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The Binder Grösswang Magazine

December 2015

THIS WAS THE IBA ANNUAL CONFERENCE 2015 IN VIENNA

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I HAD A DREAM!

I had a dream, not by any means as visionary and memorable as that of Martin Luther King – after all, it was just a lawyer's dream – but it was a dream that has come true. The Annual IBA Conference came to Vienna!

After decades of little transparency – a first application by Vienna some ten years ago had simply been disregarded – the process for the choice of venue started to become clearer and has further improved over the years. By now there is a list of fairly clear and reasonable criteria, a geographical rhythm and a timetable.

And so a second attempt was made in 2009. In the meantime, the professionality of prominent conference cities had likewise improved, and the 2009 submission was by far more professional than the somewhat homespun earlier one. Together with two other most attractive European cities, Vienna entered the competition, site visits were conducted, and finally the Management Board voted for Vienna at the 2010 Annual Conference in Vancouver.

After that there was little activity for a few years. This changed abruptly before the 2014 Annual Conference in Tokyo, when we started to help friends book hotel accommodation for the Vienna Conference and learned that a few of the most attractive hotels were about to be fully booked even before the Tokyo Conference had started.

What followed was a one-year rush, the formation of a great and large host committee, and very smooth cooperation with the IBA staff and their conference organizers, disturbed only by a pretty unique political force majeure event and a few hickups that could all be managed *viribus unitis* and merely have anecdotal character in retrospect.

And finally it began, for me with our dinner at Haus der Industrie, an impressive Opening Ceremony preceded by the unique opportunity to chat with Manuel Barroso in private, a great Opening Party at Konzerthaus, an unbelievable sequence of meetings, cocktail and dinner parties at the most wonderful places Vienna has to offer, the special Austrian-Australian Host Committee Party and a most elegant yet very relaxed Closing Party at the Hofburg, at least as good as a "real" Viennese ball. At all these occasions and in between, I met more friends from all over the world and made more new ones than at any event in the past.

My only regret: I had barely any chance to attend some of the many sessions which got such a great echo. But I myself experienced and heard everywhere of the virtual omnipresence of our President David Rivkin, who set an admirable standard for attention and devotion to all aspects of an Annual Conference.

And now the dream is over, you are all back home, and we at Binder Grösswang can just hope that your memories of the 2015 Vienna Conference are as good as ours!

Michael Kutschera

Managing Partner, Binder Grösswang

MICHAEL KUTSCHERA AND THOMAS SCHIRMER REVIEW HOW THE FIRM HAS ADAPTED TO THE REGION'S CHANGING DEAL FLOWS.

By IFLR contributing writer James Wilson

ADVISING IN A GLOBAL LANDSCAPE

Cover Story ADVISING IN A GLOBAL LANDSCAPE

Cover Story ADVISING IN A GLOBAL LANDSCAPE

IN CONVERSATION WITH BINDER GRÖSSWANG

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Binder Grösswang Managing Partners Michael Kutschera and Thomas Schirmer

> In some respects, the dust of the financial crisis seems to be beginning to settle in the Austrian market. The last quarter of 2014 and first half of 2015 have, in line with global trends, seen a significant increase in M&A activity to levels not experienced for some time.

Bank restructurings do still dominate headlines, but beyond this the nature of transactions has been shifting. This is a welcome development, say Binder Grösswang Managing Partners Thomas Schirmer and Michael Kutschera, fresh from an IBA Annual Conference Vienna (October 4-9) that brought more than 6000 lawyers to the city. Michael Kutschera chaired the Host Committee of the Conference. It was he who succeeded several years ago in arranging for this year's conference of the world's leading organization of international legal practitioners, bar associations and law societies to be held in Vienna.

Apart from the increase in transactions, the legal environment has also been embedding a new way of doing business. Firms must balance a full service offering with a flexible approach, strong global expertise, top class project management and organizational capabilities, plus awareness of increasingly stringent compliance rules, while also being a pleasure for clients to work with.

"We had quite a number of larger transactions over the past 12 months in Austria where large assets or participations were sold, and we didn't see that really the year before," says Schirmer, adding that "deals during 2015 have involved larger teams and have been more complex. In the second half of 2014 it was already very good but 2015 has been even better." Part of the reason for the complexity and size of the deals is due to banking sector restructurings. One of the biggest of these, where Binder Grösswang has been playing a key role, has been the restructuring of the more than 50 different Volksbanken (co-operative banks) and the transfer of their hub activities from Österreichische Volksbanken AG (ÖVAG), which was transformed into a bad bank, to Binder Grösswang's client Volksbank Wien.

However, beyond this and other bank restructuring work, Schirmer argues that there have been significant asset sales in the banking sector by better-off banks driven by strategic and growth concerns. Kutschera, who focuses on corporate but has a more diversified practice, also notes a change in the market toward larger strategic transactions.

"I have recently been working on three large strategic transactions at the same time and that is something I haven't had for a while. We have had a lot of private equity, followed by sales from private equity to the next private equity house and so on, so I see these strategic transactions as a turn in the industry; it is another type of doing business," he said.

"It is also one where the type of work being solicited and the manner in which it is solicited are different. It is very challenging and, though not necessarily financially, rewarding."

Strategic global deals re-emerge > Many of these strategic deals have taken place outside the banking sector and have reflected global M&A trends. Globally, according to reports published by Deloitte, JP Morgan and Mergermarket, corporates have rebuilt balance sheets, accumulated cash reserves, seen their stock market values rally and are now in a strong position to pursue growth through M&A. Not only that, but they need to pursue M&A to achieve the growth they want. Low oil prices, the currency gap between the Euro and the US Dollar, and the appetite for M&A from Asian corporates have also been driving deal flow and defining the nature of transactions. In 2014, nearly one in four Euros spent on deals in Europe came either from the US or Asia, while M&A from Asia tripled compared to 2013.

Correspondingly, Kutschera and Schirmer note that activity in Austria is being driven by non-European investment, and in particular from the US and Asia. Binder Grösswang meanwhile has managed to stay at the forefront of this M&A market. The importance of inbound investment, strategic transactions and multi-jurisdictional transactions are challenging lawyers in new ways. "I led a transaction which did not come to fruition but was one of the most challenging things I have ever done," says Kutschera. "It would have been the acquisition of a business of which all the components were located outside Europe. We were appointed as lead counsel and coordinated a worldwide due diligence, and together with an American law firm worked on a New York law governed purchase agreement."

Law firms need to get five things right > According to Schirmer and Kutschera, these deals give rise to a number of challenges. The first is the global nature of the work. "You have to have close contacts on a global level," says Kutschera. "You must be in a position to offer advice for every jurisdiction from New Zealand to Chile to South Africa."

With global contacts comes an inherent understanding that the legal world is not the same everywhere, and this poses an initial focus on the due diligence process. "You have to be in a position to request a due diligence report that can give, in the end, a very detailed picture of the business in question, but you must also have the resources to digest these reports," says Kutschera. He stresses the deceptively simple point that when due diligence reports begin to arrive from around the world, you must have someone to read them all and understand their nuances. "It is quite a responsibility because the client will look at you if something pops up. Many clients just do not have the personnel resources to do it in-house."

"The standard is a red flag or an issues report from our side, so it is important not only to have junior lawyers review and summarise documents but that more senior people look at them and do a good summary of the issues they can spot," adds Schirmer.

Even when the clients have extremely sophisticated and significant in-house capacity for these issues, they look to somebody who can tie it all together.

A second factor, a consequence of the financial crisis and strategic deals, is the need for law firms to handle financial, economic and tax analysis. According to Kutschera this is a marked change in the way of doing business where

previously these were delegated to external auditors or tax advisers. “Even when the clients have extremely sophisticated and significant in-house capacity for these issues, they look to somebody who can tie it all together, who can write the clear formula which in the end makes the deal possible.” Added to this, says Schirmer, is that issues that come up in the due diligence reports need to be given a value, and this again places an onus on the law firm to understand the economics of business.

A third and increasingly critical challenge is effective project management so that efforts are not duplicated and efficient relations are maintained with international counsel.

Good project management skills are also needed for a much simpler reason: e-mails. The sheer weight of e-mails in complex multi-jurisdictional deals is staggering. “Nowadays in transactional work you receive so many e-mails per hour that you have to find new ways to communicate and separate the important things from the less important ones,” says Schirmer.

Clients expect experience and they expect you to have advice ready at hand.

A fourth factor is the stricter compliance and liability environment faced by corporations, their directors and law firms. “These days everybody has special controlling bodies round his or her neck, there is an enormous competitiveness and mistakes are not forgiven,” says Kutschera. The compliance environment has created more scrutiny and, says Kutschera, “can hold management responsible for unfortunate developments.”

“I would believe that ten years ago the director of a company engaging in a transaction might have been more amenable to say well, maybe this is a bit unfortunately phrased but what we really meant was something different, but this is no longer the case,” he adds.

A fifth crucial challenge is the staffing of deals and the client demand for senior input. As in-house legal departments have become smaller and efficiency has become a buzz word, there is less time for lawyers to discuss potentially trivial aspects of due diligence, for instance. According to Schirmer and Kutschera, clients do not want to be burdened with trifles. “Clients want presentations in concise and clear language limited to the essentials and they want the law firm to take the responsibility that whatever is not mentioned is a trifle,” says Kutschera. The nature of complex restructurings has also put the focus on senior lawyers. “Clients expect experience and they expect you to have advice ready at hand”, says Schirmer. Added to this is the increasing need for speed in modern deals. “Legal work is much faster than it was five years ago, every transaction is faster, everyone expects the lawyer to have an answer ready immediately or very quickly, and also for that reason more senior attention is requested. They don’t tolerate delay,” says Kutschera. “Otherwise you are out.”

A healthy culture is the key to success > Austrian law firms, along with many of their clients, have been through some uncertain times and the market has seen a fair number of diverging growth strategies and spin-offs, in some cases with the departure of one partner but in others the loss of an entire department. However, as Schirmer stresses, Binder Grösswang has continued to grow through this period at both partnership and associate level. Both he and Kutschera believe that the firm was spared these problems thanks to having a strong culture in which teams work well together.

“A positive and friendly spirit is the culture to which we aspire,” says Kutschera. “What we want to achieve is for our clients to find it a pleasure to work with us. We want to make the client feel that she or he is really supported and that we are loyal to them, that we are willing to take responsibility, we are willing to give advice and stand to it.” Kutschera adds that such a culture is important in order to attract the best talent. “Everybody knows we all work hard; everybody works hard here and it is to be expected from everybody. But at the same time working hard doesn’t mean being treated badly.” According to Schirmer: “We hear that we have exactly that reputation in the market because we have been establishing that culture for decades.”

A positive and friendly spirit is the culture to which we aspire. What we want to achieve is for our clients to find it a pleasure to work with us. We want to make the clients feel that we are loyal to them.

One cause for the spin-offs from large firms, says Schirmer, is that some lawyers cannot cope with a rigidly centralized structure. “You do have to delegate power to a centralized management or board to centralized administrative functions, but law firms like ours have to keep some flexibility,” he says. Another cause, which is an eternal issue not specific to Austria, has been that experienced mid-level lawyers can become frustrated at a perceived slow rate of promotion. The fact is, says Kutschera, that “if you see to it that you have only the best talent in your firm, despite growth, which we have fortunately experienced, the growth will not be such that every talented lawyer gets to be partner eventually.”

To tackle these issues, firms can manage the intake of lawyers flexibly, for instance allowing the various internal teams and departments to respond to personnel needs and encourage junior lawyers to experience different departments, making life for them interesting while balancing out resources where needed. These approaches help to manage capacity at busy and less busy times. The firm has also been active in creating flexible work arrangements for lawyers to give them the ability to value family time without losing touch with work. ●

GUEST COMMENTARY

From the Opening Ceremony and Party to the Viennese Ball that closed the week, the IBA annual conference in Vienna was a stunning success. It included a remarkable array of outstanding speakers and sessions. When else has an IBA conference ever been addressed by a former UN Secretary General, three former heads of government and three Nobel Prize winners? The conference brought to Vienna 6000 delegates from more than 135 countries and provided an extraordinary opportunity to share insights, experiences and the latest developments in every field of law.

This success was created by the hard work of the officers of the IBA’s divisions, sections and committees, the IBA staff and the Vienna Host Committee, headed by Michael Kutschera of Binder Grösswang. As President, I had the honor to present annual IBA awards to three outstanding lawyers who should inspire us all to do more. We were honored by former UN Secretary General Kofi Annan, who spoke at two of our showcase sessions. He argued forcefully that lawyers can influence society, governments and their clients to enhance respect for human rights, and that companies do not prosper in a society that fails. Several general counsel who followed him confirmed that companies must do more than comply with statutory law and regulations. They must do the right thing and avoid impacts on human rights.

The IBA Council approved an important resolution adopting the IBA’s Guidance for Bar Associations on Business and Human Rights. It recognized the need for lawyers to understand the UN Guiding Principles on Business and Human Rights (UNGPs) and other human rights standards in order to advise clients on their impact and to be able to follow them in their own right as businesses.

The showcase session on the IBA’s Judicial Integrity Initiative brought together judges, lawyers and representatives of various organizations that have been fighting corruption around the world. They offered many insights into the causes of judicial corruption and potential solutions.

I was delighted that the IBA provided the excellent food that was left over at the conference center and at IBA events to the refugees who had reached Vienna. I was also happy to learn of various efforts by bar associations and individual lawyers to assist the refugees everywhere, and I hope that all lawyers can think of ways to provide much needed legal assistance.

I look forward to seeing everyone at next year’s annual conference in Washington, September 18-23, 2016. We will work to make it even bigger and better than this year’s successful Vienna conference.

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David W. Rivkin
President, International Bar Association
Partner, Debevoise & Plimpton LLP

COMPLIANCE – THE NEVER-ENDING STORY

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We all praise the importance of robust, state-of-the-art compliance management systems for the sustainable success of a corporate organization. We also know that predominantly internationally-oriented companies have long since introduced and implemented compliance programs, internal training and guidelines, internal audits, as well as monitoring and enforcement measures. What is striking, though, is the fact that despite all the hard law with its massive sanctions, and all the strict internal "rules", an organization sometimes arrives at a crossroads – and seldom of its own volition. Often, external shocks reveal management decisions that, even in hindsight, are not at all comprehensible. Clear violations of product regulations, in the worst case perhaps even fraud or other white-collar crime, come to the fore, leaving stakeholders and external observers in disbelief and, depending on the personal interests involved, angst, frustration or even anger. At this stage, one could quote the philosophers of the postmodern era, engage in ethical debate, or do what one is supposed to do in emergency situations: make a U-turn, appoint a new management team, collaborate with public authorities and affected stakeholders, ensure a thorough internal investigation throughout the organization, and reach out to the market in an attempt to restore confidence in the brand. Thus, change management is borne, and consultants of all sorts of professions are hired with the aim of rebuilding the former success story, ideally with as little collateral damage as possible. What is evident even in this early phase of the process is: the organization will have to change, and will eventually change… [the next chapters of this story are still under construction].

Why am I telling you all this? The impetus is by no means a sense of ethical supremacy or – even worse – schadenfreude. Rather, the message is, and must be, hope for a brighter future with restored trust and a rebuilt reputation, probably only after a flood of legal proceedings of various types, and, at the end of the day, compliance instruments at hand that are well-designed and do not over-bureaucratize internal procedures: a compliance department and internal working processes that have been redesigned to an effective normal state. In this regard, seen from the Plan, Do, Check, Act paradigm: business as usual. Compliance work has its dynamics – what else.

Compliance in der Unternehmenspraxis

Let me briefly make you familiar with our brand-new book "Compliance in der Unternehmenspraxis". Numerous members of our law firm have contributed to an introductory publication on corporate compliance with a particular emphasis on the application of the Austrian legal system. We are excited about almost 400 pages in which we share our passion for compliance.

Johannes Barbist
Binder Grösswang
Regulatory/Compliance Team

SOME TRANSPARENCY ON THE TRANSPARENCY DIRECTIVE – ADDITIONAL FINANCIAL ADMINISTRATIVE SANCTIONS IN AUSTRIA

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Administrative Sanctions in Austria
The European institutions have adopted amendments to the Transparency Directive 2004/109/EC ("TD"). The changes regarding the major shareholding disclosure regime are of interest to listed companies and to their investors, and will enter into force in Austria as amendments to the Austrian Stock Exchange Act on 26 November 2015.

The TD required the disclosure of voting rights held by a shareholder if such rights reached or exceeded a certain threshold (in Austria this was 4% or, if set out in a company's articles of associations, 3% of the total voting rights of an issuer). The TD originally applied only to physical shareholdings and instruments providing the holder with an entitlement to acquire shares on such holder's own initiative (such as physically settled derivatives), meaning that under the former TD disclosure regime, it was possible to acquire, through cash-settled derivatives, an economic exposure to listed shares in excess of the thresholds without disclosure. This technique, so-called "secret stakebuilding", was used, for example, in the course of the acquisitions of the Swiss group Sulzer-Oerlikon, the German groups Porsche VW and Schaeffler-Continental, and the Austrian group Telekom Austria.

The EU has amended the TD to cover the scenario outlined above. Following a review of the TD by the European Commission, the Transparency Directive Amending Directive 2013/50/EU ("TDA") was adopted, and has to be transposed into national law in the Member States by 26 November 2015. The TDA introduces, among other changes, a disclosure requirement for holdings of financial instruments having an economic effect similar to holding issued voting shares, as well as a requirement that holdings of shares be aggregated with holdings of financial instruments. However, as the Austrian major shareholding disclosure regime already has been more extensive than required by the TD since 2013, e.g. in that it has already required the aggregation of voting rights and, for all practical purposes, also, the disclosure of (certain) financial instruments with a similar economic effect, there will be only limited changes made to the principles of the major shareholding disclosure regime in Austria as such.

In addition, to improve compliance, the TDA sets out minimum powers to enable competent authorities (i.e. in Austria, the FMA) to enforce key provisions of the TDA, and this will have practical impacts in Austria. As of 26 November 2015, the FMA will be able, in particular, to impose the following sanctions in the event of a breach:

– a public statement indicating the person/entity responsible and the nature of the breach ("blame and shame");
– an order requiring a person/entity to cease the conduct and desist from repetition thereof;
– financial administrative sanctions:
for a **legal entity**, up to EUR 10 million or up to 5% turnover or up to twice the advantage;
for a **natural person**, up to EUR 2 million or up to twice the advantage;
– a suspension of voting rights.

Compared to the pre-TDA situation, this means, in particular, a heavy increase in the scope of the administrative financial sanctions, since prior to the TDA, financial sanctions could only be imposed up to the (formerly lower) maximum amount of EUR 150,000.

Florian Khol,
Hemma Parsché
Binder Grösswang
Capital Markets Team

ECJ DECLARES SAFE HARBOR AGREEMENT INVALID

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Background
In 2013, the Austrian Maximillian Schrems filed a complaint to the Irish Data Protection Commissioner in which he, in essence, asked the latter to exercise his statutory powers by prohibiting Facebook Ireland from transferring Schrems' personal data to the US. This transfer to Facebook, Inc. was based on the "US-EU Safe Harbor Decision" of the European Commission (2000/520/EC), according to which companies participating in the Safe Harbor framework were assumed to be operating at an "adequate" data protection level. Schrems claimed that the law and practice in the US did not ensure such adequate protection in reality, due to the surveillance activities of the US intelligence services, in particular those of the NSA. The Irish Data Protection Commissioner took the view that he was not required to investigate the adequacy of such protection since the European Commission, in the Safe Harbor Decision, had found that the US ensured an adequate level of protection. The Irish High Court subsequently held that the mass and undifferentiated accessing of personal data in the US constituted a violation of the Irish Constitution and asked the ECJ for a preliminary ruling.

Judgement
On 6 October 2015, the ECJ issued its judgment (ECJ C-362/14), ruling that national data protection authorities may independently review the adequacy of the data protection level of non-EEA member states. Additionally, even though Schrems did not formally contest the validity of the Safe Harbor Decision and the Irish High Court did not explicitly ask for a preliminary ruling on this issue, the ECJ declared the Commission's Safe Harbor Decision to be invalid.

Implications
As a consequence, as of 6 October 2015, data transfers to the US in reliance on the Safe Harbor regime are unlawful. Until then, Safe Harbor potentially served as a legal basis for the transfer of data from Europe to over 4,500 US companies. In particular, companies with headquarters in the US strongly relied on this legal basis for intra-group data transfers. Furthermore, numerous European companies save data on servers or in clouds based in the US or are using IT systems that process data in the US. The vast majority of these service providers were also operating under the Safe Harbor regime.

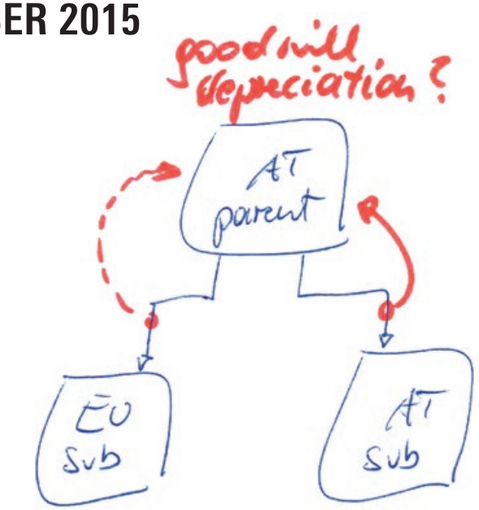
Solution
Businesses that relied on Safe Harbor will have to find alternative solutions. One possibility is for transferor and transferee to conclude the Standard Contractual Clauses published by the EU Commission. According to the "Article 29 Working Party", which comprises members of all EU Data Protection Authorities (DPAs), this is still regarded as an effective transfer basis. Furthermore, intra-group data transfers, in particular, can be based on Binding Corporate Rules (BCRs), which, however, need to be approved by the DPAs before implementation.

Legal Situation in Austria
Under Austrian law – contrary to the legal situation in most other EU member states – the invalidation of Safe Harbor has the effect that any data transfer to the US will generally require prior approval by the Austrian DPA. Even if companies base data transfers on Standard Contractual Clauses or BCRs, such approval is required.

Since only few exemptions from this approval obligation exist (e.g. explicit consent of the data subject), many Austrian companies that transfer data to the US will have to initiate the approval process with the DPA. It is to be expected that the duration of approval proceedings will be prolonged accordingly. This may cause substantial delays and interruptions for Austria-US data transfers.

Angelika Pallwein-Prettner
Binder Grösswang
Data Protection

ECJ TAX LAW DECISIONS IN OCTOBER 2015



IFN-Holding, ECJ 6 Oct 2015, C-66/14
When the group taxation rules were introduced in 2005, a depreciation of goodwill over a period of 15 years with respect to participations held in group member companies was permitted. This type of depreciation was intended to make share deals more similar to asset deals when, in the context of share deals, no step-up of the underlying assets was possible. The goodwill depreciation was capped with 50% of the acquisition costs; goodwill was, for those purposes, defined as acquisition costs minus equity and hidden reserves in non-depreciable assets.

Under Austrian law, this goodwill depreciation was abolished for acquisitions taking place after 28 February 2014 in light of doubts as to whether the concept violated EU law, given that the goodwill depreciation was only allowed with respect to Austrian tax group members and not with respect to foreign subsidiaries. Those doubts were backed by a decision of a tax tribunal (UFS 16 April 2013, RV/0073-L/11), against which the revenue authorities appealed. The Austrian Administrative Court (Austria's highest tax court) filed a preliminary ruling request with the European Court of Justice (ECJ), asking not only whether the EU fundamental freedoms were at stake, as concluded by the tax tribunal, but also whether the goodwill depreciation could constitute a prohibited state aid.

In October 2015, the ECJ ruled that the goodwill depreciation did violate the EU freedom of establishment, but did not constitute a state aid. For fiscal years that are still open, Austrian corporates have to determine whether they may ask for goodwill depreciation with respect to foreign subsidiaries.

David Hedqvist, ECJ 22 Oct 2015, C-264/14
Bitcoins are used to buy goods or services or to exchange traditional currencies for Bitcoins for future payments or as an investment. In the last two years there was heavy debate on whether the exchange of Bitcoins itself was a supply or a service subject to VAT.

In the Hedqvist case, the ECJ ruled upon exactly this question. Mainly, the ECJ looked into how the various exemptions provided for in Article 135(1) EU VAT Directive apply to the exchange of traditional currency into Bitcoins. Generally those exemptions apply to traditional currencies that are used as legal tender. However, the ECJ concluded that the exemption contained in (e) of said Article also applies to Bitcoins, since the intention of (e) was to "alleviate the difficulties connected with determining the taxable amount and the amount of VAT deductible which arise in the context of the taxation of financial transactions" (para 48 of the judgement).

A number of fiscal authorities in the EU had taken the position that the exchange of Bitcoin against currency was a taxable transaction and not tax exempt, as Bitcoin is not a legal tender. This would have had the consequence that VAT would have been a cost in any Bitcoin transaction with consumers and, as a result, the Bitcoin business would have ceased to exist in the EU.

Acknowledging that Bitcoin transactions are viewed with scepticism by both revenue and homeland security authorities, it should be highly welcomed that due to the ECJ ruling in Hedqvist, the Bitcoin business is not being pushed out of the EU, but rather remains part of our economy and therefore can be scrutinized and observed better than if it were to leave good old Europe.

Like it or not, Bitcoin, a private means of payment, may be the currency of the future. You could say, therefore, that the ECJ has brought us "back to that future" one day after October 21, 2015.

BINDER GRÖSSWANG has advised a number of Bitcoin businesses along the lines of the ECJ ruling, including Coinfinity, operator of the first Bitcoin ATM in Austria.

Christian Wimpissinger
Binder Grösswang
Tax Team

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BINDER GRÖSSWANG WELCOME RECEPTION AND GALA DINNER

On the evening before the opening of the IBA Annual Conference 2015 in Vienna, Binder Grösswang held a welcome reception and gala dinner at The House of Industry. 170 international lawyers accepted the invitation to this enjoyable event and joined the Binder Grösswang partners in toasting to a successful week in Vienna.

IBA 4-9 October 2015
VIENNA
BINDER GRÖSSWANG





























On the occasion of the IBA Annual Conference 2015 in Vienna, Binder Grösswang opened its doors especially early on 6 October so that about 300 international guests could start the day with breakfast in a relaxed, cheerful atmosphere. It was a great opportunity to meet and exchange views with the Binder Grösswang team while enjoying a variety of Viennese culinary specialties.

BINDER GRÖSSWANG BREAKFAST



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RANKINGS

IFLR1000, Edition 2016, Financial and Corporate

IFLR1000 has launched the Financial and Corporate Rankings 2016 and lists Binder Grösswang again as one of the leading law firms in Austria in the areas of Banking, Capital Markets and M&A: "Traditionally, Binder Grösswang is known for its excellent banking practice, but it has a strong corporate team that has grown more noticeable on the market's bigger deals. Some excellent client feedback and work on deals at the top end of the market sees Binder join Tier 1 for M&A.

"Flexible, always reachable (seems that they are working 24 hours a day), reliable and always to the point," says one client of the corporate team. "Good preparation, pragmatic execution, efficient communication, thorough follow-up. They felt almost like part of our internal team," is another client's feedback on the M&A team. The team secured roles on a number of high profile M&A deals", writes IFLR1000.

JUVE Ranking Corporate/M&A

The latest issue of the Austrian edition of the German law journal JUVE – Magazin für Wirtschaftsjuristen (September/October 2015) presents an evaluation of Austrian law firms operating in the field of Corporate/M&A. Binder Grösswang is listed as a leading law firm:

„Kaum ein Deal, bei dem diese im Gesellschaftsrecht/M&A führende Kanzlei zuletzt nicht dabei war. Sei es die Beratung von Wendel beim Kauf von Constantia Flexibles - die größte Transaktion des Jahres 2014 -, der Verkauf von Magna Steyr Battery Systems oder die Begleitung von Lenzing bei mehreren Transaktionen: Überall haben die Anwälte von Binder Grösswang eine zentrale Rolle übernommen. Immer wieder profitiert die Kanzlei von ihren exzellenten Kontakten zu ausländischen Sozietäten, die das Team als local Counsel hinzuziehen. Doch kann sich BG auch auf eine sehr starke innerösterreichische Mandantenbasis verlassen. Dass es zugleich noch gelingt, mit der Restrukturierung des Volksbankensektors eines der größten gesellschaftsrechtlichen Mandate des Jahres zu betreuen, liegt nicht zuletzt an der konsequenten Weiterentwicklung der Praxis, die neben etablierten zunehmend jüngere Partner an vorderste Front bringt."

Chambers Europe 2015 on Competition

Market-leading competition team held in high esteem by peers and clients alike. Active on the full range of antitrust matters, and recognised for its involvement in major vertical agreement investigations as well as private enforcement and merger control proceedings. Particularly active in abuse of dominance cases of late.

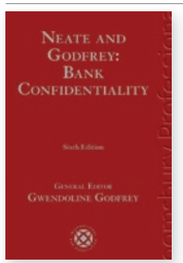
"The team is easy to reach and gets the work done. It has a deep understanding of the mechanics of the industry, for example who the relevant people are to speak to, and understands how the cartel court works. I have an excellent impression of the firm."

The Legal500 2015 on Dispute Resolution

Undoubtedly one of the leading firms, Binder Grösswang routinely represents clients from the IT, automotive, transport and utilities sectors, and has been defending a number of clients in financial services industry litigation.

Financing Company Group Restructurings

Binder Grösswang partners Gottfried Gassner and Thomas Schirmer are authors of the Austrian chapter. This book provides the first comprehensive treatment of out-of-court restructuring and post-commencement insolvency financing in the corporate group setting, domestically and internationally. Edited by Gregor Baer and Karen O'Flynn, Oxford University Press, 2015



Neate and Godfrey: Bank Confidentiality

This book deals with the duties or obligations of confidentiality or secrecy which banks owe to their customers in 37 countries around the world. Stefan Tiefenthaler and Emanuel Welten are authors of the Austrian chapter. The ways in which banks may be obliged to disclose information in court proceedings - or to assist the authorities in combating money laundering or the funding of terrorism and wider international anti-money laundering initiatives - are considered. Bloomsbury Professional, 6th edition 2015

UP TO DATE **DEALS**

VOLKSBANK RESTRUCTURING SUCCESSFULLY COMPLETED

A major milestone in the restructuring of the Volksbank sector has been successfully achieved: Effective as of July 2015, the central organization of Österreichische Volksbanken AG (ÖVAG) was de-merged and transferred to Volksbank Wien-Baden AG, and a new association of Volksbank (with a joint liability scheme) was established. Following the stress test conducted by the European Central Bank (ECB) in October 2014, which showed that the Volksbanken association had an aggregate capital shortfall of EUR 865 million, the Volksbank sector decided to undergo a major restructuring under considerable time pressure. ÖVAG, previously the central institution of the sector, was transformed into the run-down company immigon portfolioabbau ag as of 4 July 2015; it is to be wound down by 2017. As a result of the de-merger, the assets of the core business (balance sheet total: approx. EUR 8.65 billion) and the service units of ÖVAG were transferred to Volksbank Wien-Baden AG, which will now serve as the body of a new, strengthened, joint-liability Volksbank association. The more than 40 previously existing Volksbank institutions (balance sheet total: approx. EUR 30 billion) are to be merged into eight regional Volksbank institutions and two specialized banks by 2017. The Binder Grösswang team led by senior partner **Michael Binder** together with partner Stephan Heckenthaler (both: Banking & Finance, Banking Supervisory Law) and Gottfried Gassner (Corporate/M&A) advised Volksbank Wien-Baden and the Volksbank association in this challenging restructuring process from the beginning. Thereby, Binder Grösswang once again demonstrated its expertise in dealing with complex projects involving banking supervisory law and corporate law.

COUNSEL TO MACQUARIE ON THE ACQUISITION OF A STAKE IN ESTAG

Macquarie Infrastructure and Real Assets acquired a 25% stake in Energie Steiermark AG (ESTAG) from EDF International SAS. The purchaser Macquarie European Infrastructure Fund IV (MEIF4) is a specialist infrastructure fund focused on long-term investments. ESTAG is the fourth-largest energy distribution company in Austria.
As the local legal counsel, Binder Grösswang advised purchaser Macquarie on the Austrian legal aspects of the transaction. The Binder Grösswang team was led by **Andreas Hable**, Michael Kutschera (both: Corporate/M&A) and Johannes Barbist (Regulatory).
The transaction is still subject to the relevant antitrust clearance. The closing of the transaction, expected before year end 2015, also requires the signing of a new shareholders' agreement between Macquarie and the Province of Styria, ESTAG's controlling shareholder.

ARDIAN ACQUIRED ESIM CHEMICALS

Binder Grösswang, with lead partners Thomas Schirmer and Andreas Hable, was the Austrian counsel to the French private equity company Ardian (former Axa Private Equity) on the acquisition of the agrochemicals and fine chemicals business activities of DPx Holdings B.V., based in Chemie-Park Linz, Austria, after its carve-out into ESIM Chemicals GmbH. ESIM is a leading European chemical manufacturer in the respective market segments, with a 75-year tradition of translating the latest research results into scalable intermediates and end products. This transaction was one of the largest M&A transactions in 2015, and due to its structure with a prior carve-out one of the most complex.

SUCCESSFUL CAPITAL INCREASE OF OBERBANK AG

For the second time this year, Binder Grösswang capital markets partner Florian Khol and his team advised the listed Oberbank AG on a successful capital increase. The entire planned volume of approx. EUR 73.7 million was successfully placed, showing that there is a demand for shares in Austrian banks despite the difficult market environment. The new shares have been listed on the Wiener Börse since October 2015.
In the course of this capital increase, Oberbank AG issued a total of 1,535,100 new no-par bearer shares, thereby increasing its share capital to EUR 96.7 million. Due to the fact that CABO-Beteiligungsgesellschaft m.b.H., a 100 % subsidiary of Bank Austria, did not exercise its subscription rights, a considerable volume was available for placement in the market, which brought in numerous new shareholders.

NOVOMATIC MAKES BINDING OFFERS FOR SHARES IN CASINOS AUSTRIA

Binder Grösswang is advising Novomatic AG, Europe's largest gaming technology group, in regard to their acquisition of a stake in Casinos Austria AG, the holder of the exclusive national lottery and casino licenses in Austria. The conclusion of the transaction remains subject to various permissions governed by public law as well as by company law and to formal approval requirements
The Binder Grösswang team consisted of partners **Raoul Hoffer** and Christine Dietz (both: Competition Law).

Career Moves WELCOME ON BOARD

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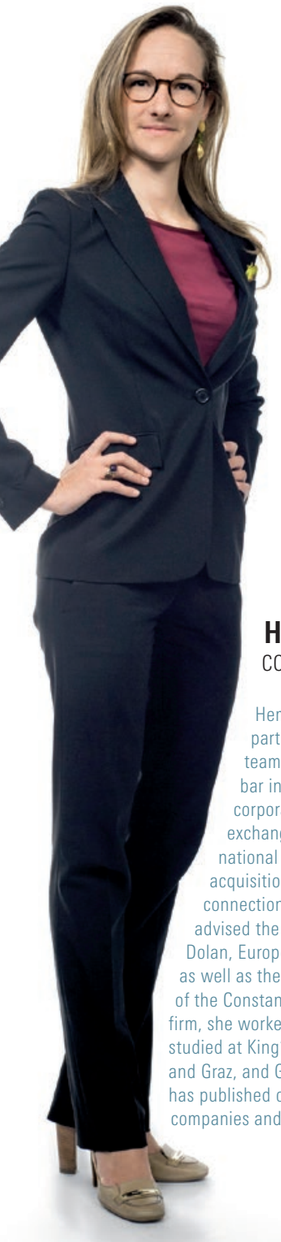
CAREER MOVES



CLAUDIA FOCHTMANN
CORPORATE/ M&A

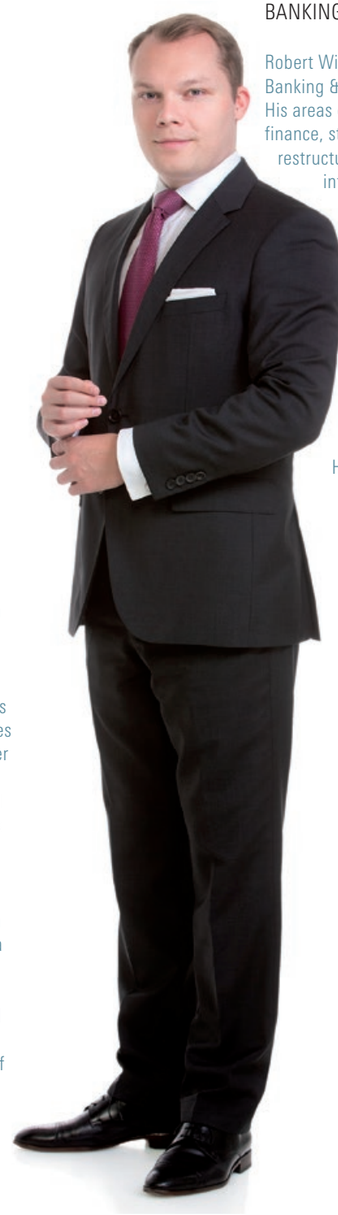
Claudia Fochtmann has supported Binder Grösswang's Corporate/M&A team since 2011 as an associate. She was admitted to the bar in June 2015. Her areas of expertise are mergers & acquisitions, corporate law, restructurings and reorganizations. She advises national and international investors, companies and banks on complex reorganizations. Prior to joining the firm, she worked in the legal department of Pfizer Corporation Austria GmbH. She studied at the University of Vienna.

HEMMA PARSCHÉ
CORPORATE / M&A

Hemma Parsché, LL.M. (London) has been part of Binder Grösswang's Corporate/M&A team since 2012 and was admitted to the bar in June 2015. She specializes in M&A, corporate law, stock corporation law, stock exchange law and takeover law, and advises national and international clients on the acquisition and sale of companies, particularly in connection with bidding processes. Recently she advised the Austrian Lenzing group on the sales of Dolan, European Carbon Fiber and Lenzing Plastics, as well as the French Wendel group on the acquisition of the Constantia Flexibles Group. Prior to joining the firm, she worked as a junior associate with Schönherr. She studied at King's College London, the Universities of Vienna and Graz, and Griffith University in Brisbane. Hemma Parsché has published on topics relating to compliance in listed companies and takeover law.

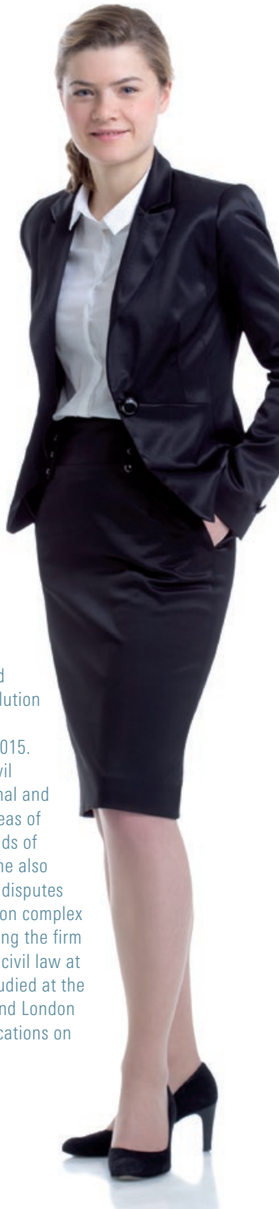
ROBERT WIPPEL
BANKING & FINANCE

Robert Wippel strengthens Binder Grösswang's Banking & Finance team as an attorney at law. His areas of specialization are banking and finance, structured finance, project finance and restructurings, and he advises national and international companies and financial institutions on complex finance transactions. In particular, Robert has broad expertise with respect to cross-border financings in CEE. Robert was admitted to the bar in December 2014. Before joining Binder Grösswang, he was an associate on the Finance team of Freshfields Bruckhaus Deringer LLP. He received his legal education at the University of Vienna, the University of St. Gallen and the Max Planck Institute in Hamburg.



MARTINA ROMMER
BANKING & FINANCE

Martina Rommer, LL.M. (Durham) was admitted to the Austrian bar in September 2015. She specializes in banking and finance, in particular project finance, real estate finance and acquisition finance, and advises national and international corporates and banks in relation to cross-border transactions. Before joining Binder Grösswang in 2015, Martina gained extensive experience at Wolf Theiss and DLA, and worked as a trainee for the Austrian Trade Commission in New York. She studied at the University of Vienna and at Durham University, UK, and participated in a student exchange programme with Santa Clara University, California, USA, as well as in the study abroad programmes of Moscow State University and the London School of Economics and Political Science in Moscow and Beijing, respectively.



DIANA HOLZINGER
DISPUTE RESOLUTION

Diana Holzinger LL.M. (LSE) joined Binder Grösswang's Dispute Resolution team as an associate in 2012 and was admitted to the bar in April 2015. She specializes in civil law and civil procedural law and advises national and international companies in key areas of business law. One of her main fields of expertise is the banking sector. She also has broad experience in handling disputes before the courts and in advising on complex contractual disputes. Prior to joining the firm she was a university assistant for civil law at the University of Salzburg. She studied at the Universities of Vienna, Salzburg and London and is the author of various publications on Austrian civil law.

SEASON'S GREETINGS

The year 2015 has been an eventful and exciting one. **Thank you for the trust that you placed in us this year.** Together we have achieved a great deal, and together we can achieve a great deal more. Of that we are convinced. This conviction is a defining characteristic of our firm's culture, both internally and externally. Binder Grösswang is also committed to helping people who need help the most. People who have had to flee war, violence and persecution. With the programme "We Care", we have placed a focus on social corporate responsibility and will be generously supporting current refugee aid projects. For this reason, we have once again decided not to send out holiday greeting cards this year. **We wish you and yours a joyous holiday season and a Happy New Year 2016.**