



Cyber Crime Risks – Experiences from a land-locked country and possible influence on Marine Insurance

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Outlook:

- Learn from yesterday: short look back at Austria's history in marine and cyber insurance
- Live for today: recent decisions and cases linked to marine and cyber
- Hope for tomorrow: what is there yet to come?



Austria's marine history

Lost port Trieste to Italy in 1918

Austrian Lloyd



Today's relevance

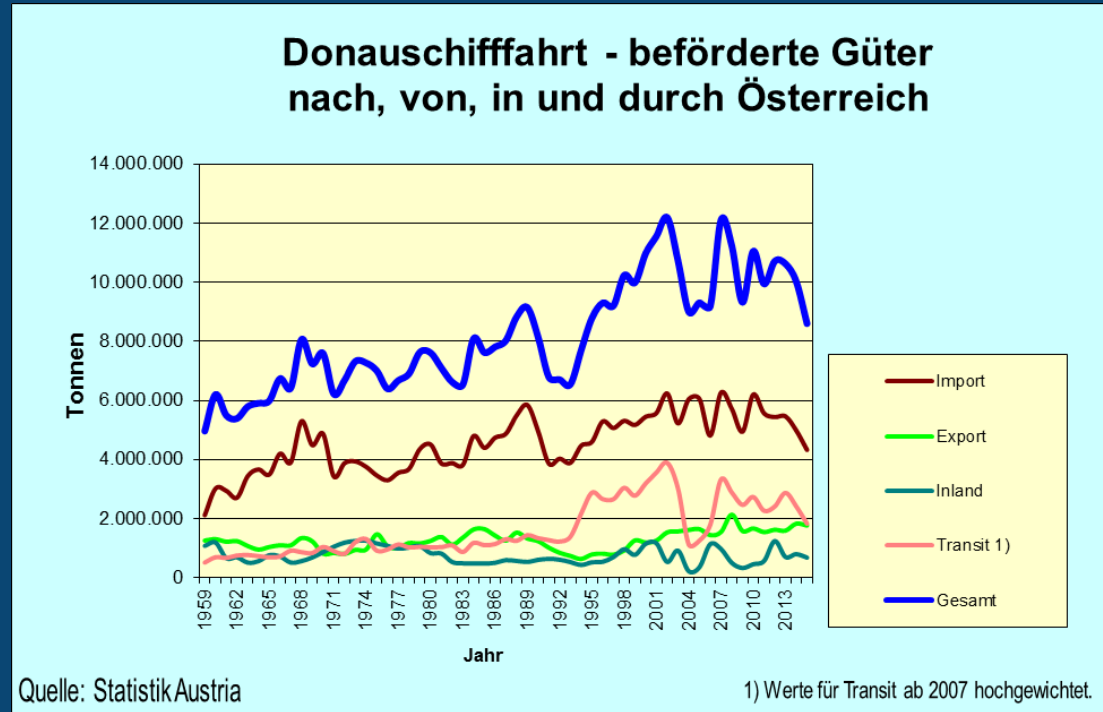
No maritime transport vessel under Austrian flag

Importance shifted to inland transport

8 mio t of goods transported



Shipping alongside the Danube; freight to, from and in Austria



Supreme Court decision,
7 Ob 93/16b, 25th May 2016:

Plaintiff claiming for reimbursement from his first
property insurance

Yacht leaked



Terms of insurance:

Art 7 terms of insurance: The insurer is freed from its duty to pay out the compensation, if the insured, the skipper or one of its passengers caused the incident on intent or by gross negligence



- Vessel was steered neither with reduction of speed
- nor into direction of the open sea;
- although the skipper was aware that his gps-system malfunctioned several times;
- all this happened in a region with many islands during the night.
- If the skipper would have stopped, he would have recognised the deviation from the planned course.

Supreme Court decision,
7 Ob 93/16b, 25th May 2016:

Gross negligence!

No surprise, but what if malfunction of gps was caused by
cyber criminalists?



Swifting to Cyber Insurance:

Cyber Insurance market in Austria



Cyber Crime events in Austria:

- Denial of services (A1)
- Ransom
- Fake president tricks

→ but no published jurisprudence so far



Most prominent incident:
“FACC scandal”

Between December 23rd and January 19th € 50 Mio have been wired in several tranches ranging from € 1,4 Mio to € 4 Mio to bank accounts in China, Taiwan and Slovakia.

“Reason for payment”: faked email



FACC attempting to regain the loss:

- At financial institutes arguing that they failed their investigation and verifications obligations
- D & O Insurance arguing negligent behaviour of board member



- Case still ongoing
- Shows connection between different types of insurance
- D & O Insurances might lead the way for Cyber Crime Insurances



Austria's Supreme Court decision 7Ob137/15w,
issued on the 19th November 2015

First decision on D & O Insurance in Austria
Elaborates Claims-made-principle



Timeline

The plaintiff, member of the board, was employed at the B* limited corporation from 1st January 2001 to 31st December 2010

1st January 2011: plaintiff changed into the Board of B**** Corporation.

05th June 2012: the plaintiff was dismissed on cause of untrustworthy behaviour.

21st June 2012: the insured merged into the B**** Corporation

30th July 2012: B**** Corporation claimed for damages in the preliminary criminal proceedings against the plaintiff

1st October 2012: “alleged” end of contract (end of insurance period after change of control).

9th October 2012: B**** Corporation filed a set-off plea in the labour trial pending at the court of Eisenstadt.



The arguments of the plaintiff can be summarised as follows:

- Due to the serial defect clause insurance cover is to be granted as a whole
- The “claims-made” was initiated by the not quantified adhesive claim in the criminal proceedings
- Even if the insurance maybe terminated in case of change of control, this would be against §§ 24 and 34a of the Austrian Insurance Act, which only grants a right and no automatic termination in case of increase of risk
- The non-declaration of the merger did not affect the assessment of the insured event



The defending insurance company objected:

- According to the wording of the terms of insurance the contract terminated on the 1st October 2012
- Thus only legal expense insurance can be granted, not third party insurance cover
- The insured event in the third party chapter happened after the 1st October, because the adhesive claim was not quantified. Thus there is no “series”
- The insurance is released from its obligation to pay because the insured failed his obligation to report the merger



The Austrian Supreme Court decided:

- The insured event is not defined in the Austrian Insurance Act
- The insurance terms are to be interpreted in an objective way with relation to the understanding of an average insured; in case of doubt the “contra proferentem” rule applies
- as all events relate to the same breach of duty this constellation is considered to be one event, which is insured to due the series clause rule
- the obligation to report had no affection on the assessment of the claim



What will the future bring?

Cyber Crime is an emerging risk.

Due to our annual cyber crime report which was issued this week we had an increase of reported attacks of 11%.

Austria is planning on a new cyber security act, which should implement the NIS-directive.

The German GDV will issue a guideline on Cyber insurance policies, which will certainly affect Austria as well.



Thanks for your attention!
Enjoy your stay in Vienna!

Rechtsanwälte - Studio legale - Law firm

Tramposch Partner

