a foundation. A wall of security that represents an important step on the way to the self-determined individual. The guardian of this collective stability is the rule of law with its separation of powers between the jurisdiction, the independent judiciary, the executive bodies, i.e. the government and its powers, and the legislature, i.e. the parliament. The walls of security and stability have shifted in favour of the population, resulting in a more peaceful coexistence than in the past. Violence has been reduced through laws, so that the law ensures autonomy, coexistence, and peace.

THE RULE OF LAW AS A SECURE FRAMEWORK FOR ALL CITIZENS

In recent decades, it has become almost normal for large parts of humanity to have this strong wall of human rights, full access to our fundamental rights, collective security, and individual freedom. The rule of law is a secure framework, the outer wall inside of which we can move and develop. The rule of law sets visible limits to society and to each individual. Any attempt to break out of the corset of laws is restricted and sometimes even punished. The functions of rules within the rule of law are similar to those in the family. Growing up in a social network without rules is a great burden for children. The rule of law and its executive give people clear boundaries. The state has a monopoly on the use of force. It compensates for injustice suffered and replaces the instrument of revenge. Citizens have learned a sense of injustice so that they can distinguish between what is allowed and what is not.

Can law protect us from the power and violence of chaos that threatens us everywhere? Yes, because we need the law to be able to reconcile conflicts of interest without violence. Consequently, an understandable and acceptable legal system also enables cultural development. The beneficiaries of the rule of law are we, the citizens. The law creates the balance between violence, aggression, and joie de vivre and thus contributes significantly to society's ability to change and develop despite enormous disruptions. ■

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Photo: LGP

EU Sanctions Law: Quo vadis?

The EU's latest sanctions packages already show that the focus does not lie solely on measures for further economic sectors and the extension of the sanctions lists: it also revolves around new kinds of bans and prohibitions, as well as the tightening of enforcement. Precisely because this is the responsibility of Member States, there are issues with delays – and major differences. New proposals by the EU Commission are intended to help curb violations of restrictive measures imposed by the Union in the long term.

In sanctions law it becomes particularly evident that the direction taken by Brussels is largely determined by the Member States. On the one hand, this can be attributed to the national legal framework, but on the other hand, it is also due to the lack of certain minimum standards at EU level. However, things have now started to move. EU sanctions law is currently on the verge of a decisive qualitative leap forward– and not just another package, but in terms of a specific regime. It is about a horizontal instrument, i.e. one that encompasses all sanctions regimes and is far-reaching. After years of imposing individual sanctions ("targeted" or "smart" sanctions) – these are measures that are not directed against a state but specifically against individuals and companies or institutions (e.g. financial sanctions) – in addition to economic sanctions on certain sectors (therefore also called sectoral sanctions). EU sanctions law is currently undergoing a fundamental shift.

A step to increase the effectiveness and uniformity of the implementation of the Russia sanctions concerning Ukraine was taken at the end of July by the so-called seventh package. Firstly, listed persons are obliged to report funds or economic resources that are owned, held or controlled by them within the territory of a Member State to the competent authority of the Member State where these funds or economic resources are located, in most cases, by the end of August. Failure to comply is considered a breach of anti-circumvention clause, which may have more far-reaching consequences in the future. Within two weeks thereafter, Member States had to inform the Commission of this. Secondly, the third-party reporting obligation was tightened up by requiring the authorities to be informed about "concealed" assets. The exchange of data between the Member States and with the Commission is now also envisaged.

An even deeper change is to connect asset recovery and confiscation of assets to violations of EU restrictive measures – not only as a mere possibility but even as a legal obligation. At any rate, this is the aim of the Commission's first two proposals. They are one of the results of the "Freeze and Seize" task force that has been working at the Union level for months. Since the enforcement of sanctions lies with Member States and they have different standard definitions and legal consequences for the violation under their administrative and/or criminal law, the first proposal is to create a corresponding offence at Union level. Accordingly, the first proposal is for a Council decision to classify an infringement of restrictive measures of the Union as a criminal offence with a European dimension. Technically, this is the qualification as an "area of crime within the meaning of Article 83(1) TFEU".

The significant impact of the proposal then becomes clear when one takes into account the comprehensive prohibitions, i.e. in addition to the prohibition to make available funds and the prohibition of circumvention, in particular the newly introduced reporting obligation incumbent upon sanctioned persons (individuals as well as institutions), as well as the intensified reporting obligation incumbent upon third parties, which almost always also include indirectly committed acts. Secondly, the Commission sub-

mitted to the Council a proposal for a Directive on asset recovery and confiscation, which aims to enhance the effectiveness further. This is achieved, firstly, by extending the mandate of Asset Recovery Offices by allowing them to rapidly trace and identify assets of persons and entities subject to restrictive measures, including the power to seize assets immediately in the case of imminent risk. Secondly, the proposal aims to expand the possibilities for asset recovery. Thirdly, the proposal provides for the establishment of Asset Management Bodies in all Member States. These bodies are to ensure that seized assets do not lose value and that seized assets that rapidly lose value or are costly to maintain can be disposed of.

There is still a long way to go before this first package is adopted and partly implemented by the Member States. This is already implied by the requirements for decision-making, namely unanimity in the Council and the consent of the European Parliament. The latter, along with some Member States, will, as expected, work towards the strictest possible regulation. Together with these two proposals, the Commission has published a Communication announcing another proposal that is central to the enforcement of sanctions law: a Directive on criminal penalties for the violation of Union restrictive measures. This proposal builds on the Council Decision and will therefore only follow once Member States have agreed on the Council Decision. This third proposal would regulate a number of criminal law aspects and mainly covers offences such as participation in acts directly or indirectly attempting to circumvent the restrictive measures.

Apart from these qualitative developments, some of which are still in the early stages, quantitative changes can also be observed. For example, sanctions law is becoming more complex with each new package that is added. The Commission is trying to counter this with a steadily growing number of interpretative aids, especially on the Russia sanctions, on specific sectors (e.g. finance, trade, agriculture and energy) or on horizontal issues (circumvention, implementation of agreements, payment channels, etc.). ■

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Photo: unsplash.co; LGP

Azerbaijan as new EU energy partner

While the supply of Azerbaijani natural gas to Europe via the Southern Gas Corridor already started in December 2020, EU Commission President Ursula von der Leyen visited Azerbaijan on 18 July 2022 to expand bilateral cooperation. LGP Legal Consultant Orkhan Ismayilov spoke with Elnur Soltanov, Deputy Minister of Energy of the Republic of Azerbaijan, about new strategic partnerships in the energy sector.

Ismayilov: The MoU signed between the EU and Azerbaijan, inter alia, provides for a significant increase of gas supplies from Azerbaijan to the EU. What impact will Azerbaijan and the Southern Gas Corridor (SGC) have on the EU's energy supply security in the forthcoming years?

Soltanov: This MoU has been signed during a critical time for the global and European energy markets. It highlights the strategic nature of the EU-Azerbaijan energy partnership building on a similar document on Strategic Partnership in the Field of Energy signed in 2006, as well as on the Joint Declaration on the Southern Gas Corridor from 2011. The new MoU refers to a joint commitment to double natural gas exports to Europe via the Southern Gas Corridor (SGC) by 2027. The SGC has already proven itself as a reliable contributor to the security of supply and market competition – two principal pillars of the European energy policy. Increased supply from Azerbaijan will play a significant role in delivering much needed gas to vulnerable regions. The potential for the transit of gas originating beyond Azerbaijan could also be looked at as a complementary option.

The EU adopted a number of new legislative acts aimed to achieve carbon neutrality by 2050. The role of fossil gas is recognized as a transitional source of energy with gradual restrictions for its utilization as well as requirements for low carbon standards.

At the same time the REPowerEU Plan and the "EU external energy engagement in a changing world" documents highlighted that the "support of the expansion of the SGC to 20 bcm per year will play a major role to secure gas supply for Southeastern Europe and the Western Balkans" while expressing the intention to "intensify cooperation with Azerbaijan in the light of the strategic importance of the SGC". In 2021, Azerbaijan exported 19 bcm of natural gas, including 8.2 bcm to Europe. This year we will increase gas supplies to Europe to 12 bcm.

The Trans-Adriatic Pipeline (TAP) has bought multi-dimensional economic benefits to all countries along its route and beyond in the form of jobs, investment in local communities and revenues. TAP made the participating countries' energy systems more stable and secure; reduced prices for citizens and businesses thanks to a better gas-to-gas competition. TAP will also support market integration in Southeastern Europe via physical interconnections such as Interconnector Greece-Bulgaria and, in the future, hopefully, the Ionian Adriatic Pipeline.

July also marked the inauguration of the Greece-Bulgaria Interconnector, which is considered as a harbinger of new projects related to the expansion of the SGC and will transport Azerbaijani gas to Bulgaria. How do you assess further expansion potentials of the SGC in terms of capacity and geographical footprint?

In July 2022 President Ilham Aliyev welcomed Ursula von der Leyen, president of the European Commission, in Azerbaijan

Regarding additional natural gas volumes for European countries through expansion and extension of the SGC, concrete actions should be taken now for significant amounts of gas to be available by around 2027. There is clarity and transparency on the supply side with huge reserves of gas in Azerbaijan. We need the same level of clarity on the demand side.

We also need to clarify several important issues such as: How can the EU support the SGC by prioritizing it and providing additional regulatory incentives to speed up the process? Which financial incentives could be provided and which practical ways could be devised to streamline the supply and demand?

Further expansion will also depend on a reliable network of interconnectors, a current good example being the Interconnector Greece-Bulgaria. Quite some time ago, we started a dialogue with several Western Balkan States on potential gas deliveries to this region. The European Commission has also become part of this dialogue, which is a part of the energy transition processes in the Western Balkans towards a decarbonized economy. There is demand for additional volumes of gas from our other partners. It is obvious that sometimes even small amounts of additional gas can provide huge diversification for a given country.

As it is known, Shah Deniz is the main gas field in Azerbaijan and to date, the only contributor to the SGC. While the reserves of Shah Deniz are estimated to be around 1.2 trillion cubic metres, Azerbaijan has more than twice as much proven gas reserves. What can you say about the other gas fields and what prospects do they offer?

Azerbaijan's proven gas reserves are 2.6 trillion cubic meters and the estimated reserves stand at about 3 trillion cubic meters. The potential of Umid, Babek and Absheron fields alone are more than 1.7 trillion cubic meters. Within a comprehensive strategic energy dialogue with the EU, which started several months ago, Azerbaijan presented its potential domestic production profile and expansion scenarios which indicate the availability of additional gas volumes for the full expansion of the SGC.

It should be noted that the production of additional volumes of gas will require multi-billion upstream and downstream investments in Azerbaijan and beyond which can be obtained only on the basis of long term commercial arrangements between producers in Azerbaijan and buyers in Europe, as well as through a regulated process of binding capacity bookings.

Photo: RND

Luckily, the new MoU has a provision encouraging cooperation for financing the expansion of the SGC, including through cooperation with international financial institutions.

Continuing with the latest MoU, the document also covers the cooperation in the field of renewables. How do you jointly intend to accelerate the development and deployment of renewable energy generation?

Gas supply is only a part of the new MoU between Azerbaijan and the EU. The document has rather extensive parts related to renewable energy, energy efficiency, renewable hydrogen and the potential export of green energy/electricity to the EU. Renewables and green transition are also a crucial part of our ongoing energy dialogue with the EU.

The Caspian Sea has an enormous potential for wind energy – a globally significant technical reserve of 157 GW. Our goal is, and this has been already reflected in a recent MoU with the EU on strategic energy partnership, to establish routes for green energy/electricity export to Europe. Besides the SGC, we will have a Green Energy Corridor, connecting Azerbaijan to Europe. Naturally there are two viable options to realize it:

1) A mainland Azerbaijan-Zangazur Corridor-Nakhchivan AR of Azerbaijan to Turkey and Europe and

2) via a Black Sea subsea cable through Georgia, Romania and Hungary.

Recently we have concluded game changing deals in the development of enormous potential of offshore wind in the Caspian Sea (besides onshore projects) with leading companies. And we are currently and in parallel working on export channels for those upcoming new volumes of green electricity and probably hydrogen to potential markets mainly in Europe.

If we talk specifically about hydrogen, which goals and objectives has your country set with respect to this topic? Is there potential for transporting hydrogen along the SGC?

Last year, an inter-agency working group was established to develop a Hydrogen Strategy in Azerbaijan. With the support of the EBRD, the consulting company "Advision" is involved in the development of the "Low-carbon hydrogen economy market study" for Azerbaijan. This project consists of the Azerbaijan country report and hydrogen case studies. The country report covers current and future demand, existing and forecasted production, hy-

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The **Southern Gas Corridor (SGC)** is one of the most complex gas value chains aimed at improving the security and diversity of the EU's energy supply by bringing natural gas from Azerbaijan to Europe. The gas produced in Shah Deniz, one of the world's largest gas-condensate fields located on the deep-water shelf of the Caspian Sea (70 km southeast of Baku) is being transported to Europe via an integrated pipeline system consisting of three pipelines with a total length of 3,500 km.

- **South-Caucasus Pipeline Expansion** (SCPX): 691 km-long, connecting Azerbaijan and Georgia with Turkey
- **Trans Anatolian Pipeline** (TANAP): 1,850 km-long, connecting the eastern border of Turkey with the western border of Greece
- **Trans Adriatic Pipeline** (TAP): 878 km-long, traversing Greece and Albania toward end destination in Italy.

TAP offers various connection options to several existing and proposed pipelines, delivering Azerbaijani gas to further European markets. Noteworthy is the newly commissioned Interconnector Greece-Bulgaria (IGB), connecting the Greek and Bulgarian gas transmission systems. Additionally, TAP can provide an exit point to the planned 511 km Ionian Adriatic Pipeline (IAP) to link to the markets in Croatia, Albania, Montenegro and Bosnia and Herzegovina.

drogen production costs analysis, policy, regulatory, and financing context as well as assessing export opportunities of low carbon hydrogen to the energy markets. By the end of 2022, case studies on hydrogen application will be developed by a consultant company and submitted to the working group.

We believe that there is an economic basis for the production and export of green hydrogen. Moving forward there will be more opportunities for the overall hydrogen development value chain as we can see our EU partners are also launching various initiatives to support hydrogen production and its utilization. We are also currently studying whether and how our existing domestic and international natural gas pipeline networks would be capable of carrying a certain mix of hydrogen.

Azerbaijan's lands and our section of the Caspian Sea have been generous in terms of traditional energy sources. Blessed with the wise political leadership of the country, this potential has been turned into sources of welfare and security for our nation starting from the 1990s as never before, which has spilled over into our neighbourhood all the way to Europe. We see that the same lands and the Caspian Sea now are offering a new potential in the form of green energy. It is only a matter of time before Azerbaijan rises also to be a reliable and trustworthy source of green energy bringing in great benefits at home and beyond. ■

Photo: unsplash.com; LGP

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Hydrogen – hope for the future

We are witnessing a huge race to find solutions to the current energy price crisis. LGP Senior Expert Counsel Klaus Wölfer spoke to Erich Gornik, one of Europe's leading experts on nanotechnology and semiconductor devices, about hydrogen as an important energy source and why it pays to put scientific findings above political slogans, headlines and short-term hype.

Wölfer: To what extent can hydrogen serve increasing demand and, above all, provide climate-neutral energy?

Gornik: The problem with hydrogen at the moment is that electrolysis-generated production is very costly and is only climate-neutral if the electricity is first produced in a climate-neutral way. The second problem is that a lot of distilled water is used, which requires a lot of energy to purify beforehand. This makes distillation and thus also hydrogen production expensive. However, I assume that new processes with new catalysts will become much cheaper. These are currently still in the research stage and it will be several years before they are ready for industrial application. It is probably also possible to produce hydrogen from water with special algae, but these are new processes that will take another five to ten years to develop.

We have a European hydrogen strategy. Some say that in a way it is already being overtaken by the new anti-inflation law in the US, as America offers huge incentives for the production of hydrogen via massive tax exemptions. Europe attaches very strict and restrictive conditions to subsidies, while in the US research on "green" hydrogen is being carried out eagerly in order to achieve breakthroughs.

I can only agree with that. America is much more flexible here and apparently also better advised than Europe, because Europe hinders itself enormously with its purist approach. I think the US approach is the right one. We should not pull out of fossil fuels completely, but instead use a certain proportion, because there is nothing better. No fuel will ever be better in terms of energy density. However, it is quite possible to bind CO_2 and thus to become climate-neutral. The USA will run ahead of Europe if Europe cannot agree on some kind of programme within the next two years.

Several major European players, such as Germany, often hinder themselves through their negative approach to nuclear energy and through overambitious, unrealistic targets. France, as the second major player, has the advantage of being committed to nuclear energy for a long time and, under President Macron, has also set up strong support for hydrogen research. In terms of research and breakthroughs, can France – I don't want to say substitute – but lead and guide Europe? And should we in Austria take our cue from France?

I can confirm this. First of all, France has a base level of secure electricity supply due to its large share of nuclear energy. If additional electricity is generated through solar energy, for which France is much better positioned than Germany due to its southern location, you can of course also use part of the electricity generated by nuclear energy to generate hydrogen. Hydrogen is an energy store, so to say, that can then be used in many ways. I believe that France has the right strategy to set an example in Europe.

There is already cooperation between the Austrian and French industry. In Paris I saw an H2 racing truck from the truck manufacturer Gaussin with additions from AVL List – what future do such technology partnerships have?

"Hydrogen drives for trucks will soon become reality"

Erich Gornik

I know the List company has built an extremely efficient, if stationary, fuel cell, with very good data in terms of durability and efficiency. This system can be used industrially. I assume that the development of hydrogen drives for trucks, i.e. larger units, will be successfully implemented in the next few years.

Supply could become a problem, because the fuel station network is considered expensive and is currently still rather broad-meshed ...

The hydrogen fuel station network is certainly cheaper than the electric charging network, which is much more expensive to build. The hydrogen network can take over parts of the existing network and most petrol stations already have natural gas supplies. It should be possible to transport hydrogen via natural gas pipelines.

This is an interesting scientific view that contrasts with industry or states going all in on battery-powered vehicles.

That is incomprehensible to me. Of course, an electric car is of great benefit, especially in the city, because it produces no emissions at all. But the electric car is not that efficient in terms of energy consumption, because it must carry the heavy battery load, thus requiring additional energy. Electromobility is a good thing, but we should not believe that 100% of traffic can be covered by electric vehicles. In my view, this is a misguided development, especially since there will be problems with sourcing raw materials. There are some initial plans for the disposal procedures for batteries. But basically, disposal should already be taken into account in the production of batteries so that they can be easily disposed of or the materials can be reused. It will certainly take another five to ten years until recycling reaches a reasonable capacity.

If we want to rely on batteries as the pillar of our energy supply right now, we would need gigantic sums and a huge amount of raw materials. If I understand this correctly, this is actually unrealistic?

Photo: LGP

LGP Senior Expert Counsel Klaus Wölfer (l) and Professor Erich Gornik (r).

Gornik: We would probably soon reach our limits in terms of the availability of raw materials were we to run everything electrically worldwide. It would certainly not work without the involvement of Russia.

We are currently very dependent on Russia, China or the Democratic Republic of Congo for many of our green technologies, which does not fit in at all with the current desire for energy independence.

Right, we should actually see the treasures that the earth has provided us with as belonging to all of humanity and that individual countries only own them because they happen to have the right to exploit them. The gas or the oil is not Russian or Chinese per se, because these raw materials belong to the whole of humanity and therefore one should not pursue moral politics with these energy resources. This is a completely flawed approach and harms Europe in particular.

There is also the idea of producing green energy elsewhere: in the United Arab Emirates, in Saudi Arabia or most recently in Canada, hydrogen could be produced locally from "green" electricity, which is then transported to European industrialised countries to be used in an environmentally friendly and efficient way. What relief can be expected from these initiatives for Europe in the short and medium term?

None at all in the short term, because these are primarily projects that are supposed to show how efficiently you can do it. That means it takes several years. And then there's the fact that the long transport routes are expensive and you're basically walking into a price trap, because this form of green hydrogen will always be expensive and thus lead to a very big competitive disadvantage for Europe. Germany would basically be in a very good position if the country had not shut down its nuclear power plants and instead planned to convert the superfluous electricity, of which there has been an enormous amount from wind power in the Baltic Sea in recent years, into hydrogen. Then Germany would have no energy problems at all and would not have to buy hydrogen from Australia and Canada. Germany should develop its own industrial methods to produce hydrogen from wind on a large scale and switch the nuclear power plants on again. Anything else will lead to a very severe handicap for German industry. The standard of living in Germany will drop, because the question is whether German industry will even be competitive in a few years.

What possibilities are there for the use and generation of green energy in Southeast Europe? I'm thinking, for example, of North Macedonia, where the sun shines very strongly.

"Gas and oil are not per se Russian or Chinese."

Erich Gornik

Yes, you should generate electricity primarily with solar cells in these regions. In southern Italy or southern Spain, the efficiency of a solar panel is at least twice as high as here. That means that electricity costs exactly half as much there. That is a competitive disadvantage for us. Because we have money, we build huge numbers of solar panels. Within Europe, it should be possible to generate electricity in another country where it can be generated more efficiently. If we have to buy twice the number of panels, we are consuming a lot of raw materials. The production of solar cells generates a lot of CO_2, but strangely nobody talks about that. Solar cells are mainly made of silicon, which needs be at high purity levels and requires a very energy-intensive process. We should also think about saving materials if we want a real energy transition.

That is also the question with hydrogen transport. There is serious talk about bringing it from Australia and Canada to Europe. Isn't that also very costly in terms of the raw materials required?

It's also unethical to transport liquefied gas to Europe from such a great distance. That pollutes the oceans and the air. Of course, if one were to stipulate that the ships must be hydrogen-powered, the climate effect would be small, but then quite a lot of the hydrogen to be transported would be consumed.

When it comes to the use of hydrogen, there is always talk of so-called "Hydrogen Valleys", where the production and use of hydrogen is concentrated. Probably most expediently in the vicinity of heavy industry, where relieving the environment by running on hydrogen would bring a lot of benefits.

Yes, that makes a lot of sense, because it's always good if the transport routes are short. You can basically produce hydrogen wherever there is wind and sun, maybe also with geothermal energy. Transporting hydrogen over long distances carries the issue that practically no material is completely leak proof and hydrogen diffuses out of all materials. Therefore, it is better to concentrate everything locally.

In Northern Burgenland, hydrogen is to be produced on a larger scale around the wind farms due to their often surplus energy production. There is also talk of feeding hydrogen into the gas grids. Does that have a future? Should we focus further on this?

I believe that wherever you have superfluous electricity, you should rely on hydrogen. Electricity is the most valuable energy we have. Before we just dump it without having used it, we should produce hydrogen with

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it. I hope that hydrogen production will become a little more efficient. But instead of just dumping unused electricity, using it for hydrogen production is the best method. And the hydrogen economy will certainly cover 35 to 40% of the total primary energy demand in about 15 to 20 years.

Up to 40 % of total energy demand? In about 20 years? Regardless of how it is generated?

For the clean energy transition, you need hydrogen above all else and you should also use grey hydrogen as far as it is necessary. It will be phased out anyway once the subsidies for green hydrogen are significantly higher. It is good to use existing production methods, even if they are not yet completely climate neutral. The Americans are very pragmatic and apparently much smarter than the Europeans.

In what way does European science organise and articulate itself vis-à-vis politics?

There are many conferences on hydrogen and European science sees how valuable it is and what you can do with it. However, I believe that European politics has long since abandoned really listening to science. Unfortunately, you get this impression when you follow Europe's actions in climate policy.

Will it ultimately take a real energy collapse in the coming winter to bring about a rethink here?

Well, that would be sad, but it probably takes dramatic circumstances for people to wake up. European politics has started to completely abandon the wishes and needs of its people. This is a very worrying development that could lead to an extreme destabilisation of our political system. I hope it will not continue like this. ■

LGP Senior Expert Counsel

Dr. KLAUS WÖLFER

Doctor of Law and active at the Austrian Foreign Ministry for a long time. He was Head of the Austrian Cultural Institute in Rome and Head of the Arts Section in the Federal Chancellery, as well as Ambassador for Austria in Indonesia and Turkey.

Dr. ERICH GORNIK

Professor emeritus for solid-state electronics and nanotechnology at the Vienna University of Technology. Studied technical physics. Scientific expertise in the fields of semiconductor components and infrared laser technology. Wittgenstein Prize winner of the Austrian Federal Government. More than 500 publications in peer-reviewed journals.

Towards a green hydrogen society

Our focus on hydrogen and France is complemented by a current policy paper on green hydrogen. In his guest editorial, French politician Michel Delpon, France's "Monsieur Hydrogène", discusses the great potential of this emission-free energy source for business, industry and agriculture.

For the last five years, I have dedicated my term as a Member of Parliament to the development of renewable hydrogen in France and Europe. Today, hydrogen has made its mark on the worldwide energy landscape by occupying an important place in politics. Because it is such an important building block of the international climate ambitions of COP 26, every country should be fully briefed on hydrogen energy. However, the environmental and social dimension required to drive the development of this zero-emission energy source is too often lacking. The "CLUB VISION HYDROGENE", which I founded in March 2022, is a new repository for ideas and at the same time a positive catalyst for action. Its mission is to train stakeholders, identify and promote initiatives, find solutions, share best practices and experiences and, above all, communicate in order to contribute to the dissemination of this form of green energy. The aim here is to provide access to abundant, environmentally friendly energy to as many people as possible, including those who are less well off.

Energy is economically and financially heavily based on volatile pricing. We therefore need to move to an ecological transition based 100% on renewable energy. For the time being, energy may be more expensive, but eventually it will level out: once hydrogen costs as much as fossil fuel, about 2 euros per kilogram, we will be a hydrogen society. All countries will then operate on an even playing field, regardless of the region, including the African nations, which will finally also be included thanks to intensive solar radiation. Hydrogen production will be driven by the mass production of electrolysers, tanks, fuel cells and new use cases. This means between 150,000 and 200,000 jobs for France by 2030, in 25 sectors of activity and around 100 different professions. This will boost upstream production in the entire renewable energy sector: photovoltaics, wind power, methane, hydropower and geothermal, as well as both natural and by-produced hydrogen, not to mention CO_2 capture, which is making great progress.

On the downstream side (use side), in addition to mobility, i.e. car, truck, sea and air transport, there will be a gigantic market for industry, especially for steel, concrete, nitrogen fertiliser and construction with hydrogen-powered boilers. Bankers have also begun to understand this paradigm shift and will act accordingly: they are abandoning fossil fuels and increasingly focusing on green finance by selecting investors who do not pollute. The national challenge, as with all interlocking technologies, is to maintain our sovereignty over the entire industrial value chain. In the future, every European country must therefore succeed in striving for this economic sovereignty by promoting clean reindustrialisation, industrial relocation, and

shorter transport routes. In 2020, France authorised a 10-billion-euro budget to support the hydrogen sector through the COVID-19 crisis.

Before the Ukraine war and the economic and financial sanctions against Russia, European climate policy was strengthened through the "Fit for 55" package which ambitiously promotes the development of hydrogen technology. At the time, however, no one anticipated the major geopolitical tensions that are now having a huge impact on our economy due to our dependence on imported fossil fuels. The consequences are hugely increased production costs for grey hydrogen made from Russian gas, which in turn makes green hydrogen more competitive.

That is why I am lobbying the government to pass a decree allowing the direct connection of electrolysers, which will fix production costs and fully decouple hydrogen production from fossil fuel market fluctuations. In addition, the next draft law on the ecological transition will address the scaling of renewable energies from 2023 onwards by facilitating permits for the siting of carbon-neutral plants throughout the country. Another of France's trump cards is the "France 2030" programme, whose goals have been set by the President of the Republic and in which hydrogen plays an important role. Thus, France is the country best positioned to achieve carbon neutrality by 2050. It is essential that European countries, which sometimes have different interests, find a unified roadmap to meet the goals of the Paris agreement.

In any case, the drought and fires of the past summer are a serious warning for the future of our planet! ■

MICHEL DELPON
is President of the "Club Vision Hydrogène" in Paris, founded in spring, and a former French MP (2017-2022). At the end of August, Michel Delpon was appointed "Ambassadeur France 2030" for hydrogen by President Emmanuel Macron.

Photos: unsplash.com; LGP

Western Balkans from an EU perspective?

The future of the Western Balkans is in the European Union. Although the success of the enlargement process would be very important geostrategically for both sides, the risks of failure are much greater than the difficulties to be overcome.

In June 2003, the first EU-Western Balkans Summit, held in Thessaloniki under the Greek Presidency of the European Union, catalysed hopes and political will. Its Conclusions sealed the EU unequivocal support for the European perspective of the Western Balkans based on the shared values of democracy, the rule of law, respect of human and minority rights, solidarity and a market economy. The EU and the governments of the countries concerned reiterated their commitment to respecting international law, ensuring the inviolability of international borders, peaceful resolution of conflicts and regional co-operation. The Western Balkans committed to undertaking reforms to meet the EU accession criteria. The prospect of membership in a common family of European values provided enthusiasm and the impetus for change in the region. The EU perspective acted as a catalyst for addressing challenges and important progress was made. The Prespa Agreement between Greece and North Macedonia is an example. It was a complex process for both sides, yet the prospect of co-operation within an enlarged European family gave both countries the political leverage to make this difficult leap.

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And yet, with the exception of Croatia, nearly two decades after the Thessaloniki Summit the Western Balkans remain on the EU waiting list. The initial years of enthusiasm were followed by a lack of momentum and a tough reality check, which gave way to disappointment, frustration and pessimism. Failure to reward progress along the path of EU accession contributed to fuelling ethnocentric impulses and nationalistic nostalgia, tarnished the credibility of the EU amongst the public opinion and led to the rise of anti-European sentiments in the region. Surveys show that an increasing number of people, especially amongst the youth, think that the EU perspective will never materialise. The European vision is losing its shine. In its place, nationalism has resurfaced. A trend not exclusive to the Balkans, nationalistic and xenophobic sentiment is found in many corners of Europe, if not the world, possibly due to similar reasons: the failure of global co-operation to deal with issues of inequality and social protection effectively, population movements, health and environmental crises.

In the Western Balkans, however, there is an important difference. The wounds of bloody conflicts are fresh and can easily be revived, if extreme nationalistic rhetoric prevail in the public sphere. Furthermore, the history of the Balkans has often been one of proxy wars fuelling ethnic division, dependency on protector powers and weak institutions feeding clientelism and corruption. While European prospects seemed to wane, we increasingly notice a new geo-politicisation of the region with third parties vying for influence and deepening existing fractures. This trend may become stronger as the Western Balkans, in particular following the consequences of the war in Ukraine, risk becoming a space of geopolitical antagonisms that could import instability in the EU. Thus, a number of players from outside the region are now using a mix of economic investment and soft power as a vector to accrue political influence.

As there is limited investment from EU countries in the region, Western Balkan countries in many cases try to attract investment from third countries like China. In the last decade, China has committed $2.4 billion in net foreign direct investment to the Western Balkans, along with $6.8 billion in infrastructure loans. China finances projects such as highways, railways, and power plants in the framework of its Belt and Road Initiative. It also purchases key stakes in several key transport and energy companies. In addition to investments and loans, China uses soft power tools such as academic cooperation and vaccination diplomacy to strengthen its position.

Although its economic footprint in the region has diminished since the illegal annexation of Crimea, the Russian Federation retains influence in strategic sectors such as energy, banking, metallurgy and real estate. In the past few years, Turkey has provided cultural and educational programs through institutions like the Maarif Foundation in countries with a large Muslim community and has invested in projects such as motorways, bridges, hospitals, schools, mosques and the restoration of buildings from Ottoman heritage. Turkey's soft power in the region is also reinforced by the popularity of Turkish culture, especially TV shows and entertainment industries, among certain sectors of the population.

It is time for the EU to accelerate the enlargement process by relaunching the negotiations with Serbia and Montenegro, establishing them with Albania and North Macedonia, granting candidate status to Bosnia and Herzegovina, and liberalising entry visas for Kosovo. Focus on this region cannot be set aside, even if the need to support European aspirations of other countries, such as Ukraine, Georgia and the Republic of Moldova, has emerged in the meantime. In this new page of European history, it is even more clear that supporting democratic reforms and respect for the rule of law and human rights, reconciliation and good neighbourly relations is a geostrategic investment in peace, stability and security for the European continent. This is why responding to the Western Balkans' aspirations for EU membership is so important not only for the countries concerned but for the whole of Europe.

Conclusion: Europe should not fail its historic responsibility to accompany the Western Balkans' European integration process to the finishing line and to prevent the region from becoming a battlefield for geopolitical wrangling, to the detriment of its inhabitants. ■

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Photo: LGP

Human rights vs. crime prevention

Lawyers nowadays more and more often face situations when their clients' human rights have been drastically violated by illegal use of instruments and mechanisms of international and regional police organisations, be it at a national or even international level.

One of the most important instruments for cross-border police cooperation and international wanted persons alerts, which enable police in Interpol member countries to exchange relevant information on criminal activities or accused persons, are notices such as a "Red Notice" (colloquially also called an international arrest warrant). A Red Notice contains information on the identity of the wanted person and information on the crime for which the person is wanted. Red Notices are published by Interpol at the request of a member state in accordance with the relevant regulations. However, this powerful Interpol tool could also be used by law enforcement agencies in some countries to put additional pressure on individuals. Especially when the local regime is characterised by corruption and political unrest, there is often a risk that Interpol systems will be abused.

Interpol Red Notices are issued for fugitives wanted either for prosecution or to serve a sentence. A Red Notice is a request to law enforcement worldwide to locate and provisionally arrest a person pending extradition, surrender, or similar legal action. Unfortunately, it happens more and more often that some government officials, politicians and even businessmen try to use this valuable tool, which is vital for human security, in order to put pressure on their opponents and/or gain advantages in commercial or political disputes. Since this powerful tool and mechanism of location and arrest is sometimes used illegally, persons already harmed by these tools or expecting to be a target of similar violation

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should know how to protect their rights from an illegal publication of a Red Notice which may damage their political career, reputation, business and /or commercial interests.

It is therefore essential that affected persons who have already been harmed by these measures, or who expect to be the target of similar measures, know how to protect themselves against the illegal publication of a Red Notice. If a person believes that the instruments used or intended to be used by Interpol have violated or would violate his or her rights and freedom, the existing protection mechanisms should be invoked. In particular persons who have already been harmed should promptly report the violation of their rights to the Commission for the Control of Interpol's Files (CCF -Commission).

The CCF operates within a legal structure defined by its Statute, its Operating Rules, Interpol's rules and applicable international legal standards. The Commission is structured in two chambers and is supported by the Secretariat for the Commission for the Control of Interpol's files. Its powers are defined by the Statute of the Commission.

Photo: unsplash.com

THE SUPERVISORY AND ADVISORY CHAMBER

In its supervisory capacity, this Chamber carries out the necessary checks to ensure that the processing of personal data by the Organisation complies with Interpol's rules. In its advisory capacity, this Chamber provides the Organisation with advice on any of its projects, operations or sets of rules, either on its own initiative or at the request of the General Secretariat.

THE REQUESTS CHAMBER

This Chamber examines and decides on requests for access to data as well as requests for correction and/or deletion of data processed in the Interpol Information System. It also examines applications for revision.

The Commission is independent and has three functions, as defined in Interpol's Constitution: a supervisory role, an advisory role, and a processing role—in which it handles individual's requests for access to, correction of or deletion of data in the Interpol Information System.

The requests to the Commission are specific and should be addressed in accordance with all rules and regulations of the Commission for the Control of Interpol's files and Interpol.

Lansky, Ganzger + partner cooperates with independent experts who specialise in the protection of human rights at the international level. They have a lot of experience in protection of reputation, interests and rights of their clients against the illegal use of international police organisations' tools. The experts work closely together with the lawyers and have not only helped to restore clients' reputations and clear their names but also have helped to avoid ruining business or political reputation by acting on time.

Conclusion: Using the appropriate legal protection mechanism is the only way to protect a client's rights and to secure their business and political reputation. ■

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Game-Changer for Security Tokens?

The "DLT Pilot Regime Regulation" comes into force on 23 March 2023 and is part of a comprehensive EU-level package of measures aimed at promoting the potential of digital finance while mitigating possible risks. The aim is to enable facilitated trading of tokenised securities (security tokens) on regulated markets in the EU.

Contributions on the topic of security tokens often invoke liquidity as a very important advantage of tokenising assets. They offer the possibility of injecting liquidity into illiquid assets such as real estate, by, for example, trading the corresponding tokens after they have been issued. In theory, this is undoubtedly correct. However, practice has proved different so far. The European Union in particular has almost no trading platforms on which the corresponding security tokens are (allowed to be) traded. As a result, there is no corresponding secondary market, although such a market would be indispensable for strong trade and thus liquidity. This situation is mainly due to the current legal position. This position is characterised by a series of very strict requirements and restrictions that corresponding platforms are subject to.

Specifically, the current legal provisions for the operation of crypto exchanges provide for comprehensive regulatory requirements. Crypto exchanges in which buyers and sellers of securities (including security-like transferable security tokens) based on "distributed ledger technology" (DLT) are brought together without the exercise of discretion through internal operating procedures qualify as a so-called "MTF", or multilateral trading facility. Under Austrian law, the operation of an MTF requires a licence under the Securities Supervision Act, the obtaining of which requires initial capital of EUR 730,000 and involves complex compliance requirements.

According to the current legal situation it is also essential that the participation of investors in the crypto exchange or trading system without the prescribed characteristics (such as securities firms and credit institutions) is not permitted. This provides for a duty of mediation regarding market participation by a legally authorised person. Furthermore, the transaction requires the involvement of a central securities depository, which operates certain settlement systems (securities delivery and settlement systems) for the transactions and on whose securities account the respective security must be booked for the settlement of the transaction. These prerequisites already pose great challenges to project developers at the beginning of a crypto project and have so far prevented the establishment of corresponding trading venues.

In addition to the planned EU regulation entitled "Markets in Crypto-Assets Regulation" (MiCAR), the new DLT Pilot Regime Regulation should also help overcome previous regulatory hurdles and facilitate access to the crypto market.

Because this regulation provides for an exemption from the previously applicable and strict regulations if certain conditions are met, a kind of "regulatory sandbox" is to be created for the trading and settlement of financial instruments based on DLT. The DLT Pilot Regime is primarily aimed at investment firms, market operators and central securities depositories and regulates the requirements in relation to so-called DLT market infrastructures. These are (i) DLT multilateral trading facilities (DLT-MTF), (ii) DLT settlement systems (DLT-SS) and (iii) DLT trading and settlement systems (DLT-TSS). These correspond to familiar regulatory infrastructures, but are specifically tailored to DLT-based securities.

In principle, the same legal provisions apply to the aforementioned DLT market in-

frastructures as are already applied to the classic MTFs and settlement systems of the central securities depositories. In order to promote the establishment of such systems, however, the DLT pilot regime now provides for temporary exemptions from certain requirements and restrictions if certain conditions are met. Amongst other things, this will allow that the aforementioned brokerage obligation is not bound to a limited time period, in contrast to the current legal requirements for classic MTF trading platforms or for the operation of a DLT-MTF. Prospective investors will therefore now be able to access the crypto exchange or the respective trading venue directly.

The operation of a DLT-SS requires a licence and may only be carried out by central securities depositories, but will now also be facilitated by the DLT pilot regime upon application. For example, the requirement to book DLT securities on the securities account of the central securities depository may be waived. The possibility of operating a DLT-TSS (DLT trading and settlement system) is, however, entirely new. Accordingly, this can either be a DLT-MTF, where the services of a DLT-MTF are combined with those of the DLT-SS, or a DLT-SS, where in turn the services of a DLT-SS are provided with those of a DLT-MTF. In this way, investment firms and market operators could partially provide services of a CSD and vice versa. This should greatly facilitate the settlement of DLT transactions.

In conclusion, while the current provisions will remain in place, developers will be offered the possibility, at least in certain respects, to take advantage of exemptions to speed up and simplify project implementation. The ordinance, which will come into force on 23 March 2023, will be valid for three years, although this can be extended after assessing the costs and benefits. In any case, the introduction of this regulation promises to become a real "game changer" for the importance of security tokens and their emissions. ■

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Photo: unsplash.com; LGP

ECJ ruling: ÖBB not liable after damage event

LGP has represented the companies of the ÖBB Group for almost 20 years. In a pending case, the European Court of Justice (ECJ) was most recently called upon to provide a reference for a preliminary ruling. The landmark ECJ ruling in international rail transport was published in July 2022.

Photo: ÖBB / Harald Eisenberger

In the case, which had been pending before the Austrian courts since 2018, ÖBB-Infrastruktur AG, as the responsible infrastructure manager, was sued by a railway undertaking that used locomotives on ÖBB's tracks. The reason for this was a derailment in a Tyrolean railway station in 2015, in which locomotives owned by the railway undertaking had been damaged. The company had to rent replacement locomotives for the duration of the repair and claimed the replacement rental costs it incurred from ÖBB. The company argued that the rail infrastructure was defective and claimed that this had led to the derailment. In addition to the question of the actual cause of the damage, it was also necessary to clarify whether all of the claims asserted by the plaintiff were compensable.

ÖBB argued that the convention applicable to international rail traffic (Appendix E to COTIF Uniform Rules concerning the Contract of Use of Infrastructure in International Rail Traffic "CUI") applied in this instance. The journey in question was an international journey, as the train coming from Italy ran through Austria on its way to Germany. ÖBB argued that the replacement rental costs were purely pecuniary losses and that these could not be compensated under the CUI. The Commercial Court of Vienna followed ÖBB's arguments, but the Higher Regional Court upheld the appeal of the plaintiff, the railway undertaking, and permitted an appeal to the Supreme Court. In this appeal, ÖBB requested a referral to the European Court of Justice due to the international relevance of the legal question at issue and submitted the legal questions to the ECJ for this purpose.

In its ruling issued in the summer of 2022, the ECJ clarified that the costs incurred for the replacement rental of locomotives due to an incident are not covered by the liability of ÖBB as the responsible infrastructure manager. This means that the railway undertaking that used the locomotives and had to hire other locomotives as a substitute for the duration of their repair is left to cover these hire costs itself.

In addition to the question of whether the ECJ had jurisdiction to interpret the CUI at all, the judges in Luxembourg were asked in particular whether ÖBB's argument was to be followed and whether costs incurred for the substitute hiring of locomotives in such cases of damage were to be levied against the infrastructure manager. In addition, the Supreme Court requested information as to whether the contracting parties concerned could effectively extend their liability by means of corresponding contracts, even if there was an exclusion of liability under the CUI. The ECJ answered the first question in the affirmative, declared itself competent and answered the second question in the negative. Accordingly, the railway undertaking cannot charge the infrastructure manager for the costs incurred for the substitute hire during the period when the damaged locomotives were being repaired. The ECJ also concluded that the contracting parties were free to deviate from this by means of a corresponding contractual agreement and to extend the standard of liability accordingly.

The case will now go back to the Supreme Court, which must implement the ECJ ruling or refer the matter to the Vienna Commercial Court for a new decision. It must now be clarified whether the parties in the case at hand wanted to extend the standard of liability or whether the exclusion of liability will remain. We will report further on this matter in due course.

ÖBB receives legal advice from three LGP lawyers: Dr Julia Andras (Partner), Valentin Neuser (Partner) and Alexander Egger. ■

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Attorney-at-Law and Managing Partner
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Attorney-at-Law and Managing Partner
Mag. VALENTIN NEUSER
is Mediator and attorney-at-law at LGP. He focuses on insolvency law as well as civil law and civil procedure law. Another focus is also on Alternative Dispute Resolution (ADR). Valentin Neuser also advises in English and French.

Photo: LGP

Changes to the Employment of Foreign Nationals Act as of 1 October 2022

The Employment of Foreign Nationals Act (AuslBG) was amended and implemented by the National Council resolution of 6 July 2022 and the 20 October 2021 Directive (EU) 2021/1883 of the European Parliament and Council on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment, and the repeal of Council Directive 2009/50/EC. The amendments came in force on 1 October 2022.

The legislator has reacted to the current labour market situation and the lack of skilled workers in shortage occupations by facilitating foreigners' access to the labour market. This should further strengthen Austria's position as an attractive destination for highly qualified workers from non-Member States.

SHORTAGE OCCUPATIONS

In principle, the employment of workers from abroad requires an employment or secondment permit, which may be waived in certain cases (e.g. Red-White-Red Card, Red-White-Red Card plus, Blue Card EU, residence permit as intra-corporate transferee (ICT), residence permit plus, family members, family community with access to the labour market, permanent residence – EU). In other cases, the activity of the employee needs to be reported to the Public Employment Service ("AMS"), which must issue a confirmation of notification.

Until 1 October 2022, the employment of skilled workers in shortage occupations from a non-Member State was linked to the prerequisite that proof of relevant completed vocational training was provided and that the prescribed minimum threshold of 55 points was achieved. Until then, up to 30 points were awarded for a completed university degree, up to 25 points for a general university entrance qualification, but only up to 20 points for completed vocational training in a shortage occupation. Work experience was taken into account on a year-by-year basis and only workers under 40 years of age were given age-related points. German and English language skills also earned points. In practice, it was often difficult to achieve the minimum number of points, even though skilled personnel were objectively suitable for the shortage occupation.

Even if the general requirements will remain fundamentally unchanged, 1 October 2022 has brought about the following changes in particular:

- For completed vocational training in the shortage occupation, 30 points (instead of the previous 20) are awarded in the points scheme.
- Depending on the profession, it is no longer necessary for the applicant to prove that he/she has completed a university degree to achieve the full score.
- For professional experience appropriate to the training, points are now awarded on a semi-annual basis, so that one point is credited for every half year of professional experience (professional experience acquired in Austria is still awarded double points).
- Language skills are still taken into account. Five additional points will be awarded for special English skills if the predominant company language is English.
- A new feature is that points are awarded for workers under 50 years of age. Previously, professionals could only receive age-related points if they were under 40.

With the additional points for English skills, a total of 95 points are now possible, previously the maximum was 90 points.

EU BLUE CARD

The requirements for obtaining an EU Blue Card have also been changed significantly by the new regulation. The required minimum gross annual salary was reduced by one third to one times the average gross annual salary of full-time employees last published by Statistics Austria. For employment in a regulat-

ed profession, however, the relevant professional authorisation must be proven.

Even without a university degree, employment as a key worker is possible in certain cases if three years of relevant professional experience within the last seven years prior to the application can be proven, which is comparable to a university degree with a minimum duration of three years.

If a worker holds an EU Blue Card from another Member State, employment without a posting permit is possible in certain cases, but only if the posting does not exceed 90 days within 180 days.

If the requirements for an EU Blue Card are met and the applicant holds a Red-White-Red Card as a highly qualified person, a key worker, or as a university graduate, a labour market test is no longer required, on condition that there is no change of employer.

CORE STAFF

The amendment to the law now also privileges core staff if

- a registered regular seasonal worker has worked in the same industry for at least seven months in the previous two calendar years;
- German language skills of A2 level are proven;
- the employer offers the prospect of a permanent employment relationship and
- if the general requirements for admission to the Austrian labour market pursuant to section 4(1) AuslBG are met.

PROJECT STAFF

The amendment also introduces a new category of workers. Project workers according to section 4a AuslBG receive an employment permit for the duration of the project upon application by the employer if, beyond the general requirements of section 4 para 1 AuslBG, the workers are not temporarily employed as specialists within the meaning of section 2 para 13 no 2 AuslBG for more than six months within the framework of a project.

Overall, the amendment has brought some changes that facilitate access to the labour market in Austria for highly qualified professionals from non-Member States. However, the complex regulations of the Employment of Foreign Nationals Act are enriched with exceptions, making the jungle of the Act a little more dense. In order not to get lost here, we still recommend to seek legal advice. ■

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Photo: unsplash.com; LGP

Smart contracts from a legal perspective

Smart contracts have become indispensable for issuing tokens, planning innovative projects and simple legal transactions involving blockchain technology. They are used as a central tool for processing a wide range of contracts in the blockchain and have become popular because they can be executed automatically.

The term 'smart contract' is of technical origin and can be summarised as a digital transaction protocol that checks if-then statements according to a 'true or false' system and executes transactions securely and automatically. In other words, if a certain condition occurs, the contract is executed automatically (fulfilment of condition and consequence). As a result, the smart contract ensures that the contract on which it is based is executed. The decisive feature of a smart contract is its programmed code, which is fundamentally unchangeable, transparent and secure. The smart contract can and will execute the instructions that have actually been programmed in its code in terms of if-then statements, regardless whether each execution is justified.

Anything that is not provided for in the code cannot be taken into account in the execution. This is referred to as the 'code is law' dogma, according to which the code should be the sole regulatory basis for the execution of a contract virtualised in a smart contract. The fact that a smart contract can execute itself resembles electronic self-help, which Austrian law does not provide for in principle.

The dilemma associated with this dogma can be demonstrated using the example of a contract for a hire car that is equipped with an automatic shut-off device. This device prevents the engine from starting if payment of the hire fee is not received. If the person hiring the car were to offset their payment against a claim vis-à-vis the car's owner, meaning that there is no flow of money at all, the smart contract would not be able to take this into account, unless this had been programmed as an if-then statement. The renter would nevertheless be excluded from using the hire car after a 'true or false' check ('Has the payment been received or not?') performed by the smart contract indicated that the payment had not been received as agreed. This kind of exclusion would lead to a significant, unjustified disadvantage on the part of the renter and would not be in line with applicable law. Circumvention of the law is also not permissible through the use of smart contracts. It is therefore clear that this dogma cannot be reconciled with the Austrian legal system.

Therefore, as the above example shows, the programming of the code would have to provide for an incredibly wide range of conditions (in the sense of possibilities for the fulfilment of the contract) in order to be able to take the legal situation in question into account during its execution. Any errors or gaps in the code of the smart contract ('bugs') could cause unintentional transfers of assets or lead to other unintended consequences. The hype surrounding smart contracts due to their special characteristics is completely understandable. However, it is recommended to keep the conventional contracts underlying the smart contracts simple. Terms or regulations that are not amenable to a 'true or false' test should be avoided. For example, a smart contract will not be able to execute the payment of 'reasonable' remuneration, as the amount of the remuneration has not been specified and needs to be weighed up, which cannot be achieved by a 'true or false' test.

The if-then statements of the smart contract must therefore be clearly stated in the contract. Unlawful programming can lead to the contract being invalid and thus to the transaction carried out by the smart contract being reversed. A precise examination of the contract in question to ensure it is compatible with implementation in the blockchain via a smart contract is therefore essential. ■

New framework for vertical agreements

As a result of an increase in online sales, many companies often do not know whether their supply and distribution agreements comply with EU competition rules. Below is an overview of current innovations that came into force on 1 June 2022 in the wake of the Vertical Block Exemption Regulation.

Under EU antitrust law, agreements between companies, decisions by associations of companies and concerted practices that may affect trade between Member States are prohibited. However, according to the Vertical Block Exemption Regulation ('VBER'), vertical agreements, i.e. agreements between companies operating at different levels of the production and distribution chain, are exempted from this prohibition. The reason behind this is that certain vertical agreements can have a positive impact on economic efficiency within a production or distribution chain due to better coordination between companies.

The Commission has also issued supplementary guidelines on vertical restraints. In particular, the guidelines discuss principles for the assessment of vertical agreements and concerted practices.

This is a challenge at the moment, because the online boom in trade is also changing the business environment of companies accordingly. Therefore, we have listed the most important innovations in detail for you. ■

ONLINE PLATFORMS

- Online intermediary services are now suppliers of goods, hence the VBER also covers agreements between online intermediary platforms and traders.
- Wide-ranging parity obligations of online intermediary service providers are now exempted.
- Hybrid platforms are exempt from the VBER.

DUAL DISTRIBUTION

- The term 'supplier' is extended to wholesalers and importers.
- An exchange of information that is not directly related to the implementation of the distribution agreement and/or is not necessary to improve production and distribution is no longer exempt.
- There is an exemption for dual distribution only in case of a competitive relationship on the downstream market.

EXCLUSIVE DISTRIBUTION

- Providers will now have the option of exclusively allocating a maximum of five customers to one territory.
- In future, customer and territory restrictions will also extend across several delivery levels.
- Providers can reserve a customer group or a territory for themselves if the latter have not yet been exclusively allocated to another provider.
- In contrast to passive sales, suppliers may restrict the active sales of its buyers.

Selective distribution

- The criteria applying to online sales no longer have to correspond to the regulations for physical sales.
- There is a relaxation of the equivalence principle between offline and online sales of selective distribution systems, because online sales no longer need special protection as a result of their development.
- A selective distribution system can be exempted, regardless of the type of product, the type of selection criteria or the publication.

ONLINE SALES

- It is a hardcore restriction if it is aimed at preventing buyers from using the Internet for online sales.
- Prohibiting the use of price comparison services or search engines is largely inadmissible because, according to the Commission, it restricts passive buying.
- A ban of third-party platforms is in principle exempt regardless of the type of distribution system.
- The same quality requirements between online and offline trade are not necessary, no equivalence requirement applies.
- Dual pricing systems may be permitted if, for example, they stimulate investment in the respective territory.

EVERGREENING

- In future, it will be permissible for non-competition clauses to be tacitly extended over a period of five years.

SUSTAINABILITY

- The Green Deal is recognised as a priority objective. In addition, examples are given of how vertical agreements can be used to pursue sustainability goals.
- The achievement of sustainability goals may justify an agreement's exemption.

Exit taxation of crypto assets

The eco-social tax reform has led to far-reaching tightening of the taxation of income from cryptocurrencies. Moving crypto investments abroad to escape taxation seems to be a favourable approach only at first glance. Since the amendments to the Income Tax Act came into force on 1 March 2022, even such efforts are in vain.

The first question to be asked is what the legislature actually means by the term 'income from cryptocurrencies'. This includes, in particular, income from the transfer of cryptocurrencies against payment, income from block creation ('mining') and income from realised increases in the value of cryptocurrencies. According to the legislature, a transfer of cryptocurrencies exists if cryptocurrencies are transferred by the taxpayer to another market participant in return for payment, for example in return for a consideration similar to interest ('lending'). Mining is the use of computing power to create a new data block in the blockchain. Income from realised increases in the value of cryptocurrencies constitutes income from their sale or exchange. This income from cryptocurrencies is now subject to the special tax rate of 27.5%. The difference between the proceeds of the sale and the acquisition costs of the cryptocurrency in question is taxed. In turn, the law provides for exceptions for certain income from cryptocurrencies (e.g. for income from 'staking'), which must be examined on a case-by-case basis and are, at best, not subject to taxation. In traditional staking, existing cryptocurrencies are made available as a service for transaction processing ('proof of stake'), whereby the consideration ('reward') for correct transaction processing, in turn, consists of cryptocurrencies. The acquisition of cryptocurrency in traditional staking, for example, is not subject to taxation as income from cryptocurrencies.

This 'exit taxation' – i.e. the taxation of income upon exit from Austria – concerns

Photo: unsplash.com

income from realised increases in the value of cryptocurrencies. In general, tax liability arises in the event of a realised increase in value upon the sale or exchange of cryptocurrencies. In principle, taxable persons are those who have their domicile or habitual place of residence in Austria. However, exit taxation is intended to prevent a loss of the Republic of Austria's right of taxation in the event of the taxpayer moving abroad by establishing a fiction of sale. Circumstances such as the transfer of residence abroad or the gratuitous donation of cryptocurrencies to a person who is not liable to pay tax in Austria should therefore be deemed to constitute a sale and trigger tax liability. The increase in value of the cryptocurrencies during the period of residence in Austria is to be taxed, or, in other words the difference between the value at the point of exit and the acquisition costs.

However, when moving to an EU or EEA member state, it is generally possible to apply for non-assessment of the tax debt. The consequence of this is that the tax debt incurred is merely agreed upon, but is not given a tax assessment notice and is therefore not yet due. Strict deadlines must be observed to ensure that the application is filed in a timely manner, otherwise this right is forfeited. If the cryptocurrencies are actually sold after the individual has exited the country, the tax liability is assessed. The circumstance of the sale and thus the actual realisation of the increase in value must be reported to the competent tax office, otherwise a financial offence under the Financial Crimes Act (e.g. tax evasion) may come to bear.

If there is a reduction in the value of the cryptocurrencies between the exit and the actual sale, the assessment basis for income tax can be reduced to zero. However, this can only be taken into account when determining the tax liability if a corresponding application for non-assessment was filed in the year of departure. A move to a country that is not a member of the EU or the EEA is also considered a sale and, in principle, immediately results in the tax liability being assessed. In this case, an application for non-assessment cannot be filed at all.

Therefore, moving out of Austria can no longer counteract the taxation of cryptocurrencies under Austrian tax law as of 1 March 2022. For complex questions regarding the taxation of cryptocurrencies, we recommend taking appropriate legal advice; we would be happy to support you in these matters. ■

Attorney-at-law and Managing Partner
Mag. RONALD FRANKL
is Head of Corporate, M&A and Capital Markets, and Blockchain & Cryptocurrencies at LGP. He specialises in commercial and corporate law, international transactions, mergers & acquisitions, private equity, venture capital, banking and finance, capital markets and stock exchange law, and regulatory proceedings. He also advises clients in French.

Photo: unsplash.com; LGP

EPG versus the Marriage Act – How faithful do you have to be?

In 2010, the Registered Partnership Act (EPG) offered same-sex couples in Austria the opportunity to register their partnership at the district administrative authorities for the first time. Since then, opposite-sex couples have been allowed to "register partnerships" and same-sex persons to marry. However, the mutual duty of fidelity and avoiding harm caused by indiscretions with third parties does not seem to be entirely clear to all parties. The Supreme Court has therefore provided further clarification.

There are many ways for lovers to publicly profess their love for each other. However, when it comes to the mutual obligations within the relationship, there are key differences in terminology between the EPG and the Marriage Act, a legacy of the first version of the EPG. Marriages are "concluded" and "divorced", registered partnerships are "established" and "dissolved" – which should hardly make a difference for the persons concerned once the "marriage" or "partnership" has broken down. More relevant is that according to the text of the law, spouses owe each other mutual "fidelity", while registered partners instead must sustain a "comprehensive relationship of trust".

The legislator did not want to create a "narrow-minded marriage" in the case of registered partnerships (this terminology is taken from parliamentary material) – nevertheless, some perceived that the

Photo: unsplash.com

absence of the term "fidelity" created something like a "relaxed duty of fidelity" for registered partners. It was subsequently rightly pointed out that this could also be viewed as prejudice that same-sex partners maintain less stable relationships and also do not expect sexual fidelity from one another.

The Supreme Court recently had to deal with these fundamental questions through a concrete case. One of the male partners of a same-sex marriage contracted abroad maintained intimate relations with different sexual partners behind his husband's back upon the couple's return to Vienna – and did not stop doing so even when he was told by the betrayed partner how much it hurt him. The final break came about when the next affair was consummated in the couple's conjugal bed.

The subsequent court proceedings initially dealt with the question of whether the union – entered into several years before the introduction of marriage for same-sex couples in Austria – was to be judged according to the provisions of the EPG or those of the Marriage Act. It was obviously argued that this would make a difference for the assessment of the offending behaviour, especially since section 15 EPG lists points that are "particularly" considered to be examples of serious misconduct in marriage but does not explicitly mention adultery.

The Supreme Court first concluded that as marriage was now possible for homosexual couples in Austria, the dissolution of marriages which were concluded abroad and would previously "only" have been considered a registered partnership in Austria, are no longer to be assessed according to the provisions of the EPG, but according to those of the Marriage Act.

Subsequently, the Supreme Court stated very clearly that sexual intercourse with a person outside the relationship (regardless of whether same-sex or opposite-sex) is in any case grounds for dissolution within the EPG. The "comprehensive relationship of trust" delineated by the EPG thus includes – and this is stated in great clarity by this ruling – the obligation of sexual fidelity. The fact that the unfaithful person's behaviour does not comply with the requirement of a comprehensive relationship of trust "does not require any further explanation", according to the Supreme Court.

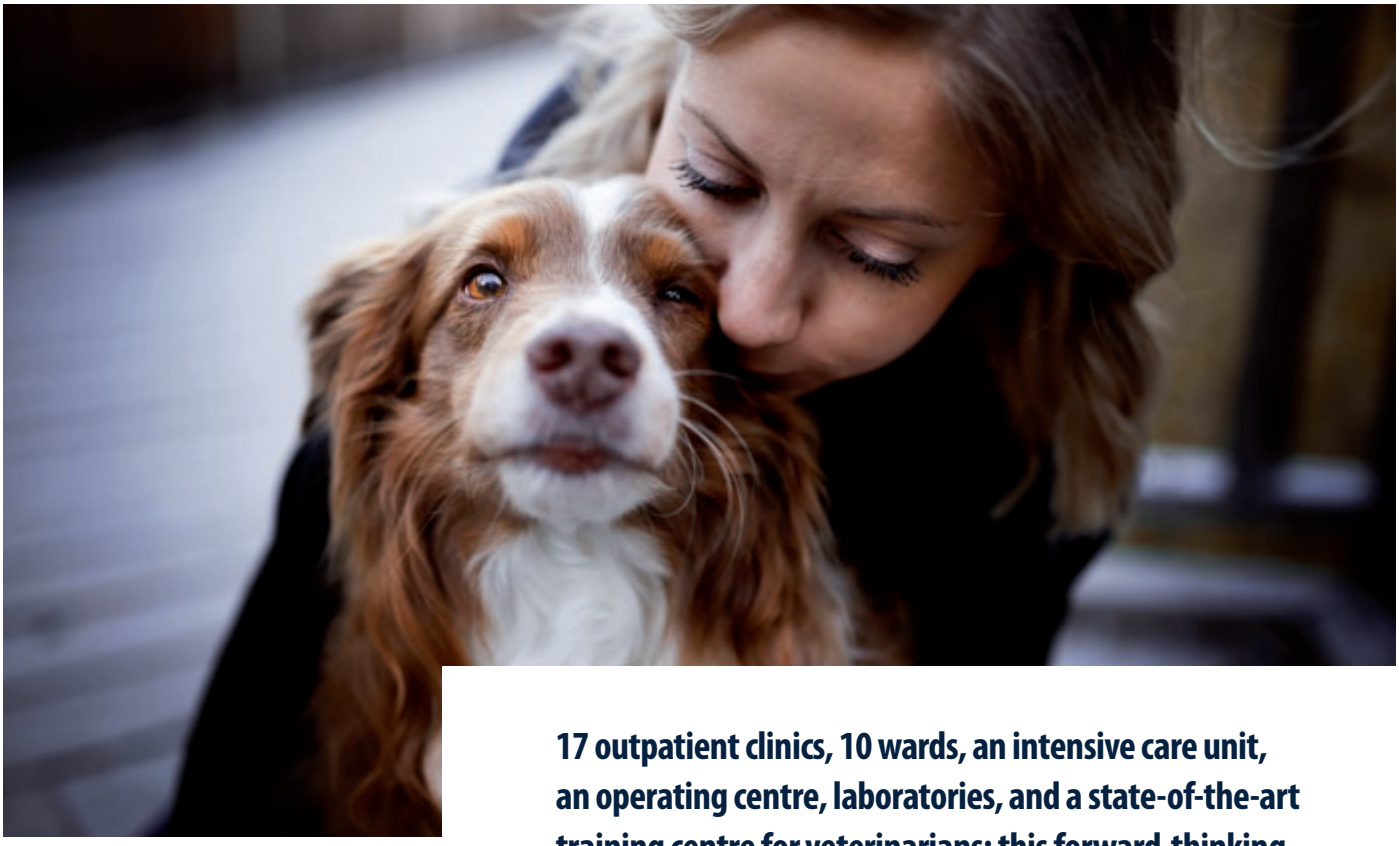
This case shows how important the interpretative work of the courts and the Supreme Court is for grasping the meaning and intention of legal texts (which are written by humans and can prove to be imprecise) and clarifying guidelines. While "fidelity" according to the Marriage Act is of course not only to be understood as sexual fidelity, but also as loyalty towards the partner in all matters of common life, the "comprehensive relationship of trust" does not only mean loyalty in other areas, but of course also sexual fidelity towards the respective better half.

The Supreme Court has thus clearly stated: sexual intercourse with third parties is a "no-go" in marriages as well as in registered partnerships and does not have to be tolerated by the offended partner. The tangible legal as well as the emotional consequences of infidelity can be far-reaching. So, before you commit yourself "forever" – in whatever legal form – it is worth having a thorough discussion of the rights and obligations that go with it. We are happy to advise you. ■

Photo: LGP

Attorney-at-Law
Mag. PIROSKA VARGHA
is Head of Employment and Corporate Litigation at LGP and specialises in employment law with a focus on employer and employee perspectives as well as legal issues concerning the relationship between companies and their governing bodies. She is now expanding her legal portfolio to include family law, together with LGP partner Dr Julia Andras. Piroska Vargha also advises in English, French and Hungarian.

LGP helps with the foundation of Vetklinikum



17 outpatient clinics, 10 wards, an intensive care unit, an operating centre, laboratories, and a state-of-the-art training centre for veterinarians: this forward-thinking veterinary hospital guarantees the best possible care for animal patients and was advised by LGP on corporate and labour law.

Dr Maximiliane Haider, Dr Georg Haider and Dr Andreas Hiebl met while studying veterinary medicine at the University of Veterinary Medicine in Vienna. Together they dreamed of founding a private small animal clinic that meets the modern requirements of veterinary medicine, combines highly trained specialists and advanced medical technology under one roof, and also offers a motivating and fair workplace for young colleagues. The three founders completed several years of postgraduate studies in order to build their professional expertise, becoming specialists in particular fields of small animal medicine. During this time, their idea of founding their own clinic became tangible, and so over the next years they developed a concept for their "perfect veterinary clinic" together.

The new Vetklinikum has a total of 17 outpatient clinics and ten wards for the care of animal patients. This ensures that cats and dogs can be examined, treated or admitted as inpatients in strictly separate areas. Intensive care patients are accommodated in a centrally located ICU for optimal care. To prevent infections, the clinic also has a

Photo: vetklinikum

Visualisation of the new Vetklinikum

Dr Georg Haider, Dr Maximiliane Haider and Dr Andreas Hiebl

separate walk-in isolation ward and a spacious surgical centre for soft tissue, bone and dental surgery. On-site diagnostic facilities include digital X-ray and fluoroscopy, ultrasound, CT and MRI, endoscopy and an extensive laboratory. In addition, the veterinary hospital includes a spacious education and training centre to provide veterinarians with access to in-clinic technology and expertise and to offer state-of-the-art veterinary medicine.

The project had to overcome numerous legal challenges: from the development of a corporate structure and the establishment of the company to labour law and property-related issues, there was barely a field of law the project did not touch upon. It was clear to the founders from the very beginning that they had to make provisions for emergencies.

LGP provided the Vetklinikum with extensive support in all major legal challenges, from the regulation of the legal relationships between the founders to ensure the company would not be adversely affected in the event of a dispute, to the regulation of the labour law relationships between the company and the future employees of the Vetklinikum.

The LGP team was led by Dr Gerald Ganzger. Piroska Vargha (labour law) and Piotr Daniel Kocab (corporate law) supported the Vetklinikum in their respective areas of responsibility.

LGP is pleased to have been able to play a part in the creation of the Vetklinikum and will continue to support its long-term success. ■

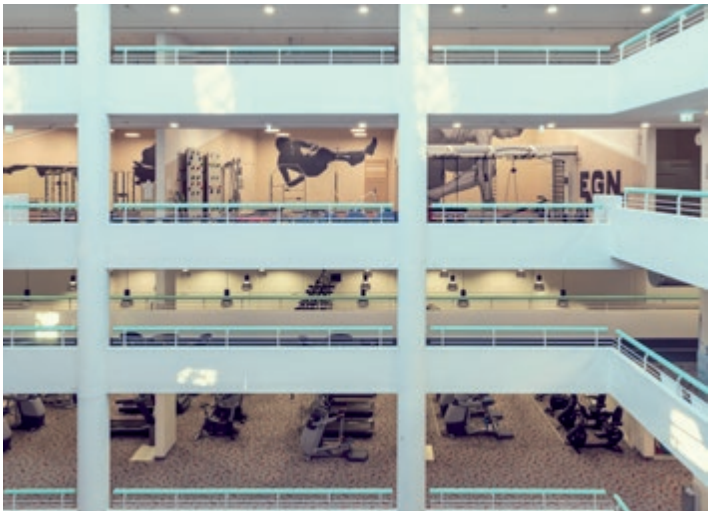
Photos: vetklinikum

A win-win situation for sport and law

Manhattan Fitness Clubs and LGP have maintained a cooperation with benefits for both sides for many years: LGP provides the company with advice and support in all legal matters. In return, LGP employees are offered the opportunity of balancing out their demanding office routine with some training and exercise.

Highly qualified, experienced trainers take care of members individually at the Manhattan Fitness Clubs and develop bespoke exercise programmes for them. On a total area of 18,000 m², the two Manhattan Clubs in Vienna and Brunn am Gebirge offer free weight areas, guided equipment for all muscle groups and numerous concept rooms, such as the new Manhattan Box Lounge. The cardio areas also leave nothing to be desired: all the state-of-the-art endurance machines are equipped with integrated TV, Netflix and social media. Anyone in need of more motivation is sure to find the right workout among the many group classes led by instructors. Relaxing and regenerating in the spacious spa area after a workout is almost a must at Manhattan Fitness Clubs, with the range encompassing everything from a massage and a sauna to a place to relax on the sunny roof terrace at Club Wien or the sun garden at Club Brunn. If you want to get in shape and enjoy a relaxed, friendly atmosphere at the same time, Manhattan is the place to be.

LGP staff are not only challenged athletically at Manhattan Fitness Clubs: the legal expertise is also essential in the successful operation of a fitness business. A particularly turbulent time legally, especially for gyms, was sparked by the onset of the coronavirus pandemic. In this respect, there was a greater than average need for legal advice in the second quarter of 2020. The coronavirus pandemic and the associated legal measures (e.g. the legal ban on entry) have had a major impact and influence on the fitness industry, along with other sectors. In this context, all-new legal questions suddenly arose for many opera-



Manhattan Fitness Club Vienna

Manhattan Fitness Club Brunn

Photo: Manhattan Fitnessanlagen GmbH

tors: from a legal perspective, how can you deal with membership fees and extraordinary terminations in the wake of the official closure, which in some cases lasted for several months? What are the rights and obligations of customers, on the one hand, and Manhattan Fitness Club as operator, on the other?

The rapidly changing COVID-19 regulations were a constant companion in these challenging times. These regulations had to be "screened" on an ongoing basis to ascertain which legal framework applied to the Manhattan Fitness Club at the time and what the implications were for the ongoing legal assessment of each issue and topic. Another important issue connected to the coronavirus pandemic on which LGP provided legal advice and technical support to Manhattan Fitness Club was the compensation claims under the Epidemic Act due to the official closure of the gym. Part of this legal advice also includes representing Manhattan Fitness Clubs in court, of course. This involves, for example, actions for interference with possession against unlawful "long-term parkers" in the company's own car park, which is exclusively available to Manhattan members. However, LGP also supports the company in all legal matters outside the courts, drafting all the company's contracts. This includes its general terms and conditions, which form the basis for the contractual relationship with the clients.

LGP's portfolio of legal advice is very broad and multi-layered, ranging from private law matters to public law issues, which LGP can handle with ease as a one-stop shop. This also highlights the complex legal problems a fitness centre and similar institutions can be confronted with – and the advantages of having a veritable legal expert as your partner. ■

Managing Partner and Attorney-at-law
Dr. GERALD GANZGER
is a founding partner at LGP and is known beyond the borders of Austria as a media lawyer, conflict solver and expert in litigation PR. Among his clients are banks, energy and infrastructure service providers, media and publishing houses, telecommunications and internet providers as well as government-related institutions.

Associate
Mag. DANIEL SÖLLNER
is specialized in trademark and media law. He also advises in the fields of civil law and litigation.

Tanja Cerny-Felsinger & Dennis Felsinger, managing directors of Manhattan Fitnessanlagen GmbH

3 questions for … Tanja Cerny-Felsinger & Dennis Felsinger
Managing Directors of Manhattan Fitnessanlagen GmbH

What are your requirements in terms of LGP's advice?

For us, independence means working autonomously and constantly, having to make quick decisions. At the same time, it is essential for us to have access to quick, competent information on legal issues.

What do you appreciate most about the support you receive from LGP's lawyers?

That they have been fulfilling our legal requests time and again to our utmost satisfaction for years. We would like to take this opportunity to thank the entire LGP team for their excellent advice during the pandemic.

How do you personally motivate yourself to exercise?

By looking in the mirror or at the holes in your belt... We only manage to stick to regular training by having a precise schedule. However, we particularly like to prioritise training sessions with our personal trainers.

Photos: LGP; Manhattan Fitnessanlagen GmbH

High-profile alumni meeting

Dr. Willibald Pahr (92), former Federal Minister for Foreign Affairs (1976-85) met with alumni of the Collège d'Europe at LGP.

Lawyer Alexander Egger, also a graduate of the Collège d'Europe, acted as host and welcomed the approximately two dozen participants from business, EU institutions, ministries and the Federal Competition Authority. The event started with a lecture by Willibald Pahr, who talked about his time at the Collège d'Europe in Belgium and also looked back at the curricula of the College of Europe, which was founded in 1949. Willibald Pahr was a member of the Constitutional Service of the Federal Chancellery from 1955 to 1976 and worked there as Head of the International Department from 1968 and as Head of the Constitutional Service from 1973. One of the youngest guests was Alexandra Enzinger, who currently attends a postgraduate course. Graduates and students of the College of Europe from over 70 years gathered and exchanged ideas in one evening. ■

Alexandra Enzinger, Alexander Egger, Willibald Pahr (from left to right)

Attractive business location

At the beginning of June, numerous experts met in Bratislava to present Austria to foreign entrepreneurs and investors as an attractive market with stable politics and economy.

Under the motto "Doing Business in Austria", the Slovak-Austrian Chamber of Commerce in cooperation with LGP and the Slovak Embassy in Vienna, the Austrian Business Agency and the Slovak Chamber of Commerce and Industry in Bratislava had invited to a panel discussion at the Radisson Blu Carlton Hotel Bratislava. Our LGP lawyers Piroska Vargha and Natalia Feriencikova took part in the panel discussion and provided an insight into the most important topics with their expertise in the areas of company formation, commercial law, contract law and labour and social law. After all, Austria should remain an ideal destination for entrepreneurs in the future. ■

Dr. Natalia Feriencikova (lawyer, LGP), Ing. Mária Berithová (President SOHK), Mag. Piroska Vargha (lawyer, LGP), Mag. Birgit Reiter-Braunwieser (ABA Invest), MMag. Dana Höller-Lipkova (ABA Invest) and Bronislava Chmelová (Commercial Counsellor of the Slovak Embassy)

Valuable brand worlds

For the 19th time, the European Brand Institute (EBI) conducted the "Austrian Brand Value Study" and once again identified the most valuable and sustainable brand companies.

In addition to current challenges and potentials, the sustainable development of brands in Austria was also examined and a "Sustainable Brand Ranking" was created. "The Sustainable Brand Rating, which was conducted for the third time, showed that the brand companies examined were able to improve their scores and that investments in sustainability are having an effect," says Gerhard Hrebicek, study author and President of the European Brand Institute. LGP Managing Partner Gerald Ganzger, as an EBI expert advisor, particularly emphasised the guarantee and trust function of brands. "The motto of our press conference this year is not called "In Brands We Trust" for nothing. Because we all associate certain ideas about quality and characteristics with established brands. After all, our favourite biscuit should taste and look the same as always."

The frontrunners this year were again Red Bull, Novomatic and Spar. ÖBB was the defending champion as Best Sustainable Brand, closely followed by Erste Bank Group in second place. ■

Photos: LGP

Munich Security Token Conference (MSTC)

At the beginning of October 2022, the leading minds of the digital asset industry met in Munich. They discussed the hot topics that are going to shape the capital markets and financial services of tomorrow. Managing Partner Ronald Frankl was part of the panel discussion on the topic of regulation.

LGP Managing Partner Ronald Frankl discussed in Munich about current regulatory measures of security tokens.

The organisers wanted to create a platform for exchange between thought leaders and industry leaders to promote the potential of the technology. The panel ventured a look into the future from the perspective of regulation, innovation and practical application in the financial sector. The capital markets may well be on the verge of a revolution due to the tokenisation of securities. At the Munich Security Token Conference, visitors were given an up-to-date overview of developments in the field of digital investment opportunities.

Apart from Managing Partner Ronald Frankl, Dimitrios Psarrakis (Director of the Brussels Council and Head of EU at XReg Consulting), Matic Nedog (Head of Legal at Cryptix AG and Equito) and Lutz Auffenberg (Partner at FIN LAW) participated in the panel "the regulatory landscape". Well-designed regulations are the cornerstone for fostering blockchain-based innovation. Regulators face major challenges in creating an innovation-friendly regulatory approach. The discussion focused on the European regulatory landscape and the question which paths the new DLT pilot regime and MiCAR regulations will take. The panellists also gave an insight into the existing Austrian and German legislation.

With the Austrian regulator, there is a good basis for discussion when it comes to applying traditional concepts to token-based concepts. According to Ronald Frankl there is all in all currently enough flexibility in Austria on the part of the regulatory authority to launch tokenisation concepts.

Germany is a hotspot for blockchain regulation at the moment, especially when it comes to regulating security tokens. In February 2019, Germany was already a pioneer with the first security token offering and BaFin (The Federal Financial Supervisory Authority) was very open-minded towards this project, explains Lutz Auffenberg in his statement.

MiCAR and the DLT Pilot Regime will certainly change these procedures. These two regulations were the most progressive steps so far the EU had taken in regulating these issues, said Ronald Frankl during the panel discussion. From today's perspective, the DLT Pilot Regime, which will come into force in spring 2023, promises to be a real game changer for the establishment of trading platforms for tokens. This time, a legal regulation will not bring a restriction, but give a good impulse, says Ronald Frankl.

The two most important developments of the DLT pilot regime are, firstly, that market participants will have direct access to any kind of exchange platform, because until now a financial intermediary was required. Secondly, it will then be possible for an investment firm to provide all settlement and custody services simultaneously. This combination will be revolutionary, as all panel participants agree. ■

Photo: Rafael Bittermann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