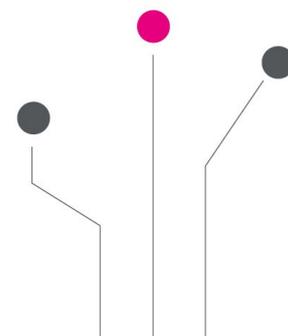


to the point technology & digitalisation



September 2020

Preface

After easy livin' in summer, autumn and winter are coming!

Together with school, the harsh reality that COVID-19 is still at large has caught up with us. Restrictions that were loosened during the summer are being re-imposed. How will the economy and markets react?

On the flip side, new investment opportunities triggered by or in connection with new legislation as well as state aid will likely arise. The Austrian government is currently debating the [Renewable Energy Development Act](#), which will likely accelerate investments in this field. This act has the potential to boost not only the production of energy through renewable sources but also the companies that build this infrastructure. We are already seeing growth in solar energy projects at a previously unheard of scale.

The pandemic is also driving investments into new fields and markets, as Dominik Tyrybon discusses in his [contribution](#).

This autumn also brings news for movie production companies and their efforts to bring copy-right-infringers to justice, which Stanislav Bednář explores in his [article](#). Meanwhile, Maximilian Nutz looks at a new legal form for investing in Austria.

There are also good news from our colleagues of our start-ups & venture capital practice group, who have successfully closed the USD 52 Series A financing round of Bitpanda – the greatest Series A financing round in Europe this year so far.



[Constantin Benes](#)
Partner, Vienna
c.benes@schonherr.eu
T: +43 1 534 37 50711

Austria: Schoenherr advises Bitpanda on its USD 52 million Series A financing round

Schoenherr advised Austrian fintech Bitpanda, on the largest European Series A financing round in 2020 led by Valar Ventures, and including other fintech investors such as Speedinvest. The funding secures USD 52 million to further drive Bitpanda's expansion.

"We are thrilled to have provided Bitpanda comprehensive legal advice on this exciting series A financing round. Congratulations to the Bitpanda team for reaching this milestone!", said partner Thomas Kulnigg, who led the Schoenherr team.

Bitpanda is a leading European neobroker on a mission to democratise the complex world of investing. Founded in 2014 by Eric Demuth, Paul Klanschek and Christian Trummer, the company is a firm believer in transparency and making it as easy as possible for everyone to start investing. Bitpanda removes complicated financial barriers by harnessing the innovative power of digitised assets and blockchain technology. With low fees, 24/7 trading and real-time settlement, Bitpanda empowers users to shape their financial futures - on their own terms.

Valar Ventures is a New York-based venture firm that is known for its breakout fintech investments including TransferWise, N26, Stash, BlockFi, Xero, TaxFix, Octane and Qonto. The company manages over USD 1.3 billion in assets under management (AUM). As part of the investment, one of Valar Ventures' founding partners, Andrew McCormack, will also join Bitpanda's board.

Speedinvest is a European venture capital fund with EUR 400 million+ AUM and more than 40 investment professionals working across Europe and the United States.

The Schoenherr team was led by [Thomas Kulnigg](#) (partner) and further consisted of [Maximilian Nutz](#) (associate); [Andreas Lengger](#) (associate) and [Dominik Tyrybon](#) (associate).



[Thomas Kulnigg](#)
Partner, Vienna
t.kulnigg@schonherr.eu
T: +43 1 534 37 50757

To the Point:

- **AI – A call for regulation**

Artificial intelligence ('AI') is no longer just the evil antagonist in our favourite science fiction novels. With the rise of intelligent assistants, such as Apple's Siri or Amazon's Alexa, so-called 'weak' AI has already become an everyday household appliance. Yet, the potential impact 'strong AI' (i.e. a machine that has the capacity to understand or learn any intellectual task just like humans) might have on our society is still pure speculation.

From a legal perspective, even weak AI raises multiple questions that may require us to rethink fundamental legal concepts such as fault, accountability, product liability, non-discrimination, data protection, and many others. However, despite a vivid discussion amongst legal scholars, it seems that AI has still not gained the attention it deserves from politicians and legislators.

Just this week, the German "KI-Enquete" (an AI-focused committee of the Bundestag, see their [website](#)) presented the results of its two years of work. The recommendations are subdivided into three different topics: AI and economy, AI and the state, AI and health. A final report is expected to be published in autumn 2020.

In Austria, the government's approach towards AI was formulated in 2018 in a document entitled 'Artificial Intelligence Mission Austria 2030' (available [here](#)). In this document though, aside from multiple explanations of current and potential future applications of AI, clear guidelines and policies are missing. Since then, no AI-related policies have been communicated to the public.

Technical advancement does not wait until an appropriate legal framework has been developed. Quite the contrary, the law typically chases behind technological breakthroughs. In particular with the rise of AI, this sequence must change, as its impacts on the functioning of our society may be profound, affecting us all. Undeniably, AI needs rules – even in a small country like Austria – and better sooner than later.

[Veronika Wolfbauer and Maximilian Trautinger](#)

- **Internet platforms are not obliged to disclose the true online identity of their users who infringe copyright**

Online platforms are often used to illegally share copyrighted works between private users uploading and downloading content without the participation of copyright holders. Under Article 8 (2) (a) of the Directive 2004/48/EC, courts may order the infringer or other person (in this case YouTube) to provide information about the origin and distribution networks of the infringing goods or services including the names and addresses of the producers, manufacturers, distributors, suppliers or retailers. Therefore, Constantin Film Verleih, which holds exclusive rights to various Hollywood blockbusters, requested YouTube LLC and Google Inc. to provide comprehensive information about the infringers uploading these films to YouTube, such as their actual e-mail addresses, IP addresses and phone numbers. In

the resulting decision of the Court of Justice of the European Union No. C-264/19, the court in fact rejected this broad request because the usual meaning of the term "address" in everyday language allegedly covers only a postal address or permanent address of habitual residence. This approach may seem surprising in light of the commercial reality, where infringers are often able to escape justice by using false "offline" names and addresses. As a result, the rightsholders will likely press national lawmakers in each of the EU Member States in order to update the local laws implementing the above-mentioned Directive to better reflect the everyday reality of virtual crime.

[Stanislav Bednář](#)

- **Austrian Limited – a new type of corporation for start-ups in Austria**

Currently the Ministries of Economics and Justice are still in the process of coordinating the draft legislation, but the first details have been announced. Below are the major key points:

- minimum nominal (foundation) share capital of EUR 5,000: (i) the nominal share capital of the company can be raised through cash contributions, contributions in kind and/or services of the founder(s); (ii) in order, to attract international founders to the new corporation type, it should be possible to conclude the articles of association in both German and English; and (iii) it should be possible to complete the entire foundation process digitally;
- corporate bodies: in order to keep the corporate governance structure as simple as possible and the running costs as low as possible, there will be basically only one management body and the general assembly of shareholders. Further, it should be possible to pass resolutions using electronic signature programmes (e.g. with DocuSign, HelloSign) or e-mail;
- incentive programmes: start-ups cannot (at least not in the beginning) offer adequate salaries/wedges on a regular basis. In most cases, a purely economic participation is desired, rather than any other shareholder rights, such as voting rights. Therefore, the introduction of non-voting shares with which only a minimum of shareholder rights is associated (e.g. the annual submission of the annual financial statements) is considered.

Stay tuned for more, once the draft legislation has been published.

[Maximilian Nutz](#)

- **COVID-19 – a catalyst for digital assets and crypto trading regulation?**

The economic impact caused by the COVID-19 pandemic has not only significantly changed the way we work, travel and shop, but has sent a large number of investors on the search for assets that can provide a safe haven during the ongoing crisis and its macroeconomic events. Many investors started increasingly to look for this safe haven by investing in crypto assets and exploring the opportunities blockchain technology offers.

Just in time a first legislative proposal by the EU Commission on a potential EU framework for crypto assets is about to be officially released to further support the innovative potential of digital assets while mitigating the associated risks at the same time. Stay tuned for more details on how crypto assets might be regulated in the EU!

[Dominik Tyrybon](#)

- **Austria is taking action against hate speech**

As one of the first countries in Europe, Austria is preparing to pass a new law to prevent hate speech. Germany tightened its hate speech provisions earlier this year. The Austrian Minister of Justice, Alma Zadic, who was the target of online hate speech in January, wants to lower the hurdles victims need to overcome when lodging a complaint.

Victims of hate speech will have a claim for injunctive relief and for the removal of an online post/information posted by an injuring party. If the injuring party uses an online intermediary, it will generally only be possible to sue the online intermediary after a warning notice has been given.

Claims for injunctive relief for "violation of human dignity in an electronic communications network" shall be brought in an expedited procedure, where the court can issue injunctive relief without hearing the Defendant first, if the alleged infringement is conclusively presented in the claim. A copy of the infringing content must be attached to the claim. The deadline for Defendants' objections will be comparatively short – 14 days – while the deadline to object to a payment order is four weeks (and 30 days for European Payment Orders).

The new hate speech law is currently under review. Materials can be accessed [here](#).

[Sara Khalil](#)

- **Vienna Stock Exchange embracing Cryptos**

The world moves swiftly towards digitisation and the creation and accumulation of digital assets becomes increasingly popular among investors. To boost the institutional adoption of cryptos, on 1 September 2020 the Vienna Stock Exchange listed 21Shares AG's Bitcoin and Ethereum exchange-traded products (ETPs) that replicate the performance of the two major crypto currencies 1:1. Through this listing experienced investors are for the first time given the opportunity in Austria to access the crypto market with the benefits of a regulated market that includes monitoring, real-time information and secure settlement. In our opinion it is just a matter of time until we will see more crypto-related products being listed on the stock exchange. Stay tuned for more.

[Dominik Tyrybon](#)

For further information, please contact any of the individuals named above, your usual contacts at Schoenherr or any member of our [technology & digitalisation group!](#)

If you have any questions, please contact our legal experts across CEE:

	<p>Constantin Benes Partner, Vienna c.benes@schoenherr.eu T: +43 1 534 37 50711</p>		<p>Stanislav Bednár Attorney at Law, Vienna s.bednar@schoenherr.eu T: +420 225 996 500</p>
	<p>Veronika Wolfbauer Counsel, Vienna v.wolfbauer@schoenherr.eu T: +43 1 534 37 50791</p>		<p>Maximilian Trautinger Associate, Vienna m.trautinger@schoenherr.eu T: +43 1 534 37 50789</p>
	<p>Sara Khalil Attorney at Law, Vienna s.khalil@schoenherr.eu T: +43 1 534 37 50744</p>		<p>Maximilian Nutz Associate, Vienna m.nutz@schoenherr.eu T: +43 1 534 37 50857</p>
	<p>Dominik Tyrybon Associate, Vienna d.tyrybon@schoenherr.eu T: +43 1 534 37 50327</p>		<p>PR Contact: Iris Stiefelmeyer PR & Marketing Manager i.stiefelmeyer@schoenherr.eu T: +43 1 534 37 50282</p>