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Sports Law 2022

Austria: Law & Practice and
Austria: Trends & Developments
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Law and Practice

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1. REGULATORY

1.1 Anti-doping

Doping as a Criminal Offence

The central legal anti-doping framework is the Austrian Federal Anti-Doping Act 2021 (*Anti-Doping-Bundesgesetz 2021*, or ADBG 2021). Section 28 of the ADBG 2021 contains a comprehensive criminal-law provision, under which anyone who, for the purpose of doping in connection with any sporting activity, puts into circulation or applies to athletes active substances prohibited under the WADA prohibited substances list (WADA Prohibited List), or applies to athletes or others prohibited methods for artificially increasing oxygen transfer (blood doping) or gene doping specified in the WADA Prohibited List, shall be punished with imprisonment of up to six months or a fine of up to 360 daily rates (the amount of these rates is determined by a court depending on the personal circumstances and the financial capacity of the offender).

Under certain conditions, even the mere possession of certain prohibited substances is prohibited, with imprisonment for up to six months or a fine of up to 360 daily rates.

Section 28 of the ADBG 2021 also contains further qualifications with regard to particularly vulnerable or underage persons or a repeated offence. In such cases, a prison sentence of up to five years may be imposed.

However, it is necessary that the substance in question must have been on the WADA Prohibited List at the time of the offence and the time of judgment for Section 28 of the ADBG 2021 to apply; otherwise, the offender is not to be punished.

In addition to the judicial criminal provisions regulated in the ADBG 2021, doping may be qualified as serious fraud under the Austrian Crimi-

nal Code (*Strafgesetzbuch*, or StGB), which is punishable by up to ten years' imprisonment. Accordingly, anyone who commits fraud involving more than minor damage by deception regarding the use of a prohibited substance or method for the purpose of doping in sport is to be punished.

If doping treatment results in damage to the athlete's health, the perpetrator may also be liable to prosecution for bodily injury.

The National Anti-Doping Agency

Austria's National Anti-Doping Agency (*Nationale Anti-Doping Agentur GmbH*, NADA Austria) was established on 1 July 2008 as a company with limited liability (*Gesellschaft mit beschränkter Haftung*). NADA Austria is a non-profit, independent anti-doping organisation and has its headquarters in Vienna.

As an independent doping control agency, it has the task of comprehensive anti-doping work in sport. The basis of the preventive and repressive activities are the ADBG 2021 and the World Anti-Doping Code (WADC). The goal of NADA Austria is to protect clean athletes with an efficient, state-of-the-art doping control system and investigations, as well as prevention through education, information and awareness-raising programmes.

Implementation of the World Anti-Doping Code

In Austria, the WADC was implemented for the first time in 2007 through the adoption of the Federal Anti-Doping Act 2007. As a result, the WADC became binding for the individual national sports federations and their athletes in Austria. The law has been amended several times in the past.

With the ADBG 2021, which came into force on 1 January 2021, Austria has fulfilled its obligation to implement the (new) WADC 2021.

Anti-Doping Cases – “Operation Aderlass” (literally “Operation Bloodletting”)

In 2019, police raided the Nordic Ski World Championships in Austria and arrested athletes just hours before the start of an event. The so-called “Operation Bloodletting” uncovered a globally operating doping network around a famous sports physician. Numerous arrests and house searches were carried out. The blood-doping ring mostly involved cross-country skiers and cyclists. Among those arrested were several Austrian athletes.

In 16 cases, NADA Austria sent an investigation request to the independent Anti-Doping Legal Commission (ÖADR) for the imposition of disciplinary measures. The majority of these proceedings have already been legally concluded, with sanctions ranging from three years to lifetime bans for all sports.

In addition to these disciplinary proceedings, there were also criminal proceedings against domestic defendants. Depending on the individual case, fines and prison sentences ranging from five months conditional to 24 months, of which eight months were unconditional, were imposed. In addition, a total of more than EUR450,000 was declared forfeited.

1.2 Integrity

Legislation on Match-Fixing

The StGB does not contain any sports-specific criminal offences relating to match-fixing. However, from a criminal law perspective, match-fixing can be qualified as the criminal offence of fraud according to Sections 146 et seq of the StGB. In a nutshell, those fraud sections punish fraudulent behaviour when it can be shown that financial losses by betting operators are attribut-

able to the use of insider information or corrupt athletes.

The StGB also contains corruption and bribery offences, but these only have limited application to the world of sport.

Besides criminal law, several sports associations in Austria have placed a strong focus on consequences of match-fixing in their disciplinary regulations (see **1.4 Disciplinary Proceedings**). The Austrian Football Association (ÖFB), for example, has implemented regulations with regard to sports betting.

Measures Taken by Sports Governing Bodies regarding Integrity Offences

Various sports governing bodies have taken many different measures to deal with integrity offences. Those measures range from reporting obligations to sanctioning and monitoring regimes. The following are only a few of such measures.

- In June 2016, Austria signed the Council of Europe Convention against Manipulation of Sports Competitions, and took the measures against betting fraud to an international level.
- The Federal Criminal Police Office (*Bundeskriminalamt*) has its own reporting office to co-ordinate measures against betting fraud in sports. It co-operates with Interpol and sports associations such as FIFA, UEFA and the ÖFB.
- The Association for the Preservation of Integrity in Sport (*Verein zur Wahrung der Integrität im Sport*, or VWIS), or better known under its brand name “Play Fair Code”, has taken over prevention work in Austria and conducts training courses throughout the country, for example in football, ice hockey and skiing. Currently, the Play Fair Code is “merely” an association under the Austrian Association Act (*Vereinsgesetz 2002*, or VerG); however,

there are efforts to lift the Play Fair Code into an authority-like function (similar to NADA Austria).

Case Law – the Dominique Taboga Case

In 2013, Austria’s Federal Criminal Police Office succeeded in striking the most significant blow to date against organised crime in betting. Dominique Taboga, a former professional football player in the Austrian football Bundesliga, was found guilty of fixing games or actions during games. He was ultimately found guilty of fraud and sentenced to three years in prison. Furthermore, his lifetime ban was reduced to a five-year ban from all playing activities and a ten-year ban from all official activities in Austrian football. Sanel Kuljic, a former Austrian international, was also involved and acted as an intermediary between Dominique Taboga and the criminals. In addition to Sanel Kuljic and Dominique Taboga, six others received prison sentences.

1.3 Betting Sports Betting Legislation

Austria distinguishes between gambling and sports betting. Gambling in the meaning of the Austrian Gambling Act (*Glücksspielgesetz*, GSpG) is a “game in which the decision on the outcome of the game depends exclusively or predominantly on chance”. It is within the legislative competence of the federal government. Sports betting, on the other hand, is considered a “game of skill” and falls within the competence of the federal states (*Bundesländer*).

Hence, each of Austria’s nine federal states has its own local (sports) betting act and its own competent regulatory authority. In addition, all nine federal states’ betting laws include their own provisions on administrative criminal offences and prohibitions. In Salzburg, for example, betting is forbidden on any games below

the third national league and games involving amateurs and youths (under the age of 18).

Protective Measures to Maintain Integrity

Many top sports associations as well as sports betting operators work closely together with the Play Fair Code mentioned in **1.2 Integrity**. The aim of this collaboration is to achieve clean and manipulation-free competitions together with athletes, coaches, support staff and club managers as well as referees through prevention measures, awareness-raising training and education.

The Austrian Football Federation and the Austrian Ice Hockey League co-operate with Sportradar, which uses its Universal Fraud Detection System (UFDS) to monitor matches with regard to match-fixing and analyse any irregular betting patterns.

Match-Fixing Scandal in the Third-Highest Football League in 2021

Match-fixing is alleged to have occurred in the third-highest football league (*Regionalliga Ost*) in 2021. The investigations for serious commercial fraud are still ongoing. So far, there have been numerous arrests and four defendants have been remanded in custody, but the exact consequences of this scandal are not yet known. The remarkable thing about this scandal is that Sportradar, a company that specialises in sports integrity solutions for sports governing bodies, helped uncover the scandal.

1.4 Disciplinary Proceedings

All sports associations are committed to maintaining the integrity of their sports competitions. The ÖFB, for example, has placed a strong focus on prohibiting and punishing match-fixing and inadmissible sports betting in their disciplinary regulations.

For example, a person (i) placing bets on matches in which their own club or a club active in the same class is involved, (ii) designating third parties to do so, or (iii) passing on non-public information to third parties which could be used in such bets, may be subject to severe punishments as a warning. These punishments might include a ban, a fine of up to three times the amount of the bet placed or winnings paid out, a deduction of points, and exclusion from competition or the relevant sporting association.

In addition, each of Austria's nine federal states' betting laws include their own provisions on administrative criminal offences and prohibitions.

2. COMMERCIAL RIGHTS

2.1 Available Sports-Related Rights

Merchandising

Merchandising refers to secondary marketing that runs parallel to the primary marketing of various merchandising objects. It is irrelevant whether the marketing is carried out by the entitled party or, by way of granting a licence, by a third party. The legal protection depends on the merchandising object. In addition to the general protection under the Austrian Unfair Competition Act, (*Bundesgesetz gegen den unlauteren Wettbewerb*, or UWG), there is also protection under personality law in the case of personality features, protection under trade mark law in the case of brand merchandising, and protection under copyright law in the case of graphics and photographs.

In the sports sector, personality merchandising and brand merchandising play a particularly important role. The former exists when a real person is the focus of the marketing. In the latter case, the brand (eg, the sports club) is the object of merchandising.

In principle, the rights holder itself grants licences. This allows a third party or specialised exploitation agencies to use such merchandising properties.

Hospitality

Hospitality as a corporate communication measure plays a particularly important role in sponsorship activities. It is an instrument for attracting, maintaining and retaining customers. This special business-to-business communication is a significant source of income for sports event organisers. The subject of such hospitality offers is the marketing of business seats, VIP tickets and boxes.

Ticketing

Ticketing involves concluding a spectator contract and paying a fee in return for access to and a seat at the event.

In this context, there is the issue of secondary ticket sales, where ticket trading takes place on an unauthorised secondary ticket market. The term unauthorised secondary market is used when third parties make ticket sales without the control and consent of the organisers, by re-selling the initially purchased ticket from the organiser of the event at least once. Since the sales prices are exposed to the unauthorised market, they are regularly higher than the original ticket price. For this reason, legal disputes take place between the organisers of events and the unauthorised secondary market.

Case law – secondary ticket selling

A recent decision of the Austrian Supreme Court refers to such a secondary ticket-selling platform. As a result, secondary sellers must disclose whether the ticket is freely transferable or personalised. In addition, the identity of the seller must be stated. The original price of the ticket does not have to be displayed.

LASK's fight against the black market during the Europa League season 2019/20

In the run-up to the UEFA Europa League match against Manchester United, there had been attempts to resell tickets for profit. Austrian football team LASK therefore blocked all tickets that had been traded at increased prices without exception. Season tickets of persons who had offered tickets at increased prices were blocked without replacement.

2.2 Sponsorship

Ways Sponsors Use Sports to Promote Their Brands

Advertising measures during the sports event itself are of particular importance. The use of brand images or slogans as perimeter advertising (in the stadium or in a finisher area) are visible to visitors in the stadium as well as to television viewers. Video screens in the stadium or along the race also allow advertising videos and acoustic advertising during breaks.

In addition, tickets and programmes provide space to mention sponsor websites or simply their name and logo.

Athletes' caps, helmets, uniforms and their sports equipment usually bear the brand or logo of the sponsor and – depending on their visibility during the performance or in interviews – allow a considerable marketing effect for the sponsor.

Key Terms of a Standard Sponsorship

Contract

The sponsorship agreement provides the basis for the sponsor to give money (and/or benefits in kind) in exchange for the sponsor recipient making themselves available to the sponsor as an advertising tool.

Key terms that can be included in sponsorship agreements are obligations and rights of the sponsor, the duration of the agreement,

the sponsor's services, the costs of advertising materials as well as early termination of the agreement and extension options.

In order for a sponsorship agreement to be concluded, the sponsor recipient as well as the sponsor shall obtain the right to use protected personal rights from the players and support staff. This applies in particular to image rights, namely the right to one's own image (Section 78, Austrian Copy Right Act (*Urheberrechtsgesetz*, or *UrhG*)) and the right to a name (Section 43, Austrian General Civil Code (*Allgemeines Bürgerliches Gesetzbuch*, *ABGB*)).

2.3 Broadcasting

Public Broadcasting

The public broadcasting company (ORF) is supported by compulsory fees to be paid for any receiver (TV set, radio, computer or laptop with TV card or DVB-T stick). In addition, income is generated through advertising.

Packages of Broadcasting Rights

Winter sport is of particular importance in Austria. There is a long tradition of exclusive broadcasting rights for the ORF. In 2021, it acquired the exclusive broadcasting rights for winter sport events on television, radio and online reports, valid until the season 2026/27. For the first time, a private broadcasting company acquired a package of highlight rights and near-live-clip rights.

Advertising rights generate high revenues due to the high interest in the various sports sectors. Lately, this was also the case for broadcasting the 2022 Winter Olympics.

3. SPORTS EVENTS

3.1 Relationships

Domiciliary Right of the Organising Associations

Even though in Austria there are no proprietary rights to sports events, the organising associations have the so-called “domiciliary right” (*Hausrecht*), which is derived from the ownership or the lease of the property or the building in which the sport event will be taking place.

Within the scope of this “domiciliary right”, the organising association has the right to exclude other persons from the sports event or to make their visit/access dependent on conditions, such as purchase of the tickets or registration for the event as well as conclusion of a certain contract with the respective organising association. Within these agreements, the concrete conditions are usually set, under which access to the sporting event is permitted as well as the (legal) consequences in the event of a violation of such conditions.

However, it should be noted that admission to an event may only be denied for objectively justified reasons based on the domiciliary right.

Organisation of Sports Events

The law on the organisation of sports events falls within the competence of the nine Austrian federal states (*Bundesländer*). For this reason, the rules and requirements for the organisation may differ depending on the relevant State Act (so-called Events Act or *Veranstaltungsgesetz*).

Most (larger) events usually require a concession issued by the competent authority based on the relevant State Act, which defines conditions and safety rules in respect to the event in question. While the concrete requirements may differ, each organiser has to implement necessary precautionary measures in any case.

3.2 Liability

Safety Duty of the Organiser

Sport event organisers have a general duty to ensure safety (so-called *allgemeine Verkehrssicherungspflicht*). Accordingly, they must take the necessary precautions in the interest of the safety of participants and spectators. If there is a possibility that an event may result in dangers for others, organisers must also take appropriate measures against such possible dangers within the reasonable framework.

Furthermore, the organiser must inform the participants about unavoidable safety risks and take preventive measures against foreseeable hazards. Continuous adaptation to the highest possible safety standard is not generally owed, but failure to adapt to new safety standards may give rise to liability.

For the sports organiser, the relevant guidelines and rules under association law serve as minimum requirements for concretising the standard of duty of care. In individual cases, however, the obligations of the sports organiser to ensure safety can go beyond the obligations set out in the guidelines/rules of the sports associations.

Liability Limitations

An organiser’s liability for injuries or damages caused within the framework of a sports event can arise, for example, against the performing athletes, spectators or other uninvolved third parties.

However, the liability can generally be limited or excluded by contract, provided that limitation or exclusion does not violate the law or is not immoral. For example, exclusion or limitation of liability for personal injury is in any case not permissible. Furthermore, exclusions of liability for damage to property caused by intent or, in the case of a contract with a consumer, by gross negligence are also not permissible. However,

limitation of liability for property damage caused by slight negligence is possible.

Contractual clauses that still exclude or limit the liability beyond the extent permitted by law are void and unenforceable.

Liability of Athletes towards Spectators

Since spectators only conclude agreements with the respective organising associations, there are no contractual obligations/liabilities of the athletes towards them. There is also generally no consent on the part of spectators to the increased risk posed by the sport. The athlete cannot therefore refer to a liability-excluding “acting at their own risk” in the case of damage.

Athletes and spectators are therefore generally not in any special relationship because of the sporting activity. The general rules of tort law apply.

How Sport Events are Kept Safe from Violence and Disorder

In addition to the general provisions, the relevant State Act also contains some special obligations that are important for the smooth and safe running of the event in question. The authorities are also authorised to impose further conditions by means of a notice in order to ensure the proper running of sporting events.

Furthermore, the competent authority as well as the police are entitled to control observance of the aforementioned provisions as well as the general safety of an event, and are obliged to remove any potential danger and cancel the event if there is no other possibility of keeping the audience safe.

4. CORPORATE

4.1 Legal Sporting Structures

The Association as the Prevailing Legal Form

The majority of sports clubs and sports bodies in Austria are organised in the form of a legal association (*Verein*) within the meaning of the Austrian Law on Associations (*Vereinsgesetz 2002*, VerG). This is true at both the professional and amateur levels.

An association is a voluntary, permanent organisation of at least two persons, organised on the basis of articles of association, for the pursuit of a specific, common purpose.

Compared to other legal forms an association can be interesting from a sports perspective for the following reasons in particular:

- simple formation;
- no minimum share capital;
- no personal liability of members;
- no accounting or publication obligations; and
- tax benefits – if certain criteria of the VerG and obligations under tax law are met, associations are treated preferentially in relation to certain tax matters (eg, associations can be exempt from corporate income tax (*Körperschaftsteuer*) and from value added tax (*Umsatzsteuer*)).

Corporations as an “Ally” in Professional Sports

A club in the form of an association can be economically active as long as the revenues serve the (idealistic) purpose of the club. Many sports clubs are now highly profitable commercial enterprises. The idealistic objective required by law for associations then often exists only on the margins.

This can be problematic from a tax perspective. The tax authorities used to apply the tax benefits

very generously to professional sports organisations. However, the tax authorities have – more or less – abandoned this practice. In order to continue to claim the tax benefits, it was necessary for the sports club to establish a subsidiary and outsource the professional operations to a subsidiary particularly in the form of a corporation with limited liability (*Gesellschaft mit beschränkter Haftung*, GmbH) or a stock corporation (*Aktiengesellschaft*, AG).

Other from tax reasons, professional sports organisations also require a different legal form for other reasons (eg, installation of a professional management, risk management or simpler investor intake). Hence, at the level of professional sports organisations, clubs often establish subsidiaries in the form of corporations, which then take over the game operation and/or other business activities.

Specifics in Football

In the realm of football, the aforementioned reasons also required clubs to transfer their professional teams to a corporation. However, they have to observe the so-called “50+1 rule” (for further discussion of which, please see **4.4 Recent Deals/Trends**). This means that it is not possible for investors to take over the majority of the voting rights in corporations into which soccer clubs have outsourced their professional teams.

4.2 Corporate Governance

National Corporate Law

Depending on which legal form is chosen for a sports organisation or club, the national laws that apply to these legal forms must be complied with. There are no sport-specific corporate governance codes.

Management and Officer’s Liability

Following on from the above, the legal questions concerning the management and liability of cor-

porate officers are also – depending on the legal form of the sports organisation – governed by the different relevant laws.

Regarding the liabilities of the association/corporation, the association/corporation is liable for its own assets. If a member of the management board of an association/corporation breaches the duty of care required by law, they shall be liable to the association/corporation in accordance with general principles of tort law. The applicable standard of liability is measured by the care, skills and knowledge that can usually be expected from a member of the board in the relevant “line of business” and according to the size of the association/corporation.

Insolvency

The sports governing bodies typically provide for specific regulations in the case of an insolvency of its member clubs. For example, the Austrian Football Bundesliga also provides for corresponding regulations in its licensing terms (*Lizenzbestimmungen*): if insolvency proceedings are opened or if an application for insolvency proceedings is rejected due to a lack of assets to cover costs, the club may lose or not be granted a licence and may also be subject to mandatory relegation.

4.3 Funding of Sport

Professional Sports v Amateur Sports

Sport receives funding from a range of sources. While professional athletes and sports teams can rely on revenues from advertising, ticket sales, sponsorships, transfers and many other sources, amateur athletes and teams do not have access to these. Grassroots sports instead have to rely on funding programmes provided by the government or membership fees.

Sports Funding Landscape in Austria and Distribution of Funds

The sports funding landscape in Austria is extremely complex and is a thicket of different federal and state funding regulations.

Traditionally in Austria, a large part of the funds for federal sports funding is raised through gambling revenues. Article 20 of the Austrian Gaming Act (*Glücksspielgesetz*, GSpG) defines a figure of at least EUR80 million for sports funding each year. The *Bundes-Sportförderungsfonds* (BSFF) administrates and distributes the funds according to a pre-defined allocation formula. Beneficiaries include ASKÖ (*Arbeitsgemeinschaft für Sport und Körperkultur in Österreich*), ASVÖ (*Allgemeiner Sportverband Österreichs*), SPOR-TUNION, the Austrian Football Association (ÖFB), the Austrian Olympic Committee, as well as numerous other professional associations.

The Federal Sports Funding Act 2017 (BSFG) established the *Bundes-Sport GmbH* (BSG) as a funding agency owned by the federal government.

Several other sources of federal and state funding are used to finance and promote sports organisations, athletes, initiatives for equality between men and women, youth sports, sports science, federal sports facilities and different events.

In addition, there are a large number of state-specific sports funding laws and programmes.

Alternative forms of financing are also becoming increasingly popular. An example is the crowd-funding platform “I believe in you”, which has created another possibility for athletes and clubs to raise money.

COVID-19

Support for non-profit organisations

Since June 2020, there has been a support fund for non-profit organisations, including sports clubs. Upon request, this fund is intended to compensate for the losses of the clubs due to COVID-19.

The sports bonus

For the 2021/2022 season, the 2022 calendar year or the 2022/23 season, the Federal Ministry of Arts, Culture, Public Service and Sports covers 75% of the membership fees. Members pay only 25% of the membership fees and the rest is compensated.

4.4 Recent Deals/Trends

Recent Trends – Reform Plans for the 50+1 Rule

The so-called “50+1 rule” is the subject of ongoing reform efforts in the Austrian Football Bundesliga (the association of the two highest division in Austrian football). According to this 50+1 rule, a Bundesliga football club must hold a majority of its own voting rights in order to obtain a licence to compete in the Bundesliga. In other words: Bundesliga clubs will not be allowed to participate in the Bundesliga if commercial investors have more than 49% of the voting rights.

Whether this regulation is compatible with anti-trust law or EU law is the subject of ongoing debate. This is why the Austrian Bundesliga is currently considering new ways to regulate investments and to reshape the rule.

Recent Deals – Investment in Football Club Austria Wien

The Viola Investment group acquired a 40% stake in the FK Austria Vienna football club. As part of the transaction, Viola Investment retains an option to further increase its stake in FK Austria Vienna with an additional 10.1%. Accord-

ing to an Austrian daily newspaper, the deal is expected to bring the club around EUR11 million.

5. INTELLECTUAL PROPERTY, DATA AND DATA PROTECTION

5.1 Trade Marks

Trade Mark Registration

Trade marks are registered with the Austrian Patent Office (*Patentamt*) and regulated under the Austrian trade mark Protection Act (*Markenschutzgesetz*, MSchG). State emblems, state flags or national badges are exempt from registration. The same applies to purely descriptive signs or signs lacking distinctiveness (eg, tennis balls).

Trade marks only exist upon registration in the public register (*Markenregister*); the principle of priority provides major advantages, since in a conflict situation the older registration enjoys the better rights.

The owner of a registered trade mark can prevent third parties from using a sign, which is identical or similar to the registered trade mark, for the same or similar goods and services.

Recent Cases

In the “SPORT+” decision the Austrian courts confirmed the similarity of the younger combined word and sign trade mark “ORF SPORT +” with the prior EU combined word and sign trade mark “SPORT+”. The opposition procedure against the registration of the younger trade mark was successful.

In a further recent decision, the owner of the trade mark rights of ABSOLUT Vodka succeeded over a ski and snowboard sports venue, which used the term “ABSOLUT” in creations

like Absolut Park, Absolut School and other. The graphic presentation was similar to the registered trade mark and considered an infringement of the trade mark owner’s exclusive rights.

5.2 Copyright/Database Rights

Austrian Law of Copyright

The Austrian Copyright Act (*Urheberrechtsgesetz*, UrhG) covers works of literature and art, music, photographs, film works, computer programs and databases.

Author’s rights are not registered, they exist upon creation. The right to file an action for injunction protects author’s rights. The courts may impose interim measures of protection to secure an author’s rights or pieces of evidence. In the case of an ascertained infringement, authors are entitled to claim removal of infringing goods from the market, payment of adequate compensation and – in cases of fault – also the payment of damages; ie, loss of profit.

Databases

Databases only enjoy protection if they qualify as a work “as a result of the selection and compilation” of their content. There must be some creative element in the collection, assessment and evaluation of data. Telephone registers, for example, cannot enjoy protection.

5.3 Image Rights and Other IP

Image Rights

The Austrian Copyright Act protects the author of the image (eg, the photographer) as well as the image rights of the pictured person. The Austrian General Civil Code (*Allgemeines Bürgerliches Gesetzbuch*, ABGB) also protects personality rights.

In this context, the Austrian Supreme Court (OGH) recognised in its recent decisions that athletes do not have to accept publication of images of a merely voyeuristic nature or taken

out of curiosity, since such publication infringes the athlete's personal rights.

The Austrian Supreme Court's long standing jurisprudence also refers to the fact that athletes usually have commercial interests in the publication of their images. Sponsoring agreements containing exclusivity rights for specific fields of industry and non-competing clauses are in their vital interest. Therefore, using their image without consent – and without monetary remuneration – infringes their personal rights.

The unlawful use of athletes' images not only infringes personal rights of athletes, but also constitutes a breach of law under the Austrian Act against Unfair Competition (*Gesetz gegen den unlauteren Wettbewerb*, UWG). Recent decisions confirm that such breach entitles competitors of the infringer to claim for an injunction.

5.4 Licensing

Licensing Agreements

Licensing agreements are concluded based on private law and copyright law. Sports bodies, which organise sports events and competitions conclude marketing and sponsor agreements and market their own name. The Austrian Football Association (ÖFB) and Austrian Ski Association (ÖSV) are of particular public interest and use their own brands.

Co-operation Agreements

The right to use image and name rights of athletes are of particular importance. Such rights are conferred by marketing co-operations with athletes. They also cover the social media activities of the athlete promoting the brand of the co-operation partner. Image rights and the use of images may also refer to the right to show body tattoos. Obligations that violate public policy are inadmissible and ineffective.

5.5 Sports Data

Athlete Data

Sports associations register and use the personal data of athletes upon their membership registration. Data also cover special categories of data (eg, health data, body weight and height). Therefore, athletes shall give explicit consent to the use of that data. Results of competitions also qualify as personal data; their publication is necessarily of interest to the public and also covered by privacy policy.

Spectator Data

Ticket sales contain General Terms and Conditions also covering the use of image rights (photos, videos) of spectators. Hence, the use and commercialisation of images taken during competition, which show spectators, is lawful.

5.6 Data Protection

Applicability of the GDPR

The Austrian Data Protection Act (*Datenschutzgesetz*, DSG) was thoroughly revised upon the entry into force of the EU General Data Protection Regulation (GDPR). This (EU) Regulation is directly applicable in Austria, like in any other EU member state. Some provisions in the Austrian Data Protection Act that specifically refer to image rights, are of great significance for the athlete's personal rights. Under such provisions, no image and sound recording is admissible in the personal sphere without consent.

In a recent decision against a golf association the Data Protection Authority (*Datenschutzbehörde*, DSB) decided that golf athletes must give consent specifically to the use of images and their publication; the respective clause in the general terms and conditions alone was not sufficient.

6. DISPUTE RESOLUTION

6.1 National Court System

National Courts and Exhausting Internal Dispute Resolution Mechanisms

In principle, Austrian courts – under the general legal framework – also have jurisdiction over disputes relating to sports law.

However, in certain cases national courts will not have jurisdiction unless the parties to the dispute have exhausted any internal dispute resolution procedures required by applicable law or the rules of the respective association or federation, such as, for example, by the Austrian law governing associations (*Vereine*), namely the Austrian Act on Associations (*Vereinsgesetz 2002*, VerG 2002) (see **6.2 ADR, including Arbitration**).

Furthermore, the ordinary court procedures do not apply if the parties have agreed on the decision by an arbitral tribunal (*Schiedsgericht*) (see **6.2 ADR, including Arbitration**). In such case, an action brought before an ordinary national court notwithstanding the arbitration clause may be dismissed.

6.2 ADR, including Arbitration

Alternative Dispute Resolution Mechanisms for Associations (*Vereine*)

Sports clubs in the legal form of (private) associations (*Vereine*) shall be registered with the register on associations (*Vereinsregister*) and shall have a minimum set of rules. Pursuant to Section 3 in conjunction with Section 8 of the VerG 2002, the articles of association must contain a mandatory provision on the settlement of disputes and a mediation body (*Schlichtungseinrichtung*).

If a dispute is not settled internally before the mediation body within a period of six months, each party in dispute may file a claim before an

ordinary national court (*ordentliche Gerichtsbarkeit*).

Recourse to the ordinary courts may be excluded only to the extent that an arbitral tribunal (*Schiedsgericht*) is established pursuant to Sections 577 et seq of the Austrian Code of Civil Procedure (*Zivilprozessordnung*, ZPO).

Alternative dispute resolution as illustrated by the example of the Austrian Ski Association

Sports governing bodies regularly set out their own mediation and alternative dispute resolution rules that must be observed prior to involving the national courts.

In this sense, Article 8 of the Code of Conduct of the Austrian Ski Association (ÖSV) also requires that the internal legal procedure of the association is to be exhausted before the ordinary courts can be called upon.

Court of Arbitration

Under the Austrian Code of Civil Procedure, a valid arbitration agreement or arbitration clause in the articles of association excludes the competence of national courts. In addition, a pending arbitration procedure excludes competence of national courts.

Decisions of arbitration courts (so-called awards) have the same effect as a judgment by an ordinary civil court.

Generally, no appeal to ordinary national courts is possible. Only an action for judicial annulment of the arbitrations' court decision (*Aufhebung des Schiedsspruchs*) to the Austrian Supreme Court can be made in the case of serious defects in the arbitration proceedings or the arbitral award.

6.3 Challenging Sports Governing Bodies

Disciplinary Authority

In Austria, it is recognised that the disciplinary authority (*Disziplinargewalt*) is vested in the associations and federations on the basis of private-law self-administration and, as such, is also subject to judicial review.

Sanctions

Internal rules of sports governing bodies provide for various sanctions and financial fines. Internal bodies and bodies of appeal can also impose fines on parties, who do not comply with the sanctions. As a last consequence, there is also the possibility of a final exclusion from the association.

According to the Code of Conduct of the Austrian Ski Federation, the following penalties in particular can be considered: a warning, a written reprimand, suspension of the payment of costs for training or a temporary exclusion from training, or a ban from competition. In general, when selecting the penalty to be imposed, a comprehensive consideration must be made, which is similar overall to that used when assessing penalties in criminal cases. Decisions on imposed punishments must be made in writing and must not be unfounded. The person concerned shall be given the opportunity to comment orally or in writing on the accusation made, which includes the possibility of consulting a legal representative.

Judicial Review of Internal Sanctions

Parties may challenge decisions of sports bodies by way of an internal appeal and, as a last redress, to an arbitration or an ordinary court, as provided for in the internal rules.

7. EMPLOYMENT

7.1 Sports-Related Contracts of Employment

Relationship between Sports Associations and Players from a Legal Point of View

Depending on the actual structuring of the relationship between the sports associations and players, the latter may be classified as employees, freelancers or independent contractors, each of which is subject to different legal regulations.

In Austria, professional players in team sports are generally considered employees, as they are usually integrated into the organisation of the club and work based on the club's instructions and are thus personally dependent.

The player's personal and economic dependence on the club is therefore a decisive factor when assessing their status. The greater the personal dependence of a player on their club and the more they earn, the more likely it is that the player qualifies as an employee.

Players' Contracts

The Austrian Football Bundesliga provides a model player's contract, which contains certain contractual clauses relevant for regulating the relationship between clubs and players, including those on the personal rights and obligations of the individual player. As a model contract, it is, however, non-binding and can be adapted depending on the individual needs.

Salary caps, however, do not exist in Austria.

7.2 Employer/Employee Rights Austrian Labour Law

Regarding professional players in team sports who are qualified as employees, Austrian labour law is applicable to their employment relationship with the clubs without restriction. However,

this repeatedly leads to unsatisfactory results, since Austrian labour law does not usually take into account the specific circumstances that a sports profession may entail, which is why some labour law provisions are hard to enforce.

For example, normal daily working hours are often exceeded in the sports industry, rest breaks cannot be observed due to competitions and the termination of sports contracts repeatedly raises legal questions. In addition, divergences between the clubs' provisions and statutory labour law cannot be ruled out. Attempts have been made to resolve these discrepancies by means of a separate Sports Labour Act, which, however, has not (yet) progressed beyond a draft stage.

However, a small milestone in this regard was made with the collective agreement between the Austrian Football League and the Austrian Trade Union Federation, which takes into account the specific circumstances of the sports industry and creates legal certainty – at least for football players working for the clubs of the Austrian Football League.

7.3 Free Movement of Athletes **Capping the Number of Foreign Athletes**

Within the EU, professional players are able to compete without any restrictions due to the Bosman ruling of the European Court of Justice (ECJ) in 1995, which granted professional players the customary freedom of movement for workers within the EU.

Due to the steadily increasing proportion of foreign soccer players in the matches of various Austrian soccer clubs as a result of the Bosman ruling, a so-called *Österreicher-Topf* was introduced in the 2004/2005 season, in order to promote the use of domestic soccer players. *Österreicher-Topf* is basically a kind of bonus system, that provides funding to clubs that use more domestic professional players in matches

in the Austrian Bundesliga. In order to participate at least twelve players must appear on the match report who have Austrian citizenship or were registered in Austria for the first time before reaching the age of 18 and are eligible to play for the under-22 national team.

Requirements for Foreign (Non-EU) Athletes

The situation is different for the professional players from non-EU states, as they have to apply for a visa, which allows residence and participation in sporting events. Even though there is a special type of visa for athletes making it easier for them to obtain one, the requirements of the procedure should not be underestimated.

8. ESPORTS

8.1 Overview of Esports

Austrian Esports Landscape

A study conducted in 2019 showed that 32% of 15–55 year-old Austrians are interested in esports. Among 14–24 year-olds, this figure was as high as 49%. The data shows that esports is already an established activity in Austria, which is growing steadily. This is also reflected in the number of esports teams, with several hundred already existing in Austria. Tournaments and leagues, such as the eBundesliga and the A1 eSports League Austria, promote the spread of esports.

In 2007 the eSports Association Austria (*eSport Verband Österreich*) was founded, which is committed to the social, media, economic and political advancement of esports.

There is also support for esports from political actors. For example, the Federal Office for Positive Predication of Digital Games (*Bundessstelle für die Positivprädikatisierung von digitalen Spielen*, BuPP) of the Federal Chancellery (*Bundeskanzleramt*) supported the national team at

the World Cyber Games, where it won a silver medal.

No Esports-Specific Legal Framework Yet

Esports involves numerous areas of law, such as labour, association and event law. Nevertheless, it is still not clear whether esports falls under the legal concept of sports, as it is not defined by law in Austria.

However, the Austrian federal government has now also recognised that there is a need for specific laws that lay down special regulations for esports. With this in mind, a working group containing representatives from the esports scene has been set up to develop a legal framework for esports.

Rising Economic Importance and Consequences of the Coronavirus Crisis

Esports is becoming more and more interesting for numerous companies, sponsors, events, teams and individual esports-athletes. In addition, there is increasing movement in the start-up scene, which sees in esports an opportunity for developing innovative business solutions.

Lastly, the esports scene has not been successful in avoiding the coronavirus crisis either. Numerous events had to be cancelled or held without spectators due to the pandemic. At the same time, however, sports have shifted from traditional sports venues – due to lockdown restrictions – to the digital world. While COVID-19 has prevented larger esports events, it has also brought esports further popularity.

9. WOMEN'S SPORT

9.1 Overview of Women's Sport

Women's Sport Landscape

In Austria, the sports landscape is still often male-dominated. Just four female presidents

are represented in the 60 Austrian sports associations (*Sportfachverbände*). Moreover, a massive gender-pay gap can be seen in the field of sports. In addition, the media coverage is in imbalance. Only 4% of sports reporting deals with the sports events of women.

Increasing Importance of Women's Sport

To increase the amount of women in the sports decision-making processes, the Austrian government took further steps by implementing a Gender-Trainee-Programme. In the first round, 15 women were selected to start the four years on-the-job training to later work as coaches, managers or in higher positions. This trainee programme should give women a strong perspective and foster equality in sports.

Furthermore, the Austrian government implemented a Sport Austria Advisory Committee Women in Sports (*Sport Austria-Beirat Frauen im Sport*).

The importance and priority of the topic can also be seen in the fact that “gender diversity” was also the topic of the Sport Austria Summit 2021, an expert conference that covers one important question for the future in the field of sports every year.

Moreover, the sports association “*Wir Frauen im Sport*” (in English: Us Women in Sports) tries to build up a network for women in sports, establishes concepts for improvement and provides experts for advisory.

Another sports association dealing with gender equality and gender mainstreaming is 100% SPORT- *österreichisches Zentrum für Genderkompetenz im Sport*, an association established by the Austrian Ministry of Sports.

Finally, the esports scene is also committed to the topic of diversity. In 2018, the Esports Asso-

ciation Austria brought on board a gender representative and women's spokesperson. Her tasks are to raise awareness of the issue of diversity in gaming and esports and to provide important educational work in the media and the wider esports scene.

10. NON-FUNGIBLE TOKENS (NFTS)

10.1 Overview of NFTs

The NFT Market in Austria

NFT hype has also reached Austria and is already spreading to very different areas and business fields.

In 2019, for example, the Austrian Post (*Österreichische Post*) created the first NFT stamps, which could be bought in their online shop.

One of the most famous examples of NFTs in Austria comes from the art scene. The Belvedere Museum in Vienna is offering Gustav Klimt's famous painting "The Kiss" in the form of NFTs. The museum divided a digital version of the painting into 10,000 parts. Each part was "mined" to an NFT and offered for sale – each for EUR1,850. On the first day of "mining" 1,730 NFTs were sold and the museum has raised EUR3.2 million.

NFTs in Sports

NFT hype has also spilled over into Austrian sports.

The Austrian national football team is also now issuing its players as NFTs. Other football teams, such as Rapid Vienna, are currently thinking about issuing NFTs.

Opportunities and Risks Associated with NFTs

NFTs can lead to a new source of income for sports associations and clubs as well as for the sports business in general.

Despite the ground-breaking innovation and attraction of NFTs, there are also numerous risks associated with them, including legal ones. There are various unresolved legal questions, for example regarding financial obligations, copyright classification, and challenges under civil law, criminal law, and data protection law.

Furthermore, there is a significant risk of cyberattacks and online fraud.

One further problem that cannot be ignored is the NFT industry's unquestionably negative impact on the environment. There is already a lot of discussion about the massive electricity use of NFTs.

11. REGIONAL ISSUES

11.1 Overview of Regional Issues

Brexit still has an impact on athletes and sports clubs in Austria especially when it comes to the transfer business. For example, since Brexit, new transfer regulations are in place in football, this, of course, also affects Austrians and Austrian clubs when they want to process transfers to or from the UK.

Although the consequences for the transfer business are often at the centre of discussions surrounding Brexit, there are a variety of other legal and contractual consequences that impact the sports business as well. Following Brexit, the UK is no longer bound by a range of EU legislation such as the rules with regard to trade marks and with regard to the freedom of movement.

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Trends and Developments

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How the Sports Community in Austria Is Responding to the War in Ukraine

The world of sports turned on Russia after the country declared war on Ukraine, invading the neighbouring country in February 2022. The reactions of the sports community were mixed. Events (such as the Champions League final, which was supposed to take place in Saint Petersburg) have been moved and changed in response to Russia's invasion of Ukraine. Many federations banned Russian and Belarusian athletes from competing; for example, they were banned from the Beijing Winter Paralympics 2022.

Furthermore, sponsorship activities of Russian companies with European sports clubs have come into focus. The Russian natural gas company Gazprom, for example, is also a partner of Bundesliga football club FK Austria Vienna – with a co-operation officially aimed at the team's youth sector. The so-called “Young Violets”, FK Austria Vienna's team in the second highest division of Austrian football, wear the Gazprom logo on their jerseys. The club receives a seven-figure sum for this. In the wake of the war in Ukraine, the Austrian club reacted by removing the Gazprom logo from its jerseys.

The economic and legal consequences of this war cannot yet be predicted. However, the dramatic events will certainly have legal implications for existing agreements, especially sponsorship and event contracts.

COVID-19 and Mandatory Vaccination

The COVID-19 pandemic has had a far-reaching impact on sports and presented a variety of challenges. In order to counteract the effects of

the pandemic, several regulations have been issued by the Austrian Minister of Health, which have contained special provisions for both amateur and professional sports. While professional sports competitions were permitted under certain conditions even in times of lockdown (for example, without any fans and spectators), general entry into sports facilities for the purpose of hobby sports (for example, in fitness centres) was, from time to time, prevented. This had a huge economic impact on the sports sector.

Furthermore, Austria passed a law making vaccinations against COVID-19 mandatory by February 2022, which will presumably play an important role from a labour law perspective. However, the vaccination obligation has been heavily criticised and has recently been suspended for a limited period of three months. At the end of this period, a new evaluation will be carried out in order to determine whether further suspension is necessary.

New Federal Anti-Doping Act 2021

The new Federal Anti-Doping Act 2021 (*Anti-Doping-Bundesgesetz 2021*, or ADBG 2021) entered into force on 1 January 2021 and implements the (new) World Anti-Doping Code 2021. In brief, the new law brings the following changes.

The ADBG 2021 sets out new provisions regarding the protection of whistle-blowers (Section 1 paragraph 2 No 11, ADBG 2021). Whistle-blowers are to be better protected against intimidation in the future.

The ADBG 2021 strengthens the protection of persons in particular need of protection

(*besonders schutzbedürftige Personen*) (Section 2 No 4, ADBG 2021). Such individuals will benefit from a lighter penalty regime for anti-doping violations.

Amateur athletes (*Freizeitsportlerin/Freizeitsportler*) are now explicitly defined (Section 2 No 14, ADBG 2021). Although amateur athletes are also subject to anti-doping violations, the law treats them less strictly. In the case of violations of the anti-doping regulations, a lesser penalty than for professional athletes can be applied and publication of the doping abuse can be waived.

Further provisions address sanctions for the use of abusive substances outside of a sports competition (Section 2 No 28, ADBG 2021). This is in response to concerns that the use of, for example, THC, cocaine, ecstasy, and heroin is more of a social problem than a sports problem. If the athlete can prove that the use of the substance with abuse potential took place outside of competition and was not related to athletic performance enhancement, the standard suspension is three months. A further reduction (up to one month) can be obtained if the athlete completes a rehabilitation programme.

With the ADBG 2021, the “International Standard for Education” comes into force and thus important measures are set in terms of doping prevention (Sections 3 and 24 paragraph 2 No 13, ADBG 2021).

The ADBG 2021 has established an athletes’ commission (Section 5 paragraph 2 No 5, ADGB 2021) in an effort to better involve active athletes in anti-doping work. Half of its members are women.

It is now possible to amicably settle disputes between the athlete and the authorities (Section 19, ADBG 2021).

Finally, the ADBG 2021 provides changes with regard to the inclusion of teams in the national testing pool (Section 9 paragraph 5, ADGB 2021) and the physician’s duty to provide information under certain circumstances, if the administration of drugs containing prohibited active substances or the use of prohibited methods is required (Section 27, ADGB 2021).

Review of the Legal Framework for Esports

Since the Austrian federal government emphasised – also in its coalition agreement (*Koalitionsvertrag*) – that esports has enormous social potential, a working group with representatives of the esports scene has been set up. Since this popular and modern form of sports competition raises many unanswered questions, it is the goal of the federal government to develop a legal framework for esports. It is also planned that esports will be recognised as a sport.

Digitalisation, Cryptocurrencies and Blockchain Technology

In Austria, sports clubs and athletes as well as companies active in the sports business have realised the enormous potential that digitalisation, cryptocurrencies and blockchain technologies have to further monetise fan engagement and attract sponsors in a new way.

Blockchain-based fan tokens, for example, can be used globally, regardless of currencies and country borders, and the technology offers transparency and traceability. Hence, Austrian football clubs in particular, such as SK Rapid Vienna, are currently thinking about the issuance of their players as NFTs to ensure that fans remain connected with the club.

In this context, the co-operation between the Austrian Football Bundesliga and the digital company Sorare is certainly worth mentioning. Together, they have presented the first NFT project in Austrian soccer: there are NFT trading

cards of each player in the Bundesliga. As in the real transfer market, users can buy players in the digital transfer market – here in the form of trading cards – and compete against each other in a fantasy football game.

The Austrian Football Association (*Österreichischer Fußballbund*, ÖFB) has also discovered NFTs for itself. Together with the Austrian startup “*AhoiKapptn!*”, the ÖFB is issuing NFTs with images of the players of the Austrian football national team. The NFTs, which can be purchased and traded using blockchain technology, offer the chance to win unique experiences and rewards such as “meet and greets”, signed match-worn jerseys or a training session with coaches.

Furthermore, Austrian sports clubs and organisations are also considering using blockchain technologies by implementing more secure and transparent ticket exchange markets.

Increased CSR Initiatives

Corporate social responsibility (CSR) is of growing importance in the Austrian corporate world. The discipline assumes that every company, including those involved in sports, should assume social responsibility.

Many sports clubs are doing this and a wide range of initiatives in this area are being launched, from sustainable turf without environmentally harmful plastic to extending the use of facilities to disabled people.

CSR also includes the fight for greater tolerance and against homophobia, racism and the like.

FIFA to Introduce New Loan Regulations

FIFA plans to introduce a new regulatory framework for football player loans. The new regulatory framework will include:

- the requirement of a written agreement defining the terms of the loan;
- a minimum loan duration, being the interval between two registration periods, and a maximum loan duration, being one year;
- a prohibition on sub-loaning a professional player who is already on loan to a third club; and
- a limitation on the number of loans per season between the same clubs and a limitation on a club’s total number of loans per season.

In particular, the limitation on the number of loans will have an impact on football clubs’ transfer business in Austria as elsewhere. Red Bull Salzburg, for example, would currently be affected by the reform.

Ongoing Discussions on the 50+1 Rule

The so-called 50+1 rule has been written into Austrian league statutes and requires that an Austrian Bundesliga football club must hold a majority of its own voting rights in order to compete in the Bundesliga (the first and second highest divisions of Austrian football), thus preventing takeovers by external investors, which are common practice in England and other parts of the world. It protects Austrian football clubs against cases where an investor with deep pockets buys a club, pumps in a lot of money and then withdraws it a short time later, leaving the club to drop down the leagues because they face economic crisis after the investor’s withdrawal.

This rule is, however, the subject of ongoing reform efforts in the Austrian Football Bundesliga, as the question of whether this regulation is compatible with antitrust law or EU law is subject to debate. For this reason, the Austrian Bundesliga is currently considering new concepts on how to regulate investments and on how to reshape the 50+1 rule.

SV Mattersburg: How a Banking Scandal Dragged a Bundesliga Football Club into Ruin

Following the Commerzialbank bankruptcy in the summer of 2020, SV Mattersburg slid into insolvency too. As a result, the football club returned its licence for participation in the Austrian Football Bundesliga. Despite the voluntary return of the licence, it must be mentioned that, due to the above-mentioned developments, SV Mattersburg would not have been able to continuously meet the criteria that a club must fulfil in order to receive a licence for the highest division in Austrian football. SV Mattersburg would therefore not have received a licence anyway.

As for the causes of SV Mattersburg's insolvency, it must be noted that the president of SV Mattersburg, Martin Pucher, was also the head of Commerzialbank Mattersburg. Thus, the club was absolutely financially dependent on the bank. Since the bank allegedly committed several financial crimes by falsifying balance sheets and issuing fictitious loans and subsequently had to file for bankruptcy, SV Mattersburg had almost no own funds left, which in turn led to the club's insolvency.

New FIFA Football Agent Regulations Expected to Enter into Force this Year

FIFA is currently discussing several proposals for a new legal framework governing agents' activity, which is expected to be approved in 2022. The changes include the establishment of an Agents Chamber to deal with specific disputes, the limiting of agents' licences to natural persons only, the payment of agent fees through a FIFA clearing house, the application of sanctions to clients who work with unlicensed agents and the creation of the Football Agent Working Group (to be composed of representatives of professional football stakeholders and agent organisations recognised by FIFA).

Changes at FIFA level will also have consequences for Austria. The changes will then have to be implemented in the Austrian Football Association's regulations on working with players' agents (*ÖFB-Reglement zur Arbeit mit Spielervermittlern*).

Austrian Football Association Plans Academy Reform

The Austrian Football Association (ÖFB) is currently evaluating its structure in the academy area together with experts from the Bundesliga, representatives of the regional associations and external experts. For example, the ÖFB is also working on a second-highest division in the youth leagues.

AUSTRIA TRENDS AND DEVELOPMENTS

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