FOCUS ON REGULATION

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IoT regulation as a challenge

BLOCKCHAIN TECHNOLOGY
Tokenization as a form of financing

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IMPRINT

Dear readers, dear clients, dear friends!

The pandemic is leading to a reassessment of the need for regulation worldwide. Old neoliberal concepts that rejected regulation to help the market break through failed in both health and economic policy. Sacrosanct temples of European law, such as European state aid law, must be reassessed. At the same time, joint procurement processes for vaccines are beginning at EU level in an unprecedented way. We will deal with this paradigm shift in detail in this and the next issues of our magazine.

Starting on page 14, LGP Managing Partner Julia Andras provides examples of the restructuring measures required under labor law to save domestic companies from the threat of insolvency without having to sacrifice a large part of their workforce to unemployment. In contrast, Klaus M. Steinmaurer, Managing Director for Telecommunications and Mail at RTR GmbH, reports on new challenges in telecommunications law and current regulatory practices in connection with IoT in a detailed guest article.

Did you know that the margin of discretion of an EU member state in designing and enforcing its regulatory systems is not unlimited? Mara Okmažić and Michael Komuczky provide information on the legal implications of the “Achmea ruling”, current developments on Intra-EU BITs and the currently unclear legal situation regarding bilateral investment treaties between Austria and Croatia. However, many people are also unaware that moving to Austria can very quickly lead to unwanted tax consequences. Daniel Kocab knows how to avoid unpleasant surprises by providing profound tax law advice.

The reform package for the Common Agricultural Policy (CAP) after 2020, recently adopted by the 27 EU Agriculture Ministers, is progressive and particularly environmentally friendly. This issue also explains why EU farmers will benefit more than ever from greater commitment to climate protection and biodiversity in the coming years.

We wish you exciting and informative reading

Gabriel Lansky    Gerald Ganzger    Ronald Frankl    Julia Andras    Valentin Neuser
Katharina Raabe-Stuppnig    Arlind Zeqiri    Martin Jacko    Anna Zeitlinger
IoT-Services as a challenge for telecommunications law
In addition to the networking of things in the industry sector, networking is also taking place today in many of the processes in our daily lives and, as a result, the continuous improvement of available communication infrastructures has become crucially important. This is because IoT applications come in many different forms depending on the purpose they are intended to serve. They can be completely static, mobile or a combination of both. The EU and its Member States currently have no codified IoT law and there are no plans for such a system at present. The European Commission (EC) has, however, announced that it will examine the “legal framework for autonomous systems and IoT applications” in order to evaluate and promote the possibilities of IoT. The EC considers IoT – along with 5G communications, cloud computing, data technologies (also for big data) and cyber security – to be one of the five priority areas that constitute the basic technological building blocks of the digital single market.

It is, however, still up for debate as to whether the current regulatory toolbox dating from the 1990s is sufficient as a basis for national legislation, and to what extent it has succeeded in providing sufficient remedies with the new European Electronic Communications Code (EECC).

**IoT and telecommunications law**

The EECC provides a cohesive framework for the regulation of electronic communications networks and services, associated facilities and services and certain aspects of terminal equipment. IoT is a cross-sectional matter, however it affects telecommunications law in particular, with the issue of spectrum use as well as the operation of IoT transmission services as communication services, the connectivity of IoT applications, and also the numbering and security of networks and services being particularly pertinent. The same applies to M2M – an electronic communica-
tions service – as for telecommunications
law roaming in particular is still signifi-
cant, as well as many other areas.

5G C-Band Spectrum

However, in the vast majority of cases, in
addition to alternative technical solutions,
it can be assumed that meaningful and,
above all, widespread service provision
requires the flexibility and mobility of a
wireless public communications network.
In particular, the 5G C(ore) band is char-
acterised by a relatively high bandwidth
combined with good propagation charac-
teristics and is therefore very well suited
for IoT networks that do not want to be
just selectively available. The 5G technol-
ogy was developed primarily for IoT. The
allocation of these frequencies is subject
to national regulatory authorities. The 26
GHz frequency range (millimetre waves)
will also play a role in the future for specif-
ic local applications with only very short
ranges but very large bandwidths. Accord-
ing to EU guidelines, at least 1 GHz of this
band must be ready for allocation by the
end of 2020. As the availability of these
frequencies is comparatively unlimited,
the allocation format to be chosen by law
is still to be discussed. Austria is therefore
still waiting for an allocation – in part due
to a lack of identified current needs.

Addressing for
IoT applications

Every IoT-capable device must be techni-
cally “addressable”, i.e. identifiable, in the
electronic communications network (fixed
and mobile) in order to route the transmis-
sion signals to the correct device. In order
for it to be possible to have a network of
up to one million objects per square kilo-
metre with 5G in the future, it risks a bot-
tleneck situation as a result of the expected
number shortage. Number administration
is also a fundamentally national task and
therefore only becomes effective within
the borders of a nation state. This, in turn,
can lead to legal problems for IoT servic-
es that are cross-border in nature. In any
case, the implementation of the EECC in
all European Member States should facil-
itate access to the relevant numbering re-
sources for IoT providers.

Art. 93 to 97 EECC embed four funda-
mental principles that are essential for
IoT. They explicitly state that “access to
numbering resources on the basis of trans-
parent, objective and non-discriminatory
criteria is essential for undertakings to
compete in the electronic communications
sector. [...]”. In any event, numbering re-
sources must be managed efficiently be-
cause of technical constraints. Although
this principle is not new, it is helpful, as
it is explicitly addressed in Articles 93(4),
94(1) and 94(5). In the future, Member
States must also ensure the over-the-air
provision of SIM card profiles in order to
facilitate the change of provider (Art. 93
(6) EECC).

In addition, according to Art. 93 (4) 1
EECC Member States must establish a
regulatory framework for national author-
ities to make available a range of non-ge-
ographic numbers that can be used for the
provision of electronic communications
services other than interpersonal ones
throughout the EU. This closes a legal gap
for M2M applications and so, in principle,
the EECC has succeeded in finding a fu-
ture-proof solution for number resources
in connection with future IoT services.
Unfortunately, national implementation
will have to wait a little longer.
Security of networks and services in IoT

In connection with IoT applications, additional threat scenarios arise which must be taken into account as part of the architecture and operation of such networks. Security is extremely important for the acceptance and marketability of IoT applications. The Network and Information Security Directive of 2016 was a first step towards general regulation. Currently, the 5G Network Security Toolbox published on 29.01.2020, which has already been partially implemented in Austria by the Network Security Ordinance of June 2020, must be taken into account.

M2M as an electronic communications service

M2M services are already widespread application examples for IoT services and come in various forms. The answer to the question of which relevant legal provisions under electronic communications law apply to IoT depends crucially on whether parts of an IoT service are legally regarded as “communications services” within the meaning of the EECC. If a communications service exists, it is subject ex lege to special regulations which do not apply to other services.

For example, if special security regulations for services have to be observed, special data protection regulations or specific consumer protection regulations apply. Art. 2 no. 4 lit. c) EECC defines “electronic communications services” as “a service normally provided for remuneration via electronic communications networks, which – with a few exceptions – encompasses services consisting wholly or mainly in the conveyance of signals such as transmission services used for the provision of machine-to-machine services and for broadcasting.”

M2M is thus subject to a concrete regulation expressis verbis in the EECC. The (technical) transmission of signals has already been regarded as a constitutive criterion for qualification as an electronic communications service. Recital 15 EECC also makes this clear and is very helpful for a legal assessment. In turn, remuneration can be quickly affirmed where a fee is payable for IoT services within the framework of a contractual relationship. However, the remuneration of the exchange of services is not lost even if the service is provided free of charge to the user or where the exchange of services is carried out either differently or by others (e.g. through advertising financing). Also “payment” with personal (person-related) data can be described as remuneration. For example, the recitals of the EECC clearly state that “the concept of remuneration should therefore encompass situations where the provider of a service requests and the end-user knowingly provides personal data within the meaning of Regulation (EU) 2016/679 or other data directly or indirectly to the provider.”

Roaming and IoT

Many business models based on IoT applications are mobility applications that often have to function not only within national borders but also globally. Roaming is therefore an essential part of the business model for cross-border IoT services. The regulation under Art. 6a of the Roaming Regulation, which has been in effect since 15 June 2017, has created a legal basis (“roam like at home”) in at least one major area – this also makes international IoT services possible. By enabling the extraterritorial use of numbers with the EECC, the development of pan-European services will be accelerated at the same time as the Roaming Regulation, however, further clarification is needed to specifically promote new innovative applications.

The topics discussed here clearly only represent a small part of the many legal issues which have to be faced by telecommunications law. It will have to be checked again and again in each individual case whether an IoT-specific regulation is necessary or whether the existing legal framework is sufficient. Experience to date shows that the second assumption is largely correct. The EECC 2018 and related EU legal acts (e.g. the 2017 Roaming Regulation) have already brought about noticeable developments.

However, it remains to be seen how the relevant provisions of the EECC will be implemented in practice within the new TKG 2021. It would certainly be desirable to have legal clarification beyond the provisions in the EECC that connects with specific issues. From a regulatory perspective, IoT is in any case a central topic that we will deal with in detail in the future.

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COVID-19 has given rise to this on several occasions, with the EU responding, in particular, through a temporary framework for state aid to support the economy. On this basis, it has so far approved more than 200 measures of aid, including some from Austria. These measures include aid for fixed costs and support for Austrian Airlines. However, when considering financial aid, it is often overlooked that not every instance of monetary aid provided by public authorities falls under the prohibition of state aid. Indeed, this rule only covers measures that are considered to be aid in the first place. If this is not the case, there is no need to notify the European Commission of it and, a fortiori, no need to discuss the facts on which the aid or the aid regime is to be based.

Not surprisingly, questions about the prohibition of state aid under EU law usually arise when there is vociferous public support and politicians are discussing appropriate measures.

Only measures which encompass all the elements constituting the concept of state aid are considered to be aid. In addition to being granted through state resources, this includes, inter alia, a favourable impact and a selective effect on certain companies or sectors. Often, this condition alone means that planned financial support is not considered to be aid at all. In many cases, the intended beneficiaries are not enterprises. Even if this is understood independently of their legal form and the way in which their activity is financed, and even if it includes bodies which do not carry out purely commercial activities, in practice
there are always cases where the support does not benefit an undertaking, or, strictly speaking, is not intended to support the commercial activities of the beneficiary. In order to avoid treating financial resources as aid, it is necessary to separate the two areas and thereby permit a clear allocation to costs and financing. This is intended to prevent cross-subsidisation.

In certain areas, it is nigh on essential to examine the activities in more detail. This applies to the health and education sectors, in particular, as well as to the fields of culture and sport, i.e. services of general interest. Therefore, before referring to the set of rules for ‘Services of General Economic Interest’ (SGEI), a collection of individual acts, it is recommended to undertake a closer examination of whether the financing at hand constitutes aid. After all, even the European Commission, sometimes erroneously known for its rigour, as well as the courts of the European Union, have repeatedly concluded that there is no economic activity at play. Now, an almost unmanageable practice of making decisions on a case-by-case basis, above all, has developed. Under this, for example, museums and (music) theatres are classed as companies – but not without exception.

A somewhat clearer picture is to be found in the education sector. There is a minimal amount of systematics at hand here, with the level of education, its integration into the state system (supervision) and its predominant financing by the state playing a role. The entity funding the educational establishment in question does not make a difference: just as public institutions can also be economically active, e.g. by offering continuing professional training for a fee, so too are private educational institutions not to be regarded as enterprises simply because of the requirement for attendees to pay (low) contributions. In the health sector, it is possible to be guided by whether the service is provided under a (national) social security system based on the principle of solidarity, especially if it is free of charge. It should be noted that the same entity may not be economically active in respect of some services, but may be economically active in respect of others. In other words, the concept of enterprise is relative.

However, even in cases where the beneficiary’s status as undertaking is undisputed, financial support to that body does not necessarily need to constitute aid. This would be the case (and this is also the practice by which decisions are made) if the measure does not affect trade between Member States and therefore lacked the essential elements of aid. Although there is no fixed set of criteria, it can be concluded from the cases to date that support for services of a purely local nature, such as cultural events or amateur sports facilities, cannot be regarded as aid for good reasons, given their regional catchment area and the lack of demand from other Member States (no incoming tourism).
Most companies and private individuals still associate the preparation and conclusion of contracts of any kind with a physical document, with the original copy signed by all the parties involved. However, there have been different providers of e-signature procedures up to the conclusion of contracts via blockchain for quite some time. Indeed, contract management does not stop even after the contract has been drawn up and signed. In most cases, the contract needs to be managed continuously throughout its term, for example, to manage ongoing payments and benefits. As a result, the digitisation of contracts does not end with the digital signature on the contract document. In addition, entrepreneurs, in particular, can gain a number of advantages by using digital contracts and comprehensive contract management systems.

The creation of a central contract database, which enables all of a company’s contracts to be accessed with a single click, as well as automation-supported analysis for the improvement of future contract processes, are just a few of the many other advantages. In summary, it allows every single business process to be automated to an even greater extent than has been the case in most companies to date. However, the digitisation of contracts also brings an array of benefits for private individuals. For example, the smartphone app ‘pia – Prove Due to the current pandemic, which has been waging since spring 2020, and the restrictions on contact associated with this, many companies have become aware of the practical relevance of digital or contactless contracts. As a result, it is no wonder that the demand for software in this area is growing rapidly.
It All’ enables every private individual to create and conclude contracts and minutes on their smartphone in a simple, legally compliant manner, using blockchain time certification. In any case, it is to be expected that the current COVID-19 pandemic and constantly advancing technology will lead to a larger and more comprehensive range of digital contract management software being available in the future.

**Data protection**

However, as soon as contract documents contain personal data and are stored in digital form (and are, by extension, also processed automatically), they are generally subject to the application of the GDPR, unlike physical, paper-based contract documents. In this context, the rules and regulations of the GDPR must therefore be observed in each instance. This includes, inter alia, the mandatory requirement of a processing base according to art. 6 GDPR. In particular, the transparency and information obligations under art. 12 and 13 GDPR and the general principles under art. 5 GDPR should also be mentioned. However, these are merely some of the legal provisions of the GDPR and do not represent an exhaustive list by any means.

Austrian legislators have already reacted to this trend, too, enacting the Signature and Trust Services Act (Signatur- und Vertrauensdienstegesetz, SVG). This law regulates all the provisions concerning electronic signatures and electronic seals. In practice, the qualified electronic signature according to section 4 para. 1 SVG, which fulfils the legal requirements pertaining to written form, is particularly important.

A qualified electronic signature has, in principle, the same effect as a handwritten signature. Consequently, it is therefore also suitable for replacing signatures that would normally be given in the course of signing a contract. Exceptions to this rule include testamentary dispositions and notarial certifications or notarial acts.

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**Explanations on the GDPR**

**Art. 5 GDPR** lays down the principles governing the processing of personal data. They include, inter alia, data processing in good faith, the limitation of the purpose of data processing and data minimisation. The controller is responsible for compliance with these principles, and must be able to prove that they have been observed (known as ‘accountability’).

**Art. 6 GDPR** provides that grounds for processing must exist for each type of data processing, failing which the data processing is unlawful. A total of six different reasons are given for this: the consent of the data subject, necessity of the performance of the contract, necessity of the performance of legal obligations, protection of vital interests, protection of the public interest or in the exercise of official authority and in the legitimate interests of the controller. Art. 6 GDPR largely brings an end to boundless, precautionary data processing.

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Telemedicine on a delicate legal footing

In our digitalised society, there is a great need for telemedical services. In order to create more security, both in terms of application and legality, for all the parties involved, the following uniform guidelines and recommendations for correct implementation would be desirable.

Telemedicine refers to any provision or support of healthcare services using information and communication technologies where the patient and the healthcare provider (HCP) are not physically present in the same location. In concrete terms, this includes any form of remote treatment, whether by telephone, by video conference or in the transmission of findings via an online platform. It can be used in a wide array of applications, which extend from telemonitoring (medical monitoring of a person’s state of health from a distance) to teletherapy, in which a HCP actively intervenes in the treatment of patients from a distance, as well as teleconsultations and teleconferences.
During the coronavirus pandemic in particular, these telemedical forms of treatment are becoming more and more appealing. As hardly anyone is keen to sit in the packed waiting room of their doctor’s surgery, many patients prefer to clarify with their doctor in advance whether they can receive treatment remotely. More and more doctors have been offering this kind of remote treatment since the ‘shutdown’ in March, if not before. However, in order to create legal certainty for all those involved, there is a need for appropriate technical preparation and compliance with numerous legal provisions. Unfortunately, there is no ‘telemedicine law’ listing all the specifications: instead, a multitude of laws must be observed, depending on the area of application at hand. They include, for example, the Doctors’ Act, the Hospitals and Health Resorts Act, the General Data Protection Regulation and, also, the Health Telematics Act, which must always be taken into account when health data is processed electronically on a regular basis. When selecting platforms or providers, it is particularly important to ensure that encrypted data transmission is guaranteed. Under no circumstances should correspondence containing confidential health data be sent by ‘normal’ email.

With regard to the Doctors’ Act, special attention must be paid to the principle of immediacy pursuant to section 49 (2) when assessing the admissibility of telemedical treatment. Although more modern doctrines hold the view that telemedicine is compatible with the principle of immediacy, I do not believe that it should go so far as to consider purely remote treatments as being permissible, in principle. Rather, it is recommended that a minimum of ‘personal’ contact takes place, with the result that a certain immediacy of the doctor-patient relationship remains guaranteed. This means that the doctor has ‘physically’ examined the patient in their practice at least once and subsequent (further) treatments are carried out remotely, provided that this does not have a negative impact on quality. In this context, it should be emphasised that there is currently (also) a lack of experience or guidelines as to when telemedical treatment is to be considered ‘lege artis’ in the sense of maintaining quality. This assessment must be made by the attending physician, without this physician being able to refer to corresponding studies or other specifications.

A further advantage of telemedicine can be the comprehensive data obtained through it. This can be made available for medical research, provided that there is a legal basis for this and/or anonymisation is available. Here, countries such as Denmark, Estonia or Sweden are already much further along than Austria, which is probably also due to their more moderate understanding of data protection.

In summary, it can be said that telemedicine is an important building block for future medical care across the nation. In order to create certainty in terms of application and legality, it would be desirable to provide the protagonists involved in this field with uniform guidelines and recommendations for correct implementation. In particular, a pan-European certificate for providers, platforms and other applications would facilitate the process of selection. In addition, uniform educational materials, for both doctors and patients, could help ensure consistent standards and provide more legal certainty.
Despite helpful changes related to short-time working, it is likely that unemployment in this country will once again rise massively and that the number of companies affected by insolvency will also increase. This article therefore deals with restructuring measures in which employment law and related possibilities for shaping the restructuring process play the greatest role. Measures relating to a reduction in personnel or the closure of social compensation plans are intended to illustrate the options available within employment law for local companies to avoid insolvency without having to sacrifice a large part of their workforce. Lastly, alternatives to staff cuts should then be a further signpost for domestic companies.

Although a company’s workforce is undoubtedly one of its greatest assets, it is often the first area in which savings are to be made in the event of financial difficulties and the threat of insolvency. Staff reduction is thus one of the most frequently taken measures in the course of employment-related restructuring. If the business decision is made to reduce the workforce, a number of considerations have to be taken into account in order to ensure that this is carried out in a legally sound manner and that the company is not subsequently confronted with negative legal consequences (e.g. legal action by former employees). Therefore, the following factors must be taken into account in the course of a successful staff reduction operation.

The country is firmly in the grip of the coronavirus pandemic. After a tightening of measures in November, the second „hard“ lockdown to contain the further spread of the virus began on November 17. What options are there under employment law to prevent a worst-case scenario for employees and the economy?
Staff reduction guidelines

If a large number of employees are to be laid off, timely engagement with the “early warning system” standardised in Section 45a AMFG (Labour Market Promotion Act) is advisable. According to the provisions of the Act, employers must notify the relevant AMS regional office according to the location of the business in writing if they intend to terminate a large number of employment contracts. Specifically, the AMS must be notified in writing if the company plans to end the employment of

- At least 5 employees in companies with more than 20 and less than 100 employees or
- At least 5% of the employees in companies with 100 to 600 employees or
- At least 30 employees in companies with more than 600 employees, or
- At least 5 employees aged 50 and over

Here, the reference is to a specific company, namely the company in which the employees whose employment contracts are to be terminated are employed. If an employer has several businesses, the employees in each individual company must be considered separately for the purpose of checking whether the above criteria are met. The employees of multiple companies should not be counted together. The wording “as a rule” in the law refers to the average employment level over the last three months prior to the filing of the report.

It is worth mentioning in this context that not only employer-instigated terminations are covered by the “early warning system”, but also terminations by mutual agreement. According to the judgement of the Supreme Court, a distinction must be drawn between terminations by notice and terminations by mutual agreement when assessing whether the termination thresholds set out in Section 45a(1) of the AMFG are reached within the 30-day period. The number of terminations depend on how many notices of termination are actually given in the 30-day period. A notice of termination is deemed to have been given at the point it is received by the employer.

In the case of termination by mutual consent, however, the Supreme Court bases its decision on how many employees were actually offered a termination agreement in the 30-day period. The notification must be made at least 30 days before the first declaration of termination of an employment contract, i.e. at least 30 days before the first notice of termination or the first conclusion of an agreement to terminate the employment relationship by mutual consent. It should be noted that notices of termination are legally ineffective if they are given before notification is received by the AMS regional office or within a period of 30 days after receipt of the notification by the AMS (“blocking period”) without the prior consent of the regional office. This shall apply mutatis mutandis to termination of employment relationships by mutual consent.

It is important to note that the AMS has no legal means to prevent or delay the implementation of staff reductions. However, redundancies in a company that trigger the “early warning system” are usually made as “voluntary redundancy payments”. The amount of a voluntary redundancy payment is not regulated by law, and in practice is determined on the one hand by the company’s interest in terminating the employment relationship, and on the other hand by the company’s risk of a possible legal challenge to termination. In general, the higher the risk of a judicial challenge to dismissal appears to be, the higher the level of voluntary redundancy that should be agreed.

In the event of termination of employment, whether by notice or by mutual agreement, the employee and employer may also agree to make voluntary payments. For tax reasons, these payments are usually made as “voluntary redundancy payments”. The amount of a voluntary redundancy payment is not regulated by law, and in practice is determined on the one hand by the company’s interest in terminating the employment relationship, and on the other hand by the company’s risk of a possible legal challenge to termination. In general, the higher the risk of a judicial challenge to dismissal appears to be, the higher the level of voluntary redundancy that should be agreed.

In summary, the following steps should therefore be followed in the event of a mass reduction in personnel:

- The number of employees to be laid off and those who enjoy special protection against dismissal must be identified
- The applicable notice periods and notice dates must then be determined
- The works council must be informed of the intended mass redundancies and the business owner must consult with it
In the case of employees with special protection against dismissal, the consent of the court or the Federal Social Office must be obtained.

Timely notification must be given to the AMS according to Section 45a of the AMFG.

The works council is to be informed of individual terminations in the sense of Section 105 ArbVG.

Finally, the notices of termination are to be given and termination agreements concluded.

**Social plan as protection**

Often, in the course of a staff reduction, social compensation plans are concluded in addition to the announcement of dismissals or the conclusion of consensual termination agreements. These are company agreements which are concluded between the works council and the employer if a works council exists, otherwise between the employer and the individual employees concerned. In principle, social plans serve to protect the economically weak and pursue the goal of preserving legal positions previously granted to the employee as long as possible or to compensate for their loss.

Although the purpose of a social compensation plan is to compensate employees disadvantaged by changes in company operations, it is not unrestricted and, when being agreed, the interests of the company and of those employees who are not covered by the scope of the social compensation plan must be taken into account. A social compensation plan or the benefits agreed in it should be agreed after weighing up the interests of the company and the employees not disadvantaged by changes in company operations on the one hand and the interests of the disadvantaged employees on the other.

The provisions of Sections 97 and 109 of the ArbVG regulate the criteria, which must be cumulatively present in order for a social compensation plan to be legally concluded. Necessary criteria for the successful conclusion of a social compensation plan are:

- A change of business in accordance with Section 109 paragraph 1 lines 1-6 of the ArbVG
- A minimum size of at least 20 employees
- A significant proportion of this workforce is affected, and
- Significant disadvantages for the workers concerned

If even one of the aforementioned conditions is not met, a social compensation plan even if concluded is completely null and void from the point of view of industrial relations law.

The existence of a change of business is to be confirmed in accordance with the provisions of Section 109 paragraph 1 lines 1-6 of the ArbVG if

The entire operation or parts thereof are restricted or shut down.
Employment relationships are terminated which trigger an obligation to report under Section 45a paragraph 1 lines 1-3 AMFG

An entire company or parts of a company are relocated

A merger with other companies takes place

A change in the purpose of the company, the operating facilities, the work and business organisation as well as branch organisation takes place

New working methods are introduced, and

Rationalisation and automation measures with considerable impact are introduced

A mere change in the legal form or ownership of a company does not justify the conclusion of a social plan.

Social compensation plans can only be agreed upon in companies that have at least 20 employees on a permanent basis. Only those in accordance with Section 36 paragraph 1 of the ArbVG are considered employees, executive employees are thus excluded. Furthermore, the conclusion of the social compensation plan requires that a considerable part of the workforce be affected as a minimum. There is disagreement in jurisprudence and legal theory as to what is meant by a considerable part. However, the predominant theory is that this means at least one third of the workforce.

In most cases, the conclusion of a social plan will be voluntary. Otherwise, it is possible to submit this as an “enforceable” works agreement to the conciliation body for a decision and to force the conclusion of the social compensation plan in this way.

What are the alternatives to staff reductions?

Unless the company is in deep long-term crisis, from which it can only recover by the last resort of staff reductions, it may make sense to give preference to certain alternatives to such drastic measures. In certain situations, it is advisable not to part for good with existing qualified specialists, especially as they could be urgently needed in the event of a future economic upturn of the company. Therefore, it is necessary to find alternatives that relieve the company economically in the short term and in the long term give both employers and employees the opportunity for a fruitful economic activity.

Relevant examples of this are the change from full-time to part-time work, the introduction of so-called “part-time work for older employees”, which is also financially supported by the part-time allowance paid by the AMS to the employer, the introduction of short-time work and/or flextime, and the conclusion of agreements on educational leave or part-time work for training purposes. The reduction of holiday credits or the use of time credits is also recommended for periods of low workload.

The exact form of the restructuring measures or alternatives presented here as examples should in any case only be determined after thorough examination and consultation with experienced legal experts in order to avert any possible disadvantages that they may entail for both employers and employees.

What are the alternatives to staff reductions?

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The coronavirus crisis – prelude to a lived practice of restructuring?

Even if there is not currently a significant increase in the number of registered insolvencies compared to previous years, the coronavirus crisis will not remain without consequences. It is likely that a number of companies suffering from economic woes will not be able to stop themselves from falling into insolvency.

At present, a realistic comparison is obscured by the aid measures adopted by the Austrian parliament (deferrals, short-time working, loans, etc.), which partly alleviate the financial burden or spread it over a longer period of time. This does not, however, completely lift the burden of debt. This can be a heavy burden, and these measures merely prevent insolvency, at best. A company is obliged to file for insolvency if they are unable to make payments or are over-indebted. In this case, a request to open insolvency proceedings should be filed without delay, at the latest within 60 days after the insolvency has occurred. These maximum periods were extended to 120 days, if the insolvency or...
overindebtedness was due to the coronavirus crisis. In the event of overindebtedness, the obligation to file an application was suspended for overindebtedness occurring up to 31 January 2021, whereby the end of the period was determined as either 60 days after 31 January 2021 or 120 days after the overindebtedness occurred, whichever was later.

Irrespective whether reason for insolvency arises, a managing director would do well to consider reorganizing or restructuring their company if there is a threat of insolvency or overindebtedness. Under certain circumstances, insolvency can still be avoided. Corporate restructuring is, basically, only possible if a company in difficulties can be returned to a position where it could generate independent profits after the planned measures have been implemented and if the restructuring appears to make more economic sense than the path to insolvency to the parties involved. To tackle a corporate restructuring or reorganisation, it is first necessary to analyse and question the strategic parameters of the company at hand. This is because the company’s lack of economic success and its resulting liquidity problems are inevitably the result of an incorrect strategic orientation. If it is possible in good time, for example to strengthen customer relations, exploit further potential, offer new products, switch production cost-effectively or optimise advertising, it may still be possible to set the course straight before earnings or liquidity problems occur.

If earnings decline and liquidity is problematic, appropriate countermeasures must be taken quickly to safeguard liquidity and enable a positive outlook for the company’s continued existence. The earlier the response, the greater the chances of successful restructuring. A planned reorganisation or restructuring often fails due to the fact that one waited too long and the insolvency is supposed to be averted only in the last second. The preparation of a holistic concept, specifying the measures to be taken, is time-critical, especially with regard to the application deadlines at hand. In order to convince investors of the usefulness of the restructuring proposal, a corresponding restructuring report (to be prepared first) is often useful – which takes further time. With a reasonable concept of the measures to be taken, it is possible to right the ship under certain circumstances. In the short term, this will depend on creating liquidity, for example through the sale of company assets (sale & lease back, patents, etc.), but in the long term, too, this will depend on strategically restructuring the business model in such a way that more income can be generated at lower costs, say, in the production area by reducing unit costs. The acquisition of investors or other outside capital can also represent a significant factor or the basis for a possible restructuring.

In principle, these reorganisations and restructurings are not bound by a legal corset, although a reorganisation often depends on the participation (or standstill) of creditors, which might be easier to achieve within a formal framework. Even though the Austrian Enterprise Reorganisation Act (Unternehmensreorganisationsgesetz, URG) provides this kind of (out-of-court) framework for restructuring, the procedure under the URG has not become established in practice. In particular, this is because the costs for the reorganisation auditor envisaged in the context of these proceedings are very high and, as a rule, people fear that launching reorganisation proceedings will damage the company’s reputation. In European culture – unlike American culture – barely forgives entrepreneurs for insolvencies, the necessity of a reorganisation is already tainted with the aura of professional failure. It is possible that a shift in thinking could occur in connection with the the coronavirus crisis, with the chance of undertaking restructuring and reorganisation without losing face.

The implementation of the restructuring directive (Directive (EU) 2019/1023), which has to be transposed into national law by July 2021, essentially, may well see Austrian legislators succeed in creating an attractive legal situation which might stem the threatening tide of insolvencies through sensible restructuring. The directive is intended to apply to companies which are not yet insolvent and which are normally continued under their own management, and with the assistance of an administrator, depending on the restructuring plan that is to be drawn up. In principle, a (temporary) ban on enforcement and insolvency is provided for, as is a ban on contractual terminations, which protects the company’s continued existence. Reorganisation via this formal procedure, which reduces time pressure, could, if done well, create incentives to avert insolvency by means of a reasonable restructuring.

It is to be hoped that the transposition of the Directive in Austria will be successful in such a way that it will be accepted in practice, in contrast to previous attempts at regulation.

Mag. VALENTIN NEUSER
is Mediator and Attorney-at-law at LGP. He focuses on insolvency law, civil law and civil procedure law, as well as on alternative dispute resolution (ADR) and mediation.
After several years of negotiations, the European Council reached an agreement on its negotiating position on the post-2020 reform package for the Common Agricultural Policy (CAP) on 20 October 2020. Consequently, the present agreement marks a significant milestone for the whole of European agricultural policy.
In line with the Commission’s original proposal, ‘green architecture’ is the basis of the new financial framework. The resolutions of the EU Agricultural Council stipulate that environmental services are to become mandatory for all Member States and that a greater commitment to climate protection and biodiversity is to be rewarded accordingly. While smaller farms will receive a higher level of support, EU farmers have more security in terms of planning and financial compensation for their additional expenditure, compared to competitors from third countries.

**EU Common Agricultural Policy**

Negotiations on the EU’s Common Agricultural Policy (CAP) after 2020 had already started as far back as May 2016, at an informal meeting under the Dutch presidency. The original idea behind the creation of a common CAP was to provide the people of Europe with sufficient food at reasonable prices by establishing uniform subsidies. Before the common market was established by the Treaty of Rome in 1958, Member States were able to operate in the agricultural sector through various national intervention mechanisms. They created the CAP so they could abolish them and thereby bring agricultural products into free circulation.

Since 1999, the CAP has been based on two pillars. The first pillar covers direct payments to farmers, while the main elements of the second pillar encompass various support programmes for management and rural development. Instead of the initial price support policy, the current EU support model is primarily based on a direct payment system. The strategic importance of the CAP is also reflected in the fact that almost forty percent of the EU’s budget (around 58 billion each year) is devoted to supporting agriculture. In addition, the CAP is enshrined in primary law at European level in Articles 38 to 44 of the Treaty on the Functioning of the European Union (TFEU).

**Focus & goals from 2020**

In principle, the financial framework of the CAP is reformed and reorganised every seven years. The last general regulations in this respect were published in December 2013. With regard to the new CAP, the European Commission set up the Working Group on Agricultural Markets as early as 2016 to consider the EU’s future agricultural policy. The EU Commission presented a first draft for the multi-year financial framework for the years 2021 to 2027 in 2018 (COM 2018/322 of 2 May 2018). This proposal included ‘green architecture’ as a central element, which involves ensuring that the design and interaction of all regulations, requirements and support measures contribute to agriculture offering higher environmental and climate protection. This issue was also a hotly debated topic at Council level. After several years of negotiations between the Member States, the 27 EU agriculture ministers finally agreed on the reform of the CAP on 20 October 2020. In particular, this agreement revolved around its future financial framework, largely taking into account the ‘green architecture’ preferred by the Commission.

One important change is the introduction of climate protection requirements. These requirements will make certain climate and environmental protection standards mandatory for agriculture in the future. The Agricultural Council’s decision that land ownership alone no longer entitles farmers to direct payments also marks a significant change in the system. In the future, farmers will always have to disclose their farming practices to be allowed to receive direct payments at all. Anyone who does not meet the prescribed criteria in this regard will see their funds cancelled or not paid out at all.

**New ecological standards**

In addition, at least 20 % of the direct payments (first pillar) will be linked to even higher climate protection requirements. To receive money from this pot, farmers will have to implement additional ecological regulations. Each country is required to submit a national strategy plan, which is to be approved by the EU Commission, along with a catalogue of specific ecological regulations. The essential progress offered by this regulation is that these eco-regulations are mandatory. Other changes mainly affect smaller farms. These enterprises will receive increasing support over the course of the new CAP, including in the form of the redistribution premium. The aim of the redistribution premium is to ensure that part of the direct payments is shifted away from large enterprises and towards small and medium-sized farms. As the arrangements outlined above involve far-reaching changes to the current CAP, the Agriculture Council’s proposal provides for a transition period of two years for certain arrangements, meaning that the rules will not apply until 2023.

The decisions of the Agriculture Council form the basis for the forthcoming negotiations between the Council and the EU Commission and the European Parliament in their ‘trialogue’. Only when these three stakeholders have reached an agreement will the European legal framework for the new CAP be established. Therefore, it remains to be seen whether the decisions of the Agriculture Council will be accepted in this form. Nevertheless, we already recommend that our clients analyse the decisions of the Agricultural Council more closely and proactively adapt their farms to align with ‘green architecture’.

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**Dr. LEVENTE NAGY**

is an associate at LGP and advises on civil law, banking litigation, banking supervisory law, capital markets law and compliance. Levente Nagy is also an agricultural technician. He also advises clients in Hungarian and Russian.
A person is subject to unlimited tax liability in Austria if they have their residence or habitual abode in Austria. Residence means having an apartment in Austria that you can dispose of at any time. If it is impossible to clearly determine whether someone has a residence in Austria, their habitual abode in Austria can be viewed as a substitute. This is the place where the person indicates that they are not just staying on a temporary basis. A person with unlimited tax liability in Austria is, in principle, subject to Austrian taxes on their ‘global income’ (principle of universality). The tax requirements placed on everyone else are limited to their Austrian income (territoriality principle). As a result, under certain circumstances, even having a flat in Austria could trigger unlimited tax liability in Austria, in principle.

Exception under the Second Residence Ordinance

However, for individuals who can prove that they have only been in Austria for a short period of time, there is an exception under the Second Residence Ordinance (Zweitwohnsitzverordnung, ZWVO). No unlimited tax liability arises, despite residence in Austria, if the person (i) has had the centre of their vital interests abroad in the last 5 calendar years prior to establishing their residence and (ii) does spend more than 70 days in a calendar year within Austria. However, there is a counter-exception to this exception: if a person uses the residence of their (spousal) partner who is already subject to unlimited taxation (in Austria), and the person in question does not permanently live separate from their partner, the use of this residence would trigger unlimited tax liability in Austria.

As a country, Austria enjoys an excellent international reputation in terms of quality of life. However, moving to the Alpine republic can also quickly lead to unwanted tax consequences. Why profound tax law advice in advance helps to avoid unpleasant surprises.

Double domicile and double taxation agreements

If a person now has several residences, this generally results in the person being resident in several states for tax purposes. This could lead to the individual’s income being subjected to double taxation, but this double taxation is generally undesirable. For this reason, Austria has concluded its own double taxation agreements (DTAs) with numerous countries. A DTA assigns the right of taxation for certain types of income to the contracting states in question. A distinction is made between the ‘state of residence’ and the ‘other state’. The respective
DTA determines which state is to be considered the state of residence. The process of examination usually takes place in stages, as the example of the Austria – Russia DTA shows:

- The person is resident in the state in which they have their permanent residence.
- If the person has a place of residence in both states, they are deemed to be resident in the state with which they have closer personal and economic ties (centre of vital interests).
- If the centre of vital interests cannot be determined or if the person does not have a permanent home in any contracting state, they shall be considered a resident of the state in which they have their habitual residence.
- If the person has their habitual residence in both states or in neither state, they shall be deemed to be resident in the state of which they are a national.
- If the person is a national of both states or of neither state, the authorities of the contracting states shall endeavour to settle the question by mutual agreement.

Once the ‘state of residence’ has been determined, it is then necessary to examine what specific income the person has earned (e.g. dividends from foreign companies, income from letting apartments, remuneration for various functions in governing bodies, etc.). The applicable DTA contains concrete norms for allocating most types of income.

An example: a natural person resident in Austria holds shares in a Polish joint stock company and receives an annual dividend in return. Since the Austria – Poland DTA regulates the right of taxation of dividends in article 10, the following applies accordingly. Step one: in principle, Austria should tax the dividend; step 2: however, Poland may tax 15% of the gross amount of the dividend; step 3: Austria does not lose the right of taxation, but credits the Polish withholding tax to the Austrian tax (credit method).

**Obligation to register triggered by moving?**

Since July 2020, service providers such as lawyers or tax consultants (intermediaries) have been obliged to inform the domestic tax authorities of cross-border arrangements that may lead to tax avoidance. If the intermediaries are subject to a professional duty of confidentiality, the taxpayer must report the cross-border arrangement to the tax authorities, unless the taxpayer releases the intermediaries from their duty of confidentiality.

Moving to Austria can also be a cross-border arrangement of this nature. From a tax law perspective, this instance would involve the assets of the recipient being revalued at the current market value (‘step-up in basis’). In some circumstances, the individual could then sell the assets at their current market value in a tax-efficient manner because they would not receive taxable income from the sale (the step-up in basis means that the assets are revalued at market value and no gain is realised on a sale at market value). As a result, this would mean that the person could ‘take’ the hidden reserves on their assets to Austria without paying any tax. Whether or not this option is available also depends on the tax law of the country of departure. The key question is whether this state is home to an exit tax. If this kind of tax were applicable in the event of departure, there would be no risk of tax avoidance.

**Conclusion**

- Even having a flat can lead to unlimited tax liability in Austria, in principle.
- If the apartment is only used very infrequently (< 70 days/year) and the taxpayer has been living abroad for at least 5 years, they can only be subjected to limited tax liability due to the ZWVO, despite their Austrian residence.
- If the taxpayer has a dual domicile, the state of residence must be verified under the applicable DTA.
- Depending on the type of income, the state of residence or the ‘other state’ may tax the specific income. The DTA also regulates how the state of residence avoids double taxation, namely by the exemption method (the state of residence does not tax the actual income at all) or the credit method (the state of residence credits the foreign tax). In most cases, DTAs provide for both methods.
- Moving to Austria may also give rise to reporting obligations. In Austria, the taxpayer’s assets will be revalued at market value (‘step-up in basis’), especially if the exit state does not have an exit tax. If this is the case, there is probably a notifiable cross-border arrangement.

This article is based on the status of the law as of 22 October 2020 and is only intended to provide a rough overview of the possible tax issues associated with moving to Austria. As not all tax law topics related to moving to Austria are dealt with in this article, it does not claim to be complete. The team of experts at LGP would be happy to provide you with an individual assessment of your specific case at any time.
For all EU member states there are two separate legal regulations that limit their own regulatory scope:

On the one hand, current EU law prohibits discrimination against market participants from other EU member states. And on the other hand, there must not be any unfair treatment of investors from one state on the territory of the other state, even within the framework of investment agreements concluded bilaterally with other countries (BITs or intra-EU BITs). However, these two regulations often cause controversy and great legal uncertainty, as the following example shows. In September 2015, Croatia passed controversial legislation which converted Swiss franc loans and mortgages to Euros. This followed a sharp appreciation of the Swiss franc against the Euro, which caused high debts to Croatian Swiss franc borrowers that they were unable to repay. The Croatian legislation obliged the banks to bear the cost of the conversion, which is estimated at over US$ 1 billion. Six European banks have instigated investor-state arbitration against Croatia as a consequence of this legislation, based on BITs concluded between Croatia and other EU member states. Four of those banks base their claims on the BIT between Austria and Croatia. Those four arbitral proceedings have been initiated between 2016 and 2017. The cases are still pending.

Implementing a regulatory framework and supervising the compliance with it is one of the core competencies of any state. But the state’s discretionary power in shaping and enforcing its regulatory systems is not unlimited, as the unclear legal situation in bilateral investment treaties between Austria and Croatia proves.

In the meantime, the Court of Justice of the European Union (CJEU) decided in the famous Achmea-judgment on 6 March 2018, that intra-EU BITs were contrary to EU law. The CJEU reasoned that those BITs provide investors from some member states with more rights against a member state than this state granted to investors.
from other member states. Hence, according to the CJEU, intra-EU BITs violate the EU law principles of non-discrimination and equal treatment. Based on the Achmea-judgment, Croatia objected to the jurisdiction of the arbitral tribunals in the cases brought against it under the intra-EU BITs. The European Commission, who joined the proceedings as amicus curiae, took the position that the Achmea-judgment was also binding on the arbitral tribunals.

In January 2019, before any ruling in the arbitration cases was made, all EU member states signed a political declaration to terminate all BITs between member states. However, this declaration was of no legally binding effect, it still needed to be implemented. 23 member states went on to conclude a multilateral treaty to terminate all BITs between them, the so-called Agreement for the Termination of Bilateral Investment Treaties between the Member States of the European Union. The Treaty came into force on 29 August 2020. Austria is not yet amongst the contracting parties of the treaty. Hence, the BIT between Austria and Croatia remains in force for the time being, though the legal effect of the Achmea-judgment on it is unclear. While the Austrian government considered to also accede to the multilateral treaty, it ultimately favored to terminate the intra-EU BITs by way of bilateral agreement. When and how Austria’s intra-EU BITs will be terminated and what effect this will have on pending arbitration cases is still unknown.

Just recently (June and September 2020), two of the arbitral tribunals in the cases against Croatia based on the BIT with Austria made rulings on their jurisdiction: Both rejected Croatia’s objection and argued that at the time when Croatia consented to arbitration (which was done by concluding the intra-EU BIT) and when the request for arbitration was registered, the Achmea-judgment was not yet rendered. The tribunals reasoned that at that point in time, the so-called acquis of EU law – which includes not only legislation adopted and international agreements included by the EU institutions, but also the case law of the CJEU – did not prevent Croatia from agreeing to arbitration under a BIT. Therefore, the tribunals found Croatia’s consent to arbitrate to be valid.

For Austria, this results in a rather difficult situation: Naturally, Austria has to comply with EU law, which includes the ruling of the Achmea-judgment. A failure to do so could lead to proceedings for treaty violations by the European Commission. However, Austria must not lightheartedly deprive its own investors of the protection on which they relied when making investments in other EU member states, such as Croatia. Due to the unclear legal situation created by the Achmea-judgment, resolving this legal entanglement without prejudicing the interests of one stakeholder or another seems hardly possible. Our arbitration experts at LGP will review this situation carefully.
Mr. Zeqiri, before teaming up with international business law firm Lansky, Ganzger + partner, you had an illustrious career in North Macedonian economic diplomacy and politics. Could you give us a brief overview of your most important career steps and what impelled you to pursue them?

Arlind Zeqiri: Before joining forces with LGP, I worked in both the private and public sector, but always with a focus on cross-border business and investment. You could say that my previous jobs prepared me for my current work bridging Balkans and EU markets as a business lawyer and consultant.

Previously, I worked at the North-West Chamber of Commerce of North Macedonia, led the Agency for Foreign Direct Investment and Export Promotion of the Republic of North Macedonia – ”Invest in Macedonia” in Bern, Switzerland, and then became the Minister for Foreign Investments in my home country.

Asked to explain what impelled me on the path that I am pursuing, I would say that the time I grew up in, my formative years, played an important part. I was born in Tetovo in North Macedonia during the early 1980s, a time when the former Yugoslavia went through a systemic transition to a market economy necessitated by a deep economic crisis. The privatizations, the capital controls and currency devaluation were badly planned and executed and left the country and the impoverished people with very little. I believe this instilled in my generation a will to work hard for success.

A second defining period was my time in Vienna as a young man, where I also first met Dr. Lansky. Looking for new challenges, I decided to follow the advice of friends who lived and studied in Vienna and told me about its beauty and cultural diversity as well as the opportunities it offered. I came here to continue my master studies in Diplomacy and Strategic Studies. Living in Vienna has taught me many things, among others about diverse cultural perspectives, acceptance and social coherence, values which shaped the person I am today. Therefore, Vienna will always have special place in my heart.

Did your work with the North-West Chamber of Commerce of the Republic of North Macedonia set the course for the rest of your career trajectory? How did you happen upon this position?
Zeqiri: After finishing my studies in Vienna, I returned to North Macedonia as a teaching assistant at the University of Tetovo. Parallelly I started working at the International Relations Department of the North-West Chamber of Commerce. After a while, I was called by the then-Deputy Prime Minister for EU Affairs to develop an economic development plan for the city of Tetovo. The Deputy Prime Minister wanted to run for the Mayor of Tetovo in the next elections; I accepted this challenge and became part of the successful campaign team. Afterwards, I worked as the managing director of the Center for Development of the Polog Region.

What did your work at “Invest in Macedonia” in Switzerland, your home country’s investment promotion agency, entail?

Zeqiri: Invest in Macedonia was embedded with the official diplomatic mission, giving me the status of First Secretary at the Embassy in Bern. The job entailed the full spectrum of economic diplomacy, including regular contact with all relevant Swiss and North Macedonian companies, market research, the identification of economic sectors of interest to potential investors, establishing regular communications with economic bodies, chambers of commerce and other business associations in the country, providing assistance to the competent institutions in the Republic of North Macedonia, organizing official visits and the like.

Concerning your position as Minister for Foreign Direct Investment, could you briefly describe how you and your cabinet worked on attracting foreign investors to North Macedonia?

Zeqiri: What we did was quite straight-forward: creating the best possible environment for investors in North Macedonia, establishing a one-stop-shop within the government structures which investors could contact for all questions and issues and which would assist them to gain necessary permits and contacts for their business ideas.

In addition, we worked hard – and frankly quite successfully – to improve North Macedonia’s ranking in the World Bank Ease of Doing Business index. This is of course not a goal in itself, but the index quite accurately represents how good or bad the environment of investors is in terms of the regulatory frameworks and other important aspects. It also ensures good PR, of course.

After your term as minister ended, how did you come to manage the Skopje branch of one of Central Europe’s most renowned business law firms as an international lawyer and business consultant? And how can you translate the skills and insights gained in your previous positions to assist your clients at LGP?

Zeqiri: My time in Vienna has influenced me strongly and I had the good fortune to meet Dr. Lansky there. When I was looking for new challenges after my time as minister, there were some obvious synergies with LGP, such as the firm’s focus on the SEE region and international business clients as well as its reputation for working at the intersection of law, business and politics. I also appreciate that LGP takes pride in giving pragmatic, goal-oriented advice – get the job done instead of producing academic legal analyses is an approach that is lacking in may law firms.

With our LGP Skopje office, we offer European companies a new bridgehead in the Balkans, and Balkans companies an entry point into Austria and Central Europe. Of course, our EU clients benefit from my network and my knowledge of the local political and business landscape, just as our Balkans clients benefit from the networks and experience of our partners at LGP Vienna. It must be noted that the DACH countries – Germany, Austria, and Switzerland – are still the most important investors in the Balkans as well as the top export locations for Balkans companies. Thus, the combination of LGP’s very strong position in these markets, my own networks in Austria and Switzerland, and my detailed knowledge of the local conditions in the Balkans make for a perfect combination.

It is notable that your cohort has yielded an impressive number of highly successful entrepreneurs, businessmen, and politicians. Do you have any explanation why your generation from the region around Tetovo is often so successful?

Zeqiri: Most of the young businessmen and entrepreneurs hailing from the northern part of North Macedonia come from families which emigrated to the West. This has given them the opportunity to carry the Western culture of doing business to our country, resulting in extraordinary success in the business world.

You are working very hard, travelling constantly between Skopje, the Balkan countries, Austria, Switzerland and further abroad. What is your next goal, either professional or personal?

Zeqiri: My current work engagement is very dynamic, therefore requesting much time, dedication and commitment, yet it is very diverse with much opportunities for challenge and growth. Each day for me is an opportunity to learn from people and partners I work with, which knowledge serves in benefit of my further career development and in creating new business opportunities.

Besides my professional life, I am happily married with two children, a seven-year-old daughter and a four-year-old son. Although having a very dynamic work situation with much travelling, I try to spend as much quality time as possible with my family.
n principle, a judgment is only valid in the nation in which it was made. International agreements or other special arrangements are required in order to be able to enforce it in another nation. For EU Member States, the cross-border enforcement of court decisions is therefore the subject of various regulations, in particular of Regulation 1215/2012, which (also) regulates the recognition and enforcement of decisions in civil and commercial matters. Within its remit, judicial decisions are enforceable without the need for further proceedings in another Member State. Only in a few exceptional cases may this be refused.

Under the Regulation, which thus far has also applied to the United Kingdom, the question of jurisdiction can be settled by agreement between the parties, but even without such an agreement the regulation is applicable, for example, to actions for damages or infringements of intellectual property rights. The Regulation thus provides the basis for an uncomplicated enforcement of court decisions within the EU in many economically relevant legal areas. Although the British officially left the EU on 31.1.2020, the Union and the UK agreed on a transitional period in the so-called exit agreement, during which EU law, including the Regulation, is still binding for the UK. This transitional period now ends on 31.12.2020. Thereafter, judgments from Member States can only be enforced in the UK according to the Regulation if the underlying judicial proceedings were started before 31.12.2020. The same applies to the enforcement of UK decisions in the Member States.

From 1.1.2021 the Hague Convention on Choice of Court Agreements between the UK and EU Member States will apply. This international treaty also governs the recognition and enforcement of certain (!) judgments in civil and commercial matters between the EU and the UK. However, the Convention – unlike the Regulation – applies only if the parties to the dispute have concluded an exclusive choice of court agreement. In addition, the UK continues to be governed by the New York Convention on Recognition and Enforcement of Foreign Arbitral Awards, which ensures the enforcement of decisions of commercial arbitration courts in the UK. The enforcement in the UK of (arbitral) court decisions by Member States based on contractual dispute settlement clauses is thus assured. Without underlying party agreements, however, there will be no protection under international law for enforcement after 31.12.2020 for the time being.

When concluding contracts with UK business partners, an exclusive choice of court agreement or an arbitration clause should therefore be included to avoid unnecessary difficulties in enforcing legitimate claims. For old contracts, it is also advisable to subsequently include a corresponding agreement between the parties. The use of legal assistance is recommended, as the correct formulation of an appropriate clause is necessary to avoid problems and costs.

In the long term, it is hoped that the unsatisfactory legal situation will be corrected under international law, for example by acceding to the Hague Convention on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters published in July 2019. The EU is currently evaluating this, but so far no Member State has ratified the Convention.

In international business transactions as in other areas, companies are often obliged to enforce their claims in court. In cross-border disputes, the enforcement of a court decision abroad often leads to increased costs.
Since the beginning of this year, the coronavirus has been infesting almost every country in the world, leaving no stone unturned. In addition to the health consequences for humans, the global economy has also suffered setbacks, some devastating. While some innovative industries are benefiting from the change in human behavior, social and communication, in response to the pandemic, a large proportion of more traditional industries are falling by the wayside. Numerous entry and exit restrictions as well as the limitations on the freedom of movement mean that the fields of tourism, gastronomy and transport companies, in particular, are suffering, as are all the companies in the art and entertainment sectors. Lockdowns and health-related stoppages have brought entire deliveries of goods to a standstill in the automotive and textile industries, among others. In addition, the different strategies pursued by individual countries in the fight against the corona pandemic also contribute to growing levels of insecurity.

In such challenging times, companies’ existing practices and methods are usually no longer adequate for generating knowledge growth and innovation within the company at hand. External consultants can assist with quickly establishing new perspectives in the present, as well as quickly optimising and adapting processes to align with changing circumstances. In this context, it is essential to address not only the business issues but also the legal requirements associated with them. This is because every company decision is embedded in a corresponding legal structure of norms: only a dual approach can guarantee that these norms are put into practice in the best possible way. In contrast, legal problems must always be clarified in the light of the client’s economic interests and objectives in order to find the best possible solution.

The existing cooperation between LGP and Gerstbauer Strategic embodies the synergy of legal and business advice described above, right down to the smallest detail. Close cooperation and transparent communication between these two areas are essential for a smooth process, from strategy development and analysis to formulation and implementation. Gerstbauer Strategic provides extensive knowledge, local and global expertise, technical support and project management and sales support around the globe. International experts and consultants, alongside competent multidisciplinary teams, ensure a distinctive and highly effective approach to solutions, which enables projects to be executed professionally, leaving customers utterly satisfied.

With a growing network of partners in Austria, Azerbaijan, Uzbekistan, Kazakhstan and Turkmenistan, Gerstbauer Strategic assists global and European champions with projects in CAC countries, Southeast Europe and Africa. Its North American organisation is currently being established and will be launched shortly. Gerstbauer Strategic supports sales organisations as a strategic consultant at C-level and assists customers with export guarantees, tenders and contract drafting.

Bringing together the resources and competencies of LGP and Gerstbauer Strategic is a winning strategy in terms of the legal and business advice provided to international clients, right down to the last detail: local and global expertise, competent multidisciplinary teams and an excellent network of partners guarantee the highest level of customer satisfaction.

Orkhan Ismayilov (LGP), Flavia Inzikuru (LGP), Gerald Gerstbauer (GS), Kristina Sprenger (GS), Daniel Neuwirth-Riedl (GS), Adela Nestorovic (GS), Maximilian Kainz (GS)

Gerald Gerstbauer

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In 2018, Gerstbauer Strategic was founded – a globally active and well-connected consulting company.
The agreement signed by the heads of state or government of Armenia, Azerbaijan and Russia contains the following provisions in addition to the complete ceasefire:

- On the one hand, the return of the remaining three of the seven Armenian-occupied districts surrounding Nagorno-Karabakh (Kalbajar, Aghdam and Lachin) to Azerbaijan by December, according to a precise timetable.
- On the other hand, the Armenian forces will have to withdraw from Nagorno-Karabakh itself. Instead, Russian peacekeepers will be deployed there along the line of contact – as well as along the Lachin corridor, which is the only land connection between Nagorno-Karabakh and Armenia – for a period of 5 years. In this context, a peace-keeping centre will also be set up to ensure compliance with the agreements.

Of fundamental importance from a human rights perspective is the provision for the return of refugees and internally displaced persons (IDPs) to their homes under UNHCR supervision. From an economic point of view, it is important to restore all economic and transport links in the region, including the transport link between Azerbaijan and the Nakhchivan exclave. It is expected that all countries in the region will benefit from the opening of the links. Although the short agreement covers several areas, there are of course still a number of issues that need to be addressed. Only further agreements, if not a final peace treaty, will be able to answer these questions.

**OSCE peace process and reasons for its failure**

Negotiations for a peaceful solution to the conflict have been under way for over 25 years in the framework of the OSCE mediation process (“Minsk Group”). There are certainly many reasons for the failure of the peace process. Azerbaijan can hardly be accused of a non-constructive position. For already at the 1996 OSCE Summit Meeting, a declaration was included in the Lisbon Final Document which emphasised Azerbaijan’s...
territorial integrity and, within it, the greatest possible degree of self-government for Nagorno-Karabakh as guiding principles of a conflict settlement. This was endorsed by all OSCE States except Armenia.

In 1997, the parties were particularly close to a solution: the proposed solution put forward by the co-chair states of the OSCE Minsk Group (USA, Russia, France) was accepted by both sides. However, internal political pressure forced the then President of Armenia, L.Ter-Petrosjan, to reject the proposal in the end. This led to a dramatic failure of the peace plan. Subsequently, Armenia showed little willingness to compromise on the “Basic Principles” or “Madrid Principles”, which were first presented in 2007. These were unsatisfactory for the Armenian side because they contained guidelines such as “restitution of the territories around Nagorno-Karabakh under Azerbaijani control” and “the right of all displaced persons to return to their original places of residence”, while the legal status of Nagorno-Karabakh was to be determined at a later date.

In the context of the fundamental and human rights of displaced persons, especially IDPs, reference should be made to the landmark judgment of the European Court of Human Rights (ECtHR) in the case of Chiragov and others v. Armenia (13216/05), in which the LGP as legal representative of the Azerbaijani Government was also actively involved. The ECtHR noted international borders. Nagorno-Karabakh as an autonomous region within the Azerbaijani SSR was thus recognised as part of the new independent state of Azerbaijan. The same was true for the recognition of Abkhazia and South Ossetia (Georgia), Transnistria (Moldova) or Crimea (Ukraine).

No state in the world, not even Armenia, has recognised the independence of Nagorno-Karabakh. Numerous international documents reaffirm the territorial integrity of Azerbaijan, including UN Security Council Resolutions nos. 822 (1993), 853 (1993), 874 (1993) and 884 (1993), UN General Assembly Resolutions nos. 60/285 and 62/243, Resolutions of the Parliamentary Assembly of the Council of Europe nos. 1119, 1416, 2085 as well as the European Parliament Resolutions 2009/2216 and 2011/2315. The four UN Security Resolutions already in 1993 called for the immediate and unconditional withdrawal of Armenian troops from the occupied territories. The above-mentioned ECtHR judgement in the Chiragov case also made it clear that the “Republic of Nagorno-Karabakh” cannot be held responsible for violations of the ECtHR on these territories because no such state exists. Rather, Armenia exercises “effective control” over Nagorno-Karabakh and the adjacent territories, and violations of the ECtHR in these territories therefore fall under the jurisdiction of Armenia.

In this context, the agreement of 10 November 2020 restores the territorial integrity and sovereignty of Azerbaijan.

### Foundations of international law

The definition of the borders of the successor states of the Soviet Union (as well as Yugoslavia) was based on the international law principle “uti possidetis iuris”: the republican borders of the federations became international borders. Nagorno-Karabakh as an autonomous region within the Azerbaijani SSR was thus recognised as part of the new independent state of Azerbaijan. The same was true for the recognition of Abkhazia and South Ossetia (Georgia), Transnistria (Moldova) or Crimea (Ukraine).

Legal Consultant

Mag. ORKHAN ISMAYILOV

joined LGP in 2012 as a Legal Consultant and Business Development Manager for Azerbaijan. He deals with cross-border projects related to Azerbaijan in the fields of international business law and infrastructure, as well as in the areas of fundamental rights and human rights, for instance being part of the LGP team that dealt with the aforementioned Chiragov case. He also advises in Azerbaijani, French and Russian.
In times of crisis, many companies reach their financial limits due to unforeseeable dips in sales and profits, which prevent planned projects or expansions from taking place. Alternatively, cost-intensive projects can also be financed by issuing tokens.
Simply put, tokenisation is a tool that maps the value of an asset as digital units based on blockchain technology. As a result, each digital unit represents a share of the underlying asset. These digital units are called (security/asset) tokens. The term ‘asset’ is to be understood very broadly: it can be real estate, raw materials, works of art, machines, and company shares, but also entire projects. Regardless of the type of asset, there is a relatively large scope for the design of the contract on which the token is based. The major innovation, however, is not the contract on which the token is based, but the simple transferability of the legal position represented by it. Just as the internet has suddenly made it possible to send documents digitally, tokenisation now allows assets to be transferred to other people at the click of a mouse.

Imagine, for example, that an entrepreneur wants to expand his existing hotel or build a completely new hotel. To put the project into practice, he needs capital totalling EUR 50 million. If this project were to be financed by issuing tokens, this would allow investors to participate with smaller amounts than usual, such as hotels in this case. This is because tokenisation allows assets to be divided into units of any size, enabling the minimum investment sums to be determined as desired.

In the course of tokenisation, the hotel would be ‘broken down’ into digital units as an asset. For example, a person could choose a denomination of 50,000 ‘hotel tokens’ at 1,000 euros each. Each token would then represent 0.002% of the hotel. Depending on the design of the tokens, the investors could, for example, be given a share of the current profit or, in the case of the tokenisation of a project development company, a share of the one-off sales proceeds from the hotel. Tokens could then be issued either to the general public in a public offering or to selected individuals in a private placement.

The opportunity this creates, enabling people to participate in different asset classes with smaller investment sums, is already creating a completely new market. This has two positive effects for holders of such assets. On the one hand, it permits initially illiquid assets such as real estate to be made liquid through tokenisation, meaning that a possible sale or exit can be carried out more quickly due to a broader group of buyers. On the other hand, the increased demand generated by this is reflected in correspondingly higher sales proceeds.

However, tokenisation is not only important for real estate. It is also conceivable, for example, that you could set up a fund for a company in any industry. Imagine that an entrepreneur wants to sell a new product due to a coronavirus-related shift in demand, and a new additional production plant needs to be built for this. Let’s say that capital totalling EUR 10 million is required to put the project into action. One conceivable financing option would, again, be for the production company to issue tokens that would grant the tokenholder in question a share in the company’s profits, for example. This would provide the company with additional capital through the issuance of the tokens and the investors would be able to enjoy profits that were in proportion to their token holdings.

If a token owner wants to part with their investment, they can simply transfer their tokens to another token owner or a third party via the blockchain. This kind of transfer may be made via a platform or directly between the buyer and the seller, without the need for any intermediaries. As a result, leaving this kind of investment could, therefore, be very straightforward. In addition to their arbitrary denomination and the easy transferability, the accounting of the ‘collected’ capital can be another major advantage of tokenisation. Depending on the legal structure, this capital can also be shown as equity on a company’s balance sheet. In this way, companies could carry out credit financing with a bank following the token financing, say, in order to achieve a leverage effect.

These two sketches only demonstrate a fraction of the conceivable possibilities and the advantages associated with them. Depending on the use at hand, there are project-specific benefits both in a legal and economic respect which we would be pleased to discuss with you.
In today’s disruptive and constantly changing business environment, clients expect not only reliable services but also higher efficiency, greater flexibility and, in addition to solutions tailored to their companies, the ability to anticipate new developments.

The current Covid-19-crisis has tested our readiness and adaptability to help our clients cope with turbulent and unexpected events. The situation is changing rapidly and information on this topic is still evolving, since the spread of the virus around the world has created several ethical, legal and social problems. Here are some examples of areas in which we can help with our legal expertise:

**Companies in adverse economic situations**

The amendment to the so-called act “Lex Corona”, effective from 12.05.2020 was introduced in Slovakia as temporary protection for business entities. Its purpose is to create a time-limited framework with tools to counter the damages that Covid-19 has done to businesses. However, these measures expire on 31.12.2020. After that, the protected business entities will be obliged again to file applications for the declaration of bankruptcy on their assets (in case of their indebtedness), interrupted enforcement proceedings will continue against them, and exercising pledges on their assets will become possible again. Unfortunately, the temporary protection did not help many business entities to get out of their adverse economic situation and ultimately has only delayed their problems. We assume that the expiration of temporary protection measures will most likely lead to insolvency in many cases. Currently we already advise our clients...
how to set up internal corporate, employment and other processes, as well as their external relations towards third parties, by adjustment of existing relationships or reassessment of prospective expansion plans, to avoid adverse economic change.

Temporary protection of viable business entities is currently being negotiated at the Ministry of Justice of the Slovak Republic. Its purpose should be to create a time-limited framework for protection against creditors equipped with tools to support business entities in difficult financial situations, which should enable them to continue their business and thus prevent loss of jobs and valuable know-how and bring a higher level of satisfaction of creditors’ claims. Unlike the temporary protection of business entities mentioned before, it should be a permanent institution in Slovak law. We follow the further development very closely in order to support our customers in solving their economic difficulties in the best possible manner.

**Legislative change in public procurement**

Currently, a publicly much-discussed topic is the amendment of the Public Procurement Act. First, the Deputy Prime Minister for Legislation presented his ideas on a public procurement reform, then the Public Procurement Office came up with its own proposal for fundamental changes in this area. The amendment is based on the program statement of the Government of the Slovak Republic and on the National Integrated Reform Plan „Modern and Successful Slovakia“. An important objective of the proposed amendment is to respond to the socio-economic situation caused by the pandemic and the ensuing global economic recession. At the same time, this amendment is intended to fundamentally simplify the public procurement procedure (e.g. increase in the current limits in the case of direct awards or simpler exclusion of dishonest bidders from public contracts). The amendment also reflects the mentioned professionalization of public procurement, which now also legally enables the government to set up a separate central procurement office for strategic purchasing.

On the other hand, the proposal presented by the Deputy Prime Minister for Legislation does not represent a reform but a revolution which is based on three substantial changes. The first group of amendments concerns the repeal of legal requirements for the award of contracts and certain restrictions that are not covered by the EU’s public procurement directive, such as the rules for contracts below the threshold or for low value contracts. The second area concerns fundamental restrictions on the Public Procurement Office’s competencies and the transfer of review procedures to specialized administrative courts. The third set concerns amendments of the rules for determining the estimated value of a contract. As our office is very active in this field, we follow the legal innovations concerning public procurement with great interest. For the direct benefit of our clients, we are also actively involved in this legislative process, as evidenced by our participation in a professional debate on the amendment prepared by the Public Procurement Office.

**Damage compensation within the context of the pandemic measures**

In the Slovak Republic it is possible to seek for damage compensation towards
the state due to the unlawful decision or wrong official procedure. Rightful reasons to seek for compensation are:

- Unlawful act (unlawful decision, or wrong official procedure)
- Damage (real damage and loss of profit)
- Causal Nexus between the unlawful act and the damage

The National Council of the Slovak Republic has by the amendment Art. 58 of the Act on protection, support and development of public health, revoked the right for compensation of damage and loss of profit. After a detailed analysis, we conclude that this amendment seems unconstitutional. None of the acts may entirely exclude the right for damage compensation. The exclusion of the right for damage compensation would mean that the National Council of the Slovak Republic could exclude any right provided for in the constitution solely on the discretion of the legislative body. Such interpretation shall be considered constitutionally unacceptable and not only contrary to the text of the general act but contrary to the goal and meaning of the constitution. The exclusion of the right for damage compensation would thus mean the denial of the principle of rule of law.

In practice, that would then mean that public power bodies may perform measures arbitrarily and without any consequences during the pandemic. The challenged provision therefore means the breach of the obligation of the state to adopt such legal acts which will allow the realization and fulfillment of the general right for compensation of damage caused by unlawful decisions and wrong official procedures of the public bodies. On 23.10.2020, the President of the Slovak Republic filed a relevant complaint with the Constitutional Court of the Slovak Republic about the suspension of the law’s effectiveness due to the non-conformity of the adopted amendment to the Public Health Protection Act. The Constitutional Court of the Slovak Republic has by the means of the Resolution dated 04.11.2020 accepted the proposal for the further proceeding in the full extent, and at the same time has suspended the effectivity of the challenged provision.

The Constitutional Court within the extent of preliminary legal assessment has declared that the interpretation of the challenged provision, which revokes the right for compensation of damage and loss of profit due to the performance of measures is in direct contradiction with the constitutional requirement to protect the nature and meaning of the fundamental rights and freedoms when adopting their limitations. This interpretation prima facie appears to be from a constitutional-law point of view unsustainable and providing for not only factual and immediate risk of infringement of fundamental right for damage compensation caused by the unlawful decisions and wrong official procedure in the respective area, but it evokes the assumption of infringement or elimination of a constitutional right.

To date, the Constitutional Court of the Slovak Republic has not yet decided on the issue, at least not by the editorial deadline. It appears that Art. 58 of Slovak Act on Protection of Public Health, which has excluded the right for compensation of damage and loss of profit due to the pandemic measures, will be declared as contrary to the Constitution of the Slovak Republic. The damaged entities are therefore at least theoretically able to seek compensation of a potential damage caused by an unlawful decision or a wrong official procedure.

As the legal framework and the possible consequences of this unique pandemic situation are indeed very interesting we will closely monitor the development of these new legal provisions. This will enable us to ensure the maximum protection of our clients’ rights and, if necessary, to demand adequate compensation.

JUDr. MARTIN JACKO
Attorney at Law and has been a managing partner of LGP Bratislava since 2015. He has an impressive track record in the areas of corporate law, commercial law, contract law, transaction advisory services, M&A, construction law (including FIDIC), real estate, administrative law, insolvency and restructuring law, compliance, public procurement, state aid/investment aid, international and European law. He focuses on major construction and infrastructure projects, mergers and acquisitions and crisis management at national and international level. He advises in Slovak, Czech and English.

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Consultant, special advisor, head of cabinet, secretary general, spin doctor, thinktank director: there are all kinds of names for those who influence the people in power behind the scenes. They themselves do not step into the public limelight and do not hold any responsibility towards that sphere. They are intelligent, educated, know a great deal or know about specific matters, are prepared to stand behind their boss and work with them. They are valued and supported by this boss, know the environment, its structures, the processes and the people involved, right down to the smallest detail. They never lose sight of the big picture and have staying power, they think strategically and act unwaveringly. They outlast the politicians and, as a result, are important. For as long as there have been states, administrations and ministers, they have been dependent on such persons.

13 individuals and 3 groups are presented. The first is old Bartenstein. He was magnificent, like how he argued away the promise of Charles VI to marry two of his three daughters to Spaniards, when one of them died. Impressive, like how he offered his resignation to Maria Theresa in such a way that she asked him to stay. He advised her well, did not patronise the 23-year-old, did not flatter her, but strengthened her back against Prussia – ultimately successfully. The finesse with which he made the weak Anton Cortiz Ulfeldt chancellor, because he himself could not be, and then used him for his own ends was masterly.

Sonnenfels’ brilliant spirit of progress advised the Empress and Joseph II in a rather different way: the son of a rabbi from the provinces, he skilfully proffered an essay to Maria Theresa to mark her birthday before fighting a great battle against torture. In the decisive phase, he fell on his knees before the Empress, parried all the intrigues of the conservatives, used his Masonic contacts, formed networks and, finally, was successful. Without this veritable giant, torture and the death penalty would not have been abolished.

Even in his youth, Friedrich Gentz became internationally known as a magnificent...
wordsmith. Vainly, as a small civil servant, he lectured to the Prussian King, was bought by Austria and held his great role as secretary of the Congress of Vienna, where he put on paper what the potentates thought, without being able to say it himself. This brilliant strategist put the new concept of Europe on paper here. Alongside this, he raked in money, took the very young Fanny Elssler as his girlfriend at the age of 65 – and died with an estate of 5 guilders.

Who advised Franz Joseph? This question fills two chapters. After taking the throne at the age of 18 and not the brightest of men, he was not up to the task and was bullied by his mother Sophie. She made him emperor and wrote on 2 December 1848 ‘We fought a good fight, we weak women’, appointed his advisors and adored him ardently. He was only able to emancipate himself at the age of 42. In his old age, Count Kielmannsegg was his advisor. He was a great administrator and chancellor of a cabinet of civil servants, but the two old men only talked about uniform buttons, flagging, ennoblement and Otto Wagner’s ugly buildings. The small-mindedness of the emperor became tangible.

An exciting episode comes in the form of how Count Alexander Hoyos set up a no-nonsense clique in the Foreign Office before 1914, how he warmongered the weak Minister Berchtold and how he led to the immediate start of the war in July 1914 in a disastrous double-cross between Berlin and Vienna. The effect of the best lawyer of his time, Hans Kelsen, was quite different at the turn of 1918. The role he played for the Lammash government in the final days of the monarchy is hardly known. This book offers a detailed exploration of his contributions to the Austrian constitution: his ability to combine the legal text with the political concepts of the rule of law, legality, popular sovereignty and the balance of powers seems more relevant today than ever before.

His sinister counterpart is section head Hecht, who shows how the interaction of political will and compliant jurisprudence eliminated democracy. He unearthed the War Economic Empowerment Act, tinkered with government by means of ordinances, prepared party bans, formulated the spin on the ‘self-dissolution’ of parliament, and procured the legality of the 1933 constitutional breach. A similar spirit is evident in the case of Walther Kastner, who, as a previously illegal Nazi, became chief aryraniser of industry in 1938, but who came back immediately after 1945, rehabilitated by VP Minister Krauland, who made him chief restitutor of the companies he aryranised. And alongside this, he built up a huge art collection.

In the book, he is followed by Heinrich Wildner, who brought the Chancellor’s Office back into a functioning state in 1945 and exploited the tensions between the Chancellors (Renner, Figl) and the Foreign Minister (Gruber) with masterful bureaucratic intrigue, both for himself and for the Office. He knew everything, even the truth about Waldheim as early as 1946, and deliberately overlooked it. Eduard Chaloupka, who was Director General of the Federal Chancellery and head of the Cartellverband at the same time, perfected the power of the CV in the administration, along with its incredible network and the methods and techniques of penetrating the state apparatus. And the story of him having himself painted into the official picture of the State Treaty is truly something else.

He stands in contrast to Hans Thalberg, the most silent of all advisors in the book. A Jew, an exile, resistance fighter while he was emigrated (while others hid within their country or became Nazi henchmen), he started off hostile, as a young diplomat in the midst of these two groups, but then became one of Bruno Kreisky’s most important advisers, especially in Middle Eastern politics.

This is the end of the individual biographies. A chapter on the ‘Republic of Secretaries’ describes the role of the cabinets of Klaus (where it becomes clear that the young people from Mock to Klestil and Graff were reformers) and of Kreisky, where advice from Lacina to Petritsch, from Jankowitsch to Kirchschläger took on very specific forms with a figure who outshone everything else. The situation starts to decline in the 2000s: content is becoming more and more meaningless, sales are becoming more and more important. That is why we no longer need political advisors anymore, that is what the consultants came for, a group which has triggered expenditure of a total of 2 billion euros over the last 20 years.

In the last chapter, which goes as far as the ‘Covid-19 Future Operations Clearing Board’, we read about the interplay between total ‘message control’ and official government, the disastrous increase in the power of ministerial offices and the smashing and ‘cleaning up’ of administrative structures that have grown into being, the failed experiment of secretaries-general, the dominance of press conferences and media consultants over the law and the opaque influence of money-backed lobbies.
Prof. Dr. Martin Selmayr, Head of the Representation of the European Commission in Austria, met with graduates of the Collège d’Europe at LGP at the end of June.

Usually, Austria-based alumni of the Collège d’Europe meet several times a year. Given the pandemic-related circumstances of 2020, opportunities have been limited. Following the relaxation of COVID-19 measures, however, the opportunity arose to hold an event at the end of June on the LGP roof terrace – not just for reasons of health protection.

The event, comprising several dozen participants from business, EU institutions, ministries and the Federal Competition Authority began with a free lecture by Professor Selmayr: topical issues such as COVID-19 measures taken by the Member States concerning medical devices and safety equipment, the restriction of the legal competences of the EU and the European Commission and the related political context, which is strongly influenced by the often very divergent positions of the Member States, were discussed in detail. The development package (Next Generation EU – NGEU) was also discussed. “Visibility”, amongst other topics, was a focus of the following discussion.

Specifically, it was felt that many EU and national measures did not have the same publicly perceived status as the sometimes much less significant activities of major international players.

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Digital Finance and Alternative Investments Roadshow

LGP Managing Partner Ronald Frankl held a lecture on “With tokenisation of assets to the leading edge” in the pavilion at the Strandbar Herrmann as part of the “Roadshow #65 Finance on the Beach” event organised by Börse Express.

Block chain technology offers entrepreneurs and investors the opportunity to invest in assets in a new and revolutionary way. Previously illiquid assets such as real estate can thus be made liquid. Through tokenisation, the value of assets is mapped into digital units, so-called tokens, based on block chain technology. The legal structure and the denomination of the tokens is completely flexible.

This makes the concept of tokenisation very attractive for entrepreneurs and investors, both as an investment, on the one hand, and to raise capital for the construction or purchase of an asset, on the other. In his presentation, Frankl explained how assets can be successfully tokenised, what types of token design are useful and the optimal legal structure.