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How to properly leave your estate under the new 2015 Amendment to the Inheritance Law

Austrian and European lawmakers have reformed key parts of inheritance law. The consequences of the Austrian amendment of 2015 and the EU regulation on international successions are substantial and make it advisable to rethink previous considerations regarding succession.

In order to consolidate the legal situation, Austrian legislators passed the 2015 Amendment to the Inheritance Law, thereby bringing the rules of succession in line with current circumstances which have changed since the law's adoption in 1811. The change also extends to linguistic nuances. The substantive law content will mostly become effective on 1 January 2017 and will therefore, as a rule, have to be applied to all cases where death occurs after 31 December 2016. The new rules governing testamentary dispositions and gifts apply to such as are made after 31 December 2016. The part of the Amendment that accompanies the EU regulation on international successions became already effective on 17 August 2015.

For **intestate succession** (which applies when the deceased has made neither a last will nor entered into a contract of inheritance), the right of succession enjoyed by the registered partner or spouse is strengthened; the deceased's siblings or grandparents no longer have a statutory right to intestate

succession, but testators may certainly continue to make provision for them in their will.

Lawmakers have also made changes regarding the **right to a compulsory portion** of the estate which is due to specified individuals regardless of who the testator named as heir. A new feature is that a compulsory portion will be due only to the spouse or registered partner and the deceased's descendants, but no longer to his/her antecedents: considering that, in this day and age, people normally survive their (grand)parents, it is no longer deemed necessary to grant a compulsory portion to their ancestors.

A newly created option to **defer payment of the compulsory portion** will bring relief to heirs affected by such a debt. The testator may provide in his/her last will that payment of the monetary portion be deferred for, at most, five years after his/her death or be paid in instalments. Alternatively, the heir may request the court to defer payment if immediate performance would be unduly hard on him/her.

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Another novelty is that last wills in favour of the ex-partner are deemed to be annulled once the marriage, registered partnership or cohabiting partnership is dissolved; the same applies when an adoption is annulled. This is, however, not the case when the deceased has given express instructions otherwise. Accordingly, the testator needs to take active steps when he or she wants to keep the legacy valid in spite of the marriage or registered or cohabiting partnership being terminated.

The new legal situation further strengthens the **cohabiting partner's** position in the event that the deceased has failed to include him or her in the will. Provided that the partner has cohabited with the deceased at the time of death and such cohabitation has continued for the last three years before the latter's death, the partner is entitled to a **special right to intestate succession** if no other heirs exist and the estate would thus devolve upon the legatees or the state. The partner moreover will be entitled to an **advance bequest**: he or she may continue to live in the joint household provided that they shared the same household for at least three years before the deceased partner's death. This right is, however, limited in time and will terminate at the latest one year after the deceased partner's death.

A new feature is the so-called **nursing bequest**. If a person close to the deceased has given nursing care to the deceased for at least six months of the last three years before the deceased's death to a more than negligible extent (according to the explanations to the bill, nursing care would need to be given for more than 20 hours per month on average), such person is entitled to a legacy provided that no bestowal or monetary compensation has been agreed. In this context, "nursing care" comprises any activity that as much as possible helps secure the necessary care and help to a person in need of nursing care and improves such person's options to lead a self-determined, need-oriented life. "Persons close to the deceased" are the legal heirs (spouse, registered partner, children, grandchildren, parents, siblings, grandparents, uncles, aunts, cousins and great-grandparents), their respective spouse, registered partner or cohabiting partner and their children and the deceased's cohabiting partner and his/her children. The amount of the bequest depends on the type, duration and scope of the nursing care given. It thus focuses on the benefit (reduction of own expenses) received by the deceased through the nursing care received. The nursing

bequest is due in addition to the compulsory portion, if any. Alternatively, the caregiver may assert enrichment rights. When a compensation has been agreed or when the nursing care is compensated by bestowals given by the deceased or by a third party or by a government agency, no such bequest will be granted. The nursing bequest may be withdrawn only if there are grounds for disinheriting the potential legatee (e.g. when the caregiver has committed a criminal offence against the deceased which requires premeditation and is punishable by a prison sentence of more than one year).

The EU regulation on international successions applies to the succession of persons dying on or after 17 August 2015. It harmonises the international law of civil proceedings and choice of law regulations (which law of succession applies?) in cross-border inheritance cases. The object is to make sure that a given succession is treated coherently, i.e. that the court in one member state handles the entire world-wide estate. The regulation applies in all EU member states with the exception of the United Kingdom, Ireland and Denmark. Contrary to previous practice, the decision of which member state has competence for a case of succession no longer depends on the deceased's nationality but on his or her "habitual residence" at the time of death. In simplified terms, this is assumed to be the centre of the deceased's vital (family and social) interests. The habitual residence then determines which court will act as probate court. While the testator may choose the law of succession of his/her native state (and only this one), competence nevertheless remains with the court in that state where the deceased had his/her habitual residence.

For all the above reasons, it is highly advisable to review last wills already made.

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Spotlight on e-commerce – online trading in the focus of competition watchdogs

The European Commission and the Austrian Federal Competition Authority are currently taking a close look at online commerce, as is evidenced by the Europe-wide e-commerce sector inquiry and recent Austrian practice of levying fines.

E-commerce sector inquiry

On 6 May 2015, the European Commission announced the launch of an antitrust competition inquiry into the e-commerce sector. It is part of a comprehensive package of measures which the Commission ambitiously aims to implement within the framework of its "Digital Single Market Strategy" by the end of 2016. The Commission aims to eliminate barriers in cross-border online commerce: even though almost 50% of the population shopped online in 2014, only 15% of European consumers made purchases across borders. The Commission intends to change this.

Through its inquiry the Commission wants to develop a better understanding of the competitive dynamics operating in e-commerce and to expose possible infringements of antitrust law. It could then open case investigations for infringement of the cartel prohibition or the abuse of dominant market positions. The inquiry focuses on arrangements made between suppliers, market platforms and comparative price providers on the one hand and retailers on the other hand (so-called vertical agreements) to restrict the internet sales channel. The Commission thus scrutinises rules applied by producers to their authorised dealers to reject inquiries by customers from other member states (so-called geoblocking), and also looks at best-price clauses (MFNs) used by platforms.

The e-commerce sector inquiry is in full swing: since summer, the Commission has sent requests for information to over 2,000 e-commerce businesses of all sales levels. The replies are currently being analysed; a preliminary report is expected in mid-2016 and the final report is scheduled to be published in the first quarter of 2017.

Fine levied on Samsung

On 4 November 2015 it became known that the cartel court has, with legal effect, levied a fine of € 1.05m on Samsung Electronics Austria. The Austrian Federal Competition Authority BWB, which filed a petition with the cartel court to fine Samsung, found in its investigations that Samsung illegally interfered with the free pricing of Austrian authorised dealers for some Samsung products. According to the BWB, there were express requests to raise online sales prices.

With a few exceptions, Austrian and European cartel laws prohibit prescribing fixed or minimum sales prices to dealers. This is known as illegal vertical price fixing. The BWB regularly considers vertical price fixing in online commerce as being particularly problematic under cartel law, assessing it as a "hard-core restriction".

Samsung is the eighth business that has been fined for vertical price fixing in online trading with electronic goods. The cartel court has already imposed final fines of € 6.22m on this sector; the second highest fine (after Philips which paid € 2.9m) was handed out to the retailer Media-Saturn (€ 1.23m). The BWB investigation was triggered by a survey carried out by the Vienna University of Economics and Business and commissioned by geizhals.at, a price comparison platform, among Austrian online traders, where 47.2% of respondents stated that they had been pressured in their pricing by producers, i.a. by delayed deliveries and worse purchasing terms. Consequently, the BWB searched, amongst others, the premises of Media-Saturn and followed up by filing the first applications for fines with the cartel court. The products affected by the proceedings cover a wide span, ranging from

plasma TV sets to navigation devices, laptops, printers, coffee machines, vacuum cleaners and pool cleaning robots.

Online trading will continue to be an investigation priority for the BWB in 2016, together with the food sector, as its director general, Theodor Thanner, informed a parliamentary session of the Economic Committee on 7 October 2015. Thanner noted that the BWB is "clawing itself along from case to case". Actually, another decision involving a fine for vertical price fixing became known just before the deadline for this P) News on 16 November 2015, in which the cartel court imposed a fine of € 100,000 on United Navigation for vertical price fixing with resellers, i.a. in online trading and illegal market allocation (prohibition to export to Germany).

Businesses should take the e-commerce sector inquiry and the BWB investigations of online trading as an occasion to perform a thorough legal review of their e-commerce sales practices

and implement compliance measures. In the Samsung case, the BWB mentioned that, in calculating the fine, a mitigating circumstance was the fact that the management had already taken compliance measures prior to the start of the BWB investigation. This was the first time that compliance efforts under cartel law did have a mitigating effect even though the infringement could not be prevented.

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P) Inside

On 6 November 2015, Preslmayr jointly with O.P.P.-Beratung organised a client workshop on "Compliance 4.0" in the first-floor rooms of Café Landtmann. Following a networking breakfast, Dieter Hauck, Rainer Knyrim and Esther Sowka-Hold from Preslmayr and Markus Oman from O.P.P. informed participants of the latest trends in cartel and data protection laws. Presentations ranged from the e-commerce sector inquiry and the investigative powers of competition authorities in searching a company's IT to a discussion of the importance of internal control systems as part of IT compliance and a debate of current developments regarding staff surveillance.

The great interest of attendants – the event had been quickly booked up – confirmed that present trends in cartel and data protection laws are of the utmost currency in everyday business life.



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