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Insurance Litigation 2021

Austria: Law & Practice
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AUSTRIA

Law and Practice

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1. RULES GOVERNING INSURER DISPUTES

1.1 Statutory and Procedural Regime

The majority of insurance disputes can be attributed to different interpretations of the policy and applicable insurance conditions. As Austrian statutory law does not provide for insurance-specific principles of interpretation, the existing insurance-related case law in this regard is of particular importance. According to settled case law of the Austrian Supreme Court of Justice, insurance policies and conditions are to be interpreted objectively unless the parties have agreed on a specific provision as a result of preceding negotiations. This means that the wording of the provision, as a general rule, has to be interpreted based on the understanding of the average and reasonably well-informed insured.

While the principles established by doctrine and case law give guidance in this context, an unequivocal interpretation of an insurance contract can only be determined by the competent courts.

With regard to the procedural regime, the Austrian Jurisdiction Act (*Jurisdiktionsnorm*, JN) determines the organisation and jurisdiction of the courts, while the Austrian Code of Civil Procedure (*Zivilprozessordnung*, ZPO) sets out the rules for contentious proceedings in civil courts and provides a framework for national and international arbitration.

1.2 Litigation Process and Rules on Limitation

Austrian Insurance Contract Act

As a starting point for any insurance case, the insured is required under the Austrian Insurance Contract Act (*Versicherungsvertragsgesetz*, VersVG) to notify the insurer without undue delay (Article 33 VersVG), as soon as a (potentially) insured event occurs. Furthermore, the insured has to provide the insurer with any information or documents required to establish the insured event or the extent of the insurer's obligation to pay (Article 34 VersVG).

If these rules (or associated obligations under the relevant insurance policy) are not met, the insurer will regularly deny coverage pursuant to Article 12 VersVG, which triggers the general three-year limitation period for the insured to file a claim. Under certain further conditions, a rejection of coverage by the insurer can also trigger a one-year cut-off period.

Court and Jurisdiction

Cases with claims not exceeding EUR15,000 are heard by the local district courts, whereas the regional courts are competent to hear cases where the amount at issue is higher.

The local jurisdiction is in either case based on the domicile of the defendant. However, it has to be taken into account that a number of insurance contracts and conditions contain provisions pertaining to the territorial jurisdiction and even the international jurisdiction, which – if valid and binding – are relevant in assessing the jurisdiction for a claim or its defence, respectively.

Appeals

The decision of the first instance court can generally be appealed before the courts of the second and third instance. At second instance, appeals are made either to higher regional courts, when a judgment issued by the regional courts is appealed, or to the regional courts, when appealing a judgment issued by the district courts. The Austrian Supreme Court is the final instance court, hearing, inter alia, appeals of second instance decisions. In addition to the general civil courts, Austria has specialised commercial courts at first and second instance. These commercial courts are particularly fit to handle complex commercial claims and, con-

sequently, well qualified to hear (re)insurance disputes between businesses.

1.3 Alternative Dispute Resolution (ADR)

The EU Alternative Dispute Resolution Directive (ADR Directive, 2013/11/EU) has been transposed into national law by Austria in the Alternative Dispute Resolution Act (*Alternative-Streitbeilegung-Gesetz*, AStG) which came into force in 2015. The AStG regulates the alternative settlement of disputes arising from sales or service contracts between a company established in Austria and a consumer resident in the European Union before the bodies for alternative dispute resolution. The AStG may also be relevant for insurance-related disputes, as insurance contracts are not excluded by Article 1 of the AStG.

The rising importance of alternative dispute resolution procedures pertaining to insurance disputes is also reflected in the founding of the Austrian Branch of the AIDA Reinsurance and Insurance Arbitration Society (ARIAS) in 2016.

In addition, the Austrian Chamber of Commerce hosts a conciliation board, the *Rechtsservice- und Schlichtungsstelle* or RSS, which handles certain types of insurance disputes (eg, where the policy was placed through an insurance broker). The focus of the RSS lies on mass products such as household, personal liability and accident insurance, rather than on specialised products such as financial lines policies. The conciliation recommendations issued by the RSS are non-binding.

Despite these developments, alternative dispute resolution is still of relatively minor relevance for insurance or reinsurance disputes. Even though a number of alternative dispute resolution services exist, the vast majority of insurance disputes are currently either settled informally or decided by the state courts. However, arbitration clauses are becoming more popular for some types of insurance and the proportion of litigation and arbitration (or other types of ADR procedures) is slowly changing for insurance disputes.

2. JURISDICTION AND CHOICE OF LAW

2.1 Rules Governing Insurance Disputes

The international jurisdiction of the courts, as is the case for all member states of the European Union, is governed by the Brussels Ia Regulation (Regulation 1215/2012/EU). The regulation's Articles 11 to 14 stipulate that claims against an insured, as a general rule, can only be made in the member state in which the defendant is domiciled. The insurer, on the other hand, can be sued in the member state in which it has its domicile, a branch, agency or establishment. Furthermore, proceedings can be brought against the insurer in the member state where the insured as claimant is domiciled, or – if multiple insurers are involved – in the courts of a member state in which proceedings are brought against the leading insurer.

However, the Rome I Regulation (Regulation 593/2008/EC) contains the relevant conflict-of-laws rules for the vast majority of cases. Article 7 paragraph 3 Rome I sets limits to the parties' freedom concerning choice-of-law clauses. Such clauses are generally valid if they foresee the jurisdiction of the courts of the member state where the risk is situated or the country where the insured has habitual residence. Certain limitations exist with regard to consumers. Deviating choice-of-law clauses may, however, be valid for policies covering "large risks" within the meaning of Council Directive 73/239/EEC. Special rules are, among others, applicable to life insurance and obligatory insurance products.

2.2 Enforcement of Foreign Judgments

The enforcement of foreign judgments is regulated in the Austrian Enforcement Code (*Exekutionsordnung*, EO) as well as in bilateral and multilateral treaties.

Within the European Union, the enforcement of foreign judgments in commercial and civil matters is regulated by the Brussels I Regulation. Enforcement of a judgment rendered in an EU member state is straightforward, as it does not require a separate declaration of enforceability and is subject to the same conditions as Austrian judgments. Likewise, judgments that have been rendered in Switzerland, Norway or Iceland will be recognised without requiring a declaration of enforceability, in accordance with the revised Lugano Convention on Jurisdiction and Enforcement of Judgments in Civil and Commercial Matters.

Apart from the above, enforcement of foreign judgments requires a formal declaration of enforceability (exequatur proceeding). This declaration is only granted if the judgment in question is enforceable according to the law of the foreign state and if reciprocity is guaranteed by a bilateral or multilateral treaty. If no reciprocity agreement has been concluded, Austrian courts will not grant enforcement of a foreign judgment.

2.3 Unique Features of Litigation Procedure

Beside the continuous legal developments driven by European Union law, German insurance law is a major factor for the Austrian insurance market. Consequently, German literature and judicature in the field of insurance law are also of interest to courts and practitioners in Austria. For the same reasons, many insurance products are, at their core, adapted versions of products underwritten on the German market.

As a result, insurance conditions are often not tailor-made for the Austrian market in what would be a costly and time-consuming process, but rather copied from other jurisdictions and only adapted cursorily. This idiosyncrasy of the Austrian insurance market amplifies the common problem of a provision's unintentional room for interpretation, which is the reason for the vast majority of insurance disputes.

Apart from that, litigating Austrian insurance cases is often influenced by model insurance terms published by the Austrian Insurance Association, which are market standard for some insurance types and usually incorporated with only minor changes.

In case of out-of-court settlements, the Austrian Fee Act (*Gebührengesetz*, GebG) provides, as a general rule, for a fee of 1% or even 2% of the matter value (with some exceptions for settlements pertaining to certain types of insurance contracts).

3. ARBITRATION AND INSURANCE DISPUTES

3.1 Enforcement of Arbitration Provisions in Commercial Contracts

With regard to arbitration clauses, the Austrian Code of Civil Procedure stipulates that the contracting parties can agree (in writing) on an arbitration clause for both existing and future claims that may arise in connection with a defined legal relationship. If the clause is valid, the Austrian courts will – as a general rule – uphold and enforce the arbitration clause. Only if the clause is invalid, or the subject matter of the dispute is not arbitrable, will the courts refuse to enforce it. Consumer and employment-related matters, especially, are only arbitrable if the parties entered into the arbitration agreement after the respective dispute arose.

3.2 The New York Convention

Austria is a signatory to the New York Convention (the Declaration of Accession was signed in 1961). The grounds for challenging an award are set out in the Austrian Code of Civil Procedure and closely mirror those provided in Article V of the New York Convention (and also Article 34 of the UNCITRAL Model Law on International Commercial Arbitration). The grounds for challenging listed below are exhaustive and there is no right to further appeal. The grounds are:

- the invalidity of an arbitration agreement or a lack thereof;
- a party's incapacity to conclude an arbitration agreement;
- a violation of the right to be heard;
- the subject matter is beyond the scope of the arbitration agreement;
- a failure in the constitution or composition of the tribunal;
- the proceedings violate Austrian public policy;
- the requirements for an action for revision are fulfilled;
- the matter in dispute is not arbitrable; and/or
- the award violates Austrian public policy.

The Austrian Supreme Court of Justice is the only court of instance when an award is challenged. The limitation period for challenges to the award is three months after the award has been handed down.

3.3 The Use of Arbitration for Insurance Dispute Resolution

In 1895, Austria first enacted legislation on arbitral proceedings and has been an arbitration hub for Central and Eastern Europe ever since. In 2006, the new Austrian Arbitration Law, based on the UNCITRAL Model Law, came into force. Austrian law also provides specific rules for mediation proceedings in civil matters.

The establishment of the Vienna International Arbitral Centre (VIAC) furthered Austria's position as the preferred place for the settlement of east-west disputes. VIAC has administered well over 1,600 proceedings since its inception and its caseload continues to increase, highlighting the importance of the institution. It administers both mediation and arbitration proceedings but is particularly renowned for its arbitration rules, the Vienna Rules. VIAC only deals with international cases involving at least one party with its place of business or normal residence outside of Austria or cases concerning disputes with an international character.

With regard to insurance or reinsurance disputes, however, arbitration still lags behind court proceedings as the preferred method for resolving disputes.

Arbitral awards can only be challenged before the Austrian Supreme Court under the specifications listed in **3.2 The New York Convention**.

4. COVERAGE DISPUTES

4.1 Implied Terms

In Austria, the parties' freedom of contract is, to some extent, limited by terms implied into a contract of insurance by operation of law as well as by settled case law.

The writing of insurance contracts is regulated by the VersVG, which governs the rights and duties of the insurer and the insured. In addition, the VersVG sets certain minimum requirements for different insurance branches.

While the general section of the VersVG is applicable to all types of insurance products, some branches, such as motor vehicle third-party liability insurance, are more tightly regulated. On the other hand, some branches, such as reinsur-

ance, credit insurance and transport insurance contracts, remain virtually unrestricted in terms of freedom of contract. For the latter branches, the legislator assumes that the insured is sufficiently qualified and experienced in the respective area of business and also equally familiar with the risk to be insured, therefore not requiring the same level of statutory protection.

Apart from the terms implied into insurance contracts by the VersVG, other limitations of the parties' freedom of contract exist. Most notably, insurance policies and conditions not individually negotiated are considered general terms and conditions and are thus subject to an unfairness test. In this context, a certain provision is deemed to be unfair, if – contrary to the requirement of good faith – it significantly alters the balance of one party's contractual rights and obligations to the detriment of the other party. While the standard is especially strict vis-à-vis consumers, it also applies, in its basic form, to entrepreneurial insureds.

4.2 Rights of Insurers

Before concluding an insurance contract, the insured is required to provide information on all aspects relevant to the insurer's decision on whether or not (or under what conditions) to underwrite the specific risk. The most important consequence resulting from these comprehensive pre-contractual disclosure duties is the insurer's right to terminate the insurance contract where the insured has intentionally refrained from notifying the insurer of a relevant circumstance.

Furthermore, the VersVG stipulates additional remedies for cases of misrepresentation or non-disclosure. The availability of these remedies depends on the degree of culpability and the time of the breach (before conclusion of the contract, during the insurance period or after the occurrence of a loss). In practical terms, the insurer may be entitled to terminate the contract, to cancel the contract or to refuse (full) settlement of an insurance claim. The aforementioned rights must be asserted by the insurer within one month after becoming aware of the infringement.

4.3 Significant Trends in Policy Coverage Disputes

The number of coverage disputes has risen considerably over the course of the last year. In particular, it is noteworthy that not only the number of cases but also the insured's determination to enforce their claims is clearly on the rise.

As regards the nature of the disputes, one noteworthy example and obvious trend throughout the last 12 months relates to the rise of cyber-insurance claims – made under both standalone cyber products or as (supposed) "silent cyber" claims. This trend was, of course, amplified by the increase in remote work in the wake of the pandemic, which increased and exposed the numerous vulnerabilities of many corporate IT systems. This, famously, then led to a significant increase in cyber-attacks and the use of ransomware. Disputes relating to cyber-insurance often relate to either:

- the inaccurate information provided by the policyholder before the conclusion of the contract, eg, pertaining to the security standards of its IT systems; or
- the interpretation of the policy wording (especially for older products and insurance conditions that in some cases leave unintentional room for interpretation).

4.4 Resolution of Insurance Coverage Disputes

Many insurance disputes relate to an insured's reluctance to accept a lack of cover for certain damages. The situation is amplified for certain types of insurance such as financial loss insurance (especially financial lines) policies, which

have become even more elaborate and complex over the course of the last decade.

One of the main reasons for insurance disputes is the breach of obligations and duties by the insureds under the respective policy, and a consequential rescission of the insurance contract or revocation of cover by the insurer. If these cases cannot be resolved amicably, they are regularly litigated in court. Litigation regarding reinsurance disputes, on the other hand, barely occurs; at such level, disputes are regularly settled amicably out of court.

4.5 Position if Insured Party Is Viewed as a Consumer

The VersVG sets out extended rights for consumers, particularly in relation to the termination of insurance policies. For example, consumers have the right to withdraw from an insurance contract within two weeks after conclusion without giving reasons (Article 5c VersVG) with a longer period for withdrawal from life insurance policies (30 days, see Article 165a(2a) VersVG).

Further protection for consumer policyholders derives from the Austrian Consumer Protection Act (*Konsumentenschutzgesetz*, KSchG). For example, as regards the right to withdrawal, Article 3 KSchG provides for a one month-period, if the contract was not concluded on the business premises of the trader or at a trade fair. Furthermore, consumers may also withdraw from insurance contracts if circumstances, which were essential for the consumer's consent, are less likely to occur than depicted by the trader (Article 3a KSchG). Consumers can withdraw from such contracts within a week of such fact becoming noticeable to the consumer, but not later than one month after complete fulfilment of the contract by both parties.

As stated in **4.1 Implied Terms**, a contractual provision that is not individually negotiated is deemed to be unfair and thus invalid, if it significantly detriments the rights of the consumer. For instance, with regard to insurance contracts, the consumer's burden of cost must be as transparent as possible. Similarly, a contract stipulating a burden of proof for the consumer that is stricter than the general statutory rule is invalid. Article 6 of the KSchG provides a non-exhaustive catalogue of contractual provisions considered unfair.

4.6 Third-Party Enforcement of Insurance Contracts

Third parties generally lack the necessary contractual (or other relevant legal) relationship with the insurer to bring a direct action against the latter. As a result, claims against the insurer can in principle only be brought by the policyholder and – under certain circumstances – by other insureds in the case of insurance for the account of another.

However, there are some exceptions to this rule, the most relevant one concerning cases involving motor vehicle third-party liability insurance (and some other types of obligatory insurance). In this context, a third person that has a claim resulting from a car accident can bring a direct action against the liable person's insurer. In such constellations, the insurer of the motor vehicle and the person causing the accident are joint and several debtors. Similar provisions exist, eg, for claims resulting from the operation of aircraft.

Finally, a third party also gains the capacity to sue when the insured assigns contractual rights to performance vis-à-vis the insurer to a third party.

4.7 The Concept of Bad Faith

The concept of bad faith (mala fide) is a core part of general Austrian contract law. Under this concept, for example, intentional fraudulent mis-

representation by the insured enables the insurer to avoid the contract.

4.8 Penalties for Late Payment of Claims

According to the general rule set forth by Article 11 of the VersVG, the insurer is obliged to pay, upon completion of the investigations necessary to determine the insured event and the scope of the insurer's payment obligations. If the insurer does not pay in time, the policyholder must file a coverage dispute and will then, should the court find in favour of the policyholder, be awarded interest.

4.9 Representations Made by Brokers

Insurance broking – which is a regulated trade pursuant to the Trade Regulation Act (*Gewerbeordnung*, GewO) – can either be carried out by insurance agents or insurance brokers, the difference between brokers and agents lying in their relationship to the insurer.

While insurance agents – within the meaning of the VersVG – are in a constant business relationship with the insurer and permanently entrusted to conclude insurance contracts (Article 43 VersVG), insurance brokers are not constantly entrusted by an insurer and are therefore economically independent, fully representing the interests of the insured. As a consequence, the insurer must impute all declarations made by an agent, while brokers – pursuant to the Austrian Brokers Act (*Maklergesetz*, MaklerG) must predominantly protect the interests of the insured (Article 27 paragraph 1 MaklerG).

On European Union law level, the implementation of the Insurance Distribution Directive (Directive 2016/97/EU, IDD) has strongly influenced the day-to-day practice of all insurance agents and brokers.

The IDD itself is broad in scope and, of course, not limited to the regulation of insurance mediation by insurance brokers and agents, but also covers the distribution of insurance products as a whole. The IDD's main regulatory objective is to improve the protection of insureds. To this end, the IDD seeks to avoid any conflicts of interest as regards the intermediary's remuneration, and imposes extensive disclosure and advisory obligations on the intermediary.

4.10 Delegated Underwriting or Claims Handling Authority Arrangements

External underwriting and claims handling do play a role in Austria, the market penetration depending on the type of insurance. Such underwriting agents (*Assekuradeure*) often act as multiple agents (*Mehrfachagenten*) and are usually authorised by one or more insurers to underwrite risks or handle claims up to a certain matter value. This business model is particularly common for certain very specific or even rare risks, where these underwriting agents benefit from their particular expert know-how in the respective niche.

5. CLAIMS AGAINST INSUREDS

5.1 Main Areas of Claims where Insurers Fund the Defence of Insureds

The insurer's duty to finance defence is set forth in the VersVG's section on liability insurance by way of a general framework. Insurers may choose to incorporate deviating or additional clauses into their respective insurance conditions. However, some of these statutory provisions are mandatory.

The concept of the insurer's duty to defend envisaged by the VersVG focuses on the costs arising in connection with the judicial or extrajudicial defence against a claim raised by a third

party. Apart from that, there are also specific provisions on certain insurance types, such as legal expense insurance regulated by the VersVG.

Some insurance products (including but not limited to legal expense insurance) also cover costs for "active litigation" (ie, the conducting of a lawsuit initiated by the insured against a third party). Such coverage, in some cases, requires that the third party, in turn, sets off liability claims of its own against the claims alleged by the insured.

In practice, insurers often stipulate a right to appoint a particular counsel (rather than leaving the choice to the insured) and to instruct the insured as to the course of action.

In recent years, investor claims have been on the rise and account for one major area in which insurers fund the defence of insureds. In addition and besides the trends described in **4.3 Significant Trends in Policy Coverage Disputes**, claims pertaining to prospectus liability have gained (even) further importance.

5.2 Likely Changes in the Future

For the immediate future – especially due to COVID-19 – an increase in insolvency cases can be anticipated. The Austrian legislator has already postponed the statutory obligation to file for insolvency several times. As many COVID-19-related state aid measures have already run out or will run out in the near future, an increase in insolvency filings can be expected in the near future. This will, in turn, also have a noticeable effect on insurance-related litigation, eg, when insolvency administrators assert claims against former directors and officers.

5.3 Trends in the Cost or Complexity of Litigation

The complexity of cases concerning both the defence of insureds as well as coverage disputes has increased in recent years and is expected to increase further. This development relates to various factors, including:

- the increased complexity of the legal framework at national and EU level;
- the increased complexity and use of technology in various areas of business; and
- the growing importance of issues with cross-border elements (which, in turn, entail various foreign law as well as private international law hurdles).

The increased complexity entails increased costs of litigation, which is one of the reasons that litigation funding is also gaining momentum on the Austrian market. This trend can be observed not only for class action-type proceedings but also for complex, high-value claims where the claimant either cannot readily afford the costs of litigation or merely prefers to preserve liquidity.

5.4 Protection against Costs Risks

Claimants can protect themselves against the costs associated with litigation by taking out legal expense insurance coverage. Where such cover was not taken out or does not suffice, claimants can resort to litigation funders that may – depending on the amount at issue and the facts of the case – agree to bear the costs of litigation under certain economic conditions.

6. INSURERS' RECOVERY RIGHTS

6.1 Right of Action to Recover Sums from Third Parties

Austrian law gives insurers a right of action to recover sums from third parties under the VersVG, which provides for a statutory subrogation of claims for damages that an insured has against a third person. Such a claim for damages is de jure transferred from the insured to the insurer to the

extent that the insurer compensates the insured for the loss suffered.

Consequently, the insurer can directly and in its own name recover losses paid out under the policy from the liable third party.

6.2 Legal Provisions Setting Out Insurers' Rights to Pursue Third Parties

Pursuant to Article 67 of the VersVG, the insured's claims for damages against a third person are transferred to the insurer by operation of law. The respective amount can be claimed by the insurer in its own name once the insurer has compensated the insured for the loss (see **6.1 Right of Action to Recover Sums from Third Parties**).

7. IMPACT OF COVID-19

7.1 Type and Amount of Litigation

In the wake of the pandemic, the Austrian legislator passed the Federal Act on the Accompanying Measures to COVID-19 in the judiciary, which interrupted all procedural deadlines in March and April 2020. The same law also provides that court hearings can be conducted remotely, if the parties consent (for the time of the pandemic). The latter has been very helpful during the past months, as physical court hearings had to be reduced to a minimum for the better part of 2020 and 2021. This inevitably led to a substantial backlog and considerable delays in pending proceedings.

Additionally, and as described in **4.3 Significant Trends in Policy Coverage Disputes**, a general increase in coverage proceedings and the determination of insureds to enforce their claims was observed last year. In addition to cases only indirectly related to the pandemic, a number of issues litigated before the Austrian courts concerned the question of insurance coverage for events more directly linked to the outbreak of COVID-19, such as cases relating to the disruption of supply chains.

Austrian Supreme Court Ruling

One prominent example of insurance litigation directly related to the pandemic concerns litigation involving business interruption insurance policies. The question of insurance coverage under dread disease insurance policies for cases concerning certain types of business (eg, hotels or restaurants) that were forbidden to grant entrance to tourists in March and April 2020 was highly controversial in Austrian literature. While some authors (and even some lower instance courts) were of the opinion that the insurers had to indemnify affected policyholders, the Austrian Supreme Court – contrary to the ruling in many other European jurisdictions – found in February 2021 that insurers were under no obligation to grant cover. The Austrian Supreme Court, in a related case, reaffirmed this decision in May 2021.

7.2 Forecast for the Next 12 Months

Famously, it is difficult to make predictions, especially about the future. As the past months have illustrated, this proverbial saying is all the more true for predictions related directly or indirectly to the development of the pandemic. As described above, eg, in **5.2 Likely Changes in the Future**, some trends can be expected to continue or increase, one example being the expected increase in insolvency filings.

7.3 Coverage Issues and Test Cases

Arguably, the most important case in pandemic-related insurance litigation concerned business interruption insurance (see **7.1 Type and Amount of Litigation**).

7.4 Scope of Insurance Cover and Appetite for Risk

A decrease in insurers' appetite for risk was noticeable even before the outbreak of COVID-19. This trend has, at least in some parts of the market, persisted until today. For some lines of business, the market has hardened considerably over the course of the last months, resulting in 100% or even 200% increases in the yearly premium for some lines and business segments. The reasons for these developments are manifold and cannot solely be attributed to the pandemic or the increased insolvency risk caused by the COVID-19 crisis. However, the pandemic has had a noticeable effect in this regard.

8. CLIMATE CHANGE

8.1 Impact on Underwriting and Litigating Insurance Risks

The Austrian Financial Market Authority has only recently reviewed the way in which environmental, social and governance (ESG) factors are considered by domestic insurers in the individual business processes. The review, which was made in light of the European Commission's package of measures for sustainable finance, showed that in about 36% of Austrian insurance undertakings, sustainability risks are monitored and measured. A further 36% have at least started to develop strategies, and a total of 48% plan to consider sustainability risks in the next three years. These results indicate that underwriting (and, for other reasons, also litigation) will most likely be more and more driven by ESG factors in upcoming years.

9. SIGNIFICANT LEGISLATIVE AND REGULATORY DEVELOPMENTS

9.1 Developments Affecting Insurance Coverage and Insurance Litigation

In terms of substance, it is expected that there will be a strong focus on cyber-resilience and that climate protection will have a considerable impact on the Austrian insurance market in the coming years.

In this regard, the European Insurance and Occupational Pensions Authority (EIOPA) brought out security and governance guidelines on Information and Communication Technology (ICT) on 1 July 2021, and these are another step towards enhanced resilience to cyber-attacks. This is supplemented by the European Commission's new digital finance strategy for Europe. In Austria, the Financial Market Authority is currently reviewing the vulnerability of insurance undertakings to cyber-risks as part of the Cyber Maturity Level Assessment in 2021.

Vavrovsky Heine Marth delivers tailor-made solutions to national and international clients in all aspects of commercial life, with a special focus on dispute resolution, real estate and insurance law. Headquartered in Vienna and featuring one of the premier insurance industry offerings in Austria, the firm covers the full range of insurance-related services. In addition to product development, insurance contract law, risk transfer, supervisory law and compliance, another major emphasis of the firm's portfolio lies in insurance law-related dispute resolution. Leading domestic and international (re)insurers rely on the team's expertise regarding, inter alia, professional liability; errors and omissions (E&O); cybercrime insurance; financial institutions professional indemnity (FIPI), directors and officers (D&O), warranty and indemnity (W&I), product and public liability, as well as property insurance. Vavrovsky Heine Marth also regularly acts as monitoring counsel in connection with handling major losses and supporting clients in complex recovery actions.

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