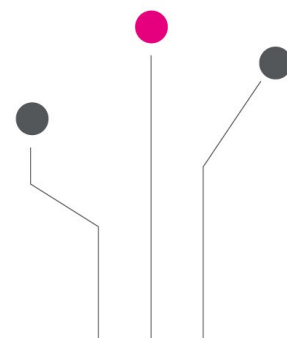


to the point technology & digitalisation



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Preface

IT technologies and creative use of data, which are the "new oil", are driving the economic growth of many prosperous nations. Examples of such technologies and data use range from IT outsourcing and clouds, which have been with us for many years and became "business as usual" for many entrepreneurs, to blockchain, autonomous mobility and fashionable cryptocurrencies and their initial coin offerings.

The recently adopted new EU rules for crowdfunding platforms seem very promising in terms of providing a unified legal framework for innovative cross-border financing. On the other hand, with other local regulatory rules remaining intact in each of the EU member states, the actual effect of the new unified rules remains to be seen. As far as rapidly exploding fintech business is concerned, the current buzzword is DeFi (decentralised finance). The idea of decentralised lending and deposit taking, which replace banks and other allegedly unnecessary middlemen by one IT platform, seems revolutionary and tempting, but can the existing complex regulatory rules indeed be swept aside so easily (and should they)? These and other topics are briefly out-lined below in our bulletin, giving you fresh legal/tech news from the perspective of experienced legal practitioners.

From the news reported below, one may find the snippet about arising EU excellence centres focused on artificial intelligence ("AI"), particularly interesting. While we Europeans should keep our fingers crossed that this initiative will boost our productivity, one may not deny the fact that the EU is currently significantly lagging behind the U.S and China in this area. This may be a result of various factors, but one of the most significant problems seems to be the heavy EU regulatory burden related to the innovative use of big data, which is crucial for any progress in AI. In particular, the GDPR seems to be feared most by innovative AI businesses for various reasons, such as the need to manually review significant algorithmic decisions, the broad and possibly costly right of affected individuals to demand explanations for these decisions, the so called "right to be forgotten" possibly having a crippling effect on the accuracy of machine learning, or vague rules regarding the difference between personal and anonymised data.

Although good lawyers are able set aside most of the alleged regulatory obstacles, this still costs time and money, which are rare assets among small innovators in general. The optimist expects consumers to feel safer in this regulated environment and the EU privacy mark should allegedly become valuable business wise.

We have to wait and hope that the advantages of GDPR and similar stringent rules will come true sooner rather than later. However, the below mentioned historic fine for GDPR breach in the Czech Republic (and similar recent record fines amounting to tens of millions of euros imposed on British Airways or Marriot), could have just the opposite effect and drive innovation outside the EEA.

Let us know what you think and contact our [technology & digitalisation group!](#)



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Schoenherr advises majority shareholder of BIA Separations on sale of its 100% shareholding to Sartorius Stedim Biotech

Schoenherr advised the majority shareholder of purification specialist BIA Separations on the 100% sale of its shareholding to German life science company Sartorius Stedim Biotech. BIA Separations will be merged into Sartorius' subgroup Sartorius Stedim Biotech, for a transaction volume totaling EUR 360 million, of which EUR 240 million will be paid in cash and EUR 120 million in shares.

[Read the full press release](#)

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Austria: Schoenherr advises Austrian start-up Carbomed on multi-million euro financing round

Under the leadership of partner Thomas Kulnigg, the Schoenherr team advised Carbomed Medical Solutions, an Austrian FemTech start-up, on a EUR 3m financing. The financing round was led by aws Gründerfonds.

Carbomed Medical Solutions, a start-up founded in Graz, developed and sells the product breathe ilo, a breath analysis device which tracks a woman's cycle predicting ovulation.

[Read the full press release](#)

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To the Point:

- **AI Excellence Centres in Europe**

The first meeting of the European Network of Artificial Intelligence (AI) Excellence Centres ("AI Network") took place at the beginning of October 2020. The AI Network's motto is: "the whole is more than the sum of its parts", which sets the tone for future developments and cooperation in the area of AI. Currently the AI Network consists of five main projects:

- AI4Media: a consortium comprising 30 leading partners in the areas of AI and media (nine universities, nine research centres, 12 industrial partners) aimed at creating next generation AI able to serve media and making sure that the European values of ethical and trustworthy AI are embedded in future AI deployments;
- ELISE: a network of AI research hubs coordinated by Aalto University inviting all ways of reasoning, considering all types of data applicable for almost all sectors of science and industry;
- HumanE-AI-Net: a network of partners within the AI-related area aimed at enabling technologies for human-level interaction to empower individuals and society, by providing new abilities to perceive and understand complex phenomena, to individually and collectively solve problems, and to empower individuals with new abilities for creativity and experience;
- TAILOR: a project aimed at creating a strong academic-public-industrial research network, reducing the fragmentation of AI hubs and increasing the joint AI research capacity of Europe, helping it to take the lead and advance the state-of-the-art in trustworthy AI;
- VISION: a project aiming to foster the exchange of information between the selected projects and other relevant initiatives, ensuring synergies and overcoming fragmentation in the European AI community.

The common goal of the AI Network is to support and make the most of the AI potential already available in Europe, to connect world-class AI researchers in order to establish a common vision, and to promote the exchange of knowledge, experience and research outcomes. Currently, the EU legal initiatives related to AI are rather theoretical and mostly revolve around ethical values. Hopefully, thanks to the AI Network and its research, the legislative work carried out in the EU will be more efficient, practical and valuable for the attempts to properly regulate the various aspects of AI.

[Daria Rutecka](#)

- **A digital euro: the right next step in financial digitalisation?**

The rise of alternative payment and store of value systems, the rapid migration of payments away from cash in the time of COVID-19 and the persistence of so many unbanked people worldwide is forcing the European legislator to rethink our financial infrastructure and payment

system to stay on track with developments. The ongoing international discussion around Central Bank Digital Currencies (CBDC) initially began with Facebook's plan to launch a new global payment system and financial infrastructure supported by its Libra stablecoin. In Europe, this resulted in a recently published report by the European Central Bank exploring the risks and opportunities of a digital euro. This currency would be offered in a digital form but not necessarily as a crypto coin and would complement but not replace the current offering of cash. Find the full report [here](#).

[Dominik Trybón](#)

- **DeFi: Cryptoasset buffet (re)opens for business**

The world of cryptoassets moves quickly and can be confusing. Decentralised Finance – or DeFi – takes this to another level with concepts and projects such as yield farming, Sushi Swap and YAM Finance springing up and closing every day. But what is actually going on in DeFi behind the rapid rate of innovation and food-inspired nomenclature? If cryptocurrencies aimed to disrupt payments, and ICOs did the same for venture capital, this latest crypto-craze comes after disintermediating the core banking business: lending and deposit taking. Unsurprisingly, legal issues and regulatory uncertainty may somewhat spoil the meal.

[Visit our blog to learn more!](#)

[Jurij Lampič](#)

- **New EU rules for crowdfunding platforms**

On 5 October 2020, the EU adopted new rules to boost EU crowdfunding platforms and protect investors. The new rules aim to increase cross-border business funding in the EU by providing for a single set of rules on crowdfunding services. The uniform set of criteria will apply to all European Crowdfunding Service Providers up to offers of EUR 5,000,000 (calculated over a period of 12 months per project owner). Investors would be provided with a key investment information sheet drawn up by the project owner for each crowdfunding offer or at platform level. European Crowdfunding Service Providers need to request authorisation from their national competent authority in which they are established. Through a notification procedure in a Member State, such service providers would also be able to provide their services cross-border. The rules will start to apply one year after its publication in the Official Journal of the EU. Existing service providers will benefit from a transition period of up to 24 months.

Our view: To date, cross-border crowdfunding campaigns need to be assessed on a state-by-state basis to ensure compliance with all regulations. Having a uniform set of rules for cross-border campaigns can be a game changer for raising funding in the EU. Still, local laws have to be considered since the crowdfunding rules only govern regulatory aspects but not things like consumer protection laws applicable to the security offered or corporate aspects applicable to the issuer. It remains to be seen how the market will react to these changes.

[Thomas Kulnigg](#)

- **Record fine for spamming imposed in the Czech Republic**

On 6 March 2020 the Czech Office for Personal Data Protection (the "Office") imposed a record fine of CZK 6,000,000 (approx. EUR 250,000) on an infringer who spammed almost 500,000 e-mail addresses with unsolicited commercial communication. The infringer, a used-car dealership, had already been fined by the Office for the same delict in the past. When imposing the record fine, the Office considered not only that the infringer is a repeat offender, but also that the number of recipients of the spam was large, and that the failure to comply with the legal requirements regarding collection of contact information and consumer consents to receive commercial communication was a systematic problem rather than an isolated incident. According to the Office, the problem stemmed from the infringer's inability to prove the existence of consumer consents, and the use of insufficient procedures for obtaining them as evidenced by the Office's local investigation. In addition, the Office condemned the behaviour of the infringer, who allegedly deliberately anonymised its database of e-mail addresses so the Office could not properly conduct the inspection, in particular verify legal titles to sending commercial communication. The infringer tried to appeal, claiming that the commercial communication had been sent by a third party and that some of it was not commercial at all; however, the Office upheld its decision in the second instance as well. Fines imposed for spamming in the Czech Republic usually do not exceed CZK 200,000 (approx. EUR 7,500).

[Eva Bajáková and Ondrej Holowka](#)









- **News about the Austrian Limited**

The envisaged new company form Austrian Limited is currently one of the top topics in Austria. Representatives of the economy and especially from the start-up sector emphasize the importance of a foundation-friendly and unbureaucratic company form which should have elements of the Austrian limited liability company as well as of a joint stock corporation. Main focus should be (i) the simple participation of employees, (ii) simplified capital increases in order to promote the scalability of start-ups, (iii) the creation of different share classes and (iv) the easier transferability of shares in the company. The ball is currently in the court of the Ministry of Justice and it will be interesting to see which demands from the business and start-up sector make it into the bill. We will update you on any material news.

[Maximilian Nutz](#)

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

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

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