

CEE

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LEGAL MATTERS

IN-DEPTH ANALYSIS OF THE NEWS AND NEWSMAKERS THAT SHAPE
EUROPE'S EMERGING LEGAL MARKETS

Guest Editorial: Octavian Cazac of Turcan Cazac ■ Across the Wire: Deals and Cases in CEE ■ On the Move: New Firms and Practices
The Buzz in CEE ■ Raising The Bar: Hungary's New CLE Requirements for Lawyers
The Big Deal: Interview with CMS's Eva Talmacsi About OTP/Societe Generale Acquisitions
A CEELM Profile of Daniel Szabo ■ Marketing Law Firm Marketing: Childhood Dreams ■ Market Spotlight: Ukraine
Guest Editorial: Glib Bondar of Avellum ■ Expat on the Market: Daniel Bilak of Kinstellar ■ Market Snapshots ■ Advancing Avellum
Market Spotlight: Slovakia ■ Inside Out: Rosum Office Complex Acquisition ■ Guest Editorial: Michaela Stessl of DLA Piper
A Progressive Profile: Slovak President Zuzana Caputova ■ Inside Insight: Interview with Stefan Orosi of Prima Banka Slovensko
Experts Review: TMT & Data Protection

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EDITORIAL: PUBS ARE OPEN, BUT THERE'S MORE THAN THAT TO BE EXCITED ABOUT

By Radu Cotarcea

On May 18, 2020, bars in Budapest opened up for the first time in what feels like a lifetime. Sure, the perception of the lockdown's duration is over-isolation-driven to a great extent, and I for one definitely do not miss the clamor of the all-too-common stag parties crawling in a drunken haze from one watering hole to the next that normally plagues downtown Budapest. While May 18 was still too early for the stags to be in town, the Jewish District – one of the city's primary social neighborhoods – was brimming with people excited to finally have an opportunity to sit down in a bar and enjoy a cold one with friends, social distancing be damned.

Human nature – obviously illustrated in the feverous return to life of the streets of Budapest – aside, there are other reasons I believe that this burst of life will be reflected in the general economy once it opens up. From stimulus packages (some more inspired than others) to unprecedented amounts of “dry powder” (cash reserves used to cover future obligations, purchase assets or make acquisitions), there are significant reasons for optimism.

I don't mean to sound daft. There is certainly cause for concern about the current economic climate, and the impact it has and will have on law firms in the region. From firms telling us they set up expenses freezes to rumors floating around the market of associate positions being slashed, one only needs to note the slowdown in reported client matters that come across our desks to realize that times are ... suboptimal.

But being the incorrigible optimist that I am, I tend to notice a different trend more than the decrease in reported deals. For the over six years that we've been publishing CEE Legal Matters, law firm marketing has been viewed pretty much in the same manner in which those stag parties tend to be perceived by us locals (and yes, after ten years in Budapest, I have earned the right to call myself that). With law firm marketers, as with drunken revellers, those engaged in the activity enjoy it, there are others who simply see the benefits to the market, and many who are not directly involved are either annoyed by it or are actively revolted by what they believe to be a level of decadence unbecoming of a “proper” law firm – ahem, I mean citizen.

That was in the past. Now, however, although I am unsure whether it comes from a level of “hunger” brought upon by the current climate, the fear of a potential one, a need to somehow push up associate utilization rates, a new awakening towards the wide variety of tools that they were, until now, reluctant to use, some form of civic responsibility, or some or all of the above, law firms have definitely upped their game in terms of their “thought leadership” efforts.



I am not unaware that some/many firms may have been churning out so much content on legislative aspects of the COVID-19 outbreak simply because they perceive it as a social and professional obligation to educate their (active and potential) clients. And I do not mean to suggest that content marketing is a revolutionary concept. Even so, the sheer volume of content put out by firms these last few weeks, when compared to the past, is staggering. And, notably, the number of firms that haven't traditionally engaged in writing new content but have started doing so now has spiked. I can only hope that, once firms get a taste of this visibility, they will continue to engage in it past the outbreak. And, for what it's worth, a few days after my Budapest outing, I became aware that we had more non-COVID-related pieces of legal analysis articles on my desk than ones dealing with the pandemic.

But what I have been most impressed by is the multitude of new tools employed. I've seen firms developing dedicated landing pages seemingly overnight, open up hotlines, set up bots on their site for immediate support, set up podcasts, and run webinars or Zoom virtual conferences – really, just a plethora of new tools that this jaded editor didn't expect to see entering the mainstream anytime soon. I won't even bother mentioning the over 20 redesigned CEE law firm websites launched recently.

A new level of the branding battle between law firms is afoot, with new “toys” being deployed across the board.

I am excited! ■



The Editors:

■ David Stuckey
david.stuckey@ceelm.com
■ Radu Cotarcea
radu.cotarcea@ceelm.com

Letters to the Editors:

If you like what you read in these pages (or even if you don't) we really do want to hear from you. Please send any comments, criticisms, questions, or ideas to us at:
press@ceelm.com

GUEST EDITORIAL: MASSIVE OPEN PRO BONO

By Octavian Cazac, Partner, Turcan Cazac



The Spring of 2020 brought the pandemic to CEE, with its “perfect storm” of ingredients – including significant legal ramifications. Whether you are an individual, a business, or a governmental official, the storm made you ask at least one of these questions: “What are my rights in pre-existing contract?”, “Am I still bound to pay?”, “Can I get my money back?”, “Will I be liable for this?”, and “What legislation is needed to help ease the impact on the public?”

Disruption of business as usual inevitably means disruption of the legal business as well. There is no longer a beaten path. We have to learn to walk anew.

As a business lawyer I am happy that business law firms in Moldova and elsewhere in CEE (I pay particular attention to firms in neighboring Romania, Ukraine, and Russia) have each made significant contributions to helping the public navigate the legal aspects of this storm.

We have taken full advantage of the digital tools that enable an instant, easy, and free-of-charge flow of ideas. The public – including both the business community and public administration – has flagged issues and raised questions, and the legal community was able to respond quickly with valuable legal assessments.

This is a new sort of *pro bono* work. We could call it “massive open *pro bono*” work (similar to already-popular “massive online open courses”), consisting of short-notice Zoom webinars

and podcasts, publications, and infographics. This has especially helped SMEs assess their specific situations and decide early on whether to suspend business or adapt and continue – and, regardless, how to handle their workforce and customers.

This new type of work is not only helpful for business communities, but for legal communities as well. Before this crisis, a lawyer would confront a new matter, make his or her own legal assessment, and recommend a strategy to the client. The accuracy and value of that assessment would usually be established over time, and would depend June 2020– in advisory work June 2020– on whether a risk eventually materialized and all went smoothly, or June 2020– in dispute resolution work June 2020– on whether the client prevailed in the litigation or arbitration proceedings. After a few years the lawyer might find out that he or she understood the law incorrectly and cost the client money and stress, or a lawyer might conclude that justice was not served and that the judge or arbitrator wrongfully applied the law to the client’s case.

During the stay-at-home period enacted by authorities across CEE and elsewhere, however, the legal community was actually given time to process many legal questions, discuss them extensively, confront divergent ideas, and find common ground. Similarly, judges and arbitrators got heads-ups on the legal issues to come and were able to observe the discussion within the legal community and even provide early guidance.

I very much welcome this novel phenomenon within the legal community. Because if lawyers fight less among themselves and if clients hear less of “it is uncertain” or “it can go either way,” then we could start defeating Professor Frank Emmert’s observation that “instead of being the cure, laws and lawyers have become part of the disease.” ■

TABLE OF CONTENTS

PRELIMINARY MATTERS

- 3 Editorial: Pubs Are Open, But There's More Than That to Be Excited About
- 4 Guest Editorial: Massive Open Pro Bono

ACROSS THE WIRE

- 6 Across The Wire: Summary of Deals and Cases
- 12 On the Move: New Homes and Friends

LEGAL MATTERS

- 16 The Buzz
- 30 Raising The Bar: Hungary's New CLE Requirements for Lawyers
- 34 The Big Deal: Interview with CMS's Eva Talmacsi About OTP/Societe Generale Acquisitions
- 38 A Safe Bet: White & Case and GKC Partners Advise on Deal of the Year in Turkey
- 40 A Hungarian Life In Focus: A CEELM Profile of Daniel Szabo
- 44 Marketing Law Firm Marketing: Childhood Dreams

MARKET SPOTLIGHT: UKRAINE

- 47 Guest Editorial: Crises And The Ukrainian Legal Market
- 48 Expat on the Market: Daniel Bilak of Kinstellar
- 50 Changes Expected by Joint Stock Companies in Ukraine
- 51 IP Reform in Ukraine and its Impact on Business
- 52 Ukrainian Gas Transmission System Unbundling – Mission Possible and Completed
- 54 Advancing Avellum

MARKET SPOTLIGHT: SLOVAKIA

- 59 Guest Editorial: M&A Market in Slovakia Following COVID-19
- 60 A Progressive Profile: Slovak President Zuzana Caputova
- 64 Inside Out: Rosum Office Complex Acquisition
- 68 Inside Insight: Interview with Stefan Orosi of Prima Banka Slovensko
- 72 Changes to the Commercial Code in 2020

EXPERTS REVIEW

- 54 TMT & Data Protection in CEE

ACROSS THE WIRE: DEALS SUMMARY

Date covered	Firms Involved	Deal/Litigation	Value	Country
15-Apr	Cerha Hempel	Cerha Hempel advised Philip Morris Austria on the launch of a new tobacco product in Austria.	N/A	Austria
15-Apr	Dorda	Dorda successfully represented Willhaben in a dispute with AutoScout24 AS.	N/A	Austria
15-Apr	Wolf Theiss	Wolf Theiss advised Japan's Takeda Pharmaceuticals on its acquisition of Plasmaspendedienst GmbH.	N/A	Austria
17-Apr	Allen & Overy; Binder Groesswang; Cerha Hempel; Eisenberger & Herzog; Schoenherr	Cerha Hempel and Schoenherr advised OMV on the acquisition of a 39% stake in Borealis AG from Mubadala for USD 4.68 billion. Allen & Overy, Eisenberger & Herzog, and Binder Groesswang advised Mubadala on the transaction.	USD 4.68 billion	Austria
22-Apr	Baker Mckenzie	Baker McKenzie advised McDonald's on the implementation of short-time work for all of its restaurants in Austria due to the Coronavirus pandemic.	N/A	Austria
27-Apr	Binder Groesswang	Binder Groesswang advised Lenzing AG and Palmers Textil AG on the establishment of a joint venture to produce protective masks in Austria.	N/A	Austria
29-Apr	Binder Groesswang	Binder Groesswang helped Austrian Post with the launch of its new bank – Bank99.	N/A	Austria
29-Apr	BPV Huegel; DLA Piper; Oberhammer	wald Oberhammer, Christoph Nauer, and Christian Temmel, of Oberhammer Rechtsanwälte, BPV Huegel, and DLA Piper, respectively, served as independent proxies at the general meeting of Schoeller-Bleckmann Oilfield Equipment Aktiengesellschaft – the first virtual general meeting of a listed company in the German-speaking countries, together with Wilhelm Rasinger from the Interessensverband der Anleger.	N/A	Austria
30-Apr	DLA Piper	DLA Piper Austria advised FFF Real Estate, a subsidiary of FFF Fund I SCSp SICAV-RAIF, on financing provided to an unnamed residential real estate developer for the acquisition and development of an unspecified residential project in Luxembourg.	N/A	Austria
4-May	Binder Groesswang; Freimuller Obereder Pilz	Binder Groesswang and Freimuller Obereder Pilz advised on Sapphire Ventures' participation in Adverity's EUR 23 million Series C financing round. Adverity was advised by Freimuller Obereder Pilz.	EUR 23 million	Austria
7-May	PHH Rechtsanwälte	PHH helped GR Real acquire the historic Art Nouveau apartment building in Linz.	N/A	Austria
8-May	Cerha Hempel; Fellner Wratzfeld & Partner; Schoenherr	Schoenherr advised Voith and Fellner Wratzfeld & Partner advised PCS on their acquisition of 59% of the shares of Traktionssysteme Austria GmbH. Cerha Hempel advised the selling shareholders on the deal.	N/A	Austria
8-May	Wolf Theiss	Wolf Theiss assisted Swiss investment foundation AFIAA on the sale of a six-property office and retail property portfolio in Salzburg to German property developer RMI.	N/A	Austria
11-May	Binder Groesswang; Havel & Partners; Jandura a Partneri	Binder Groesswang and Havel & Partners advised BEXity and its holding company, Mutares SE & Co. KGaA, on the management buy-out of Czech subsidiary European Contract Logistics. The buyer, EC Logistics CEO Roman Goerojo, was advised by Jandura a Partneri.	N/A	Austria; Czech Republic
4-May	EPAP; Sorainen	Sorainen advised DEG on the acquisition of a stake in Belgips, a Belarusian manufacturer of gypsum-based building materials. Belgips was advised by Egorov Puginsky Afanasiev & Partners.	N/A	Belarus

Date covered	Firms Involved	Deal/Litigation	Value	Country
12-May	Maric & Co.	Maric & Co advised the European Investment Bank on a loan to Intesa Sanpaolo Bank in Bosnia and Herzegovina.	EUR 60 million	Bosnia and Herzegovina
23-Apr	Buzeva & Partners; CMS	CMS has helped Bulgaria's Global Biome settle a dispute with the Sustainable Energy Development Fund related to recent changes to Bulgarian legislation. The SEDF was advised by Buzeva & Partners.	N/A	Bulgaria
6-May	Georgiev, Todorov & Co.	Georgiev, Todorov & Co successfully defended the rights of concessionaire BMF Port Burgas – Burgas East 2 and Burgas West port terminals – in an appeal of the Energy and Water Regulatory Commission's decision in a dispute concerning direct connection to electricity grids.	N/A	Bulgaria
12-May	CMS	CMS Sofia advised Korean investors KOSEP and SDN on a additional EUR 10 million financing obtained from UniCredit Bulbank AD, Expressbank AD, and DSK Bank EAD for two 42 MWp photovoltaic projects in Bulgaria. CMS Vienna advised the lenders.	EUR 10 million	Bulgaria
17-Apr	Dentons; Djingov, Gouginski, Kyutchukov & Velichkov; Ilej & Partners; Karanovic & Partners; Schoenherr	Dentons, DGKV, Karanovic & Partners, and Ilej & Partners in cooperation with Karanovic & Partners advised Hungary's Optima Befektesi Alapkezelő on its acquisition of a 61.49% share in Globe Trade Centre S.A. from Lone Star Funds. Schoenherr advised the sellers on the deal.	N/A	Bulgaria; Croatia; Poland; Romania; Serbia
29-Apr	Lovric Novokmet Smrcek; Wolf Theiss	Lovric Novokmet Smrcek advised I4 Invention and Miodrag Mircetic on the sale of a majority shareholding in Tradeticity DOO to Italian-listed company Antares Vision, which was advised by Wolf Theiss.	N/A	Croatia
13-May	Tus & Andrijanic; Wuersch & Gering	Croatia's Tus & Andrijanic law firm, acting with New York's Wuersch & Gering law firm, advised Budapest-based Lead Ventures Plc. on its EUR 3 million acquisition of an unspecified stake in insurtech start-up Amodo d.o.o.	EUR 3 million	Croatia
20-Apr	JSK; Mavericks	JSK advised Tilia Impact Ventures and Nation 1 on their investment in Dot Glasses, a provider of a radical new concept for prescription eyeglasses for people in need. The Mavericks law firm advised Dot Glasses on the deal.	N/A	Czech Republic
24-Apr	Baker McKenzie	Baker McKenzie advised Kofola CeskoSlovensko on its acquisition of the Karlovarska Korunni and Ondrasovka food and beverage companies.	N/A	Czech Republic
7-May	Weinhold Legal	Weinhold Legal advised technology security start-up Resistant AI on its recent venture financing round.	N/A	Czech Republic
16-Apr	PwC Legal	PwC Legal successfully represented Guardtime in a public procurement dispute before the Public Procurement Review Committee and Tallinn Administrative Court, which allowed Guardtime to enter into a public procurement agreement with NATO to develop an automated planning and control platform for the NATO Cyber Range.	N/A	Estonia
16-Apr	Sorainen	Sorainen advised Tenova India Private, an international innovative solutions provider for metals and mining, in an asset recovery process.	N/A	Estonia
17-Apr	Eversheds Sutherland	Eversheds Sutherland Ots & Co Managing Partner Maivi Ots been designated the reorganization adviser for proceedings related to AS Tallinna Moekombinaat, the owner and administrator of the T1 Mall of Tallinn.	N/A	Estonia
20-Apr	Derling Primus; TGS Baltic	TGS Baltic advised AS Framm on the acquisition of AS Lasbet Tootmine from AS Lasbet. Derling Primus advised AS Lasbet on the deal.	N/A	Estonia
20-Apr	Sorainen	Sorainen advised Auth0 on its acquisition of Apility.io.	N/A	Estonia
21-Apr	Cobalt	Cobalt advised Steel Import Finland Oy, a metal products wholesaler, on the acquisition of Estonia's Osauhing FinEst Metallid.	N/A	Estonia
23-Apr	Cobalt	Cobalt advised Baltic Agro Machinery OU on the sale of John Deere's agricultural and horticultural machinery business in Estonia to Wihuri OU.	N/A	Estonia
24-Apr	Cobalt	Cobalt's Tallinn office successfully represented Starbucks Corporation in a dispute involving a local entrepreneur's attempt to register a confusingly similar trademark.	N/A	Estonia
7-May	Fort	Fort Legal advised AS Selver, a subsidiary of Tallinna Kaubamaja Grupp AS, on its acquisition of a 100% shareholding in retailer ABC Supermarkets AS.	N/A	Estonia

Date covered	Firms Involved	Deal/Litigation	Value	Country
7-May	Sorainen	Sorainen represented Tallinna Linnatranspordi Aktsiaselts, a company fully owned by the City of Tallinn, in its purchase of compressed gas for natural gas-powered buses.	N/A	Estonia
22-Apr	Cobalt	Cobalt advised Lauma Fabrics, a textile manufacturer in the Baltics and Europe, on the delivery of COVID-19 personal protective equipment to Estonia and Latvia.	N/A	Estonia; Latvia
30-Apr	Bird & Bird; Kyriakides Georgopoulos	Bird & Bird and Kyriakides Georgopoulos advised Bank Gospodarstwa Krajowego on a credit agreement annex.	EUR 15.5 million	Greece; Poland
20-Apr	TGS Baltic	TGS Baltic advised SIA Saules Aptieka on an agreement with People's Republic of China regarding the supply of surgical face masks to Latvia.	N/A	Latvia
22-Apr	Cobalt	Cobalt advised APX on an unspecified pre-seed investment into Marine Digital.	N/A	Latvia
23-Apr	Cobalt	The Latvian office of Cobalt, working alongside Clifford Chance, advised Barclays, J.P. Morgan, and Societe Generale on the issuance of a 3-year Eurobond by the Republic of Latvia in an amount of EUR 1 billion. Allen & Overy advised the Republic of Latvia.	EUR 1 billion	Latvia
24-Apr	Cobalt	Cobalt advised arranger and sole book-runner AB SEB Bankas on financial institution Altum's issuance of EUR 20 million notes.	EUR 20 million	Latvia
30-Apr	Sorainen	Sorainen advised NEFCO on its investment in the Second Mezzanine Fund, which is managed by FlyCap.	N/A	Latvia
11-May	Sorainen	Sorainen represented YIT Latvija in a dispute over the legality of a construction permit.	N/A	Latvia
22-Apr	Sorainen	Sorainen successfully represented Lithuania's E Energija against the Republic of Latvia in an ICSID arbitration.	N/A	Latvia; Lithuania
16-Apr	Motieka & Audzevicius	Motieka & Audzevicius successfully represented AVAgro LLC in a dispute with Singapore-based Drey Moor regarding interim measures pertaining to assets of AVAgro's subsidiary, AVAgro UAB.	N/A	Lithuania
16-Apr	Motieka & Audzevicius	Motieka & Audzevicius successfully represented Axis Industries in an insurance indemnification dispute.	N/A	Lithuania
20-Apr	Sorainen	Sorainen advised Lords LB Special Fund I Subfund B investment fund on its lease of a 7000 square meter area in its Lvovo business center in Vilnius to Telia Global Services Lithuania.	N/A	Lithuania
23-Apr	Nove	Nove advocates Veikko Puolakainen and Veiko Vaske successfully represented the Political Parties' Supervision Commission in Lithuania's Supreme Court.	N/A	Lithuania
23-Apr	Sorainen	Sorainen successfully represented Alfa Bank as the creditor of Arvi Ir Ko in a case concerning the annulment of Arvi Ir Ko sales transactions.	N/A	Lithuania
23-Apr	Sorainen	Sorainen provided pro bono advice to Invega on Covid-19 measures for affected businesses.	N/A	Lithuania
30-Apr	Motieka & Audzevicius; TGS Baltic	Motieka & Audzevicius advised the founders of Lithuania's In Balance Grid on the investment of EUR 950,000 into the company by Koinvesticinis Fondas, Contrarian Ventures, and several angel investors, all of which were advised by TGS Baltic.	EUR 950,000	Lithuania
4-May	Triniti	Triniti advised the Groa Real Estate Fund I, a fund managed by Groa Capital, on the acquisition of the Rimi Hypermarket shopping center in Vilnius from UAB Sun Invest.	N/A	Lithuania
6-May	Dentons; Sorainen; TGS Baltic	Sorainen advised joint lead managers BNP Paribas, Citi, and Erste Group on a dual-tranche Eurobond issue by the Republic of Lithuania – a 5-year Eurobond of EUR 750 million face value and a 10-year Eurobond of EUR 1 billion 250 million face value.	EUR 2 billion	Lithuania
6-May	Sorainen; Triniti	Triniti helped Eddy Travels, a Lithuanian startup developing an artificial-intelligence-based digital travel planning assistant, to raise an additional EUR 600,000 to complete an approximately EUR 1.1 million early-stage funding round. Lead investor KUB Open Circle Capital was advised by Dentons.	EUR 600,000	Lithuania
11-May	TGS Baltic	TGS Baltic advised Siaulių Bankas on the issuance of EUR 20 million subordinated bonds and their listing on Nasdaq Vilnius's Debt Securities List.	EUR 20 million	Lithuania

Date covered	Firms Involved	Deal/Litigation	Value	Country
12-May	Sorainen; TGS Baltic	Sorainen advised Nitin Shelke, the founder and chairman of Growmore Group, on its acquisition of Medicinos Bankas, a retail bank in Lithuania with USD 395 million in assets, from Konstantinas Karosas and Western Petroleum Limited. The sellers were advised by TGS Baltic.	USD 395 million	Lithuania
24-Apr	Polenak Law Firm	Polenak advised Eurolink Osiguruvanje AD Skopje on its sale of 100% shares to GRAWE.	N/A	North Macedonia
7-May	Polenak Law Firm	The Polenak Law Firm advised the EBRD in a EUR 2.5 million loan to Ohridska Banka AD Skopje under the Green Economy Financing Facility program, which is supported by the EU, Austria, and Western Balkans Investment Framework.	EUR 2.5 million	North Macedonia
17-Apr	Greenberg Traurig; Linklaters	Greenberg Traurig advised IAD Investments on its acquisition of the company holding the D48 office building in the Mokotow district of Warsaw from Penta Real Estate. Linklaters advised the sellers on the deal.	N/A	Poland
20-Apr	Mrowiec Fialek & Partners	Mrowiec Fialek and Partners advised Yuniversal Development on the issuance of PLN 4 million in corporate bonds.	PLN 4 million	Poland
21-Apr	Clifford Chance; Dentons; Kancelaria Kurek Wojcik	Dentons advised a fund managed by GLL Real Estate Partners on the acquisition of a logistic center in Kokotow, Poland, from a joint venture of 7R S.A. and Hillwood Polska. KKW advised 7R and Clifford Chance advised Hillwood Polska on the deal.	N/A	Poland
22-Apr	CMS; Gide Loyrette Nouel	CMS advised Amundi Real Estate on its acquisition of Nowogrodzka Square, a Class A office and retail building in Warsaw, from Polish property developer Yareal. Gide Loyrette Nouel advised Yareal.	N/A	Poland
22-Apr	Rymarz Zdort	Rymarz Zdort advised PSP, the operator of the BLIK mobile payment system, on the addition of Mastercard as an investor and the start of commercial collaboration between it and PSP.	N/A	Poland
22-Apr	SSW Pragmatic Solutions	SSW Pragmatic Solutions advised Orlen Poludnie on its launch of a second generation bioethanol plant at its refinery in Jedlicze, Poland.	N/A	Poland
23-Apr	DLA Piper; Rymarz Zdort	Rymarz Zdort advised Cordia International on its PLN 229.4 million acquisition of a majority stake in Polnord S.A. DLA Piper advised Polnord on the deal.	PLN 229.4 million	Poland
24-Apr	SSW Pragmatic Solutions	SSW Pragmatic Solutions assisted Games Operators with its initial public offering and listing on the Warsaw Stock Exchange.	N/A	Poland
27-Apr	CMS	CMS advised Real Assets Advisers on its joint acquisition of 33% of Acciona Energia Internacional by AXA Real Asset and Acciona S.A.	N/A	Poland
27-Apr	White & Case	White & Case advised PKO Bank Polski on a tender offer to the holders of its EUR 750 million notes and USD 1 billion notes issued by its subsidiary, PKO Finance AB.	EUR 1.2 billion	Poland
28-Apr	Dentons; Rymarz Zdort	Dentons advised ING Bank Slaski on a multimillion acquisition financing and refinancing of a portfolio of Polish solar projects with an aggregate capacity of 45 MW. The financing was granted to a project company controlled by a fund managed by Aberdeen Standard Investments, which was advised by Rymarz Zdort.	N/A	Poland
28-Apr	Jacek Kosinski Adwokaci i Radcowie Prawni	Jacek Kosinski Adwokaci i Radcowie Prawni advised Dubai-based VC Shibumi International on its investment in Hustro, a Wroclaw-based company that operates in the construction sector. Hustro was advised by solo practitioner Maksymilian Imbirski.	N/A	Poland
4-May	SSW Pragmatic Solutions	SSW Pragmatic Solutions advised Link4 TU S.A. on the implementation of a blockchain-based project that will allow the company to, in the firm's words, "meet the requirements set by the regulator in the area of providing clients with documents, and save costs through digitization."	N/A	Poland
5-May	CMS; Schoenherr	CMS advised PZ Cossons on the sale of LUKSJA, a Polish personal care cosmetics brand, to the Sarantis Group. Schoenherr advised Sarantis on the deal.	N/A	Poland
5-May	Greenberg Traurig; Noerr		N/A	Poland
5-May	SSW Pragmatic Solutions	SSW Pragmatic Solutions advised Zedra Malta Limited on the acquisition of Poland's Awans Corporate Services.	N/A	Poland
6-May	Domanski Zakrzewski Palinka	Domanski Zakrzewski Palinka advised Gas-System SA on a construction and assembly agreement with Saipem Limited regarding the laying of the Baltic Pipe intersystem gas pipeline on the bottom of the Baltic Sea and connecting the undersea part of the pipeline with onshore sections in Poland and Denmark.	N/A	Poland

Date covered	Firms Involved	Deal/Litigation	Value	Country
6-May	Greenberg Traurig	Greenberg Traurig helped Zygmunt Solorz, the founder and majority shareholder of Grupa Polsat, purchase 200 thousand genetic tests to be used by all Ministry of Health laboratories in Poland to diagnose the coronavirus.	PLN 16 million	Poland
7-May	Rymarz Zdort	Rymarz Zdort advised Griffin Real Estate and European Logistics Investment BV on the acquisition of land and the construction of warehouses in the Polish communities of Ruda Slaska, Czeladz, and Torun, from Panattoni Development Europe.	N/A	Poland
8-May	Dentons; Wozniak Legal	Dentons advised the CPI Property Group on its acquisition of a 50.3% share in the ownership of the Chalubinskiego 8 office building in Warsaw from First Property Group. Wozniak Legal advised the sellers on the deal.	N/A	Poland
8-May	Marekvia & Plawny; Noerr	Noerr advised environmental service provider PreZero on its acquisition of 100% of the shares of Komart, a Polish provider of municipal and industrial waste management services. Marekvia & Plawny advised the unidentified sellers on the deal.	N/A	Poland
11-May	Greenberg Traurig	Greenberg Traurig advised CCC and its main shareholder on issuing and offering 13.7 million new shares.	PLN 500 million	Poland
14-May	SMM Legal	SMM Legal helped the Polish National Center for Research and Development launch the "Grand Challenge: Energy" project.	N/A	Poland
16-Apr	BPV Grigorescu Stefanica	BPV Grigorescu Stefanica successfully represented Mondialacqua SRL in a dispute over a utility model for a public water fountain technically similar to a Mondialacqua product.	N/A	Romania
4-May	Popovici Nitu Stoica & Asociatii	Popovici Nitu Stoica & Asociatii advised the Romanian branch of BLOM Bank France on a EUR 5 million loan to Isaran, a real estate developer from Brasov, to finance the development of residential projects.	EUR 5 million	Romania
5-May	Popovici Nitu Stoica & Asociatii	Popovici Nitu Stoica & Asociatii advised Libra Internet Bank on its establishment of a partnership with Monesse.	N/A	Romania
7-May	Furtuna si Asociatii	Furtuna si Asociatii represented the Romanian Airport Services handling company before the Romanian Competition Council regarding the abuse of dominant position investigation of the Avram Iancu Cluj International Airport.	N/A	Romania
12-May	Noerr	Noerr has advised the Bauer Media Group on the sale of its Romanian publishing business to Ringier.	N/A	Romania
22-Apr	Baker Mckenzie	Lawyers in Baker McKenzie's Moscow office were part of the firm's multi-jurisdictional team advising arrangers and dealers Citi and J.P. Morgan and dealers Barclays, BofA Securities, and HSBC on the establishment of a USD 6.5 billion Global Medium Term Note program by VEON.	USD 6.5 billion	Russia
28-Apr	Baker Mckenzie; DLA Piper	DLA Piper advised Russian private equity firm Baring Vostok on the acquisition of a minority stake in Synergetic, a Russian manufacturer of environmentally friendly detergents and cosmetics. Synergetic was advised by Baker McKenzie.	N/A	Russia
30-Apr	White & Case	White & Case advised VTB Bank on the USD 1.7 billion restructuring of Russian mining and metal company Mechel PAO and on various matters connected to the related sale of the Elga Coal Complex, one of Mechel's main assets.	USD 1.7 billion	Russia
4-May	DLA Piper	DLA Piper advised Debex on the sale of a minority stake in the company to Dmitry Shushkin, the managing director of ABBYY Russia.	N/A	Russia
11-May	Alrud; Monastyrsky, Zyuba, Stepanov & Partners	Alrud advised the Mechel Group on the sale of its 51% participatory interest in the companies which operate the Elga coalfield project in Russia to A-Property. Monastyrsky, Zyuba, Stepanov & Partners advised A-Property on the deal, which was valued at RUB 89 billion.	RUB 89 billion	Russia
14-May	Bryan Cave Leighton Paisner; TA Legal Consulting	Bryan Cave Leighton Paisner advised PJSC Sovcombank and Mobile Payments LLC on their entrance into a partnership with IDRAM LLC and IDBank CJSC, which were advised by TA Legal Consulting.	N/A	Russia
15-Apr	JPM Jankovic Popovic Mitic	JPM advised the German School Belgrade on its implementation of a GDPR program.	N/A	Serbia
22-Apr	White & Case	White & Case advised lead managers Ceskoslovenska Obchodna Banka, Slovenska Sporitel'na, and Tatra Banka on the Slovak Republic's issuance of EUR 1.5 billion 1.000% notes due in 2030.	EUR 1.5 billion	Slovakia

Date covered	Firms Involved	Deal/Litigation	Value	Country
22-Apr	Linklaters; ODI Law	ODI Law worked alongside lead counsel Linklaters in advising cryptocurrency software development and research company nCHAIN on its acquisition of CREA, a Slovenia-based software development firm.	N/A	Slovenia
24-Apr	Aksan; BTS & Partners; Kolcuoglu Demirkan Kocakli; Turunc	Turunc advised ELBA HR İnsan Kaynakları Eğitim ve Danışmanlık Anonim Şirketi (doing business as "Peoplise") and its founding shareholders on the acquisition of 86.7% of the company from them and Revo Capital and 500 Startups by LOGO. Yazılım Sanayi ve Ticaret A.Ş. BTS & Partners and Aksan advised Revo Capital and 500 Startups, respectively, and Kolcuoglu Demirkan Kocakli advised LOGO.	N/A	Turkey
5-May	Allen & Overy; Turunc; Yüksel Legal	Turunc advised Yu-Ce Medical and its shareholders, Cengiz Balcik and Yumnu Balcik, on the acquisition of the remaining 28% of Yu-Ce shares from the Anatolia Growth Capital Fund. Yüksel Legal and Allen & Overy advised the Anatolia Growth Capital Fund on the deal.	N/A	Turkey
12-May	Linklaters; Paksoy	Paksoy and Linklaters advised I Squared Capital LLP on its indirect acquisition of 45% of the shares in Rubis Terminal.	N/A	Turkey
29-Apr	Sayenko Kharenko	Sayenko Kharenko advised the EBRD on its provision of an up-to-EUR 7.5 million synthetic loan in Ukrainian currency to Bank Lviv under the EU4Business-EBRD Credit Line.	EUR 7.5 million	Ukraine
29-Apr	Sayenko Kharenko	Sayenko Kharenko advised the EBRD on its provision of a four-year loan of up to EUR 15 million equivalent to OTP Leasing.	EUR 15 million	Ukraine
30-Apr	Baker McKenzie	The Kyiv office of Baker McKenzie assisted with drafting new regulations of the National Securities and Stock Market Commission of Ukraine for the issuance of UAH-denominated bonds by international financial institutions in Ukraine.	N/A	Ukraine
30-Apr	KPD Consulting	KPD advised Werner Wirth on its establishment of a joint venture with an unnamed Ukrainian partner and on making a cross-border intra-group loan to the joint venture.	N/A	Ukraine
4-May	CMS	CMS advised the Bank of Cyprus on Ukrainian law matters following its 2014 sale of the Ukrainian subsidiary of Bank of Cyprus and associated debt to Alfa Group and on the refinancing by the EBRD of a EUR 68 million facility.	EUR 68 million	Ukraine
7-May	Marchenko Partners	Marchenko Partners helped Carlsberg Ukraine conduct a competition compliance spot check.	N/A	Ukraine
11-May	LCF Law Group	The LCF Law Group helped Scatec Solar and Partners launch a 54 MW Boguslav-2 PV-power-plant in Ukraine.	N/A	Ukraine
11-May	Vasil Kisil & Partners	Vasil Kisil and Partners advised Ingersoll-Rand on its merger with Gardner Denver.	N/A	Ukraine
12-May	Everlegal	Everlegal advised UDP Renewables on the development and construction of the 20 MW Terslav solar power plant in the Dnipropetrovsk region of Ukraine.	N/A	Ukraine
14-May	Sayenko Kharenko	Sayenko Kharenko successfully defended the interests of pharmaceutical manufacturer Bayer AG before the Supreme Court of Ukraine regarding a patent dispute over the drug Rivaroxaban.	N/A	Ukraine
14-May	VB Partners	VB Partners successfully represented the interests of educational start-up SkyEng in a trademark registration proceeding in Ukraine.	N/A	Ukraine



The Ticker:

■ Full information available at:
www.ceelegalmatters.com
 ■ Period Covered:
 April 15, 2020 - May 14, 2020

Did We Miss Something?

We're not perfect; we admit it. If something slipped past us, and if your firm has a deal, hire, promotion, or other piece of news you think we should cover, let us know. Write to us at: press@ceelmm.com

ON THE MOVE: NEW HOMES AND FRIENDS

Ukraine: Sayenko Kharenko Signs Collaboration Agreement with Andersen Global

By David Stuckey

Ukraine's Sayenko Kharenko has entered into a collaboration agreement with Andersen Global.

Andersen Global is an association of independent firms of tax and legal professionals around the world. Established in 2013 by U.S. member firm Andersen Tax LLC, Andersen Global now has more than 5,000 professionals worldwide and a presence in over 168 locations through its member and collaborating firms. The agreement with Sayenko Kharenko continues Andersen Global's expansion into CEE, following similar agreements in Bosnia and Herzegovina (with the Sajic law firm), Slovenia (with Miro Senica and Attorneys), Croatia (with Kallay & Partners), Serbia (with JSP), Romania (Tuca Zbarcea & Asociatii and Tuca Zbarcea & Asociatii Tax), Turkey (the former Nazali Tax & Legal), and Hungary (Szabo Kelemen & Partners).

According to Sayenko Kharenko, "this is a logical step forward in the growth of Sayenko Kharenko's tax practice, led by internationally recognized Partner Svitlana Musienko. Access to Andersen's more than 5,000 professionals worldwide, over 700 global partners with a presence in over 168 locations worldwide will allow our clients to benefit from efficient global support in cross-border tax structuring and BEPS-related issues."

"Our tax practice has been dynamically growing lately and collaborating with Andersen Global allows us to better address the evolving tax and business needs of our clients, as well as successfully handle any of their global needs," said Sayenko Kharenko Partner Nazar Chernyavsky. "Arthur Andersen alumna and Partner of our Tax practice Svitlana Musienko will assist us as we collaborate with Andersen Global. We appreciate the importance and impact of working with like-minded individuals around the globe with whom we share similar values."

"We are taking significant steps towards meeting the evolving tax and business needs of our clients. This collaboration reflects our ongoing commitment to providing the best possible tax services and helping clients face new challenges in a dynamic global business environment," said Svitlana Musienko. "I am very happy to be reunited with old friends and colleagues – some of whom I've known professionally for more than two decades."

"The addition of Sayenko Kharenko brings new depth to our presence in Eastern Europe while allowing us to deliver additional services in the region," said Mark Vorsatz, Andersen Global Chairman and Andersen CEO. "There is no question in our mind – they are the best practice in Ukraine. The firm's demonstrated passion for stewardship and proven ability to provide clients with the best-in-class solutions will allow them to integrate into our organization seamlessly." ■

Turkey: Ipek & Akin splits into Ipek | Akbal Schwimann and Akin | Legal

By Radu Cotarcea

Turkish lawyer Mehmet Ipek, formerly of Ipek & Akin, has joined forces with Ceyda Akbal Schwimann to launch the new Ipek | Akbal Schwimann law firm in Istanbul. Ipek's former partner at Ipek & Akin, Tansu Akin, has set up Akin | Legal.

Ipek established the Ipek Law Firm in 1990, then co-founded the IKMS Law Firm in 2007. In 2016, he partnered up with Tansu Akin to create Ipek & Akin.

Splitting her time between Vienna and Istanbul, Schwimann has worked with Wolf Theiss and as Head of the Turkey Practice at Specht & Partner. She began her career in White & Case's Istanbul office.

"We are excited to have formally established our partnership after more than ten years of collaboration on Turkey-related matters," Schwimann said. "Together we have already successfully handled a number of complicated cross border matters and with the new structure, which ensures independence and flexibility, we are confident that we will add even more value to our clients' businesses."

Tansu Akin started his legal career as a law clerk with Attorney Ibrahim Akin in 1999. From 2000 to 2002 he was a legal intern with Altheimer & Gray, and from 2002 to 2006 he worked as a solo practitioner and then joined Mercedes-

Benz Turk AS, where, by the time he left almost ten years later, he had become the Corporate Secretary, General Counsel & Compliance Manager. In addition to setting up Akin | Legal, he also acts as the Chief Administrative Officer of Getron, a company that develops software solutions in the fields of artificial intelligence, predictive analytics, predictive intelligent, demand forecasting, inventory optimization, prescriptive analytics, and retail. ■

Romania: Danilescu Hulub & Partners Launches as New Transportation Boutique

By Radu Cotarcea

Lucian Danilescu, a partner at the former Mares Danilescu Mares firm, has joined forces with Andreea-Oana Hulub to launch Danilescu Hulub & Partners – a new legal boutique focusing on transportation.

Danilescu, who will serve as Managing Partner of Danilescu Hulub & Partners, left the former Mares Danilescu Mares firm, which he co-founded in 2011, last fall. He also spent over 12 years with Zamfirescu Racoti Predoiu.

Andreea-Oana Hulub worked for Popovici Nitu Stoica & Asociatii for the past 12 years, becoming Senior Associate in 2012 and Managing Associate in 2016.

Danilescu explains the reasoning behind the launch of the new transportation boutique thusly: “The need to develop Romania’s transportation infrastructure is a common reasoning in the last decades. It is commonplace to emphasize the need for motorways. However, a much larger portion of the total freight can, and would, be better to go on water. Romania benefits from the longest part of the River Danube in Europe, and the Danube represents, in itself, the 7th Pan-European transport corridor. Through the Dobrogea Canal, the Port

of Constanta is also a Danube river port. Last year the Port of Constanta attracted a total of more than 66 million tons of traffic. It is estimated that the Port may attract more than 100 million tons of traffic. Finalizing some limited projected investments this traffic may double. The potential of water transportation in Romania is huge. The links with Central Asia through the ports in Georgia and Azerbaijan may also boost both traffic and energy corridors. The looming global economic crisis will also reassess large infrastructure projects. All of this made us assess that the transport and infrastructure as a whole will prove a fertile environment both in terms of investments and in terms of consultancy needs.”

Hulub added: “For me, it started with my passion for aviation – my mother was a pilot and I practice aviation sports as well – and for transportation in general. Transportation as well as logistics are somewhat viewed as secondary by the legal services market and are not systematically addressed by any of the major players. I wanted to make a difference by bringing the expertise I gained working for 12 years in these sectors: transportation, logistics, and generally supply chain.” ■

Turkey: Penezoglu Law Firm Merges with BTS & Partners

By Djordje Radosavljevic

Turkey’s Penezoglu Law Firm has merged with BTS & Partners, with Founding Partner Gokhan Penezoglu assuming leadership over the BTS & Partners’ Tax department.

Penezoglu has more than 25 years of experience, including three years at Arthur Andersen Business Consulting and 15 years at Ernst & Young. He left EY in 2016 to join KPMG and to found and manage Penezoglu Hukuk Buros.

He studied at Istanbul Bilgi University and Dokuz Eylul University.

According to BTS, “Penezoglu has comprehensive experience on tax law as he has been providing extensive services to his local and international clients in all tax-related issues for many years. He advises clients on a wide range of issues and represents them during tax inspections and tax dispute resolution processes.”

“As Penezoglu Law Firm, we are highly confident that our cooperation with BTS & Partners will bring us and our clients very successful outcomes,” said Gokhan Penezoglu. ■

Romania: Laurentiu Pachiu and Firm Join PwC Legal

By Andrija Djonovic

Laurentiu Pachiu and his Pachiu and Associates team have joined PwC’s Romanian affiliate, D&B David si Baias.

According to D&B David si Baias, Pachiu, who has over 22 years of experience, “began his career in university and diplomacy.” According to the firm, “in 1998 he opened his own law firm where he coordinated the Energy, Finance, and Litigation practice areas.” He has a JD from the University of Bucharest and an LL.M. from the University of Derby.

“This new partnership is part of the strategy of PwC Romania and D&B David si Baias to develop the legal consulting services and to consolidate the practices in which Pachiu and Associates and D&B excel,” says Daniel Anghel, Partner and Head of Tax Consultancy and Legal at D&B David si Baias. The firm reports that, “with the arrival of Laurentiu Pachiu and the Pachiu and Asociatii team, D&B David si Baias’ activity will be coordinated by eight partners, with a team of over 50 lawyers.” ■

PARTNER APPOINTMENTS

Date Covered	Name	Practice(s)	Firm	Country
24-Apr	Petr Vybiral	Capital Markets	Allen & Overy	Czech Republic
8-May	Karla Rundtova	Corporate/M&A	Kinstellar	Czech Republic
22-Apr	Marko Pilv	Litigation/Disputes	Leadell Pilv	Estonia
5-May	Orestis Omran	Litigation/Disputes; Compliance	DLA Piper	Greece
29-Apr	David Kohegyi	Compliance	DLA Piper	Hungary
29-Apr	Szilard Kui	Real Estate	DLA Piper	Hungary
29-Apr	Viktor Radics	Litigation/Disputes	DLA Piper	Hungary
15-Apr	Agnieszka Kulinska	Energy/Natural Resources	Dentons	Poland
15-Apr	Karol Laskowski	TMT/IP	Dentons	Poland
15-Apr	Agnieszka Lipska	Banking/Finance	Dentons	Poland
15-Apr	Bartosz Nojek	Banking/Finance	Dentons	Poland
15-Apr	Jakub Sobotkowski	Real Estate	Dentons	Poland
15-Apr	Dariusz Stolarek	Tax	Dentons	Poland
17-Apr	Agnieszka Skorupinska	Energy/Natural Resources	CMS	Poland
17-Apr	Jakub Podkowa	Banking/Finance	CMS	Poland
17-Apr	Jakub Wieczorek	Banking/Finance	CMS	Poland
17-Apr	Roxana Fratila	Real Estate	CMS	Romania
8-May	Zsuzsa Csiki	Corporate/M&A	Kinstellar	Romania
17-Apr	Artashes Oganov	Real Estate	CMS	Russia
22-Apr	Fedor Teselkin	Corporate/M&A	Freshfields Bruckhaus Deringer	Russia
15-Apr	Ozge Akman	Litigation/Disputes	Dentons	Turkey
15-Apr	Mahmut Karyagdi	TMT/IP	Dentons	Turkey
30-Apr	Ceyda Akbal Schwimann	Litigation/Disputes	Ipek Akbal Schwimann	Turkey
17-Apr	Natalia Kushniruk	Real Estate	CMS	Ukraine
8-May	Iryna Nikolayevska	Corporate/M&A	Kinstellar	Ukraine

OTHER APPOINTMENTS

Date Covered	Name	Company/Firm	Appointed To	Country
28-Apr	Nikolaus Weselik	Austrian Society of Construction Law and Construction Business Management	Head Construction Contract Law and Construction Procedural Law Working Group	Austria
21-Apr	Piotr Ciolkowski	CMS	Equity Partner	Poland
21-Apr	Lukasz Szatkowski	CMS	Equity Partner	Poland
21-Apr	Blazej Zagorski	CMS	Equity Partner	Poland

PARTNER MOVES

Date Covered	Name	Practice(s)	Moving From	Moving To	Country
7-May	George Panagopoulos	Maritime/Shipping	Reed Smith	Waterson Hicks	Greece
11-May	Valentinas Mikelenas	Litigation/Disputes	Supreme Court of Lithuania	Ellex Valiunas	Lithuania
24-Apr	Slawomir Czerwinski	Private Equity	Clifford Chance	CMS	Poland
24-Apr	Mateusz Stepień	Banking/Finance; Real Estate	Clifford Chance	CMS	Poland
4-May	Jaroslaw Lukawski	Competition	Soltysinski Kawecki & Slezak	Domanski Zakrzewski Palinka	Poland
6-May	Anna Wietrzynska-Ciolkowska	Corporate/M&A	DLA Piper	DWF	Poland
24-Apr	Lucian Danilescu	Logistics/Transportation	Danilescu & Partneres	Danilescu Hulub & Partners	Romania
24-Apr	Andreea-Oana Hulub	Logistics/Transportation	Popovici Nitu Stoica & Asociatii	Danilescu Hulub & Partners	Romania
30-Apr	Mehmet Ipek	Corporate/M&A	Ipek & Akin	Ipek Akbal Schwimann	Turkey
30-Apr	Tansu Akin	Corporate/M&A	Ipek & Akin	Akin Legal	Turkey
4-May	Gokhan Penezoglu	Tax	Penezoglu Law Firm	BTS & Partners	Turkey

IN-HOUSE MOVES AND APPOINTMENTS

Date Covered	Name	Moving From	Company/Firm	Country
16-Apr	Lucia Regecova	MOL	Glatzova & Co.	Czech Republic
30-Apr	Alan Ragueneau	Whirlpool	Nextlaw In-House Solutions	Europe
28-Apr	Balazs Toth	Dreher Breweries	Telenor	Hungary
14-May	Edward Keller	Dentons	Alpha Blue Ocean	Hungary
30-Apr	Tomasz Janyst	ICBC	Alipay Limited	Luxembourg
22-Apr	Maciej Szczepanski	OLX Group	Head of Legal Europe - OLX Group	Poland
6-May	Krzysztof Mazurek	Bayer	Head Team EMEA	Poland
14-May	Florina Homeghiu	Coca-Cola Hellenic Bottling Company	Policolor-Orgachim	Romania
22-Apr	Ceren Arslan	Klepierre	Bilgili Holding	Turkey
6-May	Selin Barlin Aral	Paksoy	Getir	Turkey
6-May	Bige Yucel	Herguner Bilgen Ozeke	Siemens	Turkey
14-May	Edward Keller	Dentons	Alpha Blue Ocean	Hungary

THE BUZZ

In “The Buzz” we check in on experts on the legal industry across the 24 jurisdictions of Central and Eastern Europe for updates about professional, political, and legislative developments of significance. Because the interviews are carried out and published on the CEE Legal Matters website on a rolling basis, we’ve marked the dates on which the interviews were originally published.

Ukraine

Interview with Armen Khachatryan of Asters



Armen Khachatryan

“The Ukrainian Government is concerned with resolving the issues that arose following the outbreak of the pandemic,” says Armen Khachatryan, Senior Partner

at Asters in Kyiv. “This has led to many specific measures being adopted as a response to the new challenges that suddenly appeared, like postponing the deadlines for certain obligations and expanding interest loans to businesses, all of which are well-expected and, hopefully, efficient.”

Khachatryan says that the crucial thing now is the pending support of the IMF. According to him, “the IMF is willing to provide its assistance, but only if some requirements are satisfied first.” He adds that the Ukrainian Parliament has made efforts to satisfy the IMF’s demands, but that some of the measures being considered, like lifting the moratorium on the

sale of agricultural land and making sure that the resolved banks are not given back to former owners by courts, are highly controversial and hotly contested. “As an example of such contests, MPs filed more than 16,000 amendments to the banking bill after it was approved in the first reading,” he says. “If all of these unprecedented amendments were taken seriously, the Parliament would have needed around two years to go through all of it, which is time we don’t have. This eventually led to the Parliament’s elimination of MPs’ ability to propose excessive amendments, but that only caused even bigger disagreements, as many feel like this may harm democracy in the long run. Nevertheless, most Ukrainians see no option for the country to proceed but to resolve all outstanding issues soon so that it can count on the IMF’s support to overcome the crisis.”

Unsurprisingly, Khachatryan reports, recent legislation in Ukraine has mostly centered around combating the COVID-19 crisis. “The Government introduced the ability for companies to re-negotiate rents if they are working remotely, made certain extensions of contractual obligations, and made it possible for state-owned banks to sell NPL’s at a

discount, which was previously heavily controlled in order not to allow any kind of drop in performance.”

“Business is obviously on hold here, which isn’t any different than in the rest of the world,” adds Khachatryan. “Those actors who started with their investments before the beginning of the crisis haven’t stopped. This is visible the most in renewables sector, especially wind and solar, where initial investments are still running.”

Still, while Khachatryan concedes that this is a depressing period, he also describes it as a time of great opportunity, noting that some clients – those who are bolder than others – have used the situation to restructure their business and get themselves ready for when the crisis ends. “Those who see that the glass is actually half full have already emerged and started investing, targeting at first distressed assets, to use the situation in their favor.” He adds that “they soon may be followed by others, as people are getting used to the situation.”

“What we can see from analysts and reviewers worldwide is that nothing will be the same after the pandemic passes,” says Khachatryan. He believes that people will need to change ►►►



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their mentality, as well as the way they operate businesses, which, in the end, may cause an interesting shift in the way things work. “For the economy to survive, people will need to restructure their businesses, which also applies to the legal market. This means establishing work from mobile devices, re-assessing efficiency, cutting unnecessary

Turkey

Interview with Dogan Eymirlioglu of Balcioglu Selcuk Ardiyok Keki Attorney Partnership

“Politics are nowadays mostly behind the scenes, and there aren’t a lot of recent highlights about typical topics of tension,” says Dogan Eymirlioglu, Partner at the Balcioglu Selcuk Ardiyok Keki Attorney Partnership in Istanbul. “The entire focus is now on how to tackle the impact of the pandemic and deriving lock-down.”

“Making the political headlines recently,” Eymirlioglu says, “is the tension between the Government and opposition controlled municipalities around aid programs and donations to support municipalities’ pandemic-fighting schemes.”

The main question, and all stakeholders’ focus, according to Eymirlioglu, is how to limit the hits on the economy. He describes several different mechanisms employed for that purpose. “In terms of corporate law, a new regulation temporarily prohibiting companies from distributing more than 25% of dividends that were previously undistributed has been adopted in order to maintain and solidify the cash positions and balance sheets of companies.” He continues. “Stricter monitoring rules were also adopted by the Ministry of Finance in terms of transfers of funds to foreign countries in order to prevent weakness-

costs, emphasizing e-documents and so on. This also means that some other market players will emerge. We will restructure our business management, which reflects on areas such as HR, BD, marketing, and focusing on new products or prices.” For once, Ukraine’s turbulent history may work in its favor. “Even though the situation is hard to

es in policies against money laundering and illicit financing due to the increased use of online banking transactions as a result of the pandemic.” In addition, Eymirlioglu says, “employers are prohibited from firing employees for the next three months but alternative measures such as reduced working hours backed by Government payments to employees put on reduced hours.”

Eymirlioglu says companies in industries such as construction and tourism that have been heavily impacted by the pandemic are allowed to delay paying taxes. Courts are closed – with the exception of urgent cases – and no pre-judgment collection procedures can be initiated until June 15th.

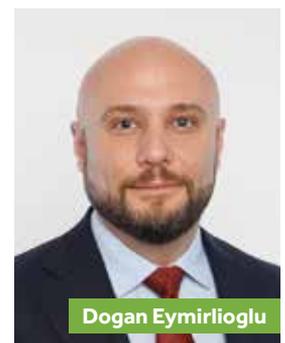
“Additional measures have been adopted in relation to possible manipulations in capital markets in order to limit the impact of the lock-down on the prices of financial products and the value of Turkish Lira,” Eymirlioglu says.

“Generally, people aren’t panicking, and most firms were able to get organized quite quickly and carry on working from home,” he reports. There was no panic in the legal market either, he says, as “the measures that are being considered and applied are very similar to other markets – there have been no mass layoffs and the main principle is to keep the jobs.” According to him, “the use of accrued leaves, delay of 2019 bonuses, and salary cuts are on the table

predict and it has unprecedented scale and challenges,” he says, “Ukraine went through a number of crises over its recent history, the last one in 2014, and this experience gave us a character that may help to get out of this situation efficiently.” ■

By Djordje Radosavljevic (May 4)

for some firms. While everyone acknowledges that this may not be the best year, there is also optimism that it might not be as terrible as the market initially thought.”



Dogan Eymirlioglu

Indeed, he says, the legal market is still quite busy. “We haven’t yet seen any major drops in business. There are a lot of restructuring and refinancing projects, although some of the M&A deals are going through a slower negotiation process, as investors want to see the performance of companies in this new era.”

Eymirlioglu says that the collective effort by all parties involved will help flatten the curve so the economy can eventually return to normal. “Plans of easing the lock-down are already in place and we expect a gradual opening of businesses in the second half of May,” he says. “The pandemic made everyone realize that we can work differently and still be as productive. As more companies discover this through time, the future might hold colossal change to the ways we see things around us and surely a new normal will arise.” ■

By Djordje Radosavljevic (May 12)

North Macedonia

Interview with Elena Dimova-Ivanoska of Cakmakova Advocates



Elena Dimova-Ivanoska

“What we have currently is a technical government,” says Elena Dimova-Ivanoska, Junior Partner at Cakmakova Advocates, “that is made up from

both the current ruling coalition members and the opposition, and formed to oversee the period leading up to the parliamentary elections which were to take place this April. “These plans were cut short by the COVID-19 crisis, when the technical government was handed a far more complex task to resolve.

North Macedonia has been under a state of emergency since March 18, with all legislative proceedings halted and all legislative power ceded to the technical government, which rules via decree. “The state of emergency is due to end on May 30,” Dimova-Ivanoska

says, “and what comes after that is still unclear. Still, the technical government has been more than active, with making legislative changes daily, sometimes even more than once!” Dimova-Ivanoska reports most of these changes to have to do with health and the economy, but she describes the rate at which they are adopted and announced is “beyond fast.”

“The most important decree we’ve seen so far is the one that provides a stimulus for businesses of EUR 235 per employee for April and May, which is contingent on the company’s not firing people and maintaining its head-counts until the end of July.” This decree was passed on April 7, she says, and was “changed three times over the course of four weeks – and this immediately before the application deadline!” The resulting legal uncertainty, she says, forced “a lot of businesses to wait with their applications until the deadline. We’re all waiting to see how this measure will work out in practice.”

Taking a wider angle, Dimova-Ivanoska reports that “a lot of companies have been hit hard by the crisis. Many people lost their jobs in the past few months,

and a lot of businesses are working with limited capacity or have completely closed for the time being.” Still, she says, she expects lay-off rates to drop, with more and more firms applying for the stimulus. “I think that the situation will be stabilized come August/September,” she says, optimistically, “even though it will take a lot of time to get back to pre-crisis levels.”

Finally, Dimova-Ivanoska reports that online retail is booming right now. “Telecommunication companies, media companies, cable companies – they’re doing great right now, a lot of work is coming their way,” she says. “Also, companies that produce medical devices and protection, disinfection materials, and the like have soared, as expected.” She says that this switch to a more “online way of doing business” constitutes a strong silver lining of the crisis. “Economic transactions, education, G2B, and G2C communication – these were all long overdue for an online overhaul. We can only hope that this trend continues post-crisis and that authorities invest in putting and keeping these systems in place.” ■

By Andrija Djonovic (May 18)

Bosnia & Herzegovina

Interview with Dino Aganovic of Heta Asset Resolution

“All activities in Bosnia & Herzegovina in the past two months have had to do with the state of emergency caused by the crisis, as they will for the foreseeable future,” says Dino Aganovic, Head of Legal and Compliance at Heta Asset Resolution in Sarajevo. Nonetheless, he says, as dangerous as the virus is, he believes in being cautious about the steps taken to address it. “I must admit

that I’m a bit of a skeptic when it comes to complete shutdowns,” he says. “The global economy is sliding into a recession that is bound to impact poorer societies in terrible ways. We need to be thinking about the future as well, not just the present.”

Aganovic notes that, although Bosnia & Herzegovina is relatively small, it is nonetheless “so complex a web of different jurisdictions and legislative frameworks, [and with] three and a half million people, living as parts of two entities, with over ten cantons.” As a

result, he says, “sometimes the different approaches to the outbreak yield ridiculous results – like one of the entities having a curfew and the other not, so if you want to go from point A to point B you sometimes have to go around some territories otherwise you’d get a fine!” Of course, such differences also cause variations in PPE ►►►



Dino Aganovic

requirements and similar matters.

Aganovic says that a number of economic stimulus measures – so-called “Corona Laws” – have been enacted. “However,” he says, “the business sector has not taken to them so well and there are clear signals they were not enough, and that they were ushered into effect too late.” Bosnia & Herzegovina has negotiated a EUR 330 million loan from the IMF to battle the economic harms of the crisis, but Aganovic reports that there is “a feeling that the loan is only there to secure the income of those working in the public sector – not to put out the fires in the economy coun-

try-wide.”

“The pandemic has fully fleshed out the corruption that exists in Bosnia & Herzegovina,” Aganovic continues, pointing to what he calls the “extremely expensive and non-transparent public procurement” of respirators that turned out to be “unusable in ICUs.” In his opinion, that particular story was just the tip of the iceberg. “We have local elections scheduled for October, so the citizens will have an opportunity to try and get their voices heard.”

In the meantime, Aganovic says that “the courts have pretty much been

locked down for the past two months, and pieces of legislation of questionable legality, from a constitutional perspective, have been passed to regulate the issues of deadlines for court proceedings by freezing them.” He sighs. “I think that legal professionals will have their hands full taking care of the mess the crisis has caused. We’re likely to see an increase of NPL transactions as well as a mountain of work in settling contractual and employment disputes, and I wouldn’t be too surprised to see the country itself sued more than a few times.” ■

By Andrija Djonovic (May 18)

Romania

Interview with Florian Nitu of Popovici, Nitu, Stoica & Asociatii

“What’s important to note is that Romania had a bit of political turmoil immediately before the crisis started,” begins Florian Nitu, Partner at Popovici Nitu Stoic & Asociatii in Bucharest. “The Prime Minister and the President engaged in a political struggle, with the PM backed by the left-wing socialist party coalition in power. Luckily, this conflict was resolved and tensions decreased – just when Covid-19 hit Romania.” As a result of this decrease, he says, the country was able to tackle the crisis without unnecessary distraction.

“Authorities reacted quickly, especially compared to Western European countries, and the lockdown measures were placed quickly,” Nitu says. As a result, Romania has kept its numbers in check, and at the time of writing has reported only over 16,000 confirmed cases. “The healthcare system was not put under in-

surmountable pressure and this allowed for the entirety of the country to be helped, not just major cities.”

Nitu says that, in his opinion, the government did a good job of protecting the economy as well. “The easing of the measures is set to start on May 18, after a full two-month lockdown.” He says that over the next four to six weeks “all restrictions will be gradually lifted, but that won’t mean we’re going to be returning to the same place we were immediately pre-COVID, as additional health and safety measures will remain in place.”

Nitu says that the government has done “a lot to support SMEs, not just in terms of subsidies and tax cuts, but also by providing access to alternative financing and short term financial aid like overdrafts, credit lines, and similar short term capital infusions.” Romania will also benefit from access to EU relief programs, but Nitu says that “big businesses are still left mostly on their own for now – an aid package for them

has yet to be announced.” He thinks this will happen, along with additional investment subsidies, in upcoming weeks.

Finally, Nitu says that “almost the entirety of the legislative agenda is focused on the crisis,” and adds that “the government is considering additional measures to handle infrastructure development, stabilizing the construction sector and publicly-funded projects.” He notes that the first pieces of legislation not tackling the crisis directly are likely to deal with updating the frameworks for public procurement and PPP. The real estate sector, he says, will also be “targeted for stimulation, as well the automotive industry. These have been hit hard and the government will have to help them.” ■

By Andrija Djonovic (May 19)



Florian Nitu

Serbia

Interview with Darija Ognjenovic of Prica & Partners



Darija Ognjenovic

“Well, the Parliament was shut down for almost two months,” says Darija Ognjenovic, Partner at Prica & Partners in Belgrade. “Given that fact, it is clear why there have been

no legislative changes of note other than those related directly to the COVID-19 crisis, instituting measures to protect public health and the economy.”

She notes that most COVID-19 public health-related measures dealing with the crisis were similar to those enacted in other countries, including a curfew, the mandatory use of personal protection equipment, maintaining social distancing, and so on. “As for the economic stimulus part,” she says, “there has been

a moratorium on the payment of social contributions and taxes on salaries as well as credit repayments for a three-month period, and there have been tax breaks.”

Additionally, legislative and administrative-proceeding deadlines have “either been frozen or extended, and most regulatory bodies are working under a special regime in which no parties are allowed to be present.” Finding a silver lining where she can, Ognjenovic believes that the Serbian courts’ caseloads are already so overwhelming that the deadline extensions are unlikely to have a noticeably adverse effect after the crisis passes. “The court system in Serbia is rather slow as it is,” she says, “so these two months will not have a huge effect on it.” And indeed, the country slowly started reopening on May 11, with courts resuming their regular work.

“As for the economic impact, the country’s SMEs will suffer huge consequences,” Ognjenovic says. “While enterprise players have systems that are

used to having high turnover and have a structure that’s more easily adjustable to a crisis such as this, SMEs will need some time to come back around.” She says that hospitality-orientated businesses such as hotels and restaurants have been “gutted” and have had to lay off a lot of people, unable “to pay them even the minimum wage.”

Sighing, Ognjenovic says that the measures the government put in place “are what they are.” According to her, “some of them are quite good, especially when it comes to protecting public health, but others are a simple reflection of the fact that the country is not very liquid.” She feels that the rather quick reopening – “so that the country doesn’t go bankrupt” – reflects this as well. Finally, she says, “also, this quick ‘return to normal’ also has political connotations – we’re due for parliamentary elections in June, postponed from April – and any more prolonging on this front would have put more pressure on the government.” ■

By Andrija Djonovic (May 19)

Croatia

Interview with Mate Lovric of Lovric, Novokmet, Smrcek

“One of the key questions in Croatia right now is the upcoming parliamentary elections,” begins Mate Lovric, Partner at Lovric Novokmet Smrcek. “They will either occur in July or sometime this fall (although July seems more likely). The current government would prefer them to be earlier, when the memory of successful measures against the COVID-19 crisis is still fresh, while the opposition would like to see them as late as possible, of course.”

Lovric says that it is difficult to know how to tell the difference between the “measures to battle the crisis and

those that serve election purposes.” In the meantime, Croatia’s numbers look relatively good – at the time of writing, there had been only 2221 confirmed cases (compared, for instance, to 10,374 in neighboring Serbia).

However, he says, the low numbers are not a reason for absolute joy. “Our tourism sector is poised to take a huge hit – some say as much as a 70% reduction from last year, and with it impacting around 20% of our GDP, it doesn’t seem stellar.” Lovric says that the projected numbers for GDP contraction are between nine and ten percent, “and even with the bounce-back that’s likely to occur next year, it will be difficult for us to be where we were in 2019.” He says that the biggest problem tourists

face – aside of course from potentially contracting the virus – is the fact that “most of them would have to go into self-isolation upon leaving

Croatia, as most countries from where tourists come to visit us are requiring.”

“One of the most prominent measures that the government has undertaken,” Lovric continues, “is the three-month cover of minimum wage employees’ salaries. A lot of lawyers and even some of the high-end, top-tier law offices in Zagreb applied for this, which only ▶▶▶



Mate Lovric

goes to show how much all markets have been impacted by the economic blowback of the crisis.” Indeed, he says, M&A transactions have slowed significantly, “especially when you compare the current numbers to Q1.”

On the other hand, Lovric says that “one of the upsides of the crisis is the switch to a more digital dealing with administrative and regulatory bodies.” He reports that “many institutions, like the tax authority, took part in this transfor-

mation, and hopefully this will last and become a norm from here on out.” He also praises the three-month freeze of enforcement and bankruptcy deadlines.

Finally, Lovric says that while Croatia has done well for the time being, “it is a huge question as to whether these measures will be possible, even, if a second wave of the epidemic strikes.” He says that Croatia experienced a negative VAT flow in April for the first time in the country’s history and that the markets

are still “scared.” According to him, “there have been a lot of bad things, not only the virus,” pointing also to the earthquake that hit Zagreb, the country’s capital, in March. “The next three months will be crucial, to see where we are, what’s going on with the tourist sector, with remittances, and to just figure out the best way forward,” Lovric concludes. ■

By Andrija Djonovic (May 20)

Kosovo

Interview with Fisnik Salihu of RPHS Law



Fisnik Salihu

“The current political situation in Kosovo is fragile, since the Assembly, in the middle of the COVID-19 crisis, dismissed the government of Prime Minister Albin Kurti

in a no-confidence vote on March 25, 2020, triggering a huge political crisis in the country,” says Fisnik Salihu, Partner at the RPHS Law Firm in Pristina. The government was dismissed, he says, “mainly after a dispute between coalition partners over whether to declare a state of emergency and the way the dialogue with Serbia should be handled in the future.”

Nonetheless, Salihu says, the government has been handling the COVID-19 crisis well. “Only two days after the first confirmed case, on March 15, the government put measures in place, such as quarantine arrangements and border control, and closed schools and businesses, except for essential ones.” However, some of these decisions did not fare as well as others, and on March

23 the country’s Constitutional Court found that the anti-movement measure was not constitutional, as the “piece of legislation the government cited as the source of this restriction was not powerful enough.”

“The former coalition political party, LDK, has initiated negotiations with other opposition political parties to form a government within the existing composition of Kosovo’s Parliament,” Salihu explains. However, that process isn’t going smoothly. “There is a political debate as to whether the parties can form a new government without elections after a no-confidence vote was successful,” he says. “As a result, the attempt to form a new government has transformed into a constitutional debate, and ultimately has become subject to constitutional review from the Constitutional Court.” Indeed, the Court issued an interim measure, which expires on May 28, suspending the vote in Kosovo’s Parliament for a new government until it rules on the merits.

The harm done by the COVID-19 crisis to Kosovo’s economy may not be permanent, Salihu says, noting that “according to the World Bank’s projections, the country’s GDP will contract by 4.5% but rebound in 2021.” The direct effect will be felt in investments, exports, and remittances. “The Government has ap-

proved an initial fiscal stimulus package of EUR 170 million,” Salihu reports. “This package includes covering monthly salaries up to EUR 170 for April and May for those who were affected by the crisis, as well as backing SME lending activities by guaranteeing 80% of unpaid loans and subsidizing 50% of interest payments.” Nonetheless, he isn’t convinced that even that stimulus will be sufficient, considering the full impact on the economy, and even with tax payment deadlines being extended and a three-month loan repayment moratorium placed by the Central Bank.

“The business community was quite proactive during this period, proposing measures to the government and developing innovative plans and strategies to handle the crisis,” Salihu says. “The crisis has led to the rapid development of online retail and e-commerce in Kosovo, and even restaurants, stores, and other non-essential businesses have started to rethink online sales and e-commerce.” He says that the legal market had to adapt as well, adding that “law firms have also started to rethink their business models and enquire about ways to accommodate some of the services remotely.” He says that thanks to IT solutions and resources, the market was able to adapt to the “new way of doing business” during this time. ■

By Andrija Djonovic (May 20)



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Bulgaria

Interview with Viktor Tokushev of Tokushev & Partners



Viktor Tokushev

“The government acted well and fast in response to the crisis,” says Viktor Tokushev, Managing Partner of Tokushev & Partners in Sofia. “The problem is, how-

ever, that the majority of the measures it enacted focus mainly on healthcare and the safety of the population, with other sectors lagging behind.” In addition, he says, while many economic measures have been announced, not many have been actually implemented.

“On May 6,” Tokushev says, “everything went back to normal, more or less, with only those businesses that operate predominantly indoors, like restaurants and shopping malls, remaining closed.”

Those businesses that were hit hardest by the crisis are currently still waiting to resume operations. “On the other hand,” he says, “this reopening of social life as we knew it may be a bit premature and it may have been more adequate to have waited for such a strong move. Perhaps a more nuanced opening, a gradual one with constant evaluation of impacts, would have been better – but the government decided to be more direct.”

Tokushev also says that the rules which have been enacted in respect of the state of emergency are now reflected through changes in the Healthcare Act, which was enacted on May 13, and which will remain relevant in the following months of transition. According to him, “the changes are rather broad and focus on the next couple of months of recovery.” Harmonizing these amendments to work smoothly with existing legislation may be a tough challenge, he believes. “I hope that the limited time for drafting and implementation of these legal provisions does not result in a need for frequent amendments and shall provide

sufficient stability for society to recover.”

In the meantime, the crisis has left Bulgaria with “fewer investments and fewer projects, which of course is reflected in all sectors of business.” He says that “the Bulgarian Development Bank and the Fund Manager of Financial Instruments (the Fund of Funds) will be the ones implementing real economic measures and controls – they will have the most important job to do until the end of the year, translating the economic measures into reality and making them more accessible for business sector players. In order to achieve these goals, these institutions will need the support and collaborations of the commercial banks, because the banks will be the ones providing the funds to possible beneficiaries. For us as consultants working with these institutions, our priority until the end of 2020 will be providing clients with information and support for utilizing all funding available to them.” ■

By Andrija Djonovic (May 21)

Turkey

Interview with Ersin Nazali of Nazali Tax & Legal

“The Turkish Government acted well and used the experience of other countries to fight the battle with COVID-19,” says Ersin Nazali, Managing Partner of Nazali Tax & Legal in Istanbul. “The situation was well prepared-for, which ultimately led to a lower number of infected people. Soon, we expect to get back to normal life.”

Indeed, Nazali reports that most indus-

tries are already getting back on track, and things are slowly but steadily getting back to normal. “The automotive sector was the first to re-open,” he says, “and the beginning of June is the expected date for everything else to start. I think the time is right to kick things off again, because people are soon going to need to start earning capital again.”

Among the measures enacted in order to help the situation, Nazali points in particular to the freezing of the judicial process, the option of delaying paying taxes, and financial support to certain businesses in order to stimulate work

and ease the normalization process. “Multiple monetary benefits as well as tax returns and loans granted to the county’s SME’s are a good way to fight the inevitable crisis,” he says.

“I can say that at the end of the day, the Government did as much as they could.”

This isn’t the only crisis Turkey had ►►►



Ersin Nazali

to overcome in recent years, of course. Still, Nazali describes it as “different from the others we had,” and he says that “therefore we needed a different sort of response.” According to him, “some employers were badly affected of course, which is an expected situation, but it seems like those businesses will be overtaken by the Government.” In addition, he says, “investors were less present – somewhere around half the usual number. Even though companies tried their hardest to stay afloat, they had to cut some of their activities, and

as a result, they asked for less consultancy. Therefore, some law firms in Turkey had to close their offices, start home-working programs, and even lay off some employees.”

Ultimately, Nazali reports that he remains confident and optimistic about the future state of affairs in Turkey, insisting that “if the conditions don’t get worse suddenly, the economy will eventually get better.” He smiles. “As I mentioned before, crises in Turkey have happened recently, and those kinds of

shocks are relatively normal.” He also believes that “the crisis is also a good opportunity,” noting that “the way it affected the supply chains of many companies makes them rethink their business models, and change the way they operate. For example, people were able to realize that China is not only a great option for supply, so I expect more of it to come from Europe or other places in the future.” As a result, he says, “this might, in the long-term, result in a better situation than ever before.” ■

By Djordje Radosavljevic (May 21)

Hungary

Interview with Levente Csengery of KCG Partners



“To be honest, I think the government handled the crisis as well as possible,” says Levente Csengery, Partner at KCG Partners. “The COVID-19 regulations do exactly what

they’re supposed to – protect public health and keep us all alive, and they’re working.” At the time of writing, Hungary has had 3535 confirmed cases (and 460 deaths) from the new coronavirus.

Still, the public health elements of the crisis are only part of the problem. “The economic blowback has been significant

and we’re all feeling it,” Csengery says. “There have been layoffs left and right – both individual and collective dismissals.” Csengery specializes in Employment law, and he is directly involved, he says, with “many such cases, so I’m pretty aware of them and the impact they have on people’s lives. However, I feel that there is light at the end of the tunnel and I think that this can be an opportunity for many businesses to transform their operating models to suit the new normal – this would, eventually, lead to an uptick in employment as well.”

As for new legislation designed to tackle the crisis, Csengery reports that “many of the laws are a bit unclear as to what they seek to achieve – which leads to us, as lawyers, being forced to interpret them in a restrictive, conservative, manner.” He feels that this may prevent these legislative measures from achieving their full potential. “This was to be

expected – the sole focus of our legislative bodies was the crisis and pumping out laws as quickly as possible to deal with it. What we’re in right now is a constant feedback loop to the government, and they’re working tirelessly to improve these and concretize them so that businesses can have more predictability in their operations.”

Ultimately, Csengery says that he remains optimistic that the crisis can end by 2020. “Hungary’s numbers are looking good and we’re doing all we can to keep the curve flat,” he says. “People are switching to remote working in many sectors of the economy and it should start improving in the coming months as well.” He says that business models of many businesses “are undergoing transformation and fine-tuning, and I think that this can only benefit the economy.” ■

By Andrija Djonovic (May 22)

Greece

Interview with Yanos Gramatidis of Bahas, Gramatidis & Partners



“I believe that Greece has become an example of how early response to COVID-19 works,” says Yanos Gramatidis, Partner at Bahas, Gramatidis & Partners.

“In particular, Greece’s response helped to stem the public health crisis and has allowed the Government to undertake a minor digital revolution.”

Gramatidis says that “in order to minimize the risk of spreading the disease via human contact, the Greek government has digitized most administrative and regulatory services. Everybody has access now from their home to any sector of the administration – documents, certificates, registries – all just a click

away.”

According to Gramatidis, most of the measures were implemented “without any political opposition or battle in the parliament – and the current government has an approval rating of around 60%, which is unprecedented in Greece”

“Most of the legislative changes recently have been related to the crisis and mitigating its negative effects,” Gramatidis says, “by dealing primarily with the social security system, tax system, and public administration among other sectors of the economy as well. Further, some preparatory work has been done by drafting legislation aimed at incentivizing various projects in development, like privatization projects, and increasing public investments to have them be the locomotive of growth.” In addition, he says, “the government is making a strong effort to help the legal market deal with the “interpretation of force majeure cases,” noting that, “as you can imagine there is a long discussion as to the application of force majeure in the

contractual realities right now.”

Gramatidis is optimistic about the Greek economy. “I do not expect the 2020 deficit to be more than 10% – as does our government, the Bank of Greece, and IMF. Honestly, I think it will more likely be around 8%.” His optimism is fueled by what he says is “a strong production sector which has not been impacted by the crisis, much unlike our services sector.” He believes that “this could prove to be the key when it comes to bouncing back from the crisis and going for strong growth of about 5% or 5.5% after Q1 2021.”

Gramatidis believes that the good tackling of the crisis “has made Greece one of the safest places in the world when it comes to FDI and tourism, which, at the same time, should spur a strong effect on the tourism sector in 2021.” Finally, he says, “privatization endeavors in the areas of infrastructure and energy shall help the Greek economy to increase its liquidity and achieve significant growth.” ■

By Andrija Djonovic (May 22)

Montenegro

Interview with Vladimir Radonjic of Radonjic/Associates

“The political situation in Montenegro reflects all the complexities that most Western democracies are facing at the moment,” says Vladimir Radonjic, Managing Partner of Radonjic & Associates in Podgorica. “It feels like, in the past few months, since we began battling the crisis, politics has really taken a back seat.” He says that this may change, though, as the pandemic weakens and a new normal emerges on the horizon.

More specifically, Radonjic says that

Montenegro’s recent Freedom of Religion Act of 2019 has “particularly shaken up the political landscape of Montenegro and pushed other important issues, such as reforming election laws and improving the economy, to the background.” He says that all of this disincentivizes foreign investment, “which should cause concern, given that FDI is one of the pillars of our economy.”

“Montenegro has spent the better part of recent years harmonizing with the EU legislative framework,” Radonjic reports, noting that “with respect to this, a whole plethora of new legislation

occurred – a new PPP Act, a new Companies Act is in the process of adoption, and the like.” Radonjic says that these new laws should serve to imbue foreign investors with “a sense of security and predictability.”



While these are positive steps forward, he says, the “entire Montenegrin business atmosphere must be free from political tensions and conflicts as ►►►

well.”

As Montenegro generates about 25% of its GDP from tourism, the effects on that industry are of real significance to the country’s economic health. “I think it safe to assume that the economy will take a big hit in 2020, but it is still difficult to predict as to how big, at this point,” Radonjic says. “Big hotels on the seaside have been forced to delay their decisions about whether or not to open

the season to the back half of June. So, even if the season does open, it will be rather short, in comparison to previous ones.”

Overall, though, Radonjic reports that the government has announced “three sets of measures to combat the economic downturn, two of which are currently being implemented, with the third on its way.” He says that he feels these measures should “prove to be an

adequate reflection of the current status of the Montenegrin economy.”

Finally, Radonjic reports that lawyers “have adjusted to the crisis in a relatively quick fashion,” and that “firms are keeping up their workloads and have made the transition to remote work quite successfully.” He says that this more flexible method of doing legal work, “will definitely mark the decade ahead.” ■

By Andrija Djonovic (May 26)

Slovenia

Interview with Marko Frantar of Schoenherr



Marko Frantar

“Quite a lot, really – it’s like watching a movie on fast forward,” says Schoenherr Attorney at Law Marko Frantar, from Ljubljana, when asked what’s happen-

ing in Slovenia during the COVID-19 epidemic. “As elsewhere, we’ve been seeing a level of state intervention that is unprecedented in terms of both range and magnitude of measures adopted – all compressed into a period of two months.”

And he says the sentiment in Slovenia is that steps taken to address the health crisis have been effective. “Social distancing measures – rigorous as they were – have done the job. Only last week, Slovenia became the first EU member state to withdraw its ‘State of Epidemics’ status,” while noting there is lesser unity over the economic policy interventions. Frantar welcomes the

“strong focus on construction projects” while noting the controversy over the restricted criteria for NGO participation in the construction permitting stage.

In Slovenia, as everywhere else, lawyers worked primarily from home over the past two months. “Naturally, the logistics are a bit more demanding – but overall the temporary adjustment has been successful.” Still, that doesn’t mean it was ideal. “The legal market is not immune to the epidemic,” he says. “Lawyers will tell you that the dynamics and nature of the work have been a bit different during this time.” Most litigation has been put on hold, and he reports that “the M&A market has also been more quiet than usual, with only the most advanced deals progressing.”

Nevertheless, he and his colleagues stayed busy throughout the crisis, Frantar says. “The crisis has produced a diversified set of legal issues,” he reports, citing various force majeure/non-performance mandates and tensions in the lease market. Unsurprisingly, many of the queries have been labor-law driven – including “very practical do’s and don’ts of returning to work, processing of personal data, and ensuring safe working environment.”

When asked whether most contractual

break-downs resulted in compromises and settlements or in the initiation of formal dispute procedures, Frantar says, “to some extent it’s too early to tell as many parties still evaluate their positions.” And certainly, some conflicts will prove resistant to negotiation, he says, noting that “I don’t know if there will be a flood of new litigation, but it’s a safe bet that a portion of non-performance disputes will move to court.”

According to him, though “nobody has a crystal ball,” everyone is hopeful that the economy will bounce back soon and the public health status will remain stable. He suggests that, while not all industries will suffer in the meantime, demand for legal services is unlikely to shrink: “We know the legal market does not precisely mimic the economy – if anything, a recession typically comes with a spike in restructurings, litigation, and other countercyclical practices.”

Frantar admits to being happy that, as of May 18th, “the team is back in the office, with business as usual in the physical sense.” According to him, “beyond accelerated digitalization, the crisis will cause all businesses, law firms including, to rethink their opportunities and business models.” ■

By David Stuckey (May 27)

Moldova

Interview with Roger Gladei of Gladei & Partners



Roger Gladei

“Naturally, nobody in Moldova was prepared for this situation,” says Roger Gladei, Managing Partner of Gladei & Partners, in Chisinau.

“Still, even though the first reaction of the Government was sporadic, in the end, they were able to put resources together and come up with an articulated response to the crisis.”

The state of emergency that was announced in Moldova on March 17 was cancelled on May 15, Gladei reports, noting that the intervening period was “challenging, but rich in opportunities.” According to him, “since the initial reaction by the Parliament wasn’t robust enough, the Government started wearing the pants and passed an emergency ordinance on business support in its first pool of actions. The ordinance was declared unconstitutional by the country’s Constitutional Court, however. I think there is a good lesson to be learned here: everybody just needs to do their job.”

Ultimately, Gladei says that the first reaction of the Government was prompt – but not sufficient. “Salary taxes paid,” he says, “including insurance premiums and social contributions, could be partially repaid by the Government, but there was fair criticism that the mechanism employed was not the most effective. Employers would have to pay the taxes first in order to receive

reimbursement – but the problem is that crisis-affected employers are short of cash to pay in the first place.”

He sighs. “The question at this new juncture is whether the Government will be able to subsidize salaries and offer real and sustainable support to the business community. This, of course, will require a large-scale allocation of public funds. The good thing is that Moldova’s development partners like the IMF, the European Commission, and the EBRD have pledged their support. Still, the budget gap is assessed as approximately one billion dollars, so the Government is seeing itself as omnivorous, looking both West and East for financial support.”

However, Gladei says, obtaining that financial support has been contentious as well. “There have been negotiations about potential sovereign loans with both Russia and the Western partners (particularly the IMF).” The first attempt failed, he says, as “starting from the pole-position, the Russian USD 200 million loan was sent to the ditch by the Constitutional Court shortly after signing.” By contrast, the IMF’s provision of USD 235 million in financial assistance was approved on April 17, catalyzing developmental partner support. Shortly thereafter, he reports, “the Parliament pulled itself together and voted for the conditionalities to access the EU 100 million loan, setting a fragile but sustainable platform for the Government to cope with the economic problems brought by COVID-19.”

“Even though the situation is not as good as it used to be, qualified lawyers are still busy,” says Gladei, adding that “even if they are able technologically to work remotely, we failed to keep up

with the ‘stay home’ slogan entirely, since our clients (both existing and new) have been keeping us fully geared. Most existing clients elected to keep their projects rolling, and some even started new projects. The recent experience of closing the Moldcell acquisition – a cross-border complex M&A transaction – amid a state of emergency was truly amazing, as we didn’t know until the last minute if we would be able to complete it, as stones were falling from all sides. On the other side, a whole new wave of clients interested in learning how to adapt to new rules or how to restructure their contracts given the situation just recently showed up.”

“Against this background, we established a dedicated portal on our website to provide first-hand legal analysis of the most stringent COVID-related legal issues,” Gladei says, proudly, “and we have now embarked on a new thrilling project, supported by the EBRD, providing legal assistance to Moldovan SMEs affected by the pandemic. It’s natural to feel a duty to help people overcome their problems in times of need.”

“Things are starting to get back to normal in Moldova,” says Gladei optimistically. “The situation, no matter how unfortunate it is, will shake up business and make way for new opportunities. It’s important to always look for a way to transform a threat into an opportunity. This means that companies will have to shift towards more viable models, understand their weaknesses, and rethink their business. I think that after the crisis passes, Moldovan business is going to become more mature and competitive, opening the door to investment and growth.” ■

By Djordje Radosavljevic (May 27)

Austria

Interview with Paul Luiki of Fellner Wratzfeld & Partners



“The fairly stringent lockdown imposed by the Austrian Government in mid-March resulted in a relatively small number of infections,” says Paul Luiki,

Partner at Fellner Wratzfeld & Partners in Vienna. “Apart from being able to get the infection under control, they also introduced a EUR 38 billion package to help the economy recover. Even though room for improvement always exists, given the little time the Government had to act, I think the support package on the whole has worked out just fine.”

Luiki is satisfied with the fact that measures imposed by the country’s Government were successful and ultimately allowed most people to keep their jobs. “More than 25 percent of all Austrian employees have been enrolled in the ‘Short-Time Working Program for

Austria,’ in which the Government pays between 80 and 90 percent of salaries,” he says. “This helped a lot of employees keep their jobs. Other measures include liquidity measures for small and large businesses, a EUR 2 billion hardship fund, short-term grants, guarantees for loans, and so on, all in order to keep businesses afloat.”

A controversy has arisen over the impact of the old Epidemics Act, reports Luiki. “This is a piece of legislation that gives especially owners of restaurants and hotels, all of the businesses that are suffering the most, some more rights when epidemics are announced and they are forced to close down their business. Now, questions are being asked whether they can claim loss of earnings under the Epidemics Act as opposed to just applying for grants, and for some companies obtaining full compensation for loss of earnings for even just a few weeks might turn out to be essential for them in these challenging times.”

Luiki, himself a transactional lawyer, reports that the volume of deals is down by around 40 percent in German-speaking jurisdictions, but he says that the deals that started before COVID-19 hit are still making it to the finish line.

“Wherever a lot of time and money has been invested in a transaction, companies will naturally often try to get them done, even in this situation,” he says. “Compared to the sectors which are obviously struggling, like tourism and the airline industry, the technology sector is very active. Austria has a good reputation for having excellent niche software companies, and the interest for them remains very high.” Luiki adds that even though it’s logical that business is not functioning as it did before the crisis, he “still expects a new peak in investment if we continue having good results with the pandemic.”

On how work has changed, he says, “I think we are never going to be as efficient working in a virtual surrounding as we are working in person. However, working virtually for many tasks is definitely possible, and the more we use modern technology, the more sophisticated we get with it. I like the fact that this way, we are able to see people we weren’t frequently seeing before – like our colleagues from other countries, for example. In the end, if you look at it, there’s a positive side to all that has happened, too.” ■

By Djordje Radosavljevic (May 28)



The Buzz:

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RAISING THE BAR: HUNGARY'S NEW CLE REQUIREMENTS FOR LAWYERS

By Tereza Green

On January 1st, 2020, the Hungarian government adopted new legislation making continuing professional education compulsory for lawyers, post-qualification, along the lines of post-certification training and education that tax advisors and accountants had been forced to obtain for many years.

With 8,700 members in the Budapest Bar Association, and 16,000 members in the Hungarian Bar Association, achieving the ambitious goal of creating, applying, and administering this system is no mean feat, especially because existing models, in CEE, are few and far

between.

The System in a Nutshell

Hungary's continuing legal education program will work on a point-based system that runs in 5-year cycles. Each year, every member of a Hungarian bar association – whether national or local – must collect a minimum of 16 credit points, and at least 80 points over the 5-year cycle. Credit points are granted to those who attend either virtual trainings (such as e-learning, online workshops, and webinars) or in-person “contact” trainings. Lawyers who are unsuccessful

in collecting 80 points in a five-year cycle will have their bar membership withdrawn.

According to the bar's regulations, each session must be at least 45 minutes long, and when the training is followed by an exam – and that exam is passed – the points are doubled. CMS Budapest, for instance, which has been accredited by the Budapest Bar to provide trainings, is offering 60-minute sessions followed by an exam, which will provide those participants who pass the exam two points. The firm is also offering 90-minute sessions worth four credit points if the



Corvinus University of Budapest



Orsolya Gorgenyi

exam is successful. Those who fail the exam, by contrast, will only get half of the available credit points.”

In addition, certain trainings completed before the Hungarian rule came into effect on January 1, 2020, can also count towards the single-year and 5-year goals. Thus, lawyers who completed a training after 2018 in a particular specialization or field of law can apply for credit points.

Credit can also be gained from trainings attended abroad; lawyers who participate in foreign courses may apply to the Education and Accreditation Committee of the Hungarian Bar Association to have them accepted and subsequently translated into domestic credit points.

The CLE regulation naturally provides some exceptions, generally for lawyers who have reached a certain level in their career or training or are pursue a particular career path. So, for example, law graduates who are university employees or have degreed in political science or public administration are exempt. Similarly, attorneys who have an LL.M or Master of Law degrees are also exempt, as are those who teach, participate in a two-year public service training, or are aged 75 or older.

How it Works – and Who Works It

The task of designing and implementing the new education system was handed to Geza Reczei, the President of the Educational Committee of the Budapest Bar Association, who previously created and developed education systems for both PwC and Deloitte, as well as the Hungarian Civil Service. Reczei created the CLE system based on those personal experiences, tailoring it to the specific requirements of legal education and making sure to include e-learning that genuinely supports a lawyer’s career. Af-

ter drawing up a general outline of the system, he then focussed on ensuring that it would use technology that could work across all devices.

According to Reczei, the Budapest Bar Association Education Committee had limited time to work out how to develop, implement, and manage the education program, so it concentrated primarily on creating an e-learning library and a points management system. In parallel, the Hungarian Bar Association started developing an administrative system while also creating educational videos. The two Bar Associations are currently combining the systems.

“In arbitration – or specifically international arbitration – we may get better trainings abroad, like in Paris, London, New York, Stockholm, and so on. You may get new angles and rules on how to act, behave, or interpret the rules. Hungary is far away from this knowledge, so it’d be better to attend those. This could be applied to M&A or finance lawyers, too.”

According to Reczei, a training event can only be organized by an official training provider, *i.e.*, at a regional bar association, an internal training venue, or an external venue with regular accreditation. And the various e-training courses currently available concentrate on general, business operational topics to make sure they are useful for everyone, at this initial stage. More specialized topics are being created, and the Education Committee continues to review and analyze each step as the program develops, watching reactions and responding



Erika Papp



Milan Kohlusz



Geza Reczei

to feedback.

The Budapest office of CMS plans to provide one training per month, and to curate the training content themselves, with approval from the Budapest Bar Association. “We are trying to contribute to the Budapest Bar’s and Hungarian Bar’s training programs in a meaningful way,” says CMS Budapest Managing Partner Erika Papp. “That is, we try to suggest training topics that are typically within the expertise of an international law firm, such as cross-border financing and other cross-border transactions.”

“I think we all must continuously develop ourselves. The offered courses are numerous, so anyone can pick topics that are relevant and useful for them. I am optimistic about the future of CLE in Hungary.”

“The training program, including the choice of topic, has to be pre-approved by the Budapest Bar,” Papp explains, noting that “we have received approval from the Budapest Bar for the trainings to be held in the first half of the year.” She emphasizes that these trainings are meant for lawyers from both within and outside CMS. “We wanted to be inclusive and invite other lawyer colleagues who are interested in our topics. Our clients – that is, the legal departments of our corporate clients – have also expressed an interest in joining our trainings.”

Mixed Response

Initially, the introduction of CLE in Hungary was an unwelcome change, and it was met with some resistance. Reczei, however, says he feels like the scepticism is passing, and that lawyers are warming

up to the concept. “People are enjoying it now,” he says, confidently. “We have Facebook groups that have given good feedback, including discussion and exchanges of new ideas, and topic requests.”

For her part, Papp says she and her colleagues had no problem adapting to the new system. “Because our staff is highly exposed to other countries’ legal systems and bar regulations it was not a surprise that the compulsory training and accreditation system was introduced in Hungary as well.” Indeed, she says, its installation will help address weird imbalances. “For example, in England it has been in existence for several years, and our English-qualified lawyers have been collecting yearly credits. Now, the Hungarian lawyers will have to do it as well, so we welcome the new regulation.”

Not everyone sees it as a pure good, of course, and Milan Kohlrusz, Partner at Bittera, Kohlrusz & Toth isn’t completely persuaded. First, he is quick to emphasize that he has no objection to the new rules in theory, saying, “I always thought that it was a great initiative, and we need developments from time to time; I know this system from the UK, and there it works quite well.” But he admits that he’s less enthusiastic about some of the individuals who have popped up, he says, solely to profit from a perceived business opportunity. “The problem here is that it is now a new business for lawyers, judges, prosecutors,” he says, sighing. “New companies have been established in order to deliver the training. Many firms are using judges to explain certain laws. And on topics that we already know about.”

Kohlrusz has high hopes for future improvements to the system, which he says should focus on providing more access

to those with specific expertise. “In arbitration – or specifically international arbitration – we may get better trainings abroad, like in Paris, London, New York, Stockholm, and so on. You may get new angles and rules on how to act, behave, or interpret the rules. Hungary is far away from this knowledge, so it’d be better to attend those. This could be applied to M&A or finance lawyers, too. I would broaden the training and make deals with foreign institutes. In these events you could get materials, sample what you could use here, and improve the Hungarian legal practice, too.”

Orsolya Gorgenyi, Partner at Szecskay Attorneys at Law and Head of International Affairs for the Budapest Bar Association, is also conscious of potential improvements down the road. “At the moment, the topics are still focused on ‘lexical knowledge.’ In my opinion, however, learning business and soft skills would be even more important to succeed in the future as a lawyer. In my opinion, once we get the CLE system going, we should also start offering a wider variety of trainings and workshops which focus on such skills. In AIJA I am now vice-chair in charge of the SCILL Commission, which stands for Skills, Career, Innovation, Leadership and Learning, and I can tell you that lawyers from around the world are hungry for such topics!”

Still, Gorgenyi insists, that doesn’t in any way limit her enthusiasm about the new system. “I absolutely approve of the CLE system,” she says. “I think we all must continuously develop ourselves. The offered courses are numerous, so anyone can pick topics that are relevant and useful for them. I am optimistic about the future of CLE in Hungary, especially now that as a positive side effect of the pandemic everyone is more used to online tools and webinars. ■

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THE BIG DEAL: INTERVIEW WITH CMS'S EVA TALMACSI ABOUT OTP/SOCIETE GENERALE ACQUISITIONS

Over the past few years **CMS** advised the **OTP Bank Group** on an extensive series of acquisitions across Bulgaria, Moldova, and former Yugoslavia.

This series of separate deals was shortlisted for CEE Legal Matters' CEE Deal of the Year in each of the countries involved, actually winning the 2018 Deal of the Year for Bulgaria and the 2019 Deal of the Year Award for Montenegro.

We reached out to Eva Talmacsi, who led CMS's multi-jurisdictional team, to learn more about the firm's impressive work on OTP's behalf.

CEELM: First, congratulations, Eva, on your firm's work on this astounding series of transactions, which were widely recognized, and won multiple CEE Deal of the Year Awards this year and last. Well done!

Eva: Thanks very much David – we were delighted with the recent wins at

the CEELM DOTY awards, and that all the hard work on this suite of transactions is being recognized so widely. As you say, quite an astonishing deal series to have supported OTP Bank Group on – and exactly the kind of work that CMS' DNA suits: cross-border, multi-country, complex, and high-profile. Plus, it is great to be supporting one of

the region's fastest growing power-houses and taking their business to the next level! In short, CMS assisted OTP Bank Group on a suite of strategic acquisitions across the region, acquiring Societe Generale Group's Bulgarian, Albanian, Croatian, Moldovan, Montenegrin, Serbian, and Slovenian subsidiaries.





Eva Talmacsi

CEELM: Can you describe the various deals in their particulars, so we understand everything?

Eva: There were six deals in total, and I'll outline the particulars of each one.

Bulgarian Acquisition

This project included the direct or indirect sale by Societe Generale of its Bulgarian subsidiary interests (Societe Generale Expressbank AD, Societe Generale Factoring EOOD, Sogelease Bulgaria EOOD, and Sogelife Bulgaria IJSC) to DSK Bank EAD, a member of the Budapest Headquartered OTP Group.

The transaction documents were signed on August 1, 2018, at CMS' Budapest office. The closing of the bank acquisition, as well as the purchase of the insurance company, was subject to the fulfilment of several conditions, which included obtaining regulatory approvals in Bulgaria and in Hungary as well as competition clearances in Bulgaria, Serbia, Montenegro, and Ukraine. The transaction closed on January 15, 2019 in Sofia – and its significance was recognized with an award at the 2019 CEE Legal Matters Awards.

Albanian Acquisition

This project involved Societe Generale selling its 100% shareholding in Banka Societe Generale Albania SHA, the Albanian bank of the SG Group, to OTP Nyrt. At the time of signing, 88.89% of the shares in Banka Societe Generale Albania SHA were owned by Societe Generale while the remainder were owned by minority shareholders. Therefore, the acquisition occurred in two parts.

For the sale and purchase of the 88.89% shareholding in Banka Societe Generale Albania SHA, a share purchase agreement was executed on August 1, 2018, in CMS' Budapest office. In the interim period (i.e. between signing and closing) Societe Generale acquired the remainder of the shares from the minority shareholders, which it then sold to OTP Nyrt.

The closing of the transaction was subject to the fulfilment of several conditions, which included obtaining regulatory approvals in Albania and in Hungary as well as competition clearances in Albania, Serbia, Montenegro, and Ukraine. The acquisition of all the shares closed on March 28, 2019 in Tirana. Accordingly, on that date, OTP Nyrt. acquired a 100% shareholding in Banka Societe Generale Albania SHA.

Serbian Acquisition

This project included the direct or indirect sale by Societe Generale of its Serbian subsidiary interests (Societe Generale Banka Srbija AD Beograd and Sogelease Srbija d.o.o.), as well as the sale by SG Group of its Serbian insurance company (Societe Generale Osiguranje ADO Beograd) to OTP Nyrt. The transaction documents were all signed on December 19, 2018 in CMS' Budapest office. The closing

of the bank acquisition, as well as the purchase of the insurance company, were subject to the fulfilment of several conditions, including obtaining regulatory approvals in Serbia and in Hungary as well as competition clearances in Serbia, Montenegro, and Ukraine. The transaction closed on September 24, 2019 in Belgrade.

Moldavian Acquisition

In this project, Societe Generale sold its 67.85003% shareholding in Banca Comercialia Mobiasbanca – Groupe Societe Generale S.A. ("Mobiasbanca"), the Moldavian bank of the SG Group, to OTP Nyrt. Societe Generale also sold its 8.84151% shareholding in Mobiasbanca, which was acquired from the EBRD in the interim period. For the purpose of the sale and purchase, a share purchase agreement was executed by Societe Generale as seller and OTP Nyrt. as purchaser.

"OTP Group's acquisition strategy is determined by seeking acquisition opportunities that will allow the banking group to achieve the optimal size. With a primary focus on CEE & SEE, OTP Bank has been one of the most active financial institutions in the European acquisition market for quite some time."

As part of this project, the Romanian Bank of SG also sold its 20% shareholding in Mobiasbanca to OTP Nyrt. in a separate short sale agreement. All transaction documents were signed on February 5, 2019 in CMS' Budapest office. The closing was subject to the fulfilment of several conditions, including the obtaining of regulatory

approvals in Moldavia and Hungary as well as competition clearances in Serbia, Montenegro, and Ukraine. The deal closed on July 25, 2019 in Chisinau.

As Mobiasbanca was a public interest company, following the closing of the main transaction, OTP Nyrt. was obliged to launch a mandatory tender offer for the acquisition of the remaining shares of Mobiasbanca that it had not acquired from Societe Generale and the EBRD.

Montenegrin Acquisition

In this project, Societe Generale sold its 90.5578% shareholding in Societe Generale Banka Montenegro A.D., the Montenegrin bank of the SG Group, to Crnogorska Komercijalna Banka AD, a member of the Budapest-headquartered OTP Group.

The transaction documents were signed on February 27, 2019 in CMS' Budapest office. The closing of the share purchase agreement was subject to the fulfilment of several conditions, including obtaining regulatory approvals in Montenegro and in Hungary as well as competition clearances in Serbia, Montenegro, and Ukraine. The share purchase deal closed on July 15, 2019 in Podgorica.

As the shares of Societe Generale Banka Montenegro A.D. were listed on the Montenegrin Stock Exchange, following the closing of the deal, Crnogorska Komercijalna Banka AD was obliged to launch a mandatory tender offer for the acquisition of the remaining shares of Societe Generale Banka Montenegro A.D. not acquired from Societe Generale in the course of the project.

The significance of the transaction was recognized with an award by CEE Legal Matters in April 2020.

Slovenian Acquisition

Finally, this project included the direct or indirect sale by Societe Generale of its Slovenian subsidiary interests (SKB Banka d.d. Ljubljana, SKB Leasing d.o.o., SKB Leasing Select d.o.o.) to OTP Nyrt. The transaction documents were signed on May 2, 2019 in CMS' Budapest office. The closing was subject to the fulfilment of several conditions, including obtaining regulatory approval of ECB and of NBH in Hungary as well as competition clearances in Slovenia, Serbia, Montenegro, Ukraine, and Albania. The deal closed on December 13, 2019 in Ljubljana.

CEELM: Were all the deals agreed-upon at the same time, as part of one entire deal, then negotiated and completed separately, or were they conceptualized, pursued, and completed separately?

Eva: Each deal had its own transaction process and negotiation, although the transaction documents signed for all six deals were similarly structured from both a business and legal perspective. In each country, the transaction documents were adapted depending on the relevant governing law and local law, capital market rules (where applicable), and market practice applicable to the operation of the relevant target entity and further transaction-specific issues and material due diligence findings.

CEELM: How do these deals fit into OTP's overall regional strategy/plan?

Eva: We understand that the OTP Group's acquisition strategy is determined by seeking acquisition opportunities that will allow the banking group to achieve the optimal size. With a primary focus on CEE & SEE, OTP Bank has been one of the most active financial institutions in the European acquisition market for quite some time.

As previously mentioned by representatives of OTP Group in various interviews, the strategic goal of OTP Group is to become the most successful universal banking group in Central and Eastern / SEE Europe by increasing its overall market share through organic growth and acquisitions across the region such as the acquisition of Societe Generale interests across SEE. OTP has gained comprehensive and in-depth market knowledge during the nearly two decades since its first acquisition in SEE and has learned how to implement a sustainable business model across its ever-increasing group to deliver profit and growth while maintaining stability in terms of portfolio quality, capital, and liquidity position.

CEELM: Why was CMS retained by OTP Bank to help make the deals happen, and what was the nature of the firm's assistance?

Eva: CMS was selected by OTP Bank after a legal tender process to provide legal due diligence and transaction advisory services. CMS has advised OTP Group on its expansion in Central and South-East Europe over the past 15 years and assisted on various successful acquisitions.

CEELM: Who led OTP's In-House Team, and what was your relationship with them like?

Eva: OTP's in-house team was led by the core M&A team consisting of Gabor Kolics (Managing Director), Balazs Letay (Director), Anna Reka Nagy (Senior Manager), and Orsolya Barbay (Senior Manager), with the overall project overseen by Laszlo Wolf (Deputy CEO). The wider OTP team included experts from relevant departments across the group and senior management of the local subsidiary banks and interests. As one would expect in respect of a project

The CMS Team



Erika Papp



Dora Petranyi



Zoltan Poronyi



Dora Czegledi

"Quite an astonishing deal series to have supported OTP Bank Group on – and exactly the kind of work that CMS' DNA suits: cross-border, multi-country, complex, and high-profile."



Aniko Kircsi



Szabolcs Szendro



Dora Altziebler

of this scale, there was a large in-house team involved in each and every transaction.

We have worked with the OTP team on numerous occasions and have witnessed first-hand OTP Group's impressive growth into the significant European financial institution that it is today. OTP's M&A and wider team are a pleasure to work with and have always impressed us with their professionalism and dedication.

CEELM: How was CMS's team organized and structured, and who all was on it?

Eva: This significant multi-jurisdictional and multi-disciplinary project involved six transactions over the two-year lifespan of these mandates, and – together with the first transaction (the acquisition of Splitska Banka in 2017) – seven transactions over three years. As client relationship and lead matter partner, I led the project with invaluable support from the core CMS transaction

team, as well as from the wider CMS team and our Moldovan local counsel advising on the relevant local law issues.

The core CMS transaction team for the full suite of deals was based in our Budapest office and included Zoltan Poronyi (senior associate, corporate) and Dora Czegledi (senior associate, corporate) with senior support from Aniko Kircsi (partner, head of corporate), Dora Petranyi (partner, head of competition), Szabolcs Szendro (senior counsel, competition) and Dora Altziebler (trainee lawyer, competition) as well as Erika Papp (co-relationship partner and head of banking) and additional members of the wider corporate and banking teams in Hungary.

We worked with our excellent teams on the ground for each of the transactions – a real multi-jurisdictional team effort across our Sofia, Kyiv, Zurich, Belgrade, Montenegro, Zagreb, Ljubljana, Bucharest, and Tirana offices, doing what CMS does best! We were also support-

ed with excellent local law advice in the Republic of Moldova from the Turcan Cazac Law Firm.

CMS is well-positioned to take on a project of this scale, as the firm has extensive expertise in advising as lead transaction counsel in multi-jurisdictional and cross-border M&A transactions in the financial services and in other sectors, as well as an appropriate depth and breadth of resource across Europe including CEE to ensure end-to-end delivery for international transactions. The success of the project also required continuous and well-oiled channels of coordination and communication with the client, the co-advisers, authorities, third party stakeholders as well as with the sell-side and its legal advisers. This was an essential component to the success of each transaction.

It's been a real privilege to assist OTP Group on this major project and we wish the expanded group the very best in the months and years to come. ■

A SAFE BET: WHITE & CASE AND GKC PARTNERS ADVISE ON DEAL OF THE YEAR IN TURKEY

An interview with **Asli Basgoz** of **White & Case** and **Emre Ozsar** of **GKC Partners** about their firms' work on the CEE 2019 Deal of the Year for Turkey: **Sisal's successful bid to operate the Turkish State Lottery.**

CEELM: First, congratulations on winning the Deal of the Year Award for Turkey!

Asli: Thank you for awarding it to us! 2019 was a landmark year for White & Case and GKC Partners in Turkey. In addition to winning the Deal of the Year from CEE Legal Matters, our M&A team had the opportunity to work for exceptional clients (like Sisal) on many other deals. We are honored to have our work and the significance of this deal recognized by colleagues and being selected as Deal of the Year for Turkey. In fact, it was a very active and successful year across our practices, including in M&A, for which the two of us are responsible. We were able to work with clients in sectors including infrastructure, energy, e-commerce, the acquisition of a major quick service restaurant chain and manufacturing. We have a lot of know-how in these sectors and there are sectors in which investors remain interested.

The feedback we get from clients and observers continues to make us happy. For 2019, we were named "Turkey M&A Legal Adviser of the Year" by MergerMarket European M&A Awards and we were ranked as the only Tier 1 foreign law firm in Turkey among all of the global firms in the market by Legal 500. And clients and observers gave us top rankings across all our practices including in legal publications such as

Chambers and Legal 500.

Also, 2020 marks White & Case's 35th year in Turkey, an important milestone for our firm and for Turkey. It demonstrates the firm's approach to key markets like Turkey: a long-term commitment and belief in Turkey as a very important and strategic market. Accordingly, this year White & Case has promoted Emre Ozsar to partner. His partnership is a reflection not just of his own expertise, hard work, personal successes, and strong client relationships, but of the successful results achieved by our entire M&A team.

CEELM: How did White & Case and GKC Partners get the mandate in the first place – why did Sisal S.p.A choose the firms to assist it in this matter?

Emre: Sisal engaged White & Case based on its experience and reputation in the market and its relationship with CVC Capital Partners. Sisal S.p.A is a portfolio company of CVC Capital Partners. It was a pleasure for our team to work with theirs, as Sisal is experienced (it is the first Italian company in the gaming sector, having started in business in 1945), has innovated in its sector for over 70 years, and approached this opportunity strategically.

CEELM: Can you describe the deal for us briefly, and your firms' roles in making it happen?

Asli: Milli Piyango is Turkey's national lottery, first established by law in 1939 and continuously operated by the government since that time. It is an iconic brand, which is known by everyone in Turkey. The Milli Piyango license was transferred in 2017 to the Turkey Wealth Fund. The TWF is the asset-backed development and wealth fund of the Republic of Turkey that was established in 2016. The TWF's mission is to increase the value of Turkey's strategic assets to provide resources for Turkey's primary investments.

This was a challenging task for TWF not only because of the two previous attempts to privatize Milli Piyango but also because this was the first significant commercial project which TWF took in line with its mission.

The TWF wanted to increase the benefit of Milli Piyango to Turkey by maximizing its revenue. It believed that doing that would require investment and innovation in operational performance, including expanding offerings to customers in its retail and online businesses.

The TWF decided to run a competitive auction to offer qualified parties the right to provide ten years of operational services to Milli Piyango. The TWF's terms required bidders to guarantee a level of financial performance, innovation, and investment in return for sharing in the revenues of Milli Piyango. At

the end of the operational period, the TWF would take back Milli Piyango's operations together with the innovations and investments made by the operator. All the while, the Milli Piyango license, with the rights and responsibilities that come with being license holder, would remain with the TWF.

Emre: Sisal bid in the auction together with a Turkish joint venture partner, Sans Dijital ve Interaktif Hizmetler Teknoloji Yatirim A.S, a subsidiary of Demiroren Holding, through a company they established together called Sisal Sans Interaktif Hizmetler ve Sans Oyunlari Yatirimlari A.S. Sisal Sans was the winning bidder and signed the operational contract with the TWF in August 2019. We assisted Sisal through the entire process, including with the legal, regulatory, and tax aspects of the bidding, negotiation of the operational contract, the shareholders' agreement between the joint venture parties, and the software and IT services agreement between Sisal and Sisal Sans. We believe our work helped Sisal reach a successful result in its first investment in Turkey.

CEELM: In your submission for Deal of the Year you noted that the Turkey Wealth Fund attempted to privatize the lottery twice before – both times unsuccessfully – leading it to pursue this creative structure, which did not involve privatization. Why was this model more successful than the previous attempts?

Asli: Just to clarify, the previous attempts were made not by the TWF but by the Privatization Authority.

The previous attempts tried to privatize Milli Piyango and required the Milli Piyango license to be transferred to the winning bidder and the bidder to pay to acquire the license and all of the rights under the license for the license period. We think that the structure was chal-

lenging because it meant the winning bidder had to finance a substantial upfront license fee before it had any revenue or was certain of the revenue stream. And that meant less financing left over for investment and innovation. Also, license transfer is more difficult from a legal and regulatory perspective.

This structure is innovative because it does not require the operator to acquire the license, only operational rights, and permits the operator pay for those rights through its guaranteed investments and the revenue it guarantees to the TWF. The structure aligned well with the mission of the TWF to increase revenue and innovation in a sustained manner and with the commercial and strategic vision of Sisal Sans.

CEELM: What was the significance of the deal, ultimately?

Emre: We think the deal is significant for many reasons. First, it was the first major commercial transaction undertaken by the TWF after its establishment. Second, it was a competitive international tender that attracted interest from Turkish and international bidders. Third, Milli Piyango was an exceptional opportunity. There are few national operators of lotteries and games of chance of this size and that present this opportunity for operators. Fourth, Turkish consumers who like to play the lottery and games of chance will have access to new numerical games, instant lotteries, and online games across a retail network of more than 10,000 points of sale and online. Finally, the TWF will have increased the value of Milli Piyango, which is a strategic asset in its portfolio, and generated additional revenue and innovation for Turkey during the operational period.

For us, the deal was significant for many reasons too. White & Case and GKC



Partners had the opportunity to work on an innovative and important transaction, with a very capable team of professionals at Sisal, to collaborate closely with Sisal's joint venture partner, Sans Dijital, and to help put together a winning bid and to negotiate a contract that will hopefully benefit our client, the TWF, and, ultimately, Turkey. White & Case and GKC Partners like to do the kind of work that ticks all of these boxes.

We want to thank the entire team from White & Case and GKC Partners: the Istanbul team consisting of Tax Consultant Hakan Eraslan, Competition Advisor Sezin Elcin Cengiz, and Associates Ece Kuregibuyuk, Asli Gulum, Irem Kurkcu and Selin Kaledelen, and the Frankfurt team consisting of Local Partner Michael Leicht and Associate Carola Van Wesel. This deal required teamwork and showcased a strong team from our Corporate, Tax, IT, and Competition practices. ■

A HUNGARIAN LIFE IN FOCUS

A CEELM Profile of **Daniel Szabo**, Central Europe Team Lead at **Hewlett Packard Enterprise** in Budapest.

By **David Stuckey** and **Djordje Radosavljevic**

Daniel Szabo, who describes himself “a fundamentalist – a serious person with a realistic and subtle approach to life” – was born into a bilingual Hungarian-Russian family in 1981, in Budapest, but as his father was in Hungary’s diplomatic corps, he spent much of his childhood far away from Europe. Now many years into a legal career in his native Hungary, Szabo practices with a combination of intellect, commitment, and focus.

Growing Up Abroad

Szabo’s first experience outside of Magyarország came in the mid-1980s, when he spent four years with his

family in Mongolia, which he recalls as “grey,” but remembers fondly. Although he was young, he recalls attending a Soviet kindergarten in Ulaanbaatar and travelling around the Asian country with his parents and sister Daria in an old Land Rover the family had bought with a friend at an auction of the British Embassy.

After a few years back in Hungary, in 1992 the family moved to Nigeria, then – as now – Africa’s most populous country, with one of the continent’s largest economies. “The Hungarian embassy and the diplomats’ homes were in an old run-down building, but



Daniel Szabo



Daniel Szabo on the “Building a Compliance Culture” Panel at the 2019 Hungary GC Summit



Szabo, at 15, on the Lagos lagoon

the location was great,” Szabo recalls. “Just on the shores of Lagos lagoon with a nice view of the water and the container ships sailing towards the city’s commercial port, as well as the Hobie Cat regatta.” Still, not everything there was idyllic. His schooling in Lagos was “an issue,” he says, and, after a year in a Russian school, his parents sent him to the French lycée, as “British or US education was unaffordable and French seemed like a good second language.”

He admits to thinking more fondly of his unusual childhood as it grows more distant in his memory. “I think an expat life, though this term is associated with high status and privilege that Eastern European diplomats did not have, does leave a deep mark on most people, irrespective of age,” he says. “Some don’t like it and don’t have good memories of it. Others might love it and feel nostalgic their whole life. I cannot say that I particularly liked living in Nigeria, but I started feeling very nostalgic as an adult.”

Upset in University

In 1996 Szabo again returned to Hungary, and several years later began attending the prestigious Eotvos Lorand University in Budapest, initially studying both Political Science and Law, before deciding to focus exclusively on the latter. That choice wasn’t easy, ultimately, and some regrets linger. Szabo describes being disappointed to find, in his law studies, a “very outdated curriculum, which hadn’t changed in a hundred years, [and] that law school in Hungary at the time was mostly based on memorizing things.” Indeed, he says, things haven’t changed much since, either: “I think that Hungarian education in general, and legal education is no exception, has a quantity over quality problem and a bias for theory over the practical application of knowledge. We are hopelessly bogged down in this mind-set.”

To this day his frustration lingers, and he admits to some regret that he turned down an opportunity to study in France: “I didn’t go to France to study because I didn’t want to have an immigrant, second-grade citizen experience,” he says. “Especially in practicing law – I didn’t want to stand out with an accent, and have people question me and my competence, because I would never be able to blend in completely.” He says, “in retrospect, I feel that not going to France may have been the wrong choice – that realization came to me when I started practicing law in Hungary. The Hungarian language is not spoken anywhere else and our school isn’t recognized elsewhere.”

Still, Szabo ultimately was able to study abroad, completing his studies in 2006 as an Erasmus student in Berlin. According to him, “German legal training had a far greater emphasis on practical knowledge. They wanted to teach you

how to think as a lawyer and solve legal problems. After all, law is a way of thinking, as Professor Paulus of the Humboldt University explained during a lecture that I remember to this day.”

“As a result of the roughly three years that I spent in the two law firms I understood that my strengths lie outside of what is required in a firm, which ultimately is an ability to build a business or become a black belt niche expert. An in-house career, on the other hand, requires a somewhat different skill set and offers perhaps more fluidity: ease of navigating cultures, businesses, seeing legal problems in the wider context, bridging gaps and collaborating across functions, innovating and adapting fast.”

The Professional Step

After graduating in 2006, Szabo joined Budapest’s Nagy es Trocsanyi law firm – at the time a family-owned litigation boutique. He spent a brief six months in what he describes as N&T’s “professional business environment,” working hard to establish himself, and he recalls his excitement at the occasional opportunity to be heard in court.

After seven months at N&T, and eager to learn more about Banking/Finance and M&A work, Szabo moved to the Budapest office of Allen & Overy. Two years later he accepted an offer to move in-house with Magyar Telekom, where, he says, he was tasked with “overseeing, from a legal perspective, (i) the M&A transactions of Magyar Telekom Group

and (ii) the key legal affairs of the Group's foreign subsidiaries."

He immediately knew he had made the right choice, and left private practice in the rear-view mirror permanently. "As a result of the roughly three years that I spent in the two law firms I understood that my strengths lie outside of what is required in a firm, which ultimately is an ability to build a business or become a black belt niche expert," he recalls. "An in-house career, on the other hand, requires a somewhat different skill set and offers perhaps more fluidity: ease of navigating cultures, businesses, seeing legal problems in the wider context, bridging gaps and collaborating across functions, innovating and adapting fast."

"I consider myself lucky. I have had great employers and managers throughout my career. I have been in-house for more than ten years now and consider this career path a more natural fit than private practice, which I experienced only briefly."

In 2013, after five years with Magyar Telekom, Szabo learned of an open position at Hewlett-Packard. He leapt at the opportunity – a move he describes as his "best career development decision" – and in January 2014 he became Country Counsel for Hungary, immediately feeling at home. "HP offered what I needed in terms of the next building block in my career, overseeing the legal affairs of a country operation even if that essentially meant a sole counsel position. Although HP Hungary was and still is a much smaller operation than MT I still consider this experience very valuable. Being a small unit in a big multinational has its advantages.

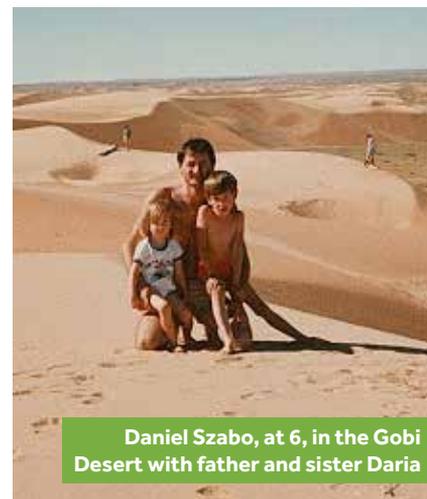
A closer integration into the fabric of the company provides you with more international opportunities. I can say that by now most of my work is related to matters outside of Hungary."

The role also provided him with the leadership position he wanted, allowing him to mentor people and teach them the values of sacrifice and hard work he had long prized. Hewlett-Packard obviously realized his value as well, and quickly moved him up the ladder: In 2016 he became Country Counsel Hungary & Azerbaijan; in 2017 South-East Europe Counsel; and in January 2019 he assumed his current position as Central Europe Team Lead, coordinating the legal department's work in the Czech Republic, Hungary, Poland, Slovakia, and Romania.

He declares himself content at HP. "HP is a company that invests in you and gives you new challenges," he says. "All of that doesn't happen overnight, of course, but it does eventually. Here, you can try different tasks, and there are plenty of opportunities. The company is financially mindful and constantly tries to motivate its employees. All in all, it's an inspiring environment, and a good one to be in."

He says he now finds it difficult to imagine himself in another career. "I consider myself lucky," he says, deflecting a compliment about his rapid ascent at HP. "I have had great employers and managers throughout my career. I have been in-house for more than ten years now and consider this career path a more natural fit than private practice, which I experienced only briefly."

And his peers – including Hewlett Packard Country Counsel for Poland, Maja Galecka-Wasowicz – agree he's in the right place. "Daniel is a real hard worker, full of passion for his work and



Daniel Szabo, at 6, in the Gobi Desert with father and sister Daria

his customers," she says. "He has deep knowledge and a strong will to grow in all kinds of ways, to become a better advisor for his customers and colleagues." She smiles. "It's a pleasure to work with him."

The Home Life

Szabo lives in Budapest with his wife and – with the recent birth of a baby girl making the already-memorable spring of 2020 even more so – three children. He spends a great deal of his free time with his family, he says, and he enjoys exercising and a recently-rediscovered love for pre-digital photography.

Daniel is not the only Szabo to practice law, as his sister Daria is a Senior Associate at Bird & Bird. In addition, he says, his grandfather earned a degree in law, though he never practiced.

"I don't have any position or title in mind in terms of what's next," Szabo says, modestly. "I enjoy working on international assignments of company-wide significance and hope to be included in more of those going forward." ■



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MARKETING LAW FIRM MARKETING: CHILDHOOD DREAMS

We decided to lighten the mood this time around by asking our Law Firm Marketing experts from across the region a non-law-firm related question: "What did you most want to be when you were little?"



"I, of course, wanted to be a hairdresser. As a kid, I used to accompany my mother to the hair salon, and it was a safe haven for the both us. She was free of her usual daily routine, surrounded by what I then thought were her friends, and now I understand were just random clients, while I got to listen, and observe, and pretend I understood their jokes. I think this passion to observe and understand the world around me never fully left me. I ended up majoring in sociology, and I was keen to help my community with my scientific observation skills. How I ended up in business development, that's anyone's guess."

Jelena Bosnjak, Senior Business Development Manager, CMS Zagreb



Vrzakova at 3

"As a little girl, I always wanted to be a 'magistra' – to work in a pharmacy. I loved the environment, the clean colors of white and blue, and also a good friend of my family – one of my "aunts" – worked there, so I wanted be like her and mix all the ointments and stuff. But then, in the 8th grade of the elementary school, I met a devil: My chemistry teacher. She was the reason I never went on to achieve my pharmacy dreams."



Renata Vrzakova, Business Development Executive, JSK



"Oh, I dreamt to have a cookie place! A bakery with all kinds of sweet cakes, cheesecakes, doughnuts, apple pies ... everything you can imagine."

Katarzyna Ataman, Group Marketing Manager, NGL Services

"When I was little, I wanted to become a hairdresser. Brushing and braiding and snipping away was one of my most favorite things to do. All of my Barbie dolls underwent serious hairstyling and ended up with the same short hair trims as Kent. My masterpiece, however, was a real fox fur coat I found one day in our wardrobe while my parents entertained guests. This wonderful piece of hair got a perfect Mohawk cut at the back. Very stylish, very Chanel. Unfortunately, the owner of the remodeled coat was neither able to appreciate the make-over nor willing to pay for my services. That's when I reconsidered my career. I did not want a job with such great risk."

Gina-Maria Tondolo, Founder, Lawrence





“Believe it or not, as a kid my goal wasn’t just becoming a boring ballerina, my dreams were far more ambitious! At the age of 5 I developed an extreme interest in sports, with a clear focus on soccer. So, there was an easy answer to the question what I wanted to be when I grew up – a soccer coach. I guess all the thrill, engagement, the opportunity to guide, teach, and inspire were fascinating for mini me. I was certain that my eventual transformation would offer endless possibilities – I would command a lot of men and win trophies, and I would no longer have to listen to what my mom was saying. This dream lasted for 13 amazing years when

I finally understood that women don’t have a place in professional soccer. Yet, I refused to let my aspirations be curtailed by this minor setback. Still an avid lover of unachievable goals, I decided to become a project manager and nowadays I’m a BDM in the legal industry. Completely not expected, I do what I dreamt a long ago – to guide, teach, and inspire! Of course, my colleagues are not so athletic (at least not all of them). Dare to dream!”

Biliana Tsvetkova, Marketing Manager, Schoenherr Sofia

“As a kid, I dreamed of the things most girls usually do. I wanted to be an actress, a princess, a dancer, or anything which involved beautiful dresses, nice shoes, or funky makeup. But I also remember playing treasure hunter, explorer, traveler—all those characters which are more adventurous, courageous, dangerous than a sleeping beauty waiting in a tower. I could imagine myself doing somehow both at the same time: being an actress who plays a dancer now and taking a more dangerous role later. I did not try to be an actress but I did some acting courses and even joined an amateur acting company in Budapest in my early twenties. Then dance came into my life and I began to take it seriously. Now I do, teach, and occasionally perform lindy hop: a couple swing dance where one can also utilize some acting skills, especially on stage. I am a communications specialist, a marketer by day, which can be quite adventurous and challenging from time to time, and a dancer in beautiful shoes and dresses by night.”



Nikolett Rozsa, Business Development Specialist, CMS Budapest



“When I was a little girl I always said I would like to be a business lady. I grew up with my parents running their businesses – they had a restaurant, nightclub and bakery almost at the same time. I was always there with them in the company and that was an ideal world I was hoping to live in. Once I finished high school I wanted to be a lawyer, so I started my road with studies in law school, but at the same time, I was offered a place in a marketing program in Denmark. I was terrified – those were two different subjects I knew nothing about and living away from home seemed so hard. Four years later, while pursuing my Masters studies at the University of Aberdeen, my mentor at a career mentoring program said to me “you need to take advantage of your knowledge in both law and marketing, there are jobs for example in law firm marketing departments.” Looking back on my academic studies today, I am grateful for the opportunity to study both marketing and law because that led me to a wonderful workplace - TGS Baltic!”



Beate Maldone, Marketing Specialist, TGS Baltic Latvia

“At around the age of five I was 100% going to be a singer. A famous singer! I wrote about it in our school newsletter, so this was serious stuff. Soon (possibly two years on) that changed, and I recall wanting to be a nurse. No particular reason, I guess I was drawn to the profession and realized that my singing career would not pay the bills.”



Liesel Beukes, Content Marketing Manager, Schoenherr

MARKET SPOTLIGHT UKRAINE



GUEST EDITORIAL: CRISES AND THE UKRAINIAN LEGAL MARKET

By Glib Bondar, Partner, Avellum



The many crises that have arisen during the more than twenty years of my legal practice show that, if you remain professional, you will be in demand regardless of the market or jurisdiction in which you practice.

1998-2004: In 1998, as a 3rd year law student at the Kyiv Taras Shevchenko University, I started as a paralegal with the Kyiv office of Altheimer & Gray. In 2000, I was lucky to pursue LL.M. studies at the Columbia Law School. Upon graduating, in 2001, I joined the Kyiv office of Baker & McKenzie as an associate in the banking & finance group. My new mentors David Scott and Serhiy Chorny left me no time to get bored. Soon the amount of interesting finance work overwhelmed me, including what ultimately seemed to be my career anchor, Kyivstar's Eurobond issue – the first Eurobond issue ever out of Ukraine (although I eventually worked on dozens of other Ukrainian Eurobond deals).

At that time, all premium cross-border work primarily flowed to the local offices of a handful of foreign law firms that had moved to Ukraine in the early nineties expecting a “gold rush” similar to that they had found in other CEE jurisdictions. Foreign clients paid hourly rates by default. There was a joke that clients were ready to pay an hourly rate just to hear that Ukraine had a civil code. Local firms were unable to compete decently with ILFs for such work and the best talent.

While Ukraine was close to overcoming the economic crisis of the 1990s, the growing interest of foreign investors cooled down in the aftermath of the Kuchmagate and Kolchuga scandals. The ILFs already in Ukraine, which dominated the premium market segment, grabbed most of few big-ticket deals, but deal flow was insufficient to seduce any other US or UK heavyweights to follow them into the country. As a result, Baker got the *crém de la crém* work, providing me with the best training I could get as a junior associate.

2004-2008: Economic growth from 2004-2008 due to positive legal and political factors (*e.g.*, the adoption of new important legislation and the Orange Revolution) streamlined the legal industry. The flow of diverse legal matters tested the ability of Ukrainian legislation to accommodate the requirements of innovative and complex deals. Demand for legal work was

rapidly increasing. I had no “work-life balance” words in my vocabulary as I was too hungry for the growing number of exciting lending, Eurobond, and even securitization financings.

Local law firms learned by, often, acting as local counsel to leading foreign law firms, and “old” ILFs gradually lost their dominant positions, as newcomers like Beiten Burkhardt and Gide Loyrette Nouel, then CMS Cameron McKenna and Clifford Chance landed in Ukraine. As 90% of deals were executed under English law, top UK and US law firms started winning more good mandates, handling them from bases in London or elsewhere around the world. The war for talent sent salaries skyrocketing and ensured long-awaited promotions. I rode the wave and made partner at Baker & McKenzie in 2007.

2008 – 2020: Several crises (including the 2008 financial crisis, the economic crisis after the Revolution of Dignity, and the political and social upheaval that followed the 2014 annexation of Crimea by the Russian Federation and military conflict in Eastern Ukraine) reshaped the Ukrainian legal market. Many ILFs – including Beiten Burkhardt, Gide, Chadbourne, Noerr, and Clifford Chance – pulled out of Ukraine. In addition, the rules of the game changed within partnerships, which prompted a number of spin-offs and the birth of new local players, some of which were founded by lawyers with ILF backgrounds. To survive in the premium segment and to develop referral relationships with top international law firms, local firms began to excel, meeting the high bar for quality and efficiency and actually breaking ahead of the ILFs in competition for clients. The change in the legal rankings speaks for itself.

In the middle of this, in 2010, I decided to develop a finance practice from scratch at a new firm recently co-founded by my former Baker & McKenzie colleague Mykola Stetsenko. My reputation and credentials made me busy fast. Since then, there has been little time to relax as post-crisis debt restructurings were followed by waves of different new money financings and regulatory work.

For the last 20 years, the Ukrainian legal market has seen 4-5-year cycles of crisis and recovery. Many things, like politicians, legislation, technologies, generations, and court practice have changed. The need for professionals, however, remains intact.

I believe the COVID-19 crisis will prove that again... ■

EXPAT ON THE MARKET: INTERVIEW WITH DANIEL BILAK OF KINSTELLAR

By David Stuckey

Daniel Bilak is the former Managing Partner at CMS Kyiv, Chairman of UkraineInvest, and new Senior Counsel at Kinstellar, on his diverse background and fascinating career.

CEELM: Run us through your background, and how you ended up in your current role.

Daniel: I've been in Ukraine for 30 years. It's been fun – a wild ride, and I've loved every minute of it.

I've been in the Ukrainian government several times in advisory roles, advisor to two Prime Ministers, and Ministers of Justice. In September 2016, Prime Minister Volodymyr Groysman asked me to help him attract foreign direct investment to the country. As mayor, he had essentially turned Vinnytsia, a mid-sized city in central Ukraine, into the poster child of what a Ukrainian city in Europe should look like, and he wanted to replicate this on a national level. I agreed and in October 2016 we founded UkraineInvest as the government's investment promotion agency and I was appointed by the Cabinet of Ministers as its first Director and the Prime Minister's Chief Investment Advisor. It turned out to be one of those rare occasions in my life where I think I'm satisfied that I basically achieved what I set out to do. I had three key objectives: I told the Prime Minister that before we started targeting new investors, we had to fix the problems experienced by existing investors and to turn them into apostles to evangelize Ukraine to new investors. Next, we needed to improve the investment environment by making systemic changes to doing business in

the country. Thirdly, I wanted to securely institutionalize UkraineInvest within the government, so that it would continue to perform effectively regardless of whether I was in charge or regardless of who was Prime Minister – it had to remain a professional and reliable service for all investors. While there are always things you'd like to do better, I think that over the last three years we basically achieved these objectives. I'm extremely proud of the young professional and dedicated team we put together. I told them they weren't being hired for a job – they were on a mission. And they acted that way. Investors were very pleased with their efforts and results.

I left UkraineInvest at the beginning of March this year. I'm currently working with investors, helping them identify good-value investments projects in Ukraine and the CEE region. I'm also quite excited to have been recently appointed Senior Counsel at Kinstellar to advise and support the firm-wide management team on the further growth and development of their legal practice in CEE, Ukraine, and beyond. I'm an Emerging Markets guy – I love the challenge of connecting people who may not otherwise come together to create something interesting and of value.

As for how I came to Ukraine in the first place, that's an interesting story. I was born in Canada and grew up speaking Ukrainian. My father came to



Daniel Bilak

Canada after the Second World War, while my mother was born in Canada to Ukrainian immigrants. When Ukraine declared its independence in 1991, I was an associate at the Toronto law firm, Faskens. As a new nation, Ukraine wanted its own currency, the hryvnia, as an attribute of sovereignty. Just as I was preparing to travel to Ukraine for the first time to scope out opportunities, I read in the paper that the currency was to be printed in Canada by the Canadian Bank Note Company out of a CAD 50 million line of credit Canada had extended to the Ukrainian parliament. It turned out that the CBNC was a client of ours! So, I called them up and I said "Look, I'm going over to Ukraine today, and I read this article, and if there's anything I can do for you while I'm over there, let me know." About 20 minutes later the CEO of the company called me, and I was retained! So, quite serendipitously, I got involved in the printing of the hryvnia, in Canada!

As this was a high-profile project, I got to know many people in Ukraine, and quite quickly I became more deeply engaged with the country. I helped start a legal foundation that George Soros ended up supporting. The Ukrainian head of our foundation then became Minister of Justice and asked me to come in as his principal advisor to implement the many obligations undertaken by Ukraine pursuant to its Terms of Accession to the Council of Europe. I essentially became his Chief of Staff. That was in 1994 and we had another stint in our respective roles in 2005-2007.

The career I've had, nobody could plan. As we say in Canada, I just had to "throw the canoe in the water and shoot the rapids." It's been a wild ride living the building of a nation!

CEELM: Was it always your goal to work in Ukraine?

Daniel: Let me tell you, had someone told me when I graduated from law school in 1986 that my career would largely be focused on Ukraine, I would have had that person committed to a funny farm. It was still the Soviet Union! Nobody expected even an association with the country, let alone a career! It was sort of out there. I got here on the ground floor through my profession, through the opportunity to facilitate the printing of Ukraine's currency.

CEELM: How would clients describe your style?

Daniel: You'd have to ask my clients! I think they would say – I'm recalling some client reviews – I'm a tenacious defender of a client's interests. And I always try to be very commercial in my advice. When I was Managing Partner of CMS Cameron McKenna's Ukraine office, I always told the lawyers that this market is full of good practitioners. That's not enough to win clients. They

will hire a lawyer that understands their business. What clients want from us is sound, practical, commercial advice that helps them mitigate the risks of doing business in an emerging market. You need to contextualize the advice you give. It sounds like a penetrating glimpse into the obvious, but, especially in the early days, a lot of Ukrainian lawyers thought lawyering was just about telling the clients what they couldn't do under the law, which, of course, is insufficient.

CEELM: Do you have any plans to move back to Canada?

Daniel: Not really. I have older children in Canada, and up until two months ago [when the COVID-19 pandemic hit] I was a frequent traveler back to Canada. Now it's not clear when we'll be allowed to travel internationally again. But my wife and younger children are here. Emerging markets is what I do – I don't know what I'd do if I went back.

CEELM: Outside of Ukraine, which CEE country do you enjoy visiting the most, and why?

Daniel: It's not in the region, but I really love London. I hope the post-COVID version is just as much fun.

In the region I find, frankly, all the countries fascinating. I am very partial to Bulgaria, because I ran a big project there in 2001-2003, after my first tour in the Ukrainian Ministry of Justice. I was sent to Bulgaria as a senior governance advisor under the auspices of the UNDP to do an anti-corruption report – these recommendations became part of the Justice and Home Affairs Chapter negotiations prior to Bulgaria's joining the EU and ultimately resulted in the adoption of a new Bulgarian Administrative Procedure Code. I spent the better part of two years there and came to really appreciate the country and its people. The same would probably be

true if I spent two years in Romania or other countries. I'm fascinated by all of the CEE countries!

CEELM: What's your favorite place to take visitors in Kyiv?

Daniel: It's not really a "favorite" place, but I always take visitors to Independence Square – the Maidan. I have this walking tour of Kyiv that I do for visitors, and it always starts with the Maidan – because it is key to understanding Ukraine today. I show them where the encampment was and the bullet holes in the lamp posts where the snipers shot protesters in 2014. Then we walk 500 meters up the hill back to the XI century, to the St. Sophia Cathedral, built when Ukraine took Christianity from Constantinople and made its civilizational choice to be part of Europe. Those two places, so close together, are historical bookends – they depict the Ukrainian people's thousand-year quest for freedom and self-determination as part of the European family of nations.

This is also part of the narrative about Ukraine I tell investors. Ukraine essentially began building the institutions of a democratic state from scratch in 2014, after the Maidan, and Russia's annexation of Crimea and invasion of the Donbas. No country anywhere has done more in the past six years to transform its economy and society than Ukraine has. In fact, by 2019, investors were telling us that these reforms, and Ukraine's deep integration into the EU economic architecture, had made Ukraine a stable and predictable emerging market with a solid investment story.

I'm convinced that Ukraine's two key advantages – "brains and grains" – will be the drivers behind unique opportunities for Ukrainians in the new post-COVID regional and global economic order. ■

MARKET SNAPSHOT: UKRAINE

CHANGES EXPECTED BY JOINT STOCK COMPANIES IN UKRAINE

By Maria Orlyk, Partner, and Oleksandra Prysiazniuk, Senior Associate, CMS Reich-Rohrwig Hainz



Since 2008 joint stock companies in Ukraine have functioned under a special corporate governance law (the “JSC Law”), which has improved through the course of its existence. Year after year, with the help of the SEC and the business community, Ukrainian legislators have introduced profound amendments to the law to bring corporate governance in JSCs in Ukraine closer to European standards, to attract foreign investments, and to insure adequate protection of rights of various stakeholders (minority shareholders, creditors, *etc.*) As a result, Ukraine has moved up in the World Bank’s Doing Business ranking, and in 2020 the country ranks 64th in the ease of doing business and 45th in the minority shareholders protection component.

At the end of 2019, a new draft law on JSCs (the “New JSC Law”) was registered in the parliament of Ukraine, and it is now being debated. In essence, this draft codifies and streamlines the changes to the JSC Law that have been made since its enactment. The New JSC Law also provides solutions for urgent problems which have been revealed during the JSC Law’s implementation consistent with the best practices of developed economies and European standards.

So, what major changes would the New JSC Law introduce?

One-Tier Governance Structure: Currently, most JSCs in Ukraine are required to have a “two-tier” structure of corporate governance, consisting of a supervisory board and an executive body (either collegial or single-person). The exception is private JSCs with fewer than ten shareholders. Under the New JSC Law, the majority of JSCs would have the option to choose between the “two-tier” structure and a “one-tier” structure (consisting of a board of directors only, to include executive and non-executive directors/officers). This one-tier

approach is seen as proportionate to the size of JSCs, company social value, and type of business model.

Electronic Voting by Shareholders: Although the JSC Law provides for absentee voting (polling) by the shareholders, its implementation is practically impossible. As a result, the only way to hold a general meeting of shareholders in JSCs in Ukraine is to organize the physical presence of all shareholders in one place. The New JSC Law aims to rectify this situation by establishing an electronic voting procedure with software and technical tools to be developed by the central depository. In addition, a simplified convocation procedure for the general shareholders’ meetings will be introduced for use with electronic voting.

Enhances Liability of JSC Officers: The New JSC Law improves the mechanisms to hold company officers liable for damages they cause to the company. In particular, damages caused by a breach of fiduciary duties should be recoverable, provided a court declares the relevant transaction invalid and the company’s officers liable. The New JSC Law also establishes limitations on taking positions in JSCs and allows for the early dismissal of company officials who cause damage to a JSC.

Corporate Governance for Professional Participants of Capital Markets

Statutory corporate governance standards for professional participants of capital markets currently do not exist in Ukraine, apart from the banking segment of the financial sector. Under the New JSC Law, the corporate governance requirements of Europe’s MiFID II and Capital Requirements Directive will be applied to Ukrainian investment firms, creating a risk-oriented supervision model.

The other proposed changes relate to expanding the ability of minority shareholders of JSCs to file derivative claims, and granting such right to shareholders of LLCs. Under a derivative claim, a shareholder may file a claim in the interests of the



company for damages caused to the company by actions or omissions of the company officers. The New JSC Law also introduces mechanisms related to the determination of minimum share price and squeeze-out counterbid options and simplifies statutory reorganization and liquidation provisions to bring them

in line with respective EU directives. The New JSC Law would also introduce the position of corporate rights counsel and further improve the function of corporate secretaries in JSCs.

The New JSC Law has been prepared as part of the ongoing corporate governance reform aimed at harmonizing Ukrainian legislation with EU regulations. The proposed changes have also long been sought by Ukraine’s business community. Once adopted, the New JSC Law will provide for more flexible, competitive, and transparent JSC business activity in Ukraine. ■

IP REFORM IN UKRAINE AND ITS IMPACT ON BUSINESS

By Anton Polikarpov, Head of IP, and Anna Kolodenska, Associate, Avellum



Under the EU-Ukraine Association Agreement of June 27, 2014, Ukraine undertook to harmonize its legislation with EU law by 2023, including the regulatory framework for IP. Subsequently, in February 2020, the Parliament of Ukraine adopted a long-awaited set of draft IP protection laws (the “Draft Laws”), which are likely to have a significant

impact on companies doing business in Ukraine, as well as on the measures which may be taken by businesses in connection with IP commercialization.

Changes in the Invention and Utility Model Regulatory Framework

Under Ukrainian law, a utility model must meet two patentability criteria: novelty and industrial applicability. A substantive examination is not involved in the patenting process. This enables an applicant to get a patent at his/her own risk without needing verification by the Ukrainian Institute of Intellectual Property (“Ukrpatent”) within 8-10 months from the date of filing. The utility model patent provides its owner with the same rights as the owner of a patent for an invention.

At the moment, products (both devices and substances), processes, and new applications of existing products or processes can be patented as utility models. Under the Draft Laws, the list of utility models objects is limited only to devices. Basically, this makes it impossible to register, for example, active substances of pharmaceutical and agrochemical preparations,

or the methods of their manufacture. After the adoption of the Draft Laws, such objects should be patented only as inventions. New forms of prior art drugs, as well as a new dosage or new use of known drugs, may not be patented as inventions. Such initiative is primarily aimed at combating so-called “evergreen patents.”



The Ukrainian legislator is also establishing an analogue of the Bolar provision, which allows pharmaceutical companies to apply to register a generic drug before the original drug’s patent expires.

While patents may still be invalidated in court, the Draft Laws also empower the Appeals Chamber of the Ministry for Development of Economy, Trade and Agriculture (the “Appeals Chamber”) to invalidate invention patents.

Changes to the Protection of Industrial Design and Trademarks

An industrial design may be protected as an unregistered design if it is brought to the awareness of the general public as prescribed by law. The term of this protection is three years from the date of its public notice in Ukraine. This is a long-awaited improvement for products from small and medium businesses with life cycles not exceeding 2-3 years.

The Draft Laws make it impossible to register marks which are identical or confusingly similar to trademarks used by another

legal person in a foreign country if the application is submitted in bad faith (which includes those filed by representatives of a person without his/her permission).

Such changes in the current legislation facilitate an effective protection of brands which operate successfully in foreign markets but have not yet been launched in Ukraine. When entering the Ukrainian market, such right-holders often face situations in which their trademarks are already registered here. In this respect, they are often forced either to start expensive legal procedures or to buy a trademark from an unfair owner.

Under the Draft Laws, third parties may not only file oppositions regarding applications for trademarks, but also appeal final decisions of Ukrpatent in the Appeals Chamber without first referring to a court. At the same time, Ukraine does not

recognize the concept of so-called post-grant oppositions in relation to trademarks. If an interested party fails to file an opposition in due course, he/she may invalidate the trademark certificate only in court. As a result, services for tracking submitted applications are becoming increasingly important.

One more expected provision is the opportunity to demand a fine of 10 to 50,000 minimum wages (from USD 1,750 to USD 8.7 million) in case of a certificate invalidation and the violation of third parties' rights being established by the court.

Although the results of all of the above are yet to be seen, these legislative improvements demonstrate Ukraine's readiness to follow the European standards of IP protection and will definitely benefit fair businesses. ■

UKRAINIAN GAS TRANSMISSION SYSTEM UNBUNDLING – MISSION POSSIBLE AND COMPLETED

By Maria Orlyk, Partner, CMS Reich-Rohrwig Hainz



2019 was an outstanding year for Ukrainian gas sector, as the country managed to complete the most critical parts of the unbundling of the gas transmission system in a timely manner. The year was also remarkable because, in twelve months, we saw three different unbundling models proposed by the

Government, forcing the participants of the unbundling process and the key stakeholders to quickly adapt to the new rules and scenarios. For most of the year the country planned to implement an ownership unbundling model. However, in September 2019, before the third round of trilateral Ukraine-Russia-EU talks on gas transit, the unbundling plan took a U-turn, when the newly appointed Ukrainian Government, in its Resolution 840 (the "New Unbundling Resolution"), decided to switch to the independent system operator (ISO) model.

We addressed and covered the general design and developments of the then-anticipated unbundling of the Ukrainian

gas transmission system in an Experts Review article titled "The Gordian Knot of Ukrainian Gas Transmission System Unbundling" in the September 2019 issue of the CEE Legal Matters magazine, and in a subsequent online update.

However, adoption of the New Unbundling Resolution was only the first of many crucial steps to be completed on the way to completing the successful unbundling before January 1, 2020. The new ISO model foresaw the transfer of GTS-related assets to the Gas Transmission System Operator limited liability company (GTSO) – the specially established subsidiary of JSC Ukrtransgaz – and the subsequent transfer of 100% of GTSO to the ownership of JSC Main Gas Pipelines of Ukraine (MGU). All MGU shares were then supposed to be transferred from the Ministry of Energy of Ukraine to the Ministry of Finance of Ukraine – which was designated as the independent "transmission system owner" on behalf of the state.

By adopting the New Unbundling Resolution the Government managed to preserve and combine most of the results of the preparatory work undertaken both by Naftogaz (the former manager of the gas transmission system and former owner

of the current GTSO) and by MGU, which was specifically established, initially, to become the transmission system operator. As a result of the completion of the unbundling MGU serves as a holding company in relation to the GTSO and is an important component in the corporate governance structure and compliance with the TSO certification conditions.

Following the adoption of the New Unbundling Resolution the Government and the Parliament of Ukraine demonstrated unprecedented unity in addressing unbundling-related commitments. Apparently the combination of a parliamentary mono-majority with the newly appointed Government played a decisive role. On October 31, 2019, the Parliament adopted the Law of Ukraine “On Amendments to Certain Laws due to Unbundling of Natural Gas Transmission Activity” No. 264-IX (the so-called “Unbundling Law”). The entry of the law into force was a bit bumpy but was eventually achieved on November 17, 2019. The Unbundling Law was a milestone in the unbundling process and the key element in Ukraine’s natural gas market reform. It ensured the market’s liberalization, efficiency, transparency, and further integration with neighboring European markets. Among other things, the Unbundling Law allowed governmental institutions to transfer state-owned assets (related to GTS) into so-called “commercial management” by the GTSO (as per amendments to the Commercial Code); introduced the supervisory role of the National Energy and Utilities Regulatory Commission (NEURC) over the ministry responsible for management of GTS assets (as per amendments to the Gas Market Law); and gave the NEURC the power to resolve disputes between GTSO and the ministry responsible for management of GTS assets (as per amendments to the NEURC Law).

Soon after, on November 2, the NEURC issued its preliminary certification decision, which was confirmed by a final decision on December 24, 2019. The NEURC final certification decision reflected and relied on the positive opinion of the Energy Community Secretariat of December 17, 2019.

All of these steps eventually contributed to the conclusion, in December 2019, of a new 5-year gas transit contract with Russia’s Gazprom and the settlement of open arbitration claims between Naftogaz and Gazprom.

Today, four months after the final completion of the gas transmission system unbundling (effected via transfer of 100% share in GTSO to MGU on January 1, 2020) Ukraine takes pride in maintaining the uninterrupted transit of gas to Europe and remaining its reliable partner. ■

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ADVANCING AVELLUM

Mykola Stetsenko's M&A boutique becomes a full-service Ukrainian success story.

By Andrija Djonovic

In 2009, deep in the throes of the global financial crisis, Mykola Stetsenko, a partner at Baker & McKenzie in Kyiv, stepped away from that secure position to start his own law firm. His ambitious move paid off, and now, eleven years later, the firm he launched – Avellum – is among the most successful and highly regarded in Ukraine.

The Beginning

“I always wanted to have a career that had an international touch to it,” Stetsenko recalls from his office in Kyiv. “I remember coming back to Ukraine in 1994 after a year in a high school exchange program in the United States and wanting to pursue a professional

path that would allow me to experience worldly things with an international angle.” He remembers contemplating becoming a translator, and laughs at the memory of considering becoming “a secret agent – they travel a lot!”

“My father had a legal background – not a huge one, but he did have a legal



Mykola Stetsenko



education,” Stetsenko says. Indeed, Volodymyr Stetsenko started his career as a lawyer, but later developed a career working for the municipal government as a manager in the department of utility services. It was Volodymyr, his son recalls, who told the would-be secret agent that, “if you want to do something interesting and make an impact at the same time – with a strong possibility of having an international career – try and apply to law school.” Stetsenko, who was at the top of his class in high school, remembers thinking to himself, “why not!?”

As a result, in 1995 Stetsenko enrolled in the Institute of International Relations of the Taras Shevchenko Kyiv National University. “I managed to get in on a free stipend from the government, otherwise my family wouldn’t have been able to afford it,” he recalls. In the course of his studies, his focus changed from international public law to international private law, before he ultimately settled on business law. In 2000 he got his Master’s degree with honors, and in 2004 he followed that up with an

LL.M. with honors from Georgetown University in the United States.

From Baker to Avellum

After graduating, Stetsenko joined Baker & McKenzie in Kyiv, eventually spending nine years there, and he made partner in July 2008. He appreciated the education he got from the global firm, but reports not being completely satisfied. “Baker is a great firm and I got some amazing experience working there – I think it gave me a great skillset,” he says. “But to be honest, I always felt that the size and type of deals it mostly worked on was not always what I wanted.”

Stetsenko dreamed of being independent and “working with the best, like Magic Circle firms,” and in 2009 he left Baker & McKenzie and set up Avellum Partners with friend Kostiantyn Likarchuk. (The name of the firm, Stetsenko explains, “is formed of A and Vellum (parchment on which laws were written in Great Britain), where the A stands for A-class service and top quality”).

“To be honest, at the time the firm was founded, the decision seemed a bit irrational,” laughs Avellum Senior Partner Glib Bondar, who worked with Stetsenko at Baker & McKenzie and joined his friend at Avellum Partners in 2010. “It was in the middle of the financial crisis and nobody knew what the markets would look like in the future ... but it turned out to be an amazing choice on Mykola’s part.”

“Looking back, I’d probably use the word crazy,” Stetsenko smiles, “but also, maybe, courageous.” In any event, he says, the time was right. He recalls that, as a result of the financial crisis, Baker & McKenzie was “slashing people left and right. A lot of good people were fired, which looking back seems pragmatic and logical, but was not very well-communicated at the time.” As a result, he says, the opportunity to pursue his dream of opening his own law firm was compelling. “I had been a partner for a year already at the time I decided to leave – so I had a well-formed client base of my own. This made the transition a bit more natural and easier.”





Anna Babych

Coming Up to Speed

Avellum Partners hit the ground running on July 9, 2009. And Stetsenko and Likarchuk did not start alone. “I tried to save as many quality people as I could, leaving Baker,” Stetsenko recalls, pointing in particular to Yuriy Nechayev, who was a junior associate when he left Baker in 2009. Bondar describes Nechayev’s decision to follow Stetsenko to Avellum Partners as a significant sign that the new firm would succeed. “I mean, to leave an established firm for what was, essentially, a start-up,” Bondar says, “it had to be looking great from the get-go!”



Glib Bondar

Still, it was a small team at first, consisting only of four associates, Stetsenko, and Likarchuk. Then, in early 2010, Bondar joined to lead the Finance and Capital Markets practice, and the firm quickly hired another three associates and three more support staff members.

The firm was able to build on Stetsenko’s reputation and existing client base and soon found itself working with international firms looking for Ukrainian assistance. “We persuaded some firms in London that we could be an asset,” Stetsenko says. “In the first few months, we did some work with Freshfields Bruckhaus Deringer and Linklaters, and in less than a year with Latham & Watkins as well.” Eventually, he says, Avellum Partners was working with “major firms on huge global transactions – something we wouldn’t have had nearly as much access to when we were at Baker.”



Yuriy Kovalchuk

Before long, Avellum Partners – the “Partners” was dropped from its name in 2015 – had become a successful full-service firm. In 2012 the firm added a formal Dispute Resolution practice, then Antitrust and Real Estate practices, and most recently, with the February

2019 addition of Counsel Anton Polikarpov, an IP practice.

“We persuaded some firms in London that we could be an asset. In the first few months, we did some work with Freshfields Bruckhaus Deringer and Linklaters, and in less than a year with Latham & Watkins as well.”

The firm’s partnership grew over time as well (although in 2015 Likarchuk left the firm to become Deputy Chairman of the State Fiscal Service of Ukraine (and then, eventually, a Partner at Kinstellar)). In 2018, Nechayev, who had joined at the beginning, was made partner, as did tax lawyer Vadim Medvedev a year later. Bondar points to Medvedev’s progress to partnership as a demonstration of the firm’s flexibility and meritocratic sensibility. “He grew quite fast and expressed, from the get-go, a desire to develop the firm’s Tax practice, seeing as how we didn’t have one back then,” he recalls. “Mykola and I, once we saw that he meant business, put our faith in him and now he is our Tax Partner.”

The firm, which started a decade ago with two partners and four associates, now has four partners, 35 non-partner fee-earners, and a 22-person administrative team. It has also, for the 11 years of its existence, worked on many of the largest deals in Ukraine. (See Box)

Bon Mots from the Market

Avellum Client Yuriy Kovalchuk remembers meeting Stetsenko, “long before Avellum, back when he was at Baker & McKenzie. We worked together on

A Strong Start: Representative Deals Reveal Avellum's Successful First Decade

- 2015 Advised Lafarge Holcim on Ukrainian merger control aspects of their EUR 40 billion merger.
- 2015 Advised the Ministry of Finance of Ukraine on the country's USD 15 billion sovereign debt restructuring.
- 2016 Acted for the bondholders of Mriya Agro Holding Plc, which defaulted under two issues of Eurobonds worth an outstanding total of over USD 570 million.
- 2017 Advised the Ministry of Finance of Ukraine on the country's USD 3 billion sovereign bond issue and tender offer.
- 2017 Advised on sale of the Karavan Hypermarket chain to Auchan Group.
- 2019 Advised Ukrzaliznytsia on its USD 1 billion collaboration with General Electric Company.

several IPOs for major Ukrainian clients while I was still with the ING investment banking team.” In fact, he says, he encouraged Stetsenko to move on from the global firm way back then. “When Mykola was contemplating leaving Baker and setting up Avellum I remember us going for lunch and discussing the idea,” Kovalchuk says. “I was all for it and told him that he should definitely do it or he’d regret it for the rest of his life.”

“Since 2009, the legal market in Ukraine has changed significantly, with many new firms appearing, spinning off, and merging. We have to focus and think more about doing business development and marketing, not just core legal work, in order to remain competitive”

Kovalchuk speaks glowingly of the service his friend’s firm provides, noting that he enjoys “working with the Avellum guys because of their responsiveness, proactiveness, and creative approach.” He says that he uses every chance he gets to “speak good of them and I plan to keep on working with

them whenever I get the chance!”

Clients aren’t the only ones offering up testimonials. Anna Babych, Partner at Ukraine’s Aequo law firm, says “I respect the way Mykola succeeded in establishing the practice and the firm in general.” Babych claims that her opinion is common among legal professionals in Ukraine, and that “M&A practitioners regard Mykola well, for his professional approach and friendly style.” According to Babych, “not only is he an excellent example of a transactional lawyer, but he also contributes greatly to Ukraine’s success by actively involving himself in law-making initiatives.”

Looking Forward

“When we started working together at Avellum, Mykola and I didn’t really have much experience in running our own business,” Bondar laughs. “We had no bureaucratic policies devised, we thought we could avoid tracking time ... we just went at it!”

Times have changed, but Bondar and Stetsenko still run their own practices – with Bondar on Finance, Capital Markets, Restructurings, and Energy, and Stetsenko on Corporate/M&A, Real Estate, Antitrust, and IP – while also working to grow the business. That’s not always easy, in an ever-more-competitive market. “Since 2009, the legal market in

Ukraine has changed significantly, with many new firms appearing, spinning off, and merging,” Bondar says, “so we have to focus and think more about doing business development and marketing, not just core legal work, in order to remain competitive.”

But Stetsenko insists that he gets more satisfaction from doing good work than from playing King of the Hill. “Some firms like to boast that they’re the biggest, some that they’re the most innovative, or that they provide new types of services,” he says. “We like to think of ourselves as being the most prepared to tackle intellectually challenging work.” As part of this, he says, Avellum seizes every opportunity to “engage in complex and complicated transactions, Eurobond issuances, huge restructurings – difficult projects overall.” He smiles, reciting his elevator pitch. “We have a strong intellectual base in Finance, Corporate, Tax, and Real Estate – and we offer outside-of-the-box thinking to solve every problem.”

“Mykola, Yuriy, Vadim, and I – we’re a true team,” Bondar reflects. “Mykola and I have known each other for almost twenty years now and we spend a lot of time outside of the firm too. Of course, you can’t escape talking shop even then,” he laughs.

At the end of the day, Avellum is getting closer to the London Magic Circle firms it models itself after. “In terms of legal work in Capital Markets,” Stetsenko says, “I think around 70% of the Ukrainian legal market is us.” Bondar agrees, and adds that the firm’s spirit matches its success. “Our team is great, our culture is most enjoyable, and we’ll keep on doing what we’re doing!” ■

MARKET SPOTLIGHT SLOVAKIA



GUEST EDITORIAL: M&A MARKET IN SLOVAKIA FOLLOWING COVID-19

By Michaela Stessl, Country Managing Partner, DLA Piper Slovakia



When I was asked some time ago to write an editorial for CEE Legal Matters on the Slovak legal market I thought it would be a nice opportunity to review my last 20 years, approaching the end of another very successful financial year.

But since then, due to COVID-19, many things have changed, including the legal market, where we see

the impact both on client needs and on daily law firm management, figuring out how, efficiently, to work with teams remotely while remaining able to handle matters that can only be done in the office.

Thus, I want to share some observations – from me, an M&A lawyer who has been active in Slovakia and CEE for more than 20 years, on the new situation with COVID-19.

Since the latest financial crisis in 2008, Slovakia, as a country excellently positioned in the middle of Europe, has strengthened its strategic position. Thanks to this it established its position as a hub for both the automotive industry and for global logistic companies, as well as for other bigger players from various sectors. In recent years, not that many global transactions have taken place without Slovakia taking part. It was exciting to see how specialization due to globalization caused significant growth of law firm revenues in Slovakia – including ours, where revenues since 2010 have almost doubled.

Our most recent financial year, which closed just some days ago, was again very successful. Even though M&A business – on an international level - was slightly down, nevertheless the slow-down complained of by our colleagues in the UK, post-Brexit, or in Germany, due to the recession, has not yet been felt in Slovakia. At least not by us, as a global law firm. Our lawyers worked on multi-jurisdictional reorganization projects for global clients wanting to consolidate their businesses in order to strengthen their liquidity, i.e., to focus on

core businesses and divest non-core businesses.

Suddenly, in that heavily transactional atmosphere, COVID-19 appeared, and quickly became the predominant topic. With the complete lock-down in Slovakia and the close of the borders everything changed from one day to the other – including the legal market, as our clients found themselves facing a whole range of new issues, requiring the consideration of significant legal consequences and implications. Pending deals had to be closed as fast as possible in order to avoid insecurities and price discussions. Interestingly, and maybe as a result of experience we gained from a cyber-attack that hit DLA Piper in 2017, it turned out that DLA Piper was well-prepared and able to handle M&A deals effectively, even in a situation where most of us are working at home. Apart from the pressure to close transactional work as fast as possible, the vast majority of the work we have done in the last couple of weeks for our clients has been related to immediate HR issues, within reorganization processes. Here it is a significant advantage that Slovak lawyers are “general specialist” lawyers, traditionally able to deal with whatever legal issues may arise.

We will see what impact COVID-19 will ultimately have. It may be expected, on the one hand, that foreign investment by US or Chinese clients will decrease in our region. On the other hand, more than ever the focus on core business will be important for global players. In my view, more European funds and PE houses will discover interesting targets in CEE. Distressed M&A will therefore be interesting for our law firm and others in the market and we believe that international law firms may be able to match with the new situation quicker and easier than others.

For my part, I see a realistic opportunity for Slovakia to overcome this challenging situation as it did the financial crisis of 2008. There is no doubt there will be new opportunities for lawyers in this market – but only if the various jurisdictions in Europe open their markets now, quickly, to prevent global players from getting into financial trouble, which would have a negative impact on suppliers and sub-suppliers in CEE and around the world. ■

A PROGRESSIVE PROFILE: SLOVAK PRESIDENT ZUZANA CAPUTOVA

By Andrija Djonovic

In March of 2019, relative unknown Zuzana Caputova won the Slovakian Presidential election, becoming the first woman and – at 45 – the youngest person ever to hold that office. With a background as an environmental lawyer and human rights activist, Caputova is largely viewed in Slovakia as a unifier, taking strong and reasonable approaches to even apparently intractable problems. Her success has inspired a degree of hope for the future from her former peers and colleagues in Slovakia’s legal community.

The Background

Caputova, who was born into a working-class family in Bratislava on June 21, 1973, grew up in the nearby town of Pezinok, where she still resides today. Caputova has described her childhood as taking place in an “open-minded house,” which influenced her later development and work as an environmental activist.

After graduating from the Comenius University Faculty of Law in Bratislava in 1996 (with a specialization in both national and international law), Caputova worked for a while in the local Pezinok government, eventually becoming Deputy Mayor. In 2001, she moved into the NGO sector and started working with the Open Society Foundation on public administration and child protection issues. From 2001 to 2017 she worked with Via Iuris – a civic organization promoting the rule of law and supporting civil rights and society, representing individuals in environmental and human rights cases.

“She used to be a very strong and a very dedicated environmental lawyer,” says

Radovan Pala, Partner and Co-Head of Taylor Wessing’s office in Bratislava, who serves as an official advisor to President Caputova. “The legal community knew of Zuzana for a long time, in the NGO world.”

It was at Via Iuris that Caputova first came to prominence, gaining particular recognition for her fight against the construction of a waste dump and an incinerator in close proximity to Pezinok. “She became recognizable person when she took on that fight in city of Pezinok,” recalls Katarina Mihalikova, Partner at Bratislava’s Majernik & Mihalikova law firm, who reports that “Caputova and her colleagues at Via Iuris managed to prove that the proposed project would be very damaging to the environment and the city, as well as to the quality of life of Pezinok’s inhabitants.”

Caputova wanted more influence than her position in the NGO sector provided her, Pala says, adding that, “I think that, as elections drew close, she decided that the time had come to move up.” She joined the Progressive Slovakia party in 2018 and began her campaign

for president in 2019. Pala was there from the beginning, in fact, and he recalls with pride being “part of the three-member petition committee that helped her gather the necessary fifteen thousand signatures so that she could run in the first place.”

An important event in the run-up to that election was the February 2018 assassinations of investigative journalist Jan Kuciak and his fiancé, Martina Kusnirova. The murders generated a huge outcry in Slovakia, with enormous rallies organized in a demand to see the killers (and those who hired them, as it was widely believed that the act had been committed under orders) brought to justice. Caputova engaged with the murder case and started galvanizing support. “She had much to say, and people listened,” Pala says. “People understood that the corruption and oligarchical structures do not stop at anything and that this was hurting their way of life as well. It attacked our values – the most basic ones.”

“The murder piqued a civic movement of unprecedented proportions,” Mihalikova agrees, recalling that “the last time

people started to rally out of fear and feeling threatened like that was in 1989.”

Caputova, who was a frequent participant in protests against the government after the murders, cast her campaign as a struggle for core values, eventually choosing “Let’s face the evil together” as her campaign slogan. It worked, and she won the first round of voting on March 16, 2019, with 40.57% of the vote, and the second round, on March 30, 2019, with 58.41% of the vote. On June 15, 2019, she was sworn in as President.

We Won, We Won! ... Now What?

Caputova’s win, as surprising as it was to many, came in an election which saw the lowest voter turnout in Slovakia’s history. This was not lost on the opposition. “With the low voter turnout, her political opponents tried to argue that her presidency was not legitimate – which was, quite frankly, ludicrous,” says Veronika Pazmanyova, Partner at Glatzova & Co. in Bratislava. “She enjoys the strong support of the people now, as she did after she won. She won the hearts of the citizens by standing behind her values, even if controversial.” Pazmanyova cites President Caputova’s pro-gay rights stance as an example of this political courage. “Slovakia is a deeply catholic country,” says Pazmanyova, “and being pro-LGBTQ is not a common sight when one looks at our politicians. Still, President Caputova is standing her ground and arguing equality and freedom for all in Slovakia from a human rights standpoint, and her message is getting across.”

“I voted for her in the Presidential elections,” says Hugh Owen, Director of Go2Law. “While it sounds naive, I voted for her because I was desperate to see someone in a significant position of power who was not part of the



Zuzana Caputova

political establishment. I could see from her history of campaigning that she was prepared to fight for her beliefs and for justice and that she would have a fresh and invigorating approach to her office.”

“I think the main reason people respond so well to her, even when she’s not saying the most popular things, isn’t only due to her being an eloquent speaker,” Pala says, “but also because she does not dodge questions. She always gives her answers straight, in a direct way.” That doesn’t mean she’s not careful. Pala points to Caputova’s comment on the topic of same-sex marriage and same-sex adoption that “this is a more preferable option than staying in an orphanage with no parents,” as reflecting her ability to reframe issues effectively.

This balanced approach – strong views coupled with an honest way of communicating – is what, Pala says, underpins President Caputova’s reputation as a unifier. According to him, “she takes a lot of care not to be a partisan president and to be there for all Slovaks,

not just her supporters.” Indeed, he suggests, President Caputova’s focus over the past year has been, ultimately, a continuation of what she has fought for all her life.

“The President focuses most on protecting the human rights of those most in need,” Pala explains. “By fighting for law and justice and against corruption, promoting the environment, and proposing a higher rate of care for the elderly and the retired people of Slovakia, she has come across as somebody everybody can trust.”

And trust is an important asset in Slovakian politics. Pala notes that the previous government was linked to “shady figures with questionable ties to criminal aspects.” As a result, he says, “for this very reason, President Caputova’s public empowerment of those prosecutors and judges willing to take up, argue, and try cases that deal with corruption and criminals is an excellent example of the good she can continue to do for Slovakia.”



Hugh Owen

Pala is convinced the effects will be significant, and he suggests that the very fabric of society is changing in a way that will lead to the exclusion, or at least suppression, of criminal factors. “The consequences of her struggle to send this message can be seen already,” he says. “The trial of those accused of the murder of Kuciak and Kusnirova is likely to end soon with a conviction, hopefully putting this terrible chapter to rest.”



Katarina Mihalikova

Of course, Caputova is not a one-issue President. Aside from battling corruption, Pala says, she has made an effort to “strengthen the ties Slovakia has in the international arena,” and essentially restarted the work of the Constitutional Court, which had been inactive, with only four of its 13 seats filled. “President Caputova pushed for the election of new judges and, basically, convinced the Parliament to nominate a sufficient number of candidates to enable her to elect six judges to the bench to make the Court functional again,” Pala says.



Radovan Pala

Slovakia’s Parliament is expected to enact more legislative reform in the future as well, Pala reports, and he insists that President Caputova will “show a strong voice in these as well.”

“She cannot be involved on the executive level in reform in a hands-on way,” Mihalikova says, “but just by virtue of her talking about the issue and by the force of her authority, she can make waves.” Mihalikova notes that 11 judges were arrested for corruption in March, describing this as “a clear representation that the judicial system is craving reform,” and adding that “it’s good that President Caputova is tackling this. If the system is corrupt people can’t do anything, their very way of life is under attack.”



Veronika Pazmanyova

Finally, President Caputova, staying true

to her roots, remains a strong voice for environmental issues. “She did quite a lot on raising awareness of the importance of protecting the environment,” Pala says. According to him, President Caputova has made an effort not only to honor the Paris Agreement but also to go “above and beyond,” noting that “based on her initiative, Slovakia has currently pledged to approach a carbon-free economy.”

The Canny Caputova

Caputova’s message has not always resonated with Slovakia’s conservative Parliament – but she has managed to engage productively anyway. “The previous Prime Minister, Peter Pellegrini, is part of the Political Party, SMER, which is tied to several corruption scandals President Caputova vocally opposed,” says Pazmanyova. “You’d expect some friction there, or animosity, to swim to the surface and hinder cooperation between her and the former Prime Minister – but in fact it was rather smooth.” Pazmanyova says that Caputova and Pellegrini had “a constructive communication, laced with respect despite the differences they clearly had.”

However, cordiality is not, alone, enough. “Before the parliamentary elections that took place on February 29, 2020, the then-ruling SMER practiced some underhanded tactics in order to try and stay in power,” Pazmanyova recalls, pointing to attempts to extend the period of time immediately before the elections during which no political advertisements or campaigning was allowed. “This period of time, the pre-election silence, is usually 14 days long, and SMER wanted to extend it to 50 days,” she recalls, insisting that SMER’s goal was to silence its opposition.

“SMER made the case that the media

is not independent and that it should, therefore, be excluded from the equation,” Pazmanyova says, describing this as “flimsy at best,” but noting that the party’s proposal nonetheless made it through Parliament and reached the President’s desk.

This is where President Caputova showed a lot of prowess,” Pazmanyova smiles, explaining that Caputova first vetoed the law, but when Parliament voted on it again, overriding the veto, Caputova then signed the law as required – but immediately filed a request with the Constitutional Court to review its legality. The Constitutional Court then suspended the amendment pending a full review. “This allowed for the elections to go ahead as planned without the extended moratorium,” Pazmanyova says.

Additionally, Pazmanyova reports that “only four days before the elections, Parliament passed an act revising the pension scheme in order to get a 13th pension payment to all retired people in Slovakia.” Retirees make up a significant portion of the electorate in Slovakia, and Pazmanyova believes the move was made in an effort to buy votes. “Many saw this as political corruption,” she says, “so close to the election.” According to her, the normal legislative procedure was purposefully truncated to preclude parliamentary debate and exclude input from experts and other relevant stakeholders. Pazmanyova reports that Caputova postponed her decision to sign or veto the law until after the election – then, after signing the law, again turned to the Constitutional Court for help, asking it to ensure the shortened procedure in which the new act was passed was proper. Pazmanyova describes this as “a political master move on the President’s end: she did not deprive retired people of the payment,

but has effectively nullified its impact on the elections.”

Coping with COVID-19

Slovakia, like other European countries, has been hit hard by the COVID-19 crisis. Still, the quick response of the government has helped keep the number of cases low; as of May 21, 2020, there had been 1502 confirmed cases, and only 28 deaths.

“The President reacted swiftly and showed how important it is to earn the public trust and lead from the front lines,” says Pala. “Besides sending out messages of support to all those battling the disease head-on, like doctors, nurses, and police officers, and to those most affected, like the elderly, she also contributed greatly to widespread adoption of personal protection.” Pala says that Caputova has worn a facemask from the very beginning of the crisis during her work and public appearances, which he credits with helping to raise awareness of the pandemic’s seriousness and provide guidance as to how Slovaks should behave. “Her role in the handling of the COVID-19 crisis is universally acclaimed,” Pala reports.

Mihalikova agrees, noting that “according to very recent polls, [the President] is the most trusted politician in the country.” She says that this fact shows that President Caputova has “upheld her role very well,” and has handled the crisis with “calming and embracing addresses” that “gave the people just what they needed.”

Looking Ahead

Following the recent parliamentary elections, President Caputova is “likely to have a much easier relationship with current lawmakers,” Mihalikova says, and she adds that “the President has

met with all the parliamentary party leaders and it seems they have a good starting point, in terms of communication.” However, Mihalikova notes, with the elections taking place so close to the start of the COVID-19 crisis, “the government was assembled hastily, and they’ll face a lot of pressure in the near future.”

Still, her fellow lawyers, at least, seem to have shed their traditional skepticism, and they remain confident that Caputova can succeed in unifying the country behind her progressive agenda. “Even deeply conservative, religious people, those that would vote for somebody else – even they do not attack her directly,” Pala asserts. “She has universal appeal.”

Hugh Owen is hopeful as well. “It is a time where change is necessary. She has a very strong background as an environmental campaigner, and seems to pursue a liberal agenda, both of which in my view are very positive influences in a time where reactionary forces and populism are also strong, and where climate change is still waiting not-so-patiently in the background.”

“It’s an amazing feeling, to be proud of your politicians, especially your President,” Pazmanyova says with a smile. “When her name is mentioned by some of our international clients or colleagues, I genuinely beam,” she laughs. “President Caputova is an advocate for human rights, a true teacher of tolerance and openness – and she communicates this very well.”

“On election day, I was with some friends and colleagues and we all felt very strongly about her winning,” Pazmanyova concludes. “A woman, a lawyer – very, very empowering. It was like I won myself.” ■

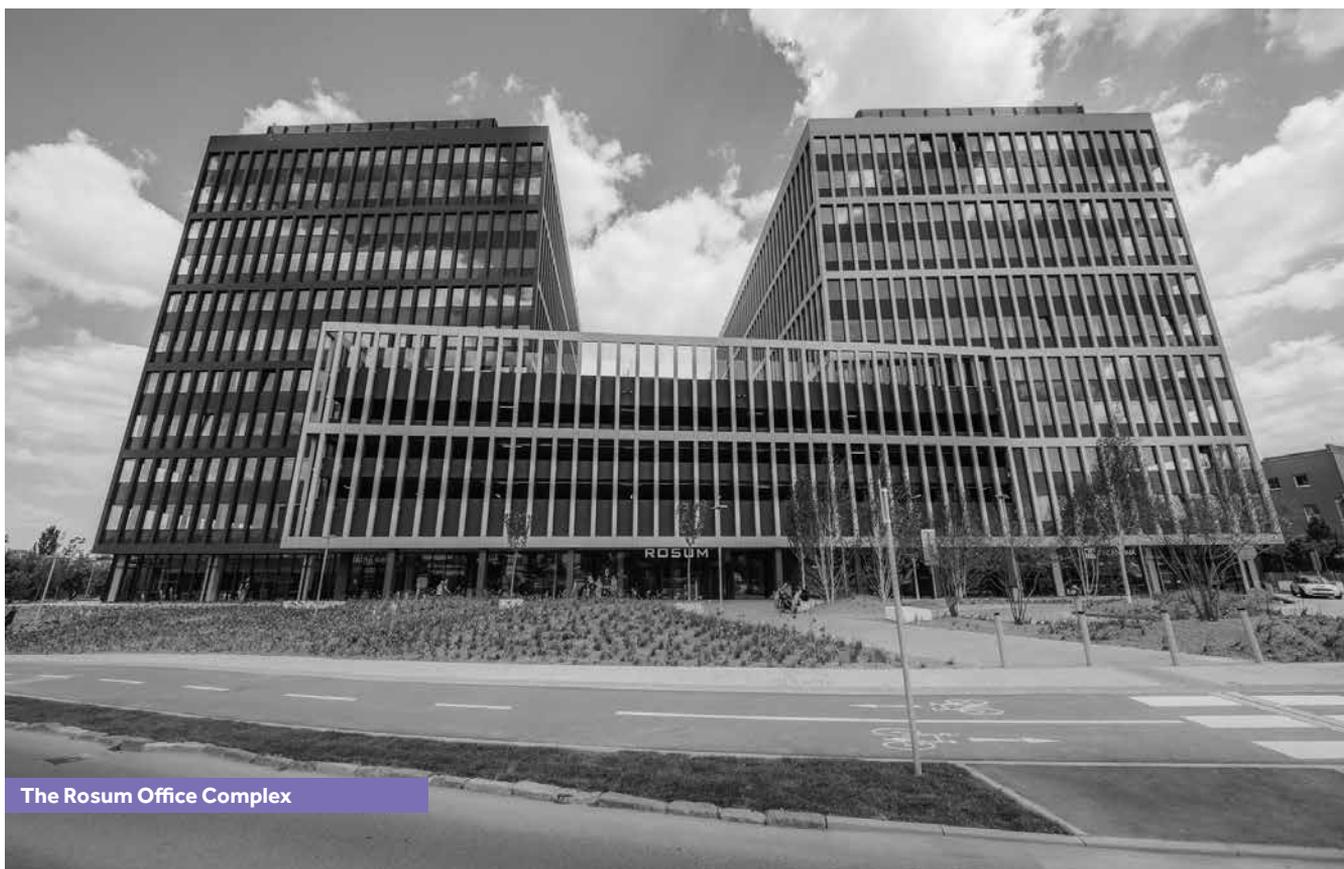
INSIDE OUT: ROSUM OFFICE COMPLEX ACQUISITION

By David Stuckey

On March 11, 2020, CEE Legal Matters reported that **Kinstellar** had advised Austria's **European City Estates** – a group of companies owned by the Austrian Humer Private Foundation – on its acquisition of the 22,000-square-meter Rosum office complex in Bratislava from **Penta Real Estate**, which was advised by **Skubla & Partneri**.

The Players:

- Counsel for European City Estates: Viliam Mysicka, Partner, Kinstellar Slovakia
- Counsel for Penta Real Estate: Marian Sulik, Partner, Skubla & Partneri



The Rosum Office Complex



Viliam Mysicka

CEELM: Viliam, let's start with you. How did you and Kinstellar become involved in this matter?

Viliam: European City Estates is a long-term Kinstellar client in Prague. In 2019, ECE began an expansion initiative in Slovakia. Due to the need for a Slovak law firm, our Prague colleagues introduced me to Dejan Mansfeld-Rupnik, ECE's managing director.

This referral resulted in us assisting ECE with its acquisition last spring of the Business Centrum Tesla 2 (BCT2) in Kosice from Penta Real Estate.

Rosum was our second project with ECE in Slovakia. Penta initially intended to sell it to another buyer, however, when negotiations collapsed in December 2019, ECE got involved, and we started work shortly before Christmas.

We actually started the due diligence on January 7, 2020 and completed the acquisition (including financial settlement) on February 27, 2020, so the entire transaction took less than eight weeks, making it one of the fastest deals on the Slovak real estate market in recent years.

CEELM: Marian, how about you? How did Skubla & Partneri become involved in this matter?

Marian: We have a long-term relationship with Penta Real Estate and we

actually advised them already in the past on several high profile real estate transactions. We have acted for them both on the sell side and the buy side, historically, therefore in our view it was kind of natural for them to approach us in this matter. We were involved from the very beginning, when the client decided to sell the asset and needed legal support.

CEELM: What, exactly, was the initial mandate when you were each retained for this project, at the very beginning?

Viliam: It was full-scope from the very beginning. I believe we had very good cooperation on the Kosice deal, so it was natural that the cooperation resulted in the Rosum deal as well.

Marian: We were basically asked to cover and oversee the whole sale process from the legal point of view. This included assisting with compiling the vendor due diligence data room for the purposes of the buyer's due diligence report; assisting with the preparation of answers to legal questions; and providing overall support to the project team with respect to questions and needs of a legal character which arose in connection with the transaction. Since this was not our first transaction for Penta, we knew what was expected of us and what are responsibilities were.

CEELM: Who were the members of your teams, and what were their individual responsibilities?

Viliam: I led our team and was the main contact for the client on the Kinstellar side. The team consisted of: Vladimir Policka, Managing Associate, responsible for deal structuring, financing, SPA, and the overall matter management on Kinstellar' side; and Martin Kosa, Senior Associate, responsible for the due diligence process, financing, and transaction closing, as well as assisting with



Marian Sulik

deal structuring and client management throughout the transaction. The three of us cooperated closely throughout the entire transaction and supported each other as needed.

Of course, the team was supplemented with other colleagues, in particular one of our rising stars, Norbert Stilla, Junior Associate, who assumed the role of main reviewer of the major lease agreements (one of the most important areas of review, considering Rosum is an office building). I would like to use this opportunity thank each and every one of them for their impeccable professionalism, hard work, outstanding knowledge, and diligence.

Marian: I was in charge of negotiating and drafting the SPA and supervising other team members. My colleague, Partner Erika Galgociova, assisted me with the SPA. Associate Michaela Balazova assisted and provided her support during the due diligence phase and Junior Associate Erik Mateasik assisted me with the preparation of ancillary documents and other documents required for closing of the transaction.

CEELM: Please describe the deal in as much detail as possible, including your (and your firms') roles in helping make it happen.

Viliam: In general, under Slovak law,

when there is a change of ownership of real estate, tenants are entitled to terminate their leases. It is therefore customary, if an office building is to be acquired, that the deal is structured as a share deal (unless specific circumstances for another approach exist). Thus this deal was structured as a share deal. The target company existed in the form of a joint-stock company (in Slovak: *akciová spoločnosť*). It was therefore expected that the signing and closing would take place simultaneously – preferably by the end of February 2020. Both parties communicated this from the very beginning (it should again be stressed that our due diligence commenced on January 7, 2020, so the end-February was quite a courageous deadline).

Considering the circumstances, the deal structure also depended on (and we were asked to implement mechanisms for) repaying the development bank financing and intragroup financing arrangements provided to the target company.

During the due diligence process, we identified several more-or-less important issues, mainly relating to the construction of the Rosum office building. These were duly discussed with Penta and agreements to remedy the identified flags were finally achieved to the satisfaction of both ECE and Penta.

The transaction documentation was drafted by Penta's legal counsel (Skubla & Partneri). Our main role consisted of reflecting all issues identified during the due diligence to be covered in the SPA, in particular by R&Ws and/or relevant indemnities provided by Penta as the seller.

My colleagues Vladimir and Martin also assisted ECE with negotiating the financing documentation entered at closing by the target company and

communication with the bank's local counsel.

During the negotiation process we took part in several negotiation meetings with Penta and all its advisors. Given that the same setup on the sell/buy-side (including legal advisors) had already met in the course of the BCT2 acquisition, negotiations on the Rosum acquisition were rather factual, straightforward, and smooth. The same could be said of the signing and closing venue.

Marian: The deal was structured as a share deal, and the fact that the target company was a joint stock company allowed us to structure the deal to allow signing and closing to occur on the same day. We were able to come up with proposals and concessions satisfying both parties which allowed the deal to happen. In particular, we had to consider and implement measures to resolve existing financing issues and existing intragroup financing. There were also several legal topics on which we were able to reach compromise solutions.

CEELM: What's is the current status of the deal?

Viliam: The deal was signed and closed (including legal and financial settlement) on February 27, 2020, but given the major workload and deadlocks at the relevant state authorities, some post-closing administrative proceedings were only finalized a few days ago.

Marian: The deal was successfully closed and the takeover of the building has occurred.

CEELM: What was the most challenging or frustrating part of the process? Why?

Viliam: Truly, the deal was smooth as we had a good track record with Penta earlier.

Marian: To be honest there were no real frustrating parts. The deal was challenging due to timing and deadlines. We had to make sure that our proposed structure made sense to the buyer so conceptually we had to show the logic behind the structure. But both the buyer and Kinstellar were very reasonable and understood our and client's demands and reasoning.

CEELM: Was there any part of the process that was unusually or unexpectedly smooth/easy?

Viliam: Financing provided by the Austrian bank – signing, completion and draw of funds – on the same date as the SPA closing is not very common in Slovakia.

"To be honest there were no real frustrating parts. The deal was challenging due to timing and deadlines. We had to make sure that our proposed structure made sense to the buyer so conceptually we had to show the logic behind the structure. But both the buyer and Kinstellar were very reasonable and understood our and client's demands and reasoning."

Marian: Actually, I would say that the whole transaction went quite smoothly. Our client was well prepared for the deal and the level of detail and quality of documentation was, in our view, high, which enabled the buyer and buyer's counsels to proceed quite effectively.

CEELM: Did the final result match your initial mandate, or did it change/transform somehow from what was initially anticipated?

Viliam: Except for the volume of doc-

uments that needed to be reviewed during the due diligence (which was initially expected to be less) and certain adjustments of the deal structure in terms of financing by the Austrian bank, we can confirm that the final result matched our initial mandate.

"We would like to highlight the approach by Skubla & Partneri and Marian Sulik, who led the deal on their side. They were exactly the counterparty you want to work with: pragmatic, pro-active, cooperative, and straightforward."

Marian: As stated in the beginning, this was not our first transaction with the client. Therefore, we knew what kind of work would be expected from us and I believe we delivered what was required. There was no major change in our mandate and in our role.

CEELM: Viliam, what specific individuals at ECE instructed you, and how did you interact with them?

Viliam: From the very beginning, we were in daily touch with Dejan Mansfeld-Rupnik, ECE's managing director.

CEELM: Marian, what about you? Which individuals did you work with at Penta?

Marian: We were instructed by Country Managing Director Juraj Nevolnik and Business Development Director Michal Hranai. Of course, taking into account the value, importance, and demanding nature of the deal, we were in frequent – daily – contact with the client. The majority of the communication was done via e-mail and conference calls, but we had weekly update meetings, which usually took place as personal meetings at the client's premises.

CEELM: How would you describe the

working relationship with each other on the deal? Viliam, can you comment on your relationship with Skubla & Partneri?

Viliam: We would like to highlight the approach by Skubla & Partneri and Marian Sulik, who led the deal on their side. They were exactly the counterparty you want to work with: pragmatic, pro-active, cooperative, and straightforward.

Most of the interactions with Skubla & Partneri was through conference calls and e-mails. However, we participated at several negotiation meetings together with Penta and Skubla & Partneri. These meetings were rather short (not exceeding three hours), and all of them were rather friendly in spirit.

CEELM: Marian, what was your relationship with Kinstellar like?

Marian: I would describe the relationship as very good. We have worked as counterparties on several transactions in the past and in my view there is a mutual respect between our firms (on a professional as well as personal level). In this particular deal, most of the communication was done over phone and via e-mail, even though the communication was quite intense. Personal meetings were quite limited; we basically had an introductory kick-off meeting, a red flag meeting where we discussed and agreed on identified issues, and then a final wrap-up meeting, where we agreed on final outstanding items. We also met at the signing date in our premises, where we went through all the documents jointly (we were in charge of preparation of the documentation for execution). The personal meetings were quite effective and we were able to resolve and agree on raised issues within couple of hours. The overall negotiation process was rather effective as well (we finalized the negotiations in a couple of

weeks, even though the communication was intense and hectic).

CEELM: Finally, how would you each describe the significance of the deal?

Viliam: A few points to mention that from our perspective make the deal one of the landmarks on the local market: (i) the Rosum office building holds a LEED Gold Certificate, which makes it one of the most ecological buildings in Bratislava; (ii) the structure of the deal required a lot of sector expertise, mainly during the due diligence process, as we were not only focused on simply corporate and/or real estate reviews, but also considered all relevant aspects of operating an office building; (iii) the transaction length – up to eight weeks – makes the Rosum acquisition the fastest transaction among deals of similar volume and complexity in Slovakia; (iv) the deal involved financing by a foreign bank (which, although we see more and more, is still not common) and included simultaneous signing, completion, and draw of funds on the same date as the SPA closing.

Marian: In our view the deal was very significant for several reasons, not just for Penta but for the Slovak real estate market as a whole. First of all, it was done at the right time from our client's perspective, just before introduction of strict governmental restrictions in relation to the COVID-19 disease, which would definitely have had a negative impact on the timing and consummation of the deal. In terms of volume it was a landmark transaction for the client in Slovakia in the realm of administrative office buildings. Furthermore, the transaction also showed the appetite and trust of foreign investors to invest in Slovakia. And finally, it has reinforced Penta's position in the administrative office real estate sector (not just as a residential real estate developer). ■

INSIDE INSIGHT: INTERVIEW WITH STEFAN OROSI, HEAD OF LEGAL AND COMPLIANCE AT PRIMA BANKA SLOVENSKO

By David Stuckey

CEELM: Can you walk us through your career leading you up to your current role?

Stefan: As far as I can recall, I have always seen myself as a clerk in a commercial bank. This perception has not changed during my legal studies either.

I graduated from law school at the P.J. Safarik University in Kosice, in the eastern part of Slovakia, in the city where I was born. Shortly after finishing my studies, I took my first job as a Contract Legal Specialist for the Slovak Air Force Academy. That appointment lasted a year and two months, from October 2002 to November 2003. Although working for the military was exciting, I did not give up on my dream to work in a bank. In January 2004, I seized the opportunity to take a position as Investment Services In-House Legal Advisor Junior at HVB Bank Slovakia and moved to the capital of Slovakia.

At that time, HVB Bank Slovakia, a subsidiary of Austrian BA-CA and German Bayerische Hypo- und Vereinsbank, was a modern, flexible, dynamic commercial bank leading the then-developing market of financial transactions. I acquired most of my knowledge in Corporate Financing, Structured Financing, Real Estate Financing, Treasury Business (including investment services), Custody Services, and various types of business with securities, bank guarantees, and letters of credit. In addition to supporting the bank's business, I played an

advisory role in transforming the Slovak Central Securities Depository to meet international standards for the booking of securities held in custody by intermediaries. During this appointment, I assisted with the March, 2007 merger of the bank's custody and treasury business into UniCredit Bank Slovakia (which was part of the consolidation of the whole banking business), and I remained at UniCredit as an in-house counsel for the next few months. My appointment with HVB Bank Slovakia – including succeeding UniCredit Bank Slovakia – lasted for almost four years, from December 2003 to September 2007. I was an active member of various working groups and commissions helping the market to implement MiFID.

In October, 2007, my experience providing investment services advice brought me to Slovenska Sporitelna, a major Slovak bank, where I was active as the in-house legal advisor on the project of setting up a trading infrastructure on the Austrian Erste bank group level. During my short appointment there, I chaired a working group for the revision of the corporate client financing documentation templates and actively advised the bank on transitioning from the Slovak national currency to the euro. Here I learned a lot about Corporate Financing.

In August 2008, I took a position as the Deputy General Counsel of Volskbank Slovensko, a small subsidiary of the Austrian bank, which was very active

in financing small and medium sized clients. In April 2011, I was appointed General Counsel of the bank. I led a small but ambitious legal department, through its acquisition by Sberbank of Russia, until the end of 2012. These were very exciting times from an organizational and cultural point of view. I learned a lot about the management of internal legal services, the management of legal risks, internal legal affairs, regulatory issues, risk management, and work-outs.

"The in-house advisory role enables a lawyer to go deeper into the mysteries of the banking business and experience the life of a transaction, not just observe it from a distance. I elected to pursue an in-house practice at the beginning of my career, and even though I was tempted to switch to private practice many times, I remain loyal to the in-house life."

In spring of 2013 I became General Counsel of a small local bank, Prima Banka Slovensko, which was owned by local private equity group PENTA. The Prima Banka brand had only recently appeared on the market. Prima Banka is a mid-sized commercial bank providing banking services to retail, municipality, and SME clients. For the first time, I added management of Anti-Money-Laundering and Fraud Prevention



Stefan Orosi

to my duties. As of March 2020, I have been in this position for seven years.

CEELM: You've never worked in private practice. Did you know, even in law school, you wanted to work in-house?

Stefan: Oh, yes. I always wanted to work in a bank. At the same time, I wanted to be a lawyer. Becoming an in-house counsel was the perfect combination of both my dreams. Practicing banking law in a law firm has, in comparison to in-house advisory, various benefits – but it has some limitations as well. The in-house advisory role enables a lawyer to go deeper into the mysteries of the banking business and experience the life of a transaction, not just observe it from a distance. I elected to pursue an in-house practice at the beginning of my career, and even though I was tempted to switch to private practice many times, I remain loyal to the in-house life.

CEELM: What are the most significant changes you've seen in Slovakian Banking law over your 17-18-year career?

Stefan: There have been a few – both positive and negative. Changes in the Banking laws always depend on the government of the country. Liberal governments have made a few very positive and constructive amendments to the laws. For example, the law of securing claims was completely redrafted, enabling creditors to effectively secure their claims for loan agreements. Various new public registers, especially those held by the Chamber of Notary Publics, were established. A brand-new Bankruptcy law, clearly based on the equality of claims of all creditors and prioritizing secured claims, was adopted. Close-out netting provisions have also been recognized by that law in Slovakia. Voluntary auction as an instrument was instituted, which enables secured creditors to foreclosure.

On the other hand, for the last couple years, lots of legislation aiming to protect consumers was adopted. Expressing my private opinion in general, no positive effect to consumers' rights can be seen. Aside from mandatory provisions of EU consumer protection legislation (which have indisputably improved consumer protection), tremendously adverse effects on the clarity of general private law principles have resulted. This led to the inability of the courts to apply any reasonable legal explanatory rules or even to read the law at all. Emotional arguments of hurt consumers began to prevail in litigation. In addition, due to the inability of the courts to absorb robust consumer protection legislation, many new executive bodies have been established, usurping the judiciary of jurisdiction over disputes between banks and consumers.

CEELM: Are there changes you would like to see in the country's Banking law that would make things easier for Prima Banka Slovensko?

Stefan: As a result of the coronavirus outbreak, there are many things that can be done to make life easier for both banks and their customers. The majority of them are macro-economic, and I do not feel competent to comment on them.

From a purely legal perspective, there is a wide range of measures the government could take to simplify banking business and services for the sake of all parties – including clients. One long-lasting problem of doing business in Slovakia is delays in court procedures. Although every government for the last couple of years has taken some measures, the problem as a whole has not been solved yet. Recently, an express procedure has been established for issuing judicial awards where there is no dispute between litigating parties – and this procedure truly works well.

There is a need to improve the substantive law as well. Much could be done in terms of predictability and simplicity. All Slovak legal practitioners are expecting a new Civil Code within the next few years, replacing the Socialist Civil Code of 1964, which will finally to come to an end.

All Slovak legal practitioners are expecting work on a new Civil Code, designed to supplement the Socialist Civil Code of 1964, finally to come to a successful end within the next few years.

If I were able to give one simple bit of advice to legislators, I would recommend that they apply common sense and set all new laws as simple to be understood as possible.

CEELM: Tell us about Prima Banka Slovensko, and about the company's legal department. How big is your team, and how is it structured?

Stefan: Clients of Prima Banka are paramount to us. When the deal is done, they must be left with a sense of satisfaction. This applies to external as well as internal clients. This rule is very clear to my legal and compliance team and this is the basis for its establishment and functioning. My team is split into two functional and geographically distant parts. A total number of five lawyers provide legal advice to 23 head office departments, 8 regional business centers, and 121 branches. It is located in our head office in Bratislava. A compliance staff consisting of five people is located in Zilina, two hours away from the capital. I split my working hours evenly between both of them, so I travel a lot.

"Clients of Prima Banka are paramount to us. When the deal is done, they must be left with a sense of satisfaction. This applies to external as well as internal clients. This rule is very clear to my legal and compliance team and this is the basis for its establishment and functioning."

CEELM: What is your typical day at work like? How has that changed during the recent COVID-19 crisis?

Stefan: As my team is split into two locations, my days spent with lawyers differ from those I spend with the bank's compliance staff. As a principle, we all work in open spaces as we believe information flow and prompt reactions are very valuable.

My life has not changed much during the coronavirus outbreak. There is still a lot of stuff that in-house lawyers have to handle, regardless of the external circumstances, although judicial proceedings have been postponed. Every single day I start by researching for new acts and measures of the government, public health services, and parliament. I also perform this same activity at the end of the day, before I leave my office. New laws and measures pop up so often that being vigilant in these days is more important than ever before.

CEELM: What do you consider your biggest single personal success or greatest achievement with Prima Banka Slovensko?

Stefan: My greatest achievement as an in-house counsel is the way I helped Prima Banka, in 2017, handle the acquisition of a competing Slovak midsize wholesale bank and its merger into Prima Banka. Despite the general perception that a merger of two banks must be a painful, difficult, long lasting, and expensive project, in Prima Banka we took a different approach. Leaving all external advisors outside and instead vesting trust in the abilities of the internal staff allowed that staff to feel fully involved – and this strategy paid off, contributing heavily to what we call the fastest and best banking merger in Slovakia yet. Since that final decision was made, through all regulatory approval processes, we reached commercial register confirmation of the merger within nine months. Another advantage of the full internal solution was maintaining coherence between individual agendas. Movements in product unification were compatible with movements in changes in IT solutions, legal developments, and technical movements. Everything fit together. I am proud that I could be part of the core team and contribute.

Additionally, in 2019, Prima Banka came to the market with its inaugural issue of covered bonds. It was both the first ever bond issue with a negative yield in Slovakia *and* the first ever covered bond issue with a negative yield in CEE. Again, I am proud to have been part of the core team.

CEELM: What one person would you identify as being most important in mentoring you in your career – and what in particular did you learn from that person?

Stefan: My biggest role model is Jan Rollo, the General Director of Prima Banka, who, with clearly-defined vision, made a big impact in my everyday activities as well as in much of my decision-making. His strict adherence to set goals proved a key strategy in providing the simplest and most easily-accessible products and services to clients, while still helping the bank develop and into the fastest-growing bank in Slovakia. It is very easy to understand why he was able to achieve this. Simplicity in products that are tailored for literally every category of clients are easier to develop – but at the same time clients are happier to pay a bit more than they are for products and services that are very complicated to access.

CEELM: On the lighter side, what is your favorite book or movie about lawyers or lawyering?

Stefan: There is not much time left when I am off duty. On weekends I try to spend some time with my family outdoors. John Grisham's books are probably my most favorite, especially the older ones. The Runaway Jury and The Firm fascinated me the most. ■

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MARKET SNAPSHOT: SLOVAKIA

CHANGES TO THE COMMERCIAL CODE IN 2020

By Michaela Stessl, Country Managing Partner, and Andrej Liska, Associate, DLA Piper Bratislava



On October 22, 2019, the Slovak parliament adopted Act No. 390/2019 Coll. (the “Amendment”), which significantly amends the Slovak Commercial Code as well as some other acts. Most of the Amendment’s provisions will come into effect on October 1, 2020.

The Amendment introduces, among other things, substantial changes in the liquidation procedure, restrictions on individuals against whom enforcement proceedings are conducted (such persons can’t found an LLC, transfer or acquire an ownership interest in an LLC, or become a managing director in an LLC), and changes in the functioning of the Commercial Register (such as digitalization and deregistration of inactive entities).

We would like to focus on certain aspects of the new liquidation regime. In light of the COVID-19 crisis, it is likely that more businesses will consider discontinuation of their operations in Slovakia than usual. In such cases, voluntary liquidation of a company is one of the possibilities to exit the Slovak market, alongside, for instance, the sale of the Slovak operation or bankruptcy (where the statutory conditions for bankruptcy are met).

In general, liquidation can be defined as an out-of-court settlement of property relations of a wound-up company that does not transfer equity to a legal successor and that shall cease to exist upon its deregistration from the Commercial Register without a legal successor. The purpose of the liquidation is to convert the property of a company into money and to satisfy creditors.

Based on the explanatory report, the purpose of the Amendment is to make the liquidation procedure more efficient.

The Amendment distinguishes the winding-up of a company and its entry into liquidation. A company is wound-up as of

the day stipulated in the resolution of the shareholder(s), and it enters into liquidation upon the registration of the liquidator in the Commercial Register.

Under the current regime, a company enters into liquidation on the day of its winding-up, i.e., as of the day stipulated in the resolution of the shareholder(s). The liquidation of the company and nomination of the liquidator shall be incorporated into the Commercial Register, but this incorporation is only of a declaratory nature.

This newly-introduced distinction is important because during the time between the winding-up of a company and its entry into liquidation, any disposal of assets of a company with a value exceeding 10% of the registered capital amount is subject to an expert evaluation and the approval of the supreme body of the company (*e.g.*, in case of LLCs this would be the general meeting or the sole shareholder). This “standstill” regime is designed to protect the interests of a company’s creditors.

Further, during the time between the winding-up and its entry into liquidation a company will be considered to be in crisis with all related consequences arising from the relevant provisions of the Commercial Code. Again, this mechanism is designed to protect creditors.

Prior to the registration of the liquidator in the Commercial Register, a liquidated company will also be obliged to deposit an advance payment for the liquidation into a notarial escrow which can be used solely for the payment of the remuneration and the expenses of the liquidator.

Another important change introduced by the Amendment is that by entering into liquidation, any unilateral legal acts of the liquidated company – authorizations, powers of attorney, and procurations with the exception of powers of attorney grant-



ed for the representation in court proceedings – cease to exist.

The process of the registration of creditors’ claims will also be regulated in more detail. The liquidator shall, among other things, prepare a list of registered claims and deposit it with the Collection of Deeds. The liquidator shall also prepare and deposit a list of assets of the liquidated company with the Collection of Deeds.

The Amendment also regulates in detail the satisfaction of claims by the liquidator. One of the new rules stipulates that

claims of affiliated persons shall be satisfied only after the satisfaction of other claims.

According to the Amendment’s transitional provisions, any liquidations where the liquidator was registered before October 1, 2020 shall be generally finalized according to the previous legal regime.

Overall, in terms of liquidation, the Amendment is a step towards greater protection of creditors of liquidated companies. ■



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EXPERTS REVIEW: TMT AND DATA PROTECTION

A person wearing a dark hoodie is shown from the side, holding a silver laptop. The background is dark with faint, blurred lines of white text, resembling computer code or data. A horizontal orange bar is visible behind the person's hand on the right side of the laptop.



The subject of Experts Review this time around is **TMT and Data Protection**. The articles are presented in order of average broadband speed by country, in megabits per second, as reported in the World Broadband Speed League 2019, prepared by cable.co.uk.

Thus, because there is no article this time around from Latvia – the country with the highest broadband speed in CEE, at 32.74 Mb/s, the first article is from Hungary, which averages an impressive 31.10 Mb/s. The article from Turkey – with an average broadband speed of only 5.27Mb/s – is last. The global average is 11.03 Mb/s.

■ Hungary – 31.10	page 76
■ Poland – 24.37	page 77
■ Czech – 23.27	page 78
■ Romania – 21.80	page 79
■ Austria – 19.33	page 80
■ Serbia – 19.17	page 81
■ Croatia – 17.22	page 82
■ Russia – 14.89	page 84
■ Ukraine – 7.72	page 85
■ Turkey – 5.27	page 86

HUNGARY: (OVER)REGULATING ARTIFICIAL INTELLIGENCE IN THE EU

By Dora Petranyi, Partner, and Katalin Horvath, Senior Associate, CMS Budapest



In February, the EU Commission issued its new White Book on Artificial Intelligence – a European Approach to Excellence and Trust. The White Book is the prelude to a new EU regulatory framework for AI that aims to minimize the risks of AI and seize the opportunities it offers.

High-Risk Applications in Focus

The focus of the new EU AI regulations is high-risk AI applications. The proposed definition sets out that an AI application is “high risk” if it is used in a sector where significant risks can be expected to arise, such as healthcare, transportation, energy, and the public sector, and only in use cases with high exposure. The EU Commission aims to introduce a voluntary labelling system for non-high-risk AI applications, but leaves relatively large room for self-regulation and self-assessment in lieu of government controls. Whilst the approach is commendable in the sense that it leaves enough room for innovation for most AI developments, it should be subject to review: high-risk AI systems should cover any AI applications using special categories of personal data—not just healthcare data but biometric data, genetic data, personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, and trade union membership. Furthermore, to ensure the ethical and fair use of governmental data, all AI applications using personal data from datasets from the public sector should be deemed high-risk.

New Legal Requirements for AI Developers, Deployers, and Users

The planned new legislation will introduce the following obligations for developers, deployers, and certain type of users of AI systems.

- **Training data:** Datasets used for training AI must be sufficiently broad, representative, and cover all relevant dimensions of gender, ethnicity, and other possible grounds of prohibited discrimination to avoid dangerous situations and prohibited discrimination.
- **Records and documentation:** The developer/deployer of the AI application must keep accurate records and documentation regarding the training datasets and testing process, programming and training methodologies, and processes and techniques used to build, test, and validate AI systems. In certain cases, they must keep datasets themselves.
- **Transparency:** The developers of AI applications must provide information on the AI system’s capabilities and limitations, the purposes for which the system is intended, and the expected level of accuracy.
- **Robustness and Accuracy:** The AI systems must be robust and accu-

rate, and outcomes must be reproducible, which means that the AI application must be resilient against both overt attacks and more subtle attempts to manipulate data or the algorithms themselves.

■ Human Oversight: Developers must

ensure that the output of the AI system will not become effective unless it has been previously reviewed and validated by a human, or at least where human intervention is ensured afterwards. Human monitoring of AI operations is also required.

We think these obligations are commendable and in line with global trends. Nevertheless, we would caution that the new administrative and documentation requirements, especially that requiring developers/deployers to keep training datasets themselves, raise potential inconsistencies with the GDPR, and could potentially lead to over-regulation.

Furthermore, these administrative burdens could overwhelm SMEs and cause competitive disadvantages for those established in the EU, as the amount of proposed documentation, registration, testing, checking, and certifying might also not generate an environment fostering innovation and might decrease the competitiveness of EU based companies in the global AI race.

New Authorities for Conformity Assessment of AI Systems

The proposal includes provisions empowering regulatory authorities to assess compliance with the new framework, including procedures for testing and inspecting or certifying high risk AI systems, including checking algorithms and datasets in the pre-launch development phase. A prior conformity assessment would be mandatory for all developers, deployers, and corporate users of high risk AI. The new authorities would be entitled to ex-post control and continuous monitoring of compliance.

We are generally against administrative control and especially in areas so key to innovation. In our view, supervisory authorities would not necessarily have the technical knowledge to assess any risks in the algorithms. Furthermore, those algorithms usually constitute trade secrets, which the AI companies are not keen to reveal. It would be significantly more critical to safeguard access to data and databases and transparency around data processing, especially regarding data stemming from or built with the use of public funds.

Overall, although the White Book on AI lists the proper principles of AI development, like trustworthiness, transparency and safety, over-regulating this area could hinder innovation for EU based competitors, and thereby endanger competitiveness on a global scale. ■



POLAND: SWITCHING TO THE “NEW NORMAL”

By Jacek Michalski, Partner, and Jakub Pietrasik, Senior Associate, Wolf Theiss Warsaw



There is a question circulating on the Internet right now: Who led the digital transformation of your company? Possible answers are: a) CEO; b) CTO; c) COVID-19. Which answer is correct?

The COVID-19 pandemic required companies to adapt. In fact, COVID-19 has forced companies to transform digitally. This is challenging in many aspects, but perhaps particularly with regard to: 1) remote

work and data protection, and 2) online infrastructure. These issues have arisen in the face of COVID-19, but they will likely become the “new normal” after the pandemic passes.

Data Protection in Remote Work

Employers are still obliged to apply high standards for personal data protection when their employees work remotely. However, fulfilling GDPR requirements may be challenging due to a lack of internal procedures and/or adequate infrastructure.

In Poland, the Personal Data Protection Office (PDPO) issued recommendations that stated, among other things, that employees should comply with their employer’s internal data protection policies even when working from home. Additionally, employees should minimize the use of paper documentation – they should use protected cloud services instead. All electronic devices should have the necessary software/antivirus updates to ensure protection and security. Employees should also use effective access controls such as multi-factor authentication and strong passwords. Furthermore, employees should only use their employer’s trusted networks or cloud services, and while working without cloud or network access, employees should ensure that any locally stored data is adequately backed up in a secure manner.

In practice, applying the PDPO’s recommendations may be very difficult, especially in the SME sector, because the data protection requirements require safe networks, VPNs, and other advanced and costly IT resources.

Virtual Meetings and Online Infrastructure

Digital transformation means that meetings are held online. This is also applicable for shareholder and board meetings.

Under special COVID-19 legislation, virtual shareholder and board meetings are now allowed in Poland. This brings technical challenges. Any technology – for example, voice-over-IP software – used for a virtual meeting must comply with regulatory requirements concerning confidentiality. This technology must also allow for real-time, two-way communication, where participants can speak during the

meeting and effectively exercise voting rights. Additionally, in practice, all activities should be recorded.

There is a growing demand for legal advice for tech companies providing tools dedicated to hosting virtual meetings. Our advice goes beyond Zoom and MS Teams software – it concerns specialized applications and services dedicated for highly-regulated matters.



E-signatures and Electronic Documents

Remote communication also means utilizing e-signature and electronic documents. Although the idea itself is very good, it brings many practical difficulties.

Different legal systems and jurisdictions have different approaches to electronic documents and e-signatures – and particularly to the legal implications of particular types of signatures/authorization.

In Poland, on-line documents can appear in one of two legal forms: a) document form, and b) electronic form. “Document form” is a commonly-used electronic document – for example, an e-mail, a scan of a signed contract, or a contract signed with a “normal” electronic signature. Confusingly, in common language, this form is often called “electronic,” and many e-signature providers declare that they provide “electronic signatures” which may suggest that the document is in an electronic form. However, formally, in order to qualify as an “electronic form” in Poland, a declaration of intent must be made in electronic form and additionally it should be accompanied with a qualified electronic signature – only then can such declaration of will qualify as “electronic form,” equivalent to declarations of intent made in writing. The two forms may sound very similar, but from a legal point of view the difference is huge and decisive.

Innovations in business must be applied, but with the utmost care and diligence. In our experience, clients in the TMT sector from different parts of the world have to adapt to Polish requirements when they conclude agreements such as the transferring of IP rights (such agreements require a written form), or at least need to obtain a complete explanation of the legal implications of using a particular type of e-signature, just to get the full picture.

What’s Next?

The issues raised above are only the tip of the iceberg. At Wolf Theiss we define many other challenges of the “new normal” and their impact on innovative companies. Our role is to properly navigate the businesses of our clients. ■

CZECH REPUBLIC: DIGITAL TRANSFORMATION OF COURTS

By Michal Matejka, Partner and Zbynek Loebel, Of Counsel, PRK Partners



During the current pandemic crisis, courts in countries around the world have had to suspend their regular operations and have focused only on the most urgent and time-sensitive matters. Yet the first few online courts have been able to maintain regular service. This has led to a massive increase in interest in and awareness of online dispute resolution (ODR) and online courts among judges, arbitrators, mediators, and lawyers in general. The pandemic has highlighted the ability of ODR to keep operating in crises that impact physical operations. Suddenly Zoom and even email are being considered ODR technology because they enable online court proceedings and distant mediations.

Yet ODR and online courts are much more than video-conferencing systems or arbitration over email. The essence of ODR is the application of technology in a form that positively aids resolution, whether through self-negotiation, innovative methods such as reframing aids, blind bidding, nudge technology, crowd sourced determination (jury of peers), or even, in some countries, the creation of robo-judges able to crunch data and assess precedents at a much faster rate than people.

Perhaps the most interesting online courts are those designed to substantially improve access to justice and provide people with a bigger role in determining how their dissatisfactions are resolved. Such new courts are the beginning of a digital transformation of our civil justice as we know it, which, although it may take many years to complete, seems both inevitable and desirable.

In civil cases, ODR allows the ultimate users of the justice system to be put first, which changes the rules of the game regarding the way civil cases are administered. Future online civil courts are going to be based on “mobile justice” – justice that is accessible via mobile phone and applications. This is a positive feature because it requires significant simplification, re-engineering, and re-inventing of civil court procedures – all of which will make justice more accessible and understandable, while preserving key ethical principles of civil judicial processes.

Successful online courts already exist both within the EU (e.g., in Denmark) and outside it (e.g., in Singapore and Canada). Interestingly, many standard ODR processes are treated similarly by online courts and private ODR platforms, despite their differences. For example, online courts have introduced direct negotiation or assisted negotiation as part of their platforms, just as they have been designed by private ODR providers.



Future online courts will, step-by-step, implement end-to-end processes and be data driven, meaning that the use of AI tools and models will increase. One of the authors of this article, Zbynek Loebel, has argued in his recent book, *Designing Online Court; The Future of Justice Is Open to All*, that in order for online civil courts to develop, the introduction of open ODR processes, schemes, and standards will be critical. Zbynek came to this conclusion after analyzing examples of the current online courts as well as private ODR platforms and the issues that they are now facing.

New technology including ODR and AI can bring a lot of improvements into our lives. But there are also serious dangers and risks that can turn into opposite outcomes – innovations could result in more discrimination, tougher central control of the judiciary systems, and further the mistrust people have about the functioning of the court system. As there are many examples in recent history confirming this danger, it is crucial that designers of online civil courts set up efficient safeguards from the very beginning. It will be critical for the designers to focus on the application of key ethical principles – not just the general principles of fair justice, but also ethical principles of AI, ODR, and software development. We are happy that in our country, the Czech Republic, our firm, PRK Partners, is actively involved in the preparatory process aimed at designing and developing the first online civil courts. ■

ROMANIA: WILL THE NEW AML 5 LEGAL FRAMEWORK RESTRICT TRANSACTIONS WITH VIRTUAL CURRENCY IN ROMANIA?

By Nicolae Ursu, Partner, CEE Attorneys/Boanta, Gidei si Asociatii



In a recent warning, the European Union Commission sent infringement letters to Romania and seven other countries alerting them that they had failed to notify the EC of any implementation measures related to the transposition of the 5th Anti-Money Laundering Directive (EU Directive 2018/843, or AML 5) into national law, and instructing them to proceed with the transposition,

which was supposed to have happened by January 10th, 2020, immediately.

In this context, the question is: *“Will the new AML 5 legal framework restrict transactions with virtual currency on the Romanian market?”*

Before answering this question, we emphasize that Romania, like many EU countries, did not regulate cryptocurrency at all – qualifying it neither as regular nor electronic currency, nor as a monetary value stored on instruments.

The National Bank of Romania (NBR) has repeatedly emphasized in recent years that it has no competence to monitor virtual currencies deriving from the use of the digital ledgers technologies (DLT). However, on many occasions it has warned that cryptocurrency is not a national currency and may expose end users to certain risks due to its volatility and low degree security.

Many regulatory and supervising authorities of other EU member states (e.g. central banks and national agencies supervising the financial sector) do not recognize virtual currencies generated by “block-chain” technologies as a legitimate payment instrument.

The European Banking Authority (EBA), while reflecting on the qualification of some crypto-assets as “financial instruments” under the Markets in Financial Instruments Directive 2004 (MiFID) to determine whether the current EU financial services law may apply to crypto-assets, concluded that the current perimeter of regulation is such that crypto-assets *may*, depending on their characteristics, qualify as financial instruments or e-money. Still, the EBA has not issued a clear and straightforward statement.

In other words, cryptocurrency is not forbidden by EU regulations governing the financial sector or by the domestic legislation of many EU members, including Romania. It is a big challenge at the EU and national levels to bring the applicable financial services legislation and technology together. But is there a necessity for EU states’ govern-

ments to regulate and supervise cryptocurrency to protect both financial instruments in general and people using virtual currency?

Until a piece of legislation is passed addressing the ramifications of cryptocurrency in the financial instruments, we consider there are no restrictions in using cryptocurrency in Romania.

We must say at least this: the new AML5 brings new restrictions in using cryptocurrency on EU markets! Will these new rules be able to shut-down cryptocurrency payments/exchange in Romania? Well, in UK this happened in case of Bottle Pay and other companies.

In the years following the emergence of cryptocurrencies, more and more officials have expressed concern about DLTs’ capacity to serve as favorable environment for money-laundering, as users/operators of cryptocurrency platforms may be tempted to avail themselves of the degree of anonymity conferred by those platforms to conceal transfers. From this perspective, the enactment of new AML5 seems to be more than a simple occurrence.

In a nutshell, under AML5: (1) providers engaged in exchange services between virtual currencies and fiat currencies (PES/FC), and (2) custodian wallet providers (CWPs) become “obliged entities” and must comply with the AML’s requirements. The member states must ensure that all obliged entities are registered.

Would these new requirements lead the Romanian lawmaker to enact a new regulatory legal framework? Would this require those PES/FCs and CWPs providing cryptocurrency services to Romanian users (such as Revolut and Bitcoin) to establish new entities, or ask for a specific authorization to the NBR?

There is no clear answer, as at the moment there is no final draft project of the law transposing the AML5 Directive into Romanian law. However, the Ministry of Finance has announced that it is working closely with the Office for Prevention of Money Laundering and the NBR to prepare such a draft. This inter-institutional cooperation suggests that the lawmakers intend to have the PES/FC/CWP cryptocurrency businesses regulated by law, and not only subject to the AML’s requirements.

The regime may be similar to that applicable to providers of gambling services, which are subject to both regulatory and AML requirements. But, only time will reveal the final resolution (and legal technique) of the Romanian authorities for transposing the AML5 in Romania. We will come back to this very hot topic ...! ■

AUSTRIA: AUSTRIA DURING COVID-19 – USE OF ELECTRONIC SIGNATURES

By Andreas Schutz, Partner, and Christopher Bakier, Associate, Taylor Wessing



In Austria, like in many other countries, the current restrictions due to the COVID-19 situation are causing extensive and opaque changes in social life and related legal issues. Although home office has become well established, it is still associated with limited opportunities for personal interaction. The situation raises many legal questions, one of which is how people can pragmatically conclude or sign a legally effective contract.

Questions which increasingly arise include whether and how contracts under private law, annual financial statements, and other official documents may be signed “electronically” and what evidentiary value an electronic signature has. In any case, it should be noted that in Austria the following different electronic signatures have different legal effects.

Simple Electronic Signatures

Simple electronic signatures are probably the most commonly used form of electronic signature at present. With a simple electronic signature, data in electronic form is merged with other electronic data. The signatory thus uses this data to sign documents. In practice, documents are transmitted to the other party, who loads the data into the software of an external provider, and only then can the document be digitally signed. Documents that are simply digitally signed are admitted as evidence in official proceedings.

The simple electronic signature is sufficient in cases where there are no special or strict formal requirements (*e.g.*, internal corporate processes, travel expense reports, and private-law contracts). A simple electronic signature basically only has the purpose of identifying the author of a message. It can be created with various programs and applications on smartphones, tablets, and computers.

Qualified Electronic Signature

However, only a so-called “qualified electronic signature” is equivalent to a “handwritten signature.” Qualified electronic signatures meet the legal requirement of “written form” within the meaning of Austria’s General Civil Code. Additional legal formal requirements, such as provisions requiring the addition of a notary or lawyer (*i.e.*, certification or notarial deed) or legal family and inheritance law transactions that require a written form are not affected by this, as in these cases a qualified electronic signature does not have the same

legal effect as the written form. Otherwise, however, electronic contracts signed with a qualified electronic signature are just as legally binding as if the contract had been signed “by hand.”

A qualified electronic signature with legal effect can be used where a “written form” within the meaning of the Austrian Civil Code is required, such as when concluding and terminating a fixed-term rental agreement or shareholder resolutions of limited liability companies, which can be made in writing by circulation and no notarization or submission to the commercial register is required.

Of course, in everyday business, not every person will be able (or will want) to rely on software or trust service to digitally sign a declaration of intent, especially when it has to be done “quickly.” A practical way of fulfilling the criterion of written form even without external providers or the use of special software is to print out the document at home, sign it, and send it back to the contractual partner. Although not everyone has a scanner at home, even a photograph of the signed contract document, which can be taken via mobile phone, is sufficient to meet the criterion of written form, although a previously scanned-in signature copied onto the contract document is insufficient. Unless more restrictive legal formal requirements are applicable, contracts may provide that digital signatures are excluded.

Cases in which a qualified electronic signature does not have the legal effect of a signature in written form and in which an “original” handwritten signature is still required include, among others, matters relating to declarations of surety or legal transactions under family and inheritance law that are bound by form. Declarations of intent in family and inheritance law and declarations of surety can only be electronically signed if a notary or a lawyer was involved in the conclusion of the declaration in an advisory capacity and a corresponding declaration was also documented with the professional signature of this notary or lawyer. The making of testamentary dispositions in electronic form are also prohibited, as are legal acts which are bound by other legal formal requirements and which require the involvement of a notary or a lawyer.

In crisis situations that require home office, the use of digital signatures can make legally effective declarations of intent. However, an e-mail without a secure digital signature is no more equivalent to a written contract document with a handwritten signature than a signature that has only been scanned, a fax, or a copy. ■



SERBIA: WALKING THE FINE LINE – PROCESSING EMPLOYEES DATA DURING COVID-19 PANDEMIC

By Goran Radosevic, Partner, and Milica Filipovic, Senior Associate, independent attorneys at law in cooperation with Karanovic & Partners



Companies around the globe are having to make urgent decisions to keep their employees safe and ensure business continuity in the midst of the COVID-19 outbreak. In order to fulfil these goals, companies need to find the right balance between providing a safe working environment and respecting their employees' privacy, which can prove to be quite difficult in practice.

Aware of the gravity of the situation, employers began collecting health data related to COVID-19 from their employees and visitors quite early on, which quickly raised privacy concerns – what exactly is permitted in the present circumstances, and under which conditions?

Although Serbia has declared a state of emergency and implemented a number of measures aimed at addressing the COVID-19 concerns – including restricting freedom of movement and gatherings – no derogation from the Constitutional right to protection of personal data has yet been put in place. This means that employers are permitted to adjust their business activities and data processing practices to address the new developments, but any measure implemented to that end must be fully in line with the Serbian Data Protection Law. The Serbian Data Protection Authority has recently issued a general position on data processing during the COVID-19 outbreak, which only reiterates the need to maintain compliance with the law, but unfortunately does not provide any further details.

Since personal data related to COVID-19 is health data, which is considered sensitive under the law, its processing can be performed only if a specific set of conditions is met. Amongst these conditions, the key ones relate to ensuring:

Adequate legal grounds, which in the context of COVID-19 may include compliance with an employer's legal obligation to ensure safety and health at work, the legitimate interests of an employer or third parties (e.g., visitors and other employees), the public interest, or even the protection of individuals' vital interests. Processing of health data also must fall within one of the exceptions to the general rule prohibiting the processing of sensitive data, among which the public interest in public health, employer's obligations in the field of employment, or potentially even the protection of individuals' vital interests could be considered.

Specific and necessary purposes, which include the need to determine whether employees and visitors are infected or have been in contact with infected people in order to provide a safe workplace for other

employees. With respect to the disclosure of the identity of infected persons to other employees, this would be lawful only if it is strictly necessary for the protection of others.

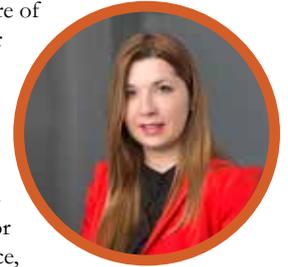
The data minimization principle, which requires that employers should only collect the information strictly necessary for achieving a specific purpose. For instance, it would be proportionate to collect data such as previous contacts with supposedly infected persons and stay in high-risk areas, whether a person is symptom-free, and contacts made with others within the company. Although it may be considered reasonable, at least in certain circumstances, the prevailing interpretation of EU data protection authorities is that performing employees' temperature measuring on-site is prohibited; and

Prior notification, which means that the employees and visitors should be properly informed of all aspects of data processing and their related rights, which can be performed either by amending existing privacy notices or (ideally) by preparing new ones specifically addressing the COVID-19 circumstances.

Depending on the specific measures implemented, companies should also consider performing a data protection impact assessment prior to collecting any personal data from individuals relating to COVID-19. This assessment is mandatory when the processing is likely to result in a high risk to individuals' rights and freedoms, which in Serbia explicitly includes the large-scale processing of health data, but is very helpful in other cases as well to ensure compliance with key data processing principles.

It goes without saying that finding an adequate balance between the health and safety precautions in the workplace and employees' right to privacy is quite a challenge. Although it would be unusual for the Serbian Data Protection Authority to start being overly nit-picky with enforcement during this time of crisis, it is nevertheless advisable to maintain at least certain reasonable privacy compliance standards. This is even more important for companies that intend to implement more intrusive COVID-19 measures, as these are likely to disrupt the delicate safety/privacy balance the employees and the public are used to, potentially resulting in both compliance risks and reputational damage. ■

The information in this document does not constitute legal advice on any particular matter and is provided for general informational purposes only.



CROATIA: OUR TOP 3 PICKS OF DATA PROTECTION NEWS FROM CROATIA

By Olena Manuilenko, Head of IP & TMT, Divjak, Topic Bahtijarevic & Krka



Looking back on the first five months of 2020, three data processing topics in Croatia deserve attention, if for nothing else than their historical value.

Data Protection – particularly finalizing the EU’s e-Privacy Regulation – has been identified as among the priorities of the Croatian Presidency of the Council of the European Union. The Croatian Personal Data Protection Agency (AZOP) publicized its first administrative fine against a bank for denying its clients the right of access to their personal data. And, if you were hoping this article would skip the ubiquitous COVID-19, no such luck: data processing issues and guidance amid the pandemic is the winner of our mini chart.

1. Croatian Presidency of the Council of the European Union

This is Croatia’s first time presiding over the Council of the European Union since the country’s accession in July 2013. The motto of the Presidency is “A Strong Europe in a World of Challenges.” No one can deny the abundance of challenges the world has faced so far in 2020. One of the priorities identified by the Croatian Presidency also proved to be a challenge, as its e-Privacy Regulation proposal of February 21, 2020 that the processing of metadata and collection of information from terminal equipment be allowed based on legitimate interests rather than consent raised many eyebrows. The proposal is clearly contrary to the position of the European Data Protection Board (EDPB), as expressed in its May 25, 2018 Statement on the Revision of the ePrivacy Regulation and its Impact on the Protection of Individuals with regard to the Privacy and Confidentiality of their Communications. The EDPB supported an approach based on “broad prohibitions” and “narrow exceptions” and ruled out the option of processing “...electronic communications content and metadata based on open-ended grounds, such as ‘legitimate interests’, that go beyond what is necessary for the provision of an electronic communications service.”

2. First Fine for Data Processing Violations

In March, the AZOP announced on its website that it had imposed the first administrative fine for a GDPR violation in Croatia, against a Zagreb-based bank that had denied its clients access to their personal data in violation of Article 15(3) of the GDPR.

Since October 2018, the AZOP had received frequent complaints from the bank’s clients that they had repeatedly been denied access to requested documentation. The AZOP rendered 34 orders instructing the bank to provide its clients access to their personal data. Apparently, the violation affected more than 2,500 of the bank’s clients.

Under the national GDPR Implementation Act, the AZOP must publish on its website a final and binding decision without anonymizing the perpetrator data if the imposed fine amounts to at least HRK 100,000 (approximately EUR 13,195). Since the identity of the bank and the amount of the fine remain undisclosed, we assume the AZOP’s decision has not become final and binding yet. Presumably, the bank has contested it before the competent administrative court.

3. Data Protection amid Covid-19

In view of the anti-pandemic measures imposed by the Civil Protection Headquarters of the Republic of Croatia, the AZOP provided guidance on the GDPR-compliant processing of health-related personal data in the context of the state of emergency caused by the novel coronavirus.

In March, advice on the processing of employee health data by employers was published. In the beginning of May, as the preventive measures were relaxed, the AZOP reflected on the processing of client personal data by service providers where services require physical contact (such as beauticians, hairdressers, and barbers). The AZOP’s recommendations boil down to the importance of (a) abiding by the GDPR’s data processing principles; and (b) determining the proper legal basis for the processing of health-related data under Articles 6 and 9 of the GDPR. Specifically, the AZOP emphasized that often consent will not be a valid legal basis for data processing in the subject-matter context.

In April, with the support of local businesses, the Croatian Government launched a digital assistant based on the WhatsApp Business API, to help educate people about the symptoms of coronavirus infection through assisted self-assessment, direct them to the competent institutions, and report relevant information about their household to facilitate real-time data sourcing for epidemiologists. It was named Andrija, after Professor Andrija Stampar, a distinguished Croatian scholar in the field of epidemiology and preventive medicine, who was one of the founders of the World Health Organization. In May, the Government revived the idea of developing a contact tracing app on iOS and Android platforms. According to recent media publications, the app is intended to be GDPR-compliant and follow EDPB guidelines. ■

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RUSSIA: ON THE CONCEPT OF “DATA PROCESSOR” IN RUSSIAN PERSONAL DATA LAW

By Eldar Mansurov, Leader of Regulatory and Compliance, Peterka & Partners Moscow



Although, unlike the GDPR, Russia’s Personal Data Law does not clearly distinguish the concepts of data controller and data processor, there is a draft amendment to Russia’s law which, if adopted,

would introduce these concepts.

So, what does the Russian Personal Data Law say about the roles of personal data controller and processor and how these concepts could help manage the Russian personal data localization requirement, especially in regards to cross-border personal data transfers?

In determining the parties involved in personal data processing, Russia’s Personal Data Law refers only to a “data operator,” which it defines as a person who, independently or in cooperation with others, organizes and/or processes personal data as well as determining the purposes and scope of personal data processing. This definition is rather unhelpful, because it suggests that with respect to the same set of personal data a company could be regarded as both controller and processor within the GDPR’s meaning of these concepts (although it is unusual, under the GDPR, to have one company act in both roles simultaneously with respect to the same set of personal data).

Furthermore, Russia’s Personal Data Law, while setting out the requirements on personal data processing and the relevant obligations of the parties involved, usually refers only to the obligations of a data operator, suggesting, at first sight, that it does not distinguish between a controller and a processor in the GDPR-sense.

However, the Law, though in a rather non-evident manner, provides that apart from a personal data operator there might be a *de facto* separate data processor. The Russian Personal Data Law allows a personal data operator to “assign” the processing of personal data to a third person based on a contract and provided that the consent of the data subject is obtained. It is notable that, at the same time, the Law requires that any such processor follow all the requirements of the Personal Data Law.

This ambiguity in the separation of the legal roles between a data operator (controller) and a data processor, as well as the absence of comprehensive regulation of relations between the two, results in many complications in practice. A clearer distinction between the

concepts of data operator and data processor would help resolve many practical issues.

For instance, there is a rather unique feature in the Russian personal data regulations – the data localization requirement. Although the Russian Personal Data Law does not *per se* prohibit the cross-border transfer of personal data, according to the localization requirement during the process of the collecting of personal data, including collection via Internet, a data operator must provide that a record, and the organization, accumulation, storage, update, and retrieval of personal data of citizens of the Russian Federation is held on databases located within the Russian Federation. In certain cases, this obligation also applies to those foreign companies who do not have a corporate presence in Russia but who target the Russian market and Russian customers via the Internet.

Although the Russian personal data regulator has announced that the Russian Personal Data Law does not have extraterritorial effect, and that once personal data has crossed the Russian border, it shall be regulated by the jurisdiction of the place of destination, recent developments in the Twitter case – in which Twitter Inc. (California, USA) was fined for failing to localize the personal data of Russian citizens in Russia – confirmed that Russian authorities intend to apply this specific requirement extraterritorially.

Thus, if a foreign company wishes to comply with the Russian localization requirement, engaging a local data processor with a clear role and legal status to ensure that the personal data of Russian citizens are first processed locally and only then transferred abroad to a data operator might be an option. Moreover, introducing the concept of data processor to Russian law would not only help eliminate the current legal ambiguity but would also promote local data processing business. ■

UKRAINE: UKRAINIAN DATA PROTECTION CONSIDERATIONS RELATED TO COVID-19

By Mykola Stetsenko, Partner, and Dmytro Symbiryov, Senior Associate, Avellum



The restrictions that have been implemented by most governments to tackle the COVID-19 pandemic have affected various sectors of the economy and changed the way most businesses operate.

Many companies have switched to remote working to minimize personal contact to the extent possible. As a result, the intensity and volume of the data flow inside organizations has risen dramatically,

making data protection compliance as compelling as it was at the end of May 2018 when the General Data Protection Regulation (GDPR) became effective.

Let's have a closer look at how the Ukrainian data protection framework and the country's regulatory authorities are dealing with some of most crucial issues put on the agenda by COVID-19.

Lawfulness of Processing

Under the general rule, processing of personal data (including health data) requires the consent of individuals whose personal data is processed. In addition, processing of health data, which has a higher level of legal protection by operation of law, requires that the Ukrainian Parliament Commissioner for Human Rights (the "Regulator") be notified.

Nevertheless, health data may be processed without the consent of an individual if, for example, processing is necessary for the due performance of the controller's statutory obligations or to protect the vital interests of the individual whose data is processed.

In addition, processing of health data does not require the obtaining of consent if it is required for public health purposes and where the processor has a medical license or is a medical worker or a person employed with a medical institution.

Position of Regulator?

Although most European data protection authorities have issued official positions on whether certain health data (e.g., body temperature, fact of being tested COVID-19 positive, etc.) may be collected/processed without consent based on the public interest or other exemptions, the Regulator, so far, has remained silent.

Given the nature of the COVID-19 crisis, the requirement to notify the Regulator of the processing of health data appears to be quite burdensome and even impractical for some processors. As the result, some of them have approached the Regulator asking whether this requirement may be temporary lifted.

While the Regulator has not yet announced its official position,

we expect it to follow a general trend set by most data protection authorities, acknowledging the challenges raised by COVID-19 in terms of managing data protection and information security matters, but eventually reinforcing the view that the relevant laws should still apply.

Further Course of Action

While the Regulator has not yet provided any guidance on how to deal with the data compliance challenges caused by COVID-19, we have a few recommendations on how to deal with some of these challenges.

We recommend checking the subject matter of consents the company has already obtained. This may be especially relevant in relations between employer and employees. Most likely, such consents do not cover health data which the employer may collect and/or process through, for example, the use of thermal cameras. If this is the case, the processing of health data of such employees requires obtaining a separate consent (as the purpose of the initial processing has changed).

The employer may inform employees of the fact that other employees have tested positive for COVID-19, and of their potential exposure. However, the employer should not disclose the identity of infected employees to their colleagues.

Information Security

While the regulatory framework addressing information security matters remains quite undeveloped, we recommend that companies act responsibly and proactively by applying best practices without external stimulus.

It is easier to develop a solid IT infrastructure and introduce relevant policies within the company in advance, thereby reducing the risks attached to email scams, social engineering, and so on, than to refrain from doing so and await potentially adverse consequences.

Conclusion

While it is hard to predict how long COVID-19 and the relevant restriction measures will last, it is important to see the opportunities attached to such challenging times.

Shifting to remote work may be a good test for companies' IT systems and personal data compliance policies. This change may either show the areas for improvement or, on the contrary, confirm that the internal business processes are flexible and can be easily adjusted even to the realities of COVID-19. ■



TURKEY: SAVE THE DATE FOR IYS REGISTRATION – EXTENDED DEADLINE AND RECENT UPDATES ON COMMERCIAL ELECTRONIC MESSAGE

By Ayse Ulku Solak, Partner, and Tugce Gelir, Senior Associate, Nazali Tax & Legal



In Turkey, a local and centralized commercial electronic communication management system (IYS) for obtaining, exercising, and tracking opt-in/opt-out requests as well as complaints from recipients of electronic commercial communications was established under the supervision of the Ministry of Trade, the competent authority, in line with recent amendments to the Regulation on Commercial Communication and Commercial Electronic Messages. Also,

a company has been incorporated solely for the establishment and management of IYS on behalf of the institution authorized by the Ministry (IYSCo).

Registration Obligation and Deadline: As per the amended provisions of the Regulation, among other things, service providers are required to be registered with IYS and transfer all consent duly obtained under the Regulation to IYS. IYSCo has recently clarified that this requirement applies to all real persons and legal entities, whether incorporated in Turkey or abroad, aiming to send commercial electronic messages to the recipients in Turkey. Foreign entities are also obliged to provide their apostilled (i) circular of signature, and (ii) trade registry certificate/commercial activity certificate for the registration. IYS also requires service providers to divide their permitted databases with respect to their trademarks/brands and permitted communication channels.

The deadline for registration and transfer was June 1, 2020. However, just like other countries around the world, the COVID-19 pandemic has disrupted business operations in Turkey. Upon request from companies and non-governmental organizations in different sectors, the Ministry postponed the deadline to August 31, 2020 to eliminate possible losses and damages due to non-compliance.

As a result, before August 31, 2020, service providers must: (i) register with IYS, (ii) classify existing contact information as permitted / not permitted in a provable manner; and (iii) upload the permitted contact information to IYS in the required format.

Registration and Uploading Process: The application of the online registration of the service providers to IYS is made through the IYSCo website. Service providers are required to sign a standard service undertaking with the e-signature of the authorized signatories and provide information regarding: (i) their Central Registration System (MERSIS) numbers and the registration certificates of their trademarks subject to commercial communications; (ii) authorized signatories' Turkish identity numbers, mobile phone numbers, and

business e-mail addresses, and (iii) permitted contact details. Due to the increasing demand, it is expected that IYSCo may also offer alternative methods for verifying the identity of authorized signatories of service providers (i.e., through electronic government portal). Following verification, the (i) recipient's contact details (telephone number and/or e-mail address); (ii) permission date; (iii) permitted channels (call/text message/e-mail); and (iv) source of permission (i.e., signed permission form or website) shall be uploaded to IYS for each recipient whose permission has been duly obtained under the Regulation.



The permitted database shall be uploaded by the service providers manually or through application programming interface (API) integration, which enables interaction among data, applications, and devices, and may necessitate further technical work/support on the service providers' side.

Outcomes of Non-Compliance: Although there is no specific sanction provided under Law No. 6563 on Electronic Commerce for non-compliance with the registry obligation, pursuant to the Regulation, permissions that are not uploaded to IYS before the deadline shall be considered invalid. After the deadline, IYS shall notify recipients that (i) their contact data has been uploaded on IYS; (ii) they have the right to check their permissions until November 31, 2020; and (iii) their approvals will be deemed valid unless they exercise their right to opt-out through IYS before that date. Recipients may also freely opt-out anytime following that date. In brief, it will not be lawful for service providers to send any commercial electronic messages to recipients whose permitted contact data has not been uploaded to IYS.

The competent authority is the Ministry to impose fines for unsolicited electronic communications. However, it is important to note that Law No. 6698, which constitutes the main legislative instrument regarding the processing and protection of the personal data, must also be taken into consideration for electronic marketing communications since personal data is processed for such communications. Accordingly, commercial emails, text messages and outbound calls fall within the scope of both the e-communications and data protection legislation. Therefore, the competent data protection authority may separately impose administrative fines on service providers for unlawful processing activities. Last but not least, criminal sanctions may also be imposed for unlawful processing of personal data in line with Law No. 5237. ■

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