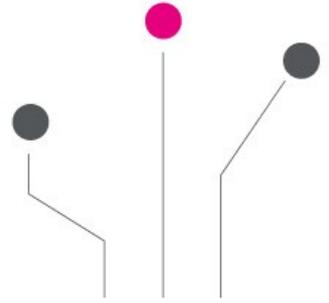


## to the point technology & digitalisation



December 2019

### Preface

- **How Technology is shaping our future**  
Technology brings unprecedented opportunities, opens up new business models and changes our everyday lives. Technology is ubiquitous. But technology projects are also complicated, expensive and long-term. And above all, there is the shadow of cybercrime and possible market abuse through technology.

Schoenherr's "technology & digitalisation" group ([tech.schoenherr.eu](http://tech.schoenherr.eu)) is made up of focused, specialised lawyers from all over CEE, striving to improve the way technology-related challenges can be tackled. We will regularly be informing you of important legal developments in this area. And so, I present the second edition of our "to the point"-newsletter. Enjoy reading it and follow us on [LinkedIn](#)



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### Cybercrime on the rise (again)

- over 13,000 cybercrimes reported to the Austrian police in the first six months of 2019
- increase of cybercrime offences by over 50% compared to the previous-year period
- online fraud increased by over 30% compared to the previous-year period
- clearance rates are still low
- cybercrime as the biggest challenge according to the authorities

Source: [www.bundeskriminalamt.at](http://www.bundeskriminalamt.at)

### To the Point:

- **Golden Rules for IT Procurement**  
Procuring IT systems is an increasingly complex and important task. Virtually all companies nowadays depend on their IT systems. It goes without saying that their procurement should be well planned. Skilled IT lawyers can provide support in this task, offer valuable input and guidance, take over responsibility for the legal aspects and enable the procurement departments to focus on their core tasks. We have put together a short and easy to follow list of "golden rules", which, among other things, will guide procurement departments on when to involve a lawyer and how, advise you on the legal aspects to consider before sending out an RfP and on putting together the negotiation team, and explain which party's sample contracts are to be used.

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[Wolfgang Tichy](#)

- **Cybercrime and Protection Under Criminal Law**

The Austrian Criminal Code contains various provisions to counter cybercrime. One of the main advantages of criminal proceedings in this regard is that the authorities can apply investigation measures which are not available to private persons, such as gathering certain information on IP addresses used by the perpetrator or house searches. Thus, victims may gather evidence which would otherwise not be available. In addition, criminal proceedings are a very economical way to seek compensation for damages from the perpetrator, in particular since victims do not have to pay court fees for participating in criminal proceedings.

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[Michael Lindtner](#)

- **Hungary removes restrictions on selfie-based KYC in financial services**

In October 2019, Hungary removed important restrictions on the so-called non-real-time customer due diligence (KYC) conducted by service providers such as credit institutions and financial institutions. So far, non-real-time KYC could not be applied in a number of cases, such as for transactions above certain limits, and transfers to or from outside the EU. Now, if the service providers comply with a set of requirements in the KYC process, the above restrictions do not apply.

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[Marton Gervai](#)

- **Esports: legal challenges and taxation in Austria**

Today there are international tournaments almost all over the world where the best esports players compete. Due to their increasing popularity, the prize money has also risen dramatically in recent years. Naturally this means the Austrian government is now concerned about whether esports should be qualified as a sport and how the prize money should be taxed. In our latest [Legal Insight](#), we take a closer look at esports and in particular the taxation of tournament winnings. Check it out.

[Maja Petrovic, Maximilian Nutz](#)

- **Update on Artificial Intelligence and Competition Law**

On 6 November 2019, the German Cartel Office and the French Competition Authority published a [joint report on the competition risks resulting from the use of algorithms](#). The Report tackles four main issues: (i) it explains that algorithms can be used as "facilitators" in "traditional" horizontal collusion; (ii) it explores collusion between competitors involving a third party, e.g. where an external consultant provides the same algorithm or coordinated algorithms to competitors; (iii) it elaborates on aspects such as self-learning algorithms and explains several ways in which an algorithm can establish interaction that may cause horizontal collusion; and (iv) it discusses the practical challenges of investigating algorithms.

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[Christoph Haid](#)

- **New Rules for Digital Content & Sale of Goods**

Consumer Protection is one of the strategic goals of the EU. The Sale of Goods Directive and the Digital Content Directive entered into force on 11 June 2019 to provide European consumers a high level of protection and legal certainty as well as create common warranty rules in the EU. Remarkably, the Digital Content Directive may also apply when the consumer does not pay for the service. By 1 July 2021, Member States are obliged to adopt necessary regulations into their national laws to comply with these Directives, which will apply from 1 January 2022.

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[Serap Aydin](#)

- **Payment Services Directive 2 (PSD2) – Paving the way for Open Banking**

The revised Payment Services Directive (PSD2) paved the way for Open Banking, requiring banks and other financial institutions to share customer banking data for free with third-party providers (TPP), i.e. Payment Initiation Service Providers (PISP) and Account Information Service Providers (AISP) from 14 September 2019. This will make the banking experience increasingly customer-centric and present challenges for traditional banking models. Many FinTechs are currently developing or already offering new types of services based on their access to bank transaction data. However, certain regulatory and technical issues will need to be resolved before Open Banking is embraced by the broader public. For example, access for TPP to user data stored with credit institutions via application programming interfaces (APIs) does not yet work seamlessly in all circumstances. The Austrian Financial Market Authority (FMA) will therefore continue to accept older (and less secure) access methods (including "screen scraping") by TPPs until the major technical difficulties have been resolved.

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[Matthias Pressler](#)

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