THE INTERNATIONAL INVESTIGATIONS REVIEW

NINTH EDITION

Editor
Nicolas Bourtin

THE LAWREVIEWS

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PREFACE

In the United States, it is a rare day when newspaper headlines do not announce criminal or regulatory investigations or prosecutions of major financial institutions and other corporations. Foreign corruption. Healthcare, consumer and environmental fraud. Tax evasion. Price fixing. Manipulation of benchmark interest rates and foreign exchange trading. Export controls and other trade sanctions. US and non-US corporations alike have faced increasing scrutiny by US authorities for several years, and their conduct, when deemed to run afoul of the law, continues to be punished severely by ever-increasing, record-breaking fines and the prosecution of corporate employees. And while in the past many corporate criminal investigations were resolved through deferred or non-prosecution agreements, the US Department of Justice has increasingly sought and obtained guilty pleas from corporate defendants. While the new presidential administration in 2017 brought uncertainty about certain enforcement priorities, and while US authorities in 2018 announced policy modifications intended to clarify or rationalise the process of resolving corporate investigations, the trend towards more enforcement and harsher penalties has continued.

This trend has by no means been limited to the United States; while the US government continues to lead the movement to globalise the prosecution of corporations, a number of non-US authorities appear determined to adopt the US model. Parallel corporate investigations in several countries increasingly compound the problems for companies, as conflicting statutes, regulations and rules of procedure and evidence make the path to compliance a treacherous one. What is more, government authorities forge their own prosecutorial alliances and share evidence, further complicating a company's defence. These trends show no sign of abating.

As a result, corporate counsel around the world are increasingly called upon to advise their clients on the implications of criminal and regulatory investigations outside their own jurisdictions. This can be a daunting task, as the practice of criminal law – particularly corporate criminal law – is notorious for following unwritten rules and practices that cannot be gleaned from a simple review of a country's criminal code. And while nothing can replace the considered advice of an expert local practitioner, a comprehensive review of the corporate investigation practices around the world will find a wide and grateful readership.

The authors who have contributed to this volume are acknowledged experts in the field of corporate investigations and leaders of the bars of their respective countries. We have attempted to distil their wisdom, experience and insight around the most common questions and concerns that corporate counsel face in guiding their clients through criminal or regulatory investigations. Under what circumstances can the corporate entity itself be charged with a crime? What are the possible penalties? Under what circumstances should a corporation voluntarily self-report potential misconduct on the part of its employees? Is it a

realistic option for a corporation to defend itself at trial against a government agency? And how does a corporation manage the delicate interactions with employees whose conduct is at issue? *The International Investigations Review* answers these questions and many more and will serve as an indispensable guide when your clients face criminal or regulatory scrutiny in a country other than your own. And while it will not qualify you to practise criminal law in a foreign country, it will highlight the major issues and critical characteristics of a given country's legal system and will serve as an invaluable aid in engaging, advising and directing local counsel in that jurisdiction. We are proud that, in its ninth edition, this publication covers 25 jurisdictions.

This volume is the product of exceptional collaboration. I wish to commend and thank our publisher and all the contributors for their extraordinary gifts of time and thought. The subject matter is broad and the issues raised are deep, and a concise synthesis of a country's legal framework and practice was challenging in each case.

Nicolas Bourtin
Sullivan & Cromwell LLP
New York
June 2019

Chapter 7

AUSTRIA

Norbert Wess, Markus Machan and Vanessa McAllister[1]

I INTRODUCTION

A distinction has to be made between the police and judicial authorities in Austria with respect to law enforcement authorities. In general, the police as the law enforcement authority, who are subordinate to the respective public prosecutor, lead the investigation. The public prosecutor is the head of investigations and responsible for the prosecution of crimes. A permit regarding investigations is in general not required to question witnesses, for example. However, specific permission from the court is necessary if the public prosecutor decides to take special investigation measures, such as house searches (raids), opening of accounts or telephone tapping. All investigation measures are usually carried out by the police. Regarding the powers of the prosecution authorities, there is no distinction between corporate criminal proceedings and others.

After the investigation procedure has been completed, the public prosecution decides, based on the results of the investigation, whether to press charges against the defendant (either an accused individual or a corporation) or whether proceedings should be discontinued.

The Central Public Prosecution for the Enforcement of Business Crimes and Corruption (WKStA) is a special prosecution authority that was established in 2011 as a response to the increasing number and complexity of white-collar crimes. It is in charge of prosecuting all Austrian business property crimes involving sums exceeding a certain amount and involving serious cases of corruption.

A special feature of Austrian criminal law is the reporting obligations of the public prosecutors. The public prosecutor must report crimes to its superior public prosecutor's office if there is an overriding public interest resulting from the significance of the crime or the suspect. If the importance of the crime is not restricted to the locality, the High Public Prosecutor's Office has to submit another report illustrating the premeditated procedural actions to the Federal Ministry of Justice. Thus the reporting chain can range from the investigating or prosecuting public prosecutor to the Federal Ministry of Justice. Corresponding to the obligation of public prosecutors to report to higher authorities, these higher authorities have the right to issue instructions to subordinate public prosecutors.

The possibility of directives being given by higher public prosecutors has been the subject of numerous discussions, since critics stated that the prosecution should be – as part

1 Norbert Wess is a partner, Markus Machan is an attorney and Vanessa McAllister is an associate at WKK Law Rechtsanwälte.

of the jurisdiction – as independent as courts and, therefore, directives given by higher public prosecutors would be improper. Therefore, a commission of experts has been set up to make a proposal concerning each single case that is reported to the Minister.

Since the Austrian Code of Corporate Criminal Liability (VbVG) came into effect on 1 January 2006, companies and other legal entities can also be accused in criminal proceedings and, like natural persons, can be (under given circumstances) held liable and be convicted. Depending on the conduct of the legal entity following the crime, the prosecutor is entitled to refrain from prosecuting if the prosecution seems unnecessary. Comprehensive cooperation with the prosecution and the installation (or adjustment) of an efficient surveillance system (for the future) can, in fact, protect the legal entity from further prosecution, but not the accused individual.

II CONDUCT

i Self-reporting

In terms of corporate and business crimes, Austrian law does not provide for a specific regulation governing self-disclosure that would exempt the perpetrators from punishment. However, if an offender or a legal entity that has committed or is responsible for a crime shows active repentance, the punishment may be exempted. What is expected from the individual or legal entity when showing repentance after committing an offence is precisely specified by law. The offender or the legal entity has to be willing to remedy the damage voluntarily even if only pressed by the victim, or at least commit himself or herself to compensating the damage without the law enforcement authorities becoming aware of the offender's guilt.

Self-disclosure is a special and very important feature in Austrian tax law. Taxpayers can often be exempted from quite substantial punishment by self-disclosure. The tax enforcement authorities, in turn, do not have to lead (lengthy) investigation procedures; however, self-disclosure only exempts offenders from punishment under circumstances that are strictly specified by law and that have been considerably tightened over the years.[2]

In financial criminal law, an exemption of punishment is only possible by means of self-disclosure if it occurs before an offence has been discovered or before the first prosecution measures against the self-disclosing person or business have been taken. In the case of an ongoing audit, self-disclosure has to take place when the audit starts. Owing to a recent modification, a tax surcharge is added when the offender is guilty of an intentional or grossly negligent tax offence.

In addition, within the scope of self-disclosure, the misconduct and all relevant circumstances that are important in determining the evaded amount or the tax loss have to be disclosed. If the self-disclosure is inaccurate to the extent that not all the relevant facts are disclosed, tax evaders will not be exempt from punishment. Moreover, the amount due must be paid within a month. It is possible, however, to apply for payment in instalments over a maximum of two years.

Austrian competition law[3] also provides for a legal remedy with an effect similar to self-disclosure. The Federal Competition Authority (BWB) may refrain from requesting a

2 See Schrottmeyer, 'Verschärfungen bei der Selbstanzeige gemäß Section 29 FinStrG', *Aufsichtsrat aktuell* 2014, 13.

3 Competition law is technically regulated outside criminal law; however, the cartel fine is a criminal penalty in the meaning of Article 6 ECHR; see McAllister, *Die Kartellgeldbuße* (2017) 83.

fine in the event of violation of cartel regulations if a corporation that has violated cartel regulations is the first to disclose information and evidence to the BWB that allows it to file a well-founded request permission to carry out a house search. If the corporation is not the first to provide new information, it still can benefit from this regulation if the information disclosed allows the BWB directly to file an application (to the Cartel Court) to impose a fine.

Furthermore, it is required that the corporation has ceased violating cartel regulations and that it fully cooperates with the BWB in investigating the facts. The corporation must also not have forced any other business to participate in the violation of cartel regulations. If the corporation does not fulfil the requirement of being the first (whether to enable a house search or an application to impose a fine), but it complies with all the other aforementioned conditions, the BWB is entitled to request the imposition of a reduced fine.

Complementary to this legal remedy in competition law, the Code of Criminal Procedure contains a leniency programme applicable to offences perpetrated by employees or executives (e.g., Article 168b Criminal Code – collusive bidding) if the corporation benefits from the leniency programme provided by competition law. Furthermore, a general leniency programme (adapted via an amendment in 2016) enables an 'alternative reaction' in the meaning of 'out-of-court offence resolution' basically limited to small offences. If such an alternative reaction is not possible in particular cases (e.g., the offender did not comply with all the requirements), the offender can at least benefit from an 'extraordinary mitigation of punishment'.

ii Internal investigations

Internal investigations into corporations are increasingly gaining importance in Austria. The purpose of internal investigation is to gain a full and detailed picture of any criminal or illegal conduct of employees and executives if unlawful conduct in the corporation has occurred or is suspected. The results of internal investigations may also be made available to the public prosecutor, who may be investigating simultaneously, or to the interested public (i.e., concerning stock market-listed corporations).

Regarding sophisticated cases, there is often a requirement to set up an entire internal investigation team consisting of specialists within the corporation, optionally supported and strengthened by external experts, such as auditors and specialised attorneys at law. This team is in charge of seizing, preparing and analysing relevant data within the scope of the investigation. After screening the data it may also be necessary to question former or current employees of the corporation about any incidents. During such 'forensic interviews', the interrogated person may (very often) incriminate himself or herself by a statement, hence an interview can be conducted only if the person cooperates voluntarily and is given the opportunity to consult an attorney at law in advance.[4]

There is no obligation to share the results of an internal investigation with law enforcement authorities, but if the corporation decides to cooperate with the enforcement authorities, there may be conflicts of interest with the company's current or former employees. This must be pointed out by the legal counsellor from the outset.

4 See Wess, 'Unternehmensinterne Ermittlungen – Erfahrungen und Problemstellungen in Österreich', *Anwaltsblatt*, 2013, 223. There is an ongoing discussion whether an employee has to disclose all his or her knowledge (owing to the employee's duty of good faith) even if it may result in self-incrimination; see, for example, Zerbes, 'Strafrechtliche Grundsatzfragen "interner Untersuchungen"', in *Lewisch (Hg), Wirtschaftsstrafrecht und Organverantwortlichkeit Jahrbuch 2013* (2013) 271.

A few years ago, there was a discussion[5] regarding whether law enforcers are entitled to request the surrender or to effect the detention of documents and reports kept by the corporation against its will. As a result of an amendment to the Code of Criminal Procedure in 2016, the correspondence with an attorney concerning, for example, an internal investigation is also protected if it is in the company's custody (and not only in the lawyer's office). These documents (even in the company's custody) cannot be confiscated; illegally obtained documents containing correspondence with a lawyer are subsequently inadmissible in court.

iii Whistle-blowers

Internationally, many corporations and public institutions already rely on whistle-blowers in the prevention of business crimes and corruption. There is no obligation for corporations in Austria to make anonymous whistle-blowing facilities available; however, the establishment of whistle-blowing facilities is increasingly acknowledged as part of modern risk management. Appropriate whistle-blowing facilities can consist of a corporation's own hotline, an email address established specifically for this purpose or a suitable internet platform. Often the corporation mandates a third party (e.g., a law firm) with execution of the hotline. The offences reported to these whistle-blowing facilities are not necessarily limited to internal offences against criminal law within the corporation; violations of labour law and environmental regulations may also be the subject of whistle-blowing reports.

In general, whistle-blowing facilities create certain tensions between an employee's duty of loyalty as defined by labour law (which goes beyond the general duty to work) and the employer's duty to have regard for the welfare of employees. Thus, the employee's duty of loyalty, according to which the employee has to safeguard the operational interests of the employer in the course of his or her work, may oblige the employee to report violations of regulations by other employees of which he or she has become aware. An obligation to spy on other employees can usually not be assumed. Regarding certain employees, however (e.g., employees of internal review or control departments), an extended obligation to report may already result explicitly from the agreed work activity.

If an employee aims to conceal serious violations of rules by other employees, he or she may prove to be undeserving of the employer's confidence. This can also result in a subsequent (summary) dismissal. Owing to the fact that an employer is obliged to have regard for the welfare of his or her employees, it would, however, not be appropriate to monitor an employee based on unsubstantiated and unfounded reports to document any further violations of rules.

Certain legal provisions may encourage or even force an employee to notify the authorities or a compromised corporation of unlawful conduct. For example, persons trading financial instruments in their profession are obliged to notify the Financial Market Authority without delay when there is reason to suspect that a certain transaction could represent insider trading or market manipulation.

Depending on its precise design, an established whistle-blowing facility may be a monitoring measure or system that could potentially affect human dignity. For this reason, the introduction of a whistle-blowing facility requires the prior consent of the workers' council. If there is no workers' council, the consent of each employee has to be obtained in advance.

5 See Wess, 'Die Privatisierung der Strafverfolgung', *Journal für Strafrecht*, 2014, 12.w.

When implementing a whistle-blowing facility, data protection regulations have to be taken into consideration. The data inspection board dealing with whistle-blowing facilities must evaluate whether appropriate safeguards have been taken to prevent unauthorised access to collected data.

Moreover, the Austrian judicial authorities have established their own whistle-blowing home page.[6] It is an anonymous interactive platform that is specifically maintained by the WKStA. Instead of being a mere reporting system that allows users to submit a message with a specific suspicion, this platform also offers the possibility of a mutual communication between the informant and the authorities, in which the informant (if desired) can remain anonymous.

This institution was set up in March 2013 and has been frequently used since then. In the first year of its existence, more than 1,200 tip-offs had been registered, only 6 per cent of which were dismissed as being unsubstantiated. Information obtained from this platform has already led to a number of charges and convictions, thus proving its effectiveness.

III ENFORCEMENT

i Corporate liability

The VbVG is a separate law that regulates the criminal liability of corporations organised as legal entities (see Section I). The criminal liability of a corporate entity results from criminal offences committed by its employees or decision makers. Irrespective of the level of seniority of the individual offender, liability of a corporate entity is only given if the offence was committed in favour of the corporate entity or if obligations relating to the corporate entity were infringed. An offence is already regarded as being to the benefit of a corporate entity if it has improved its competitive situation; material gain is not required. Obligations of the corporate entity that, if violated, may result in its liability, can be related to all areas of law.

Regarding offences of a decision maker, the corporation is (criminally) liable if the decision maker has committed the offence unlawfully and culpably. Decision makers are, as the VbVG states, persons who are authorised to represent a corporate entity externally, such as members of the board of directors or managing directors.

The statutory prerequisites for holding a corporate entity liable as a result of the criminal offence of a (non-executive) employee are more comprehensive. The criminal offence committed by the employee must have been made possible or substantially facilitated by the corporation's failing to take measures in terms of technology, organisation and personnel in order to prevent such an offence. The employee must not have acted culpably (e.g., he or she can be exculpated owing to a mistake of law).

As described above, the criminal liability of a corporate entity depends solely on the criminal relevance of acts of its employees or decision makers. As specified, this may lead to serious conflicts of interest between prosecuted individuals and the corporate entity. For this reason, attorneys at law are advised against representing corporate entities and prosecuted individuals in the same case as this could cause a conflict with respect to the professional prohibition of dual representation.

6 www.bkms-system.net/bkwebanon/report/clientInfo?cin=1at21&language=eng.

ii Penalties

Corporate entities that are liable for criminal offences are punished only with fines. The amount of the fine is determined by the number of 'daily rates' imposed and the amount of the daily rate. The range of punishment (number of daily rates for the offence in question) depends on the seriousness of the offence committed and is derived from the penalty range applicable for individuals (e.g., an offence punished with 10 to 20 years or life imprisonment may lead to a fine with up to 180 daily rates imposed against the corporate entity). The next step is for aggravating and mitigating circumstances to be taken into consideration, to determine the specific amount of daily rates. An aggravating circumstance can be the amount of damage caused by the criminal offence as well as the level of unlawful conduct by employees that was tolerated or even promoted. Mitigating circumstances include whether the corporate entity participates in uncovering the infraction, remedies the consequences of the offence or takes precautions to prevent such offences in the future. In practice, the maximum number of daily rates for business crimes that are relevant is 130.

The amount of an individual daily rate results from the corporation's profitability, taking into account the corporation's economic performance. A daily rate corresponds to 1/360 of the corporation's annual yield (this amount may be exceeded or fall below by a third). The maximum amount of a daily rate, irrespective of the corporation's economic performance, is €10,000.

iii Compliance programmes

The establishment of a compliance programme does not automatically release a corporate entity from its criminal liability. The VbVG explicitly regulates that preventive measures (one example being an established compliance programme) taken both before and after the offence are considered mitigating circumstances. If the corporate entity involved has already taken preventive measures before the offence – which later, however, turn out to be inappropriate – and if, consequently, efforts to prevent such violations of laws by employees are obvious, this will (at least) lead to a significant reduction of the penalty. The same holds true for a corporate entity that decides– following the disclosure of misconduct by employees or decision makers – to establish a compliance programme or to remedy its weaknesses in order to avoid future misconduct.

The implementation of suitable training programmes or the drafting of guidelines for employees in sensitive fields of work are other examples of preventive compliance programmes seen as mitigating circumstances. In addition, the promotion or establishment of a whistle-blowing system may be regarded as an important step to prevent similar offences in the future.

An essential contribution to uncovering a crime may also lead to a reduction of the fine imposed on the corporate entity. That contribution will be realised more easily if a compliance programme with comprehensive duties of documentation or support for the corporation's internal review is already in place. These documents will most likely facilitate a review of the decision-making process in retrospect.

Furthermore, a reduction of the fine in the event of a criminal conviction can be achieved with the argument of impeccable business conduct. This mitigating circumstance for legal entities (liable under VbVG) corresponds with that of 'proper moral conduct' of natural persons. Impeccable business conduct is certainly indicated and supported by the establishment of a comprehensive and, above all, effective compliance programme.

In addition to many other advantages, the purpose of a compliance programme is, by definition, to prevent the commission of criminal offences in business. If a compliance programme has been successfully established and integrated into the corporate culture, this may well mean that the corporate entity should be able to produce evidence of its impeccable business conduct if convicted (for the first time). An effective compliance system can help a corporate entity that has already been liable once for an offence to show good conduct over a longer period.

iv Prosecution of individuals

Regarding the criminal liability of individuals in connection with the criminal liability of companies, it has to be taken into account that the criminal liability of companies always depends on the unlawful conduct of individuals (employees or decision makers). Only in exceptional cases, the employee who triggered the criminal liability of the company would go unpunished (e.g., if he or she did not act in a 'culpable' manner).

If an investigation against individuals working in the company is launched, the fundamental question for the company is whether it intends to cooperate with the defendants' counsel. In the event of close cooperation with the defendant, it is likely that criminal charges will be brought against the individual and also (after further analysis) against the company. In this respect, the invalidation of accusations against the individual can subsequently weaken the accusation brought against the company. Ultimately, it is at the discretion of the company to choose to cooperate with the defendants.

As the dismissal of employees or decision makers being criminally charged cannot always hinder the imposition of a fine against a company, the company – in cooperation with specialised attorneys at law – should devise a strategy for dealing with these individuals. At the same time, law enforcement authorities must be convinced (i.e., by the company cooperating as closely as possible) to refrain from bringing criminal charges against the company.

IV INTERNATIONAL

i Extraterritorial jurisdiction

In general, Austrian criminal law applies to all offences committed in Austria. This corresponds to the principle of territoriality that is now common practice for the application of statutes. Regardless of the foregoing, Austrian criminal law also applies to certain offences explicitly specified by law even if they were committed abroad.

The legal provision that crimes of corruption and bribery will be prosecuted in Austria, regardless of where the crime was committed if only the offender is Austrian, is of particular relevance for companies. These crimes are also prosecuted in Austria if the offence was committed to the benefit of an Austrian public officer.

If an Austrian citizen as an employee or decision maker of a company bribes a foreign public officer, he or she has to be punished pursuant to Austrian criminal law. This applies regardless of whether the crime was committed in Austria or abroad and whether it was an Austrian or foreign company. Conversely, decision makers or employees of foreign companies can be held criminally liable in Austria if they bribe an Austrian public officer – even from another country.

This type of special regulation goes far beyond the original principle of territoriality. In reality this means that bribery committed anywhere in the world by Austrian citizens or of Austrian public officers can be prosecuted in Austria.

ii International cooperation

The Austrian criminal justice authorities cooperate closely with those in foreign countries. The applicable legal basis is laid down in bilateral or multilateral international treaties and their respective implementation in Austrian law.

The Austrian Administrative and Judicial Assistance Act regulates, for example, the circumstances under which an extradition request to foreign criminal justice authorities can take place. This Act also contains several provisions governing general judicial assistance, and the takeover of criminal prosecutions, as well as the takeover of surveillance by Austrian authorities. The statutes specify reciprocity as a general prerequisite for these measures. In addition, administrative and judicial assistance requests must not infringe on public policy or the national interests of Austria.

Austria does not extradite individuals who commit petty crimes. Extraditions from Austria are only admissible in the case of intentional offences and for those who carry a prison sentence of more than one year pursuant to foreign and Austrian law. Austria does not, however, extradite to countries in which criminal proceedings are not in compliance with the fundamental principles of the European Convention on Human Rights (ECHR), or if the person extradited is at risk of political persecution, suffering cruel or humiliating punishments, or even the death penalty. In principle, Austria does not extradite its own citizens. However, there is an exemption with respect to extraditions to the International Criminal Court.

The influence of EU law on the criminal law of individual Member States is becoming more important in practice. European law can specify, for example, minimum requirements for the determination of offences and penalties and for the facilitation of the mutual recognition of court sentences and decisions.

Extraditions to EU Member States have been specifically regulated by an EU Directive that was implemented in Austria by federal law with respect to judicial cooperation in criminal cases with EU Member States. This encompasses both pending foreign criminal proceedings (extradition for pretrial detention) and non-appealable sentences (execution of a sentence). These processes have been substantially simplified, compared with extraditions to third countries, owing to the principle of mutual recognition of criminal sentences passed by European states. It is also required that human rights standards are observed across Europe. For a number of specified offences, the requirement of reciprocity, for example, is no longer a prerequisite for extradition to another EU Member State. Consequently, a person who is prosecuted by an enforcement authority can also be extradited for an offence that is not punishable in Austria.

iii Local law considerations

In cross-border cases that have an impact on Austria, some special features have to be taken into consideration in criminal investigations. Austria still has banking secrecy laws that are comparatively strict. Information concerning transactions may only be given with prior approval of the court based on a motion filed by the public prosecutor. However, banks now have to report current accounts, building society accounts, passbooks and securities accounts to a central account register. Since 2017, Austria also participates in the international exchange of information on bank accounts.

There is also a strict obligation of secrecy regarding certain professional groups, such as attorneys at law, auditors and tax consultants. This obligation may not be invalidated by the seizure or confiscation of communications. Thus, members of these professional groups

have the right to object to seizure. In the event of an objection, a court has to decide whether the seized communications are covered by professional secrecy. These communications may not be exploited by law enforcement authorities before the court has decided that the seized communications are not protected by the relevant professional secrecy.[7] The protection of other professional groups, such as banks, has substantially softened in recent years. Therefore, it is now much easier for law enforcement authorities to gain access to communications from banks.

V YEAR IN REVIEW

The 2018 amendment to the Austrian Criminal Code in particular aimed to implement Directive (EU) 2017/541 on combating terrorism, replacing Council Framework Decision 2002/475/JI and amending Council Decision 2005/671/JI (the Directive on Terrorism). In addition, this amendment intended to create conditions for a potential ratification of the Additional Protocol to the Council of Europe Convention on the Prevention of Terrorism in Austria, and included the following measures:

a Domestic jurisdiction relating to acts of terrorism has now been widened by means of adding further criminal offences in connection with terrorism to Article 64(1)(9) of the Austrian Criminal Code. Further, according to this Article, it is now sufficient for establishing definite domestic jurisdiction if the offender was resident in Austria when he or she committed the offence or when criminal proceedings were initiated. On the other hand, Article 64(1)(10), which regulated domestic jurisdiction in the case of terrorism financing, has been rescinded.

b A further addition to the current terrorist offences listed in Article 278c(1) of the Austrian Criminal Code was necessary to ultimately cover the offence of disrupting the operation of a computer system,[8] provided actions taken by the offender are likely to endanger human life or the property of others on a large scale, or if those actions interfere with computer systems or essential elements of critical infrastructure.

c Terrorist financing, as mentioned in Article 278d(1) of the Austrian Criminal Code, was widened according to Articles 278c(1) and 278e–g, or by the recruitment of another person to commit a terrorist offence according to Article 278c(1)(1)–(10) of the Austrian Criminal Code.

d 'Travelling for the purpose of terrorism' was introduced in 2018 as a new criminal offence and renders offenders liable under Article 278g of the Austrian Criminal Code. Accordingly, anyone who travels to another state to commit a criminal offence in accordance with Articles 278b, c, e or f of the Austrian Criminal Code, is now liable to imprisonment for six months to five years. The type and level of the sentence, however, shall not be any higher than the penalty provided by law for the intended offence.

e Persons entitled to access legal aid – as defined in Article 66(2) of the Austrian Code of Criminal Procedure – was expanded to include victims of terrorism.

7 See Wess, 'Der Rechtsanwalt als Tatbeteiligter im Wirtschaftsstrafrecht – Grenzen strafprozessualer Zwangsmaßnahmen' in *Lewisch (Hg), Wirtschaftsstrafrecht und Organverantwortlichkeit Jahrbuch 2011* (2011) 77.

8 Article 126b Austrian Criminal Code.

The accomplished amendment to the Austrian Code of Criminal Procedure in 2018 and the introduced Articles 134(3a) and (135a) as part of it, created a legal basis for new investigation measures concerning the monitoring of encrypted messages; it comes into force on 1 April 2020 and is limited until 31 March 2025. In addition, the confiscation of letters no longer requires that the accused person has to be detained.

Following the introduction of the Data Protection Amendment Act 2018, the Austrian Code of Criminal Procedure was adapted to match the new terminology of the Data Protection Act, and Article 77(2) of the Austrian Code of Criminal Procedure, which regulates the transmission of personal data of criminal proceedings for scientific purposes, was also revised.

Finally, the Federal Act on Judicial Cooperation in Criminal Matters with Member States of the European Union, the Code of Criminal Procedure and the Federal Act on Cooperation in Financial Criminal Matters with Member States of the European Union were adapted to meet the requirements of the European Union, and a uniform legal framework was created for international cooperation in administrative financial criminal matters. The aim of this was to ensure the applicability of the European Investigation Order in judicial criminal proceedings and in administrative financial criminal proceedings in accordance with Directive 2014/41/EU and to further develop international administrative and judicial assistance instruments for the purpose of the administration of financial criminal offences.

VI CONCLUSIONS AND OUTLOOK

The accomplished amendments mainly concerned implementations of numerous Directives of the European Union, especially those referring to counter-terrorism measures and data protection, as well as standards to further develop international administrative and judicial assistance instruments.

Appendix 1

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Norbert Wess is a founder and partner at wkk law Rechtsanwälte. He graduated from the University of Vienna as *Dr iuris* and was admitted to the Bar in 2004. Within a short time he established himself by acting in many of Austria's high-profile cases concerning white-collar crime. He advises and represents national and international clients (corporations as well as individuals) regarding investigations by Austrian and foreign authorities, and regularly appears in court as a defence counsel, as well as a civil party representative, to enforce their claims as victims of crimes.

Furthermore, Dr Wess is the author of various publications regarding criminal procedural law and gives lectures and presentations on issues relating to criminal law, compliance and related topics. He is co-editor of *Zeitschrift für Wirtschafts- und Finanzstrafrecht* (journal for business and tax criminal law) and of the *Handbuch Strafverteidigung* (2017).

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