



CEE

YEAR 10, ISSUE 4
MAY 2023

LEGAL MATTERS

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

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The Debrief: May 2023 ■ Tech Sector Focus: The Growing Impact of the ESG-Driven Data Race ■ CEELM Top 10: Most-Read Briefings
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BANKING AND FINANCE

CZECH LAW FIRM ON INTERNATIONAL MARKETS

Highly Recommended in these categories:

- Corporate Law
- Property Development and Real Estate Projects
- Mergers and Acquisitions
- Dispute Resolution and Arbitration
- Capital Markets
- IT Law
- Employment Law
- Compliance
- Tax Law
- Transport & Logistics

Recommended in categories:

- Competition Law
- Insolvency and Restructuring
- Intellectual Property
- Infrastructure & Energy
- Environmental Law

THANK YOU.



EDITORIAL: PUTTIN' ON THE RITZ

By Radu Neag

Where: Why in Istanbul, of course. The size of a couple of New Yorks, Istanbul is one metropolis that made the right decision on urban wildlife. Mice and rats can be unseemly and dangerous, and dogs tend to leave a mess in the middle of the street. Cats, on the other hand, are clean, take care of the rat problem, are reasonably well-behaved, and are just exceedingly cute. Well done, Istanbul!

Then there were the people – more welcoming than you'd ever believe. Kind and helpful as well, doing their best to overcome any language or cultural barriers. And the food – my goodness, the food. Ali Nazik has carved a permanent spot in my top ten dishes worldwide.

While in Istanbul, I frequently felt like I was stealing from businesses. I was losing my voice at one point – so for an evening, I was just sipping hot tea. Three hours later I had racked up a three-euro bar tab while sitting under a heating lamp and interacting with at least five waitstaff (one to welcome us, one to take our orders, one to deliver our orders, one to clear our table, and one to just ask us if everything is in order). Even with a 100% tip, I felt I couldn't possibly have covered the electricity and the time of those five people. I'm probably missing something.

What: The CEELM GC Summit and 2022 Deal of the Year Awards. If you missed it, well, you shouldn't have. It was a packed two days, in more ways than one: the full schedule, the people in the room, the best practices being shared, and the insightful conversations. I'm grateful I was able to attend – and was both honored and humbled by the caliber of lawyers who chose to join us for both events. The Award Gala was, I thought, a spectacular event and a chance to meet old and new friends, put some faces to those names I've been corresponding with for some time, and celebrate those lawyers that make our work both easy and difficult, but certainly, at the end of the day, worth it.

Who: A full list of participants is available somewhere on the GC Summit and DOTY Gala websites. To all of them, our

heartfelt thanks. Hope you had a good time, took something away with you, and liked the photos. See you at the next one!

And, below, I'd like to introduce you to the team that made it all click: the CEELM Five. We're like the Avengers or AC/DC – but we mostly sit behind computers.

The Heart: Anna, our events *czar*, and *de facto* leader of the Istanbul expedition. She handled all the logistics while – and this is mind-boggling – still being able to focus on whether people were happy, having a good time, or needed anything sorted. If Istanbul was a win, it was primarily hers.

The Brain: Bianca, a quite literal *deus ex machina* for our attendance lists. She made sure everyone was accounted for, present where they needed to be, signed in, badged, and introduced to people. I have no idea how she did it, but she made any problems go away.

The Brawn: Andrija. Covered the whole GC summit by himself, while also handling presentations, microphones, questions, and the people on stage. You need something done right away, no questions asked? Making it look easy, Andrija is your man.

The Lancer: Yours truly. I exist to make the life of our leader hard(er). I ask questions, disagree with him, point out alternatives, then disagree some more. I'm the primary point of contact for yelling expressing dissatisfaction. But when push comes to shove, I get on board – and make sure everyone else is on board as well.

The Hero: Radu Prime, our fearless (read: daredevil) leader. He's the one who believed – all the way – that five people from outside Turkiye can fly in, arrange everything, and host 260 lawyers for an event. He's also the one who believed – and rightly so – that if you can organize one event, you might as well put together two of them. At the same time! Handing out tasks and barks, from beginning to end, we wouldn't be here without him. ■



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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: WHAT I LOVE ABOUT THE CEE REGION

By Hugh Owen, Head of CEE Legal Business Solutions, PwC



Congratulations to CEE Legal Matters on its ten-year Anniversary. It's an impressive feat, and it exemplifies what I love about the CEE region – if you can dream it, you can do it!

I first came to CEE as a young trainee lawyer in 1995. I was offered the opportunity to do a six-month secondment in one of Allen & Overy's overseas offices, and took an 'under the radar' posting to Prague (instead of more 'glamorous' postings like New York). Prague in 1995

was enchanting. I had magical times touring the beautiful back streets of this gem, until I dragged myself back to London. I came back to Prague, and therefore CEE, in 1998. I never looked back.

While in Prague I actually started doing a lot of work in Slovakia (mostly privatizations in those days), and suggested to my bosses that we open an office in Bratislava – to my shock and surprise, they sent me to do just that, at the tender age of 29. It was supposed to be a three-year posting, and I am still here after 23 years, also with a posting to Budapest for four years in between, and opening an associated office in Bucharest.

Why do I love CEE so much? Well, CEE has just kept on giving – I have had fantastic opportunities over the years. It's hard to believe what we've done. We've witnessed the stunning and rapid transformation of command economies into fledgling, and then fully-fledged, European economies.

We have taken part in the wholesale privatization of all key industries in most countries in the region – banks, insurance companies, energy generation and distribution, telecoms, and media. We've nurtured these countries while they joined the EU, and we've all worked incredibly hard to draft and interpret an amazingly wide range of laws to ensure catch-up and convergence, and in some cases improvement.

We've got up to speed with regulatory environments in all sec-

tors. We've advised in connection with the transformation of all these countries, also in terms of massive construction and development, the building of new factories, offices, and logistics centers. We've watched foreign investors come and go, perhaps a little disappointed that some of the heady dreams of European homogenization from the early days didn't quite work out.

We had all the ups and downs witnessed by Western economies (dotcom crisis, the GFC, pandemic, wars), but we did this at the same time as undergoing transformation and growth (economic and social) at a breakneck pace. We've watched countries like Poland and Romania emerge as regional powerhouses. We've watched amazing entrepreneurs from all the countries in the region create absolutely fantastic businesses, and then sell, go public, or just hang on and grow some more!

And all this was taking place as we, a community of bright-eyed and like-minded lawyers, got to grips with it all, with the most extraordinary learning curve. International firms held some hands to begin with, but we've witnessed the wonderful growth and success of hundreds of fantastic law firms and lawyers across the entire region. We've all made friends and we all share this common bond – it's a constant enthusiasm to do more and do better, together.

As we now enter into the new 'AI' age, and are perhaps filled with some fear about that, we should also remember – what are we afraid of?! Just look at what we have dealt with and achieved!

I am just as excited about this new era ahead of us as I was back in those early days. I have made so many friends across so many countries (I have cupboards full of rakija to prove it too). And now I am making new friends across Eurasia as well!

I have traveled to nearly all these countries, mostly (but not always) having time to take a quick tour, taste local food and wines, and learn a little about local history and customs.

So, I can look back on over 25 years of all this – what a fantastic life so far! And I hope very much that I will still be here, with these same experiences and new ones, in ten years' time to celebrate another ten years of CEE Legal Matters too! ■

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ACROSS THE WIRE: DEALS AND CASES

Date Covered	Firms Involved	Deal/Litigation	Value	Country
17-Mar	Schima Mayer Starlinger; Schoenherr	Schoenherr advised OMV on establishing a geothermal energy joint venture with Wien Energie. Schima Mayer Starlinger reportedly advised Wien Energie.	N/A	Austria
21-Mar	E+H; Gibson, Dunn & Crutcher	E+H, working with Gibson Dunn & Crutcher, advised Solenis on its acquisition of Diversey Holdings.	N/A	Austria
22-Mar	Schoenherr; Wolf Theiss	Schoenherr advised joint lead managers Danske Bank, DekaBank Deutsche Girozentrale, Erste Group Bank, Natixis, Raiffeisen Bank International, and UniCredit Bank on the EUR 500 million issuance by Volksbank Wien of 4.750% green ordinary senior eligible notes due March 2027. Wolf Theiss advised Volksbank Wien.	EUR 500 million	Austria
30-Mar	Binder Groesswang; Clifford Chance; Freshfields; Wolf Theiss	Wolf Theiss, working with Freshfields' Frankfurt office, advised Alpen Glasfaser on a EUR 417.5 million financing from a consortium including UniCredit Bank Austria, KfW IPEX-Bank, La Banque Postale, Erste Group Bank, Natixis, and Hypo NOE. Binder Groesswang, working with Clifford Chance's Frankfurt office, advised the banks.	EUR 417.5 million	Austria
4-Apr	Herbst Kinsky	Herbst Kinsky advised Mangrove Capital Partners on leading a EUR 6 million series-A financing round for accounting automation company Finmatics.	EUR 6 million	Austria
11-Apr	Koutalidis	The Koutalidis law firm advised the National Bank of Greece on the dual listing of Austrian company Austriacard Holdings on the Athens Exchange and the Vienna Stock Exchange.	N/A	Austria; Greece
27-Mar	CMS; Herbert Smith Freehills	CMS advised the Alpa Group on establishing a pharmaceutical packaging market joint venture with Spain's Inden Pharma. Herbert Smith Freehills Spain reportedly advised Inden Pharma.	N/A	Austria; Poland
23-Mar	Djingov, Gouginski, Kyutchukov & Velichkov	Djingov Gouginski Kyutchukov & Velichkov advised lender DSK Bank on the EUR 4 million and BGN 3.5 million term facilities agreement with Terra Tour Service for the rebranding of some of its hotels to Hyatt brands.	EUR 4 million, BGN 3.5 million	Bulgaria
23-Mar	CMS	CMS Sofia successfully represented Xylem in settling a dispute with a Bulgarian hydropower producer before the ICC International Court of Arbitration.	N/A	Bulgaria
24-Mar	Djingov, Gouginski, Kyutchukov & Velichkov	Djingov Gouginski Kyutchukov & Velichkov advised Bianor Holding on its acquisition of the Itido Technologies and Databreathe software companies.	N/A	Bulgaria
29-Mar	Gugushev & Partners	Gugushev & Partners advised Alfatar Ventures on the registration of a Bulgarian EuVECA alternative investment funds manager.	N/A	Bulgaria
30-Mar	Dinova Rusev & Partners; Djingov, Gouginski, Kyutchukov & Velichkov	Djingov Gouginski Kyutchukov & Velichkov advised the European Innovation Council on leading a EUR 2.5 million investment round in Transmetrics. Dinova Rusev & Partners reportedly advised Transmetrics.	EUR 2.5 million	Bulgaria
13-Apr	Deloitte Legal	Deloitte Legal successfully represented the Loznitsa Municipality before the Supreme Administrative Court of Bulgaria in a lawsuit against the Managing Authority of Operational Program Environment 2007-2013.	BGN 1.5 million	Bulgaria
3-Apr	Savoric & Partners	Savoric & Partners advised Croatian private equity fund Feelsgood on its EUR 1 million investment in GameBoost operator Global Gaming Services.	EUR 1 million	Croatia
7-Apr	Bozic and Partners; Savoric & Partners	Savoric & Partners advised the Printec Group on its acquisition of NeoInfo from Igor Vukmirovic, Ivan Vidovic, and Jakov Kondza. Bozic and Partners advised the sellers.	N/A	Croatia
13-Apr	Ellex (Valiunas); Rask	Ellex advised Estonian software company GT Tarkvara on its sale to Croatia's Span. Rask advised Span on the deal.	N/A	Croatia; Estonia
16-Mar	Noerr; Samak	Noerr advised Orlando Management portfolio company SLR Gruppe on its acquisition of Sates. Samak advised the four founders of Sates on the sale.	N/A	Czech Republic
21-Mar	Eversheds Sutherland; Tovarek, Horky and Partners	Eversheds Sutherland advised Remondis Group company TSR Czech Republic on its acquisition of Barko. Tovarek, Horky and Partners advised the sellers.	N/A	Czech Republic

Date Covered	Firms Involved	Deal/Litigation	Value	Country
21-Mar	Dentons	Dentons advised the CPI Property Group on its debut sustainability-linked loan through a bilateral facility with MUFG.	EUR 100 million	Czech Republic
30-Mar	Clifford Chance; Vinge	Clifford Chance, working with Vinge, advised CBRE Investment Management on its sale of Swedish retail assets Port 73 and Gallerian Nian to NIAM.	N/A	Czech Republic
30-Mar	Klimus & Partners; Kocian Solc Balastik	Kocian Solc Balastik advised an undisclosed seller on the sale of a 7,500 square-meter land plot in Uhrineves, Prague, to Uhrinevska Zahrada. Klimus & Partners advised Uhrinevska Zahrada.	N/A	Czech Republic
5-Apr	Kinstellar; Linklaters	Kinstellar, working with Linklaters, successfully advised Credit Agricole Consumer Finance and Stellantis on their acquisition from ALD Automotive of, among others, LeasePlan's Czech operations.	N/A	Czech Republic
6-Apr	Kinstellar; Mikulas & Partners	Kinstellar advised the owner of Unuodesign on the sale of a majority stake to the Hartenberg Holding. Mikulas & Partners reportedly advised Hartenberg.	N/A	Czech Republic
11-Apr	GT Legal; JSK	JSK advised CVI on its bond financing investment in the parent company of the Algotech Group. GT Legal advised the Algotech Group.	N/A	Czech Republic
11-Apr	Kocian Solc Balastik	Kocian Solc Balastik advised real estate rental start-up Platform on its establishment and partnership agreements with insurance companies.	N/A	Czech Republic
16-Mar	Cobalt	Cobalt advised BayWa r.e. Energy Ventures and EdgeCap Partners on leading the EUR 6.45 million investment round into Roofit.Solar.	EUR 6.45 million	Estonia
23-Mar	Cobalt	Cobalt successfully represented the interests of the Suislepp family against false allegations published in Postimees and Louna-Eesti Postimees relating to Ilvi Suislepp's tenure as a school principal.	N/A	Estonia
24-Mar	Lee & Thompson; Sorainen	Sorainen, working with Lee & Thompson, advised Head Gear Films on financing the Last Sentinel movie in Estonia and on related IP and state aid issues.	N/A	Estonia
28-Mar	Sorainen	Sorainen advised Decathlon's Lithuanian subsidiary Decathlon Lietuva on the commercial lease agreement for premises in Estonia's Kurna shopping park near Tallinn.	N/A	Estonia
30-Mar	Pohla & Hallmagi	Pohla & Hallmagi advised CF&S Estonia on renting new office space in the Ulemiste City business park from Opiku Majad.	N/A	Estonia
30-Mar	Pohla & Hallmagi	Pohla & Hallmagi advised the Nomme Kalju football club on the cooperation agreement with Marsbet as the club's new shirt sponsor.	N/A	Estonia
5-Apr	Pohla & Hallmagi	Pohla & Hallmagi advised CF&S Estonia on its acquisition of railway wagons from Operail Leasing.	N/A	Estonia
12-Apr	Cobalt	Cobalt advised Pakrineeme Sadama on selling its liquefied natural gas loading quay in Paldiski – together with the related infrastructure and port property – to the Estonian Stockpiling Agency for a total transaction value of EUR 31.5 million.	EUR 31.5 million	Estonia
20-Mar	Reed Smith	Reed Smith advised investor and manager Sirec Energy on the final closing of the European Sustainable Investments Fund, a Greek green-energy fund with total commitments of EUR 70 million.	EUR 70 million	Greece
20-Mar	KLC	The KLC Law Firm advised GAP Pharmaceutical Products on transferring its Greek market-approved pharmaceutical licenses to Innovis Pharma.	N/A	Greece
24-Mar	Drakopoulos; Mentis-Filopoulou And Associates	Drakopoulos advised UK-based engineering consultancy Ricardo on its EUR 27 million acquisition of a 93% stake in E3-Modelling. Mentis-Filopoulou and Associates reportedly advised the seller.	EUR 27 million	Greece
24-Mar	AKL; Drakopoulos; Your Legal Partners	Drakopoulos advised the Orphee Beinoglou shareholders on their sale of an 80% stake in the company to HIG Capital. Your Legal Partners advised the buyer. AKL reportedly advised Eurobank on financing aspects.	N/A	Greece
31-Mar	Bernitsas; Karatzas & Partners	Bernitsas advised coordinator Intrum Hellas on the secondary sale and transfer of the Tethys securitized loan receivables portfolio – originated by Piraeus Bank – to a consortium consisting of SMERemediumCap, Latonia Enterprises, and WHG Europe. Karatzas & Partners advised the buyers.	N/A	Greece
7-Apr	Drakopoulos	Drakopoulos advised Procaffe on the acquisition of a local distribution network from Sinbrico and the establishment of Procaffe's Greek subsidiary.	N/A	Greece
12-Apr	Kyriakides Georgopoulos	Kyriakides Georgopoulos advised Viber on providing the Viber Pay service for users in Greece.	N/A	Greece
13-Apr	Bernitsas	Bernitsas Law advised Intrakat on its acquisition of Aktor from Ellaktor and Aktor Concessions.	N/A	Greece
14-Apr	Calavros	The Calavros Law Firm advised the Metropolitan College and the IEK AKMI Group on their sale of a majority stake to BC Partners.	N/A	Greece

Date Covered	Firms Involved	Deal/Litigation	Value	Country
16-Mar	Astera Legal; GLNS; Schoenherr	Schoenherr advised both the lending group and the borrower on a deal that saw ODDO BHF and GLAS Trust Limited finance Afinum's acquisition of the Christian Koenen Group. Germany's Astera Legal and GLNS Rechtsanwaelte reportedly also advised the lenders and the borrower, respectively.	N/A	Hungary
17-Mar	Baker Mckenzie; Morgan Lewis; Schoenherr	Schoenherr, working with Morgan Lewis, advised Pathlight Capital on its term loan to Lumos Holdings US Acquisition Co. Baker McKenzie advised Lumos in Hungary and the UK.	N/A	Hungary
11-Apr	Erdos Katona; Schoenherr	Schoenherr advised the China-based Shanghai Electric Power Co. Ltd. on its full acquisition of two project companies developing a PV project portfolio with a total capacity of 100 megawatts in Inarcs, near Budapest, from a Greencells Group subsidiary. Erdos Katona advised the seller.	N/A	Hungary
30-Mar	CEE Attorneys; Noerr	Noerr advised Saint-Gobain on its acquisition of plasters, paints, and coatings producer Revco Hungary. CEE Attorneys advised the sellers.	N/A	Hungary; Romania; Slovakia
16-Mar	Schoenherr	Schoenherr advised Robert Bosch Investment Nederland on its acquisition of a minority stake in Hungarian thermo-technology company Kazantrade and the related asset deal that saw RBIN sell its Serbian thermo-technology business to Kazantrade's Serbian subsidiary. Sole practitioner Zsolt Simanyi reportedly advised the Hungarian seller and target company.	N/A	Hungary; Serbia
17-Mar	Adon Legal	Adon Legal advised Taiwanese capital company FinCause on obtaining an electronic money institution license from the Bank of Lithuania.	N/A	Lithuania
17-Mar	Sorainen	Sorainen successfully represented Siauliu Plentas before the Supreme Court of Lithuania in a dispute related to the offset of contractual late interest with the Lithuanian Road Administration.	EUR 235,000	Lithuania
3-Apr	Ellex (Valiunas); Sorainen	Sorainen advised MM Prekyba – operating under the Macadamia Nut Farm brand – on its sale of a 34% stake to Baltijos Biotechnologijos. Ellex Valiunas advised the buyer.	N/A	Lithuania
11-Apr	Walless	Walless advised Finnish financial technology company Saldo Bank – formerly Saldo Finance UAB – on the establishment of its banking operations in Lithuania.	N/A	Lithuania
11-Apr	Sorainen	Sorainen advised Vsquared Ventures on participating in the EUR 4.5 million seed investment round into Droplet Genomics.	EUR 4.5 million	Lithuania
12-Apr	Allen & Overy; PwC Legal; RTPR; Walless	Radu Taracila Padurari Retevoescu and Walless, working with Allen & Overy, advised the GreenGroup on its acquisition of Zalvaris from Koncernas Consus. PwC Legal advised Consus on the deal.	N/A	Lithuania; Romania
7-Apr	Filip & Company; Schoenherr; Vernon David & Associates	Vernon David and Filip & Company advised Moldova's Victoriabank on its acquisition of the Chisinau subsidiary of Banca Comerciala Romana. Schoenherr advised the seller.	N/A	Moldova; Romania
17-Mar	DLA Piper; MFW Fialek	MFW Fialek advised the Renters.pl shareholders on their sale of a majority stake in the company to the Enterprise Investors-managed Polish Enterprise Fund VIII. DLA Piper advised the buyer.	N/A	Poland
20-Mar	Gessel	Gessel advised Finnish plastics and chemicals distributor Telko on the full acquisition of specialty chemical raw materials distributor Eltrex in Poland.	N/A	Poland
20-Mar	Rodl & Partner; Soltysinski Kaweck i Szlezak	Soltysinski Kaweck i & Szlezak advised veterinary clinic chain AniCura on its partnership with the Wroblewscy veterinary clinic in Dabrowa Gornicza, Poland. Rodl & Partner reportedly advised AniCura as well.	N/A	Poland
21-Mar	CMS	CMS advised the Constantia Flexibles group on its acquisition of Drukpol Flexo in Poland.	N/A	Poland
22-Mar	DWF; Goralski & Goss	DWF advised Multikino on its sale of a property in Warsaw's Ursynow district to GH Development 11. Goralski & Goss Legal reportedly advised the buyers.	N/A	Poland
24-Mar	Gessel	Gessel advised Urteste on the public offering of its new share issuance and switching its market listing from the ASO NewConnect to the regulated market of the Warsaw Stock Exchange.	N/A	Poland
24-Mar	Wardynski & Partners	Wardynski & Partners advised multinational chemical company LyondellBasell Industries on the acquisition of the Mepol Group, including Industrial Technology Investments Poland and the Mepol and Polar companies in Italy.	N/A	Poland
28-Mar	Lewczuk Lyszczarek i Wspolnicy; SSW Pragmatic Solutions	Lewczuk Lyszczarek i Wspolnicy advised Contec on its EUR 10 million financing round led by HiTech ASI. SSW Pragmatic Solutions reportedly advised HiTech ASI.	EUR 10 million	Poland

Date Covered	Firms Involved	Deal/Litigation	Value	Country
30-Mar	Gessel; Hewelt Wojnowski i Wspolnicy; Rymarz Zdort Maruta	Rymarz Zdort Maruta advised Kajima Partnerships and Griffin Capital Partners company Cerceda on its acquisition of Hymon Fotowoltaika from BNS Capital. Gessel and HWW Hewelt Wojnowski i Wspolnicy advised the seller.	N/A	Poland
31-Mar	DLA Piper; Norton Rose Fulbright	Norton Rose Fulbright advised PGE Polska Grupa Energetyczna on a PLN 2.3 billion ESG financing from a banking consortium. DLA Piper advised the banks.	PLN 2.3 billion	Poland
3-Apr	B2RLaw	B2RLaw advised Bentley Systems and its Cohesive Group digital integrator business on the acquisition of Vetasi.	N/A	Poland
5-Apr	CMS; Greenberg Traurig	Greenberg Traurig advised Echo Investment on its sale of the My Place II office complex in Warsaw to the Trigea Real Estate Fund. CMS advised the buyer.	EUR 45 million	Poland
11-Apr	Allen & Overy; Greenberg Traurig	Allen & Overy advised Krafon on its investment into the Warsaw Stock Exchange-listed Polish video game developer PCF Group. Greenberg Traurig advised PCF.	N/A	Poland
12-Apr	Dentons; Rymarz Zdort Maruta	Rymarz Zdort Maruta advised Projekt-Solartechnik and its subsidiaries on their private debt financing agreement with the Eiffel Investment Group for Polish solar power plants. Dentons reportedly advised the lender.	N/A	Poland
14-Apr	Crido Legal	Crido Legal advised the Green World Fizan Fund on its full acquisition of IBC Service Recycling.	N/A	Poland
16-Mar	Clifford Chance; Nestor Nestor Diculescu Kingston Petersen	Clifford Chance advised Exigent Property Investment on its EUR 57.8 million financing agreement with OTP Bank Romania and OTP Plc. Nestor Nestor Diculescu Kingston Petersen advised OTP Bank.	EUR 57.8 million	Romania
16-Mar	Nyerges & Partners	Nyerges & Partners advised the Solarpro Holding on the engineering, procurement, and construction contract concluded for the development of six photovoltaic projects with a total capacity of approximately 35 megawatts-peak in Mures, Romania.	N/A	Romania
17-Mar	CMS; Nyerges & Partners	Nyerges & Partners advised Shikun and Binui Energy on a EUR 40.5 million loan from Raiffeisen Bank International AG and Raiffeisen Bank Romania for a 70-megawatt photovoltaic project in Satu Mare. CMS reportedly advised Raiffeisen Bank.	EUR 40.5 million	Romania
30-Mar	Clifford Chance; Legance; Milbank; PwC Legal (D&B David And Baias)	PwC Legal Romanian affiliate D&B David si Baias advised the Greek Public Power Corporation on its EUR 1.26 billion acquisition of Enel Group's electricity production, supply, and distribution assets in Romania. Milbank and Legance reportedly advised the PPC as well. Clifford Chance reportedly advised the seller.	EUR 1.26 billion	Romania
31-Mar	CEE Attorneys	CEE Attorneys Boanta Gidei si Asociatii advised CEE Special Situations Fund portfolio company Aplast Wood Industry on its sale of a land plot near Bucharest including 12,500 square meters of logistics assets to Viva Toys.	N/A	Romania
31-Mar	Kapellmann; Stalfort; Stratulat Albuлесcu	Stratulat Albuлесcu advised the main shareholder of Stera Chemicals on the sale of 70% of their stake in Stera to the Oqema Group. Stalfort and, reportedly, Kapellmann advised Oqema AG in Romania and Germany, respectively.	N/A	Romania
3-Apr	Nyerges & Partners	Nyerges & Partners advised Eurowind Energy on its second acquisition of a 48-megawatt wind project in South-Eastern Romania.	N/A	Romania
4-Apr	Filip & Company	Filip & Company advised both Inform Lykos Romania and entrepreneur Octavian Radu on setting up a joint-venture holding company that took over Pink Post Group's postal and courier services business and the postal volumes aggregation business operated by the Inform Lykos group.	N/A	Romania
11-Apr	Nestor Nestor Diculescu Kingston Petersen	Nestor Nestor Diculescu Kingston Petersen advised Holcim Romania on its full acquisition of Stones Business Development.	N/A	Romania
17-Mar	Bojovic Draskovic Popovic & Partners	Bojovic Draskovic Popovic & Partners advised e-commerce investor Accel Club on opening an office in Belgrade.	N/A	Serbia
28-Mar	NKO Partners	NKO Partners advised the Dr. Max Group on its acquisition of the Vranje-based Nova Pharm pharmacy chain in Serbia.	N/A	Serbia
29-Mar	Markovic Vukotic Jovkovic	Markovic Vukotic Jovkovic advised BIG-CEE on the land acquisition and development of its tenth shopping center in Serbia, the newly opened BIG Pazova.	N/A	Serbia
30-Mar	Zunic	Croatia's HD-Win appointed Zunic Law Firm Partner Tijana Zunic Maric as its data representative for Serbia.	N/A	Serbia
4-Apr	Harrisons	Harrisons advised the EBRD on its EUR 100 million on-lending loan to Banca Intesa Belgrade.	EUR 100 million	Serbia
14-Apr	CMS	CMS advised Hansgrohe on its EUR 85 million investment in the development of a production facility in Valjevo, Serbia.	EUR 85 million	Serbia

Date Covered	Firms Involved	Deal/Litigation	Value	Country
14-Apr	Jankovic Popovic Mitic	JPM Jankovic Popovic Mitic advised Smartsy on its issuance of a financial instrument conveying the right to acquire shares in the company.	N/A	Serbia
28-Mar	CMS	CMS advised Slovenia's SID Bank on its EUR 140 million German law-governed issuance of senior unsecured fixed-rate bonds with a seven-year maturity.	EUR 140 million	Slovenia
17-Mar	Egemenoglu; Paksoy	Paksoy advised the EBRD on its USD 20 million long-term loan for Uludag Icecek to pursue green investments in Turkiye. Egemenoglu advised the borrower.	USD 20 million	Turkiye
21-Mar	Aksan; Beykem	Aksan advised the Medcover Group on the acquisition of Guven Laboratuvarlari from founder Ahmet Sahin. BeyKem reportedly advised Ahmet Sahin on the deal.	N/A	Turkiye
23-Mar	Aksan; SCH Legal; Turunc	Turunc and Aksan advised Bogazici Ventures and APY Ventures, respectively, on their investment in Kalfa in a round that also included Mindvest, Mikro Yazilim, and Hedef Portfoy. SCH-Legal reportedly advised Kalfa.	N/A	Turkiye
24-Mar	Aksan	The Aksan Law Firm advised APY Ventures on its investment in the Turan financial technology company.	N/A	Turkiye
24-Mar	Morgan Lewis; Paksoy	Paksoy, working alongside Morgan Lewis, advised Ulker Biskuvi on obtaining a sustainability-linked loan from a syndicate of international lenders.	N/A	Turkiye
30-Mar	Dentons; Dentons (BASEAK)	Dentons and its Turkish affiliate Balcioglu Selcuk Ardiyok Keki Attorney Partnership advised Akfen Holding on its acquisition of the approximately 33% outstanding stake in Akfen Yenilenebilir Enerji from the EBRD and the IFC.	N/A	Turkiye
30-Mar	Dentons (BASEAK)	Dentons Turkish affiliate Balcioglu Selcuk Ardiyok Keki Attorney Partnership advised TechOne Venture Capital on its investment in Vanora Ventures.	N/A	Turkiye
31-Mar	Paksoy	Paksoy advised Turkish flour producer Eksun Gida on its TRY 980 million IPO on Borsa Istanbul's Star Market.	TRY 980 million	Turkiye
31-Mar	Clifford Chance; Clifford Chance (Ciftci Attorney Partnership)	Clifford Chance and its Turkish affiliate Ciftci Attorney Partnership advised the China Baowu Steel Group Corporation Limited on the global merger control and foreign investment filings for its full acquisition of the Sinosteel Group Corporation Ltd.	N/A	Turkiye
3-Apr	Bagzibagli Erdem & Sahin	Bagzibagli Erdem & Sahin advised Up Venture Capital on its investment in Yamy Studio.	N/A	Turkiye
3-Apr	Aksan	Aksan advised PhiTech Bioinformatics on a new investment round.	N/A	Turkiye
4-Apr	Bagzibagli Erdem & Sahin	Bagzibagli Erdem & Sahin advised Geo Jeotermal Yatirimlari on receiving an investment from Iz Investment Holding and private investors.	N/A	Turkiye
5-Apr	Egemenoglu	Egemenoglu advised Anel Elektrik Proje Taahhut ve Ticaret on its loan restructuring agreement with the Is Bank, Denizbank, Akbank, and Vakif Katilim Bank.	N/A	Turkiye
11-Apr	Dentons (BASEAK)	Dentons Turkish affiliate Balcioglu Selcuk Ardiyok Keki Attorney Partnership advised Revo Capital on its investment in DefensX.	N/A	Turkiye
13-Apr	Egemenoglu	Egemenoglu advised Koza Polyester on its IPO, with Garanti Yatirim Menkul Kiymetler as the intermediary institution.	N/A	Turkiye
17-Mar	Asters; Quinn Emanuel Urquhart & Sullivan	Asters, working with Quinn Emanuel Urquhart & Sullivan, successfully represented the interests of the Republic of Ukraine before the UK Supreme Court in a dispute with Russia concerning a USD 3 billion eurobond issuance from 2013.	N/A	Ukraine
21-Mar	Simpson Thacher & Bartlett; Wolf Theiss	Wolf Theiss, working with Simpson Thacher & Bartlett, advised KKR on its USD 450 million investment in Hero Future Energies.	USD 450 million	Ukraine
11-Apr	Ilyashev & Partners	Ilyashev & Partners represented, pro bono, the interests of the Fencing Federation of Ukraine before the Court of Arbitration for Sport in a matter involving the cancellation of the Extraordinary Congress of the International Fencing Federation decisions about the return of Russian and Belarusian athletes and officials to participating in individual and group competitions.	N/A	Ukraine



Deals and Cases:

- Full information available at: www.ceelegalmatters.com
- Period Covered: March 16, 2023 - April 15, 2023

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@ceelm.com



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ON THE MOVE: NEW HOMES AND FRIENDS

Serbia: Gecic Law Announces New AI & Robotics Practice

By Teona Gelashvili (March 21, 2023)

Gecic Law has announced the launch of its Artificial Intelligence & Robotics practice in Serbia, to be headed by Founding Partner Bogdan Gecic.

“The new practice area will focus on the opportunities and challenges of emerging technological advancements transforming the business world and our daily lives, including artificial intelligence, machine learning, robotics, and data analytics,” Gecic Law reported. “The new practice will focus on the needs of businesses developing and applying solutions in this increasingly prominent area.”

“Innovation is an integral part of our firm’s DNA,” Bogdan Gecic commented. “By launching this practice, the first of its kind in the region, we demonstrate our commitment to those emerging fields that bring extraordinary benefits to our lives but often test the traditional boundaries of the law. We are here to help businesses that develop and use these technologies navigate the regulation and devise solutions to these challenges with creativity – across practice areas, industries, and jurisdictions.” ■

Romania: Dascalescu Nicolae & Partners Opens Doors in Bucharest

By Teona Gelashvili (March 31, 2023)

Former PNSA Attorney Alexandru Nicolae and former Prosecutor Liviu Dascalescu have teamed up to establish the Dascalescu Nicolae & Partners law firm in Romania.

Specializing in criminal law, Nicolae previously spent over nine years with Popovici Nitu Stoica & Asociatii as a Lawyer, between 2013 and 2023. Earlier, he was a Lawyer with Dragne & Asociatii from 2010 to 2013, and with Musat & Asociatii from 2009 to 2010. He began his career as a Trainee Lawyer with NNDKP in 2007.

Dascalescu, who also specializes in criminal law, had been a Founding Partner of Dascalescu & Associates since 2010. Earlier, he was a Prosecutor with the Bucharest Prosecutor’s Office, District 3 Prosecutor’s Office, and Bucharest Court of Appeal Prosecutor’s Office, between 1985 and 2004. From 1998 to 2010 he was a Member of the Superior Council of Magistracy in Romania, of which he was also Vice President for a year between 2005 and 2006. ■

Poland: Greenberg Traurig Launches Data Center Practice in Warsaw

By Teona Gelashvili (March 31, 2023)

Greenberg Traurig has announced the establishment of its new Data Center practice in the firm’s Warsaw office, to be headed by Counsel Adam Narloch.

According to Greenberg Traurig, the Data Center practice aims to provide clients with legal advice related to the aspects of the development and expansion of their digital infrastructure while drawing expertise from its Real Estate, Corporate, Banking, and Competition departments and the Environmental and Energy practice areas.

Narloch, specializing in real estate and corporate and M&A, has been with the firm since 2015, having first joined as a Senior Associate. He was promoted to Counsel in 2023. Earlier, he was an Associate with Allen & Overy, from 2010 to 2015.

“Recently, we have seen a surge of interest in data center investments in Poland, which is linked both to global trends and the very positive perception of our market by investors,” Narloch commented. “There is no doubt that with the rapid growth of cloud computing and big data, the data center sector will continue to flourish in the coming years.”

“We recognize that data centers are the backbone of modern businesses, and we are proud to be at the forefront of this industry,” Greenberg Traurig Poland Managing Partner Jolanta Nowakowska-Zimoch added. ■

Poland: NGL Legal Announces Korean Desk

By Teona Gelashvili (April 5, 2023)



Krzysztof Wiater

NGL Legal has announced the opening of the firm's Korean Desk, to be headed by Managing Partner Krzysztof Wiater with the support of Associate Ho Sun Nam, who joined the firm back in February.

According to NGL Legal, the Korean Desk will support Korean-speaking businesses in Poland and the wider CEE region.

"Associate Ho Sun Nam will be responsible for project management of all Korean Desk matters under the supervision of Partner Krzysztof Wiater, who will act as a Head," the firm's announcement read. "Ho Sun's Korean origin and bilingualism, as well as a profound understanding of the challenges Korean companies face when establishing and operating a business in Poland and the CEE region, allow her to help clients to bridge cultural and language gap differences to create effective communication, speed-up decision processes, and reach company goals." ■

Poland: Szymon Suchcicki Leaves Orlik & Partners To Establish Kaass in Warsaw

By Andrija Djonovic (April 6, 2023)

Former Orlik & Partners Partner Szymon Suchcicki left his previous firm to set up the Kaass business law firm in Warsaw.

Kaass will focus on both disputes and advisory in the fields of Banking and Finance, Labor Law, Compliance, Debt Management, Restructuring and Bankruptcy, Protection of Personal Property, and Press Law.



Szymon Suchcicki

According to Kaass, Suchcicki, its Managing Partner, "specializes in resolving litigation, including media law disputes" and has "extensive experience in carrying out enforcement and restructuring proceedings." Before the move, Suchcicki spent three years with Orlik & Partners and, earlier, four and a half years with Zieba & Partners starting in 2016. He began his career with Maciej Panfil i Partnerzy in 2010, where he spent five and a half years. ■

Croatia: Peterka & Partners Drafts Anja Haramija To Head New Zagreb Office

By Andrija Djonovic (April 13, 2023)



Anja Haramija

The Croatian office of Peterka & Partners opened its doors in Zagreb on March 1, 2023, with the addition of Attorney at Law Anja Haramija, formerly of Buterin & Partners, who will lead the firm's Croatian operations.

"Our expansion into Croatia is an important step for us as we continue to grow and enhance our presence in the CEE region," commented Peterka & Partners Managing Partner Ondrej Peterka. "We are committed to providing our clients with high-quality legal services across the entire CEE region and we believe that our new office in Zagreb will help us achieve this goal."

Haramija is a banking and finance, commercial law, and corporate law specialist. Before joining Peterka and Partners, Haramija spent almost four years with Buterin & Partners. Before that, she spent almost two and a half years with Zupic & Partners as an Associate.

"I am thrilled to be leading the Peterka & Partners new office in Zagreb," added Haramija. "We are excited to be able to increase the regional synergies within the Peterka & Partners group and to provide our clients with the best possible legal advice and solutions."

"Within the Peterka & Partners organization, the Zagreb office will become a single point of contact for the coordination of legal services for the former Yugoslavia, and the ninth Peterka & Partners office in the CEE region," the firm announced. ■

Austria: Helml Rechtsanwalte Joins Aliant Law

By Andrija Djonovic (April 13, 2023)

Austria-based Helml Rechtsanwalte has become part of Los Angeles-based Aliant Law.

According to Aliant Law, its Austrian affiliate law firm has, since 2014, "been advising its clients regionally from two Austrian offices and is now also globally networked with lawyers in over 20 countries in Aliant Law." Aliant Austria is managed by two Managing Partners, Friedrich Helml and Julia Helml.

Friedrich Helml has been at the helm of Helml Rechtsanwalte since 2014. Before that, he spent over three years as Attorney at Law with SCWP Schindhelm.

Julia Helml has been with Helml Rechtsanwalte since 2021. Before that, she spent over six years with Schoenherr, between 2015 and 2021, and over three years with SCWP Schindhelm, between 2012 and 2015.

"We have a strong first decade almost behind us," said Aliant Austria Founder and one of the Managing Partners Friedrich Helml. "Now we are finally leaving the founding phase behind us and can now serve our clients in more than 20 locations worldwide. Due to the cross-disciplinary orientation, we also benefit greatly from the internationally available know-how in the firm, which has already been evident in the first weeks of being part of Aliant in national and international cases."

"Since our founding in 2015, we've grown to provide services around the world to clients ranging from startups to global giants," added Aliant Law Chairman Jacob Stein. "The addition of operations in Austria meets the needs of many of our clients who have legal needs here. This combination represents Aliant's 20th member firm, bringing the total number of attorneys practicing under Aliant to 200 worldwide."

Aliant Law is also present in other CEE countries, including Hungary, Lithuania, and Poland. ■



Friedrich Helml

PARTNER MOVES

Date	Name	Practice(s)	Moving From	Moving To	Country
12-Apr	Thomas Adocker	TMT/IP; Litigation/ Disputes; Life Sciences	Schwarz Schoenherr	Taylor Wessing	Austria
11-Apr	Ondrej Barton	Banking/Finance	White & Case	Dentons	Czech Republic
7-Apr	Mantas Rimkevicius	TMT/IP	AAA Law	Triniti Jurex	Lithuania
16-Mar	Pawel Pogorzelski	White Collar Crime	Clifford Chance	EY Law Poland	Poland
6-Apr	Szymon Suchcicki	TMT/IP; Litigation/ Disputes;	Orlik & Partners	Kaass	Poland
31-Mar	Alexandru Nicolae	White Collar Crime	PNSA	Dascalescu Nicolae & Partners	Romania
31-Mar	Liviu Dascalescu	White Collar Crime	Dascalescu & Associates	Dascalescu Nicolae & Partners	Romania
28-Mar	Danilo Nikolic	White Collar Crime	Bojanovic & Partners	Jankovic Popovic Mitic	Serbia
28-Mar	Luka Nikolic	White Collar Crime	N/A	Jankovic Popovic Mitic	Serbia
4-Apr	Katarina Matulnikova	Labor	Allen & Overy	Wolf Theiss	Slovakia

OTHER APPOINTMENTS

Date	Name	Firm	Appointed To	Country
13-Apr	Andrea Zubovic-Devedzic	CMS	Co-Managing Partner	Bosnia and Herzegovina
13-Apr	Indir Osmic	CMS	Co-Managing Partner	Bosnia and Herzegovina
13-Apr	Anja Haramija	Peterka & Partners	Head of Zagreb Office	Croatia
31-Mar	Adam Narloch	Greenberg Traurig	Head of Data Center Practice	Poland
21-Mar	Bogdan Gecic	Gecic Law	Head of Artificial Intelligence & Robotics	Serbia
23-Mar	Eren Kursun	Esin Attorney Partnership	Managing Partner	Türkiye
16-Mar	Viacheslav Yakymchuk	Baker McKenzie	Co-Managing Partner	Ukraine
16-Mar	Serhiy Chorny	Baker McKenzie	Co-Managing Partner	Ukraine

IN-HOUSE MOVES AND APPOINTMENTS

Date	Name	Moving From	Company/Firm	Country
30-Mar	Anton Petrov	First Investment Bank (Deputy Director Legal)	First Investment Bank (Chief Compliance Director)	Bulgaria
7-Apr	Szilard Kui	DLA Piper	MET Asset Management	Hungary
29-Mar	Loredana Coras	BRD - Groupe Societe Generale	PKO Bank Polski	Romania
7-Apr	Cem Davutoglu	Akbank	Bener Law Office	Türkiye



On The Move:

■ Full information available at:
www.ccelegalmatters.com
 ■ Period Covered:
 March 16, 2023 - April 15, 2023

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THE BUZZ

In **The Buzz** we check in on experts on the legal industry across CEE for updates about 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.

All Work and No Play Tackled in Croatia: A Buzz Interview with Marija Gregoric of Babic & Partners

By Teona Gelashvili (April 7, 2023)



Croatia's labor market is experiencing an intense early 2023, as a new set of various amendments – including regulations prohibiting retail work on Sundays and public holidays – is about to take effect, according to Babic & Partners Partner Marija Gregoric.

throughout a year as working days.”

According to Gregoric, this controversial law has been debated for decades: “historically, there have been three attempts to introduce similar legislation since 2004 but, each time, the constitutional court annulled it, finding it overburdened retail businesses and was disproportionate to the goal it was designed to achieve.” On top of that, according to her, the measure is also politically contentious. “The background to this law suggests that the Catholic Church is trying to influence the government to make Sundays non-working days in a traditionally Catholic country.”

Gregoric says that the new law might face some hurdles when implemented. “The law is unclear on some practical issues, such as whether the rule of a maximum of 16 working Sundays a year applies to individual stores or retailers. For example, if the ban is applied by store, there could be a situation where the employees are shifted between stores and work more than the permitted 16 Sundays, which would go against the proclaimed purpose of the new law.” She also highlights that “the law could motivate retailers with similar stores in neighboring locations to make arrangements not to work on the same Sundays, which in turn may potentially raise concerns under competition law.”

“Businesses are heavily against this law and have criticized it, claiming that it will effectively halt consumption growth and result in a decline in GDP and redundancies due to a surplus of employees,” Gregoric continues. “Businesses have announced their intention to file a constitutional appeal. They are also grappling with the issue of scheduling work and are already preparing for potential redundancies or shifting their workforce.” ■

The proclaimed goal of these changes is to improve work-life balance and provide protection for female employees, who make up the majority of retail workers.

“At the end of 2022, Croatia made significant amendments to its employment act, which went into effect in January 2023,” Gregoric begins. “These changes introduced several important novelties in employment law, but have recently been overshadowed by the amendments made to the commerce act in March 2023, which have prohibited retail businesses from opening for trade on Sundays and public holidays.”

“We anticipate that these amendments will have an impact on the Croatian labor market,” Gregoric explains. “The proclaimed goal of these changes is to improve work-life balance and provide protection for female employees, who make up the majority of retail workers.” The new law imposes a general ban, she notes, “with two exceptions. First, the ban will not apply to specific exempted stores, such as marketplaces, fairs, stores within train stations and airports, museums, hotels, and hospitals. Second, the retailers can select up to 16 Sundays

Adaptability Is Key to Success in Hungary: A Buzz Interview with Daniel Aranyi of Bird & Bird

By Teona Gelashvili (April 13, 2023)



Despite the war still impacting the Hungarian market, there are also opportunities in the green economy and energy, as well as the Hungarian start-up scene, according to Bird & Bird Head of Energy & Utilities and Competition & EU Daniel Aranyi.

“The war in Ukraine continues to have a significant impact on the Hungarian market, affecting politics, business, and daily life,” Aranyi says. “Energy security has been a primary focus, and the prolonged state of emergency has a strong influence on the country’s economic development.”

According to Aranyi, emergency regulations in the form of government decrees can be difficult to follow, which creates a volatile environment that is not particularly helpful for foreign investors. “For example, the solar industry was shaken by a series of legislative changes enacted in close succession which caused uncertainties and delays concerning grid connection for solar projects under development,” he notes. “As a result, investors in this sector, whether foreign or domestic, have needed to rethink their business plans. The introduction of windfall profit taxes and subsequent changes to such rules had a similar deterring effect. Nevertheless, in our experience, investors are quick to adapt and accommodate to the new changes.”

Additionally, Aranyi says that the changes at the EU level, such as the implementation of the European Green Deal and the REPowerEU Plan, have had a considerable impact on Hungary. “There is a hopeful expectation for strong development and opportunities for companies operating in the energy industry, despite the current challenges in the Hungarian market,” Aranyi highlights. “At the same time, the industry’s responses to sanctions at the EU level, such as restrictions on the import and export of crude oil and mineral oil products,

are only now taking shape.”

“In line with EU policies, there is a greater emphasis on the green transition of oil and gas companies as well as on energy efficiency through, for example, digitalization and the development of new services and products,” Aranyi continues. “Solar is currently the strongest subsector, and both Chinese and EU investors are involved in Hungarian solar projects, with government and political support for this sector. There is expected to be a revival of wind energy in Hungary in the near future, with lifting restrictions on wind developments as one of the EU’s prerequisites for Hungary to utilize the RRF funds.” According to Aranyi, “the Hungarian Competition Authority is keeping a watchful eye on the green economy and is closely monitoring compliance with greenwashing guidelines.” He also adds that “to ease Hungary’s dependence on Russian natural gas, MOL is ramping up exploration projects in Hungary, with promising findings and future developments announced.”

Additionally, Aranyi highlights that the Hungarian start-up scene also proves to be resilient. “There are a significant number of new ideas and business opportunities to pursue, especially in the software development and cybersecurity sectors,” he notes. “This presents a welcoming environment for foreign investors, mostly from the EU but also the US, channeling in funds to scale up. As a result, for example, SEON Technologies has now become a global player in the cybersecurity industry.”

Aranyi also points to recent developments in the automotive industry: “Despite the challenges faced by the automotive industry in general, due to continued government support, developments have not ceased. To highlight a few, battery manufacturing plants are currently under construction, with a new one planned in Debrecen, BMW is continuing the construction of its factory, also in Debrecen, and Audi is expanding its manufacturing facilities in Gyor.”

“Overall, the challenges of the energy crisis have not put a hold on Hungary’s economic development, although it might require a flexible approach to be able to adapt, from both the government and the stakeholders of the industry,” he concludes. ■

It's Always Sunny in Albania: A Buzz Interview with Andi Memi of Hoxha, Memi & Hoxha

By Teona Gelashvili (April 18, 2023)



The primary drivers of the Albanian economy are centered around two main sectors – real estate and energy – with increasing shortages of qualified workers emerging as a key hurdle, according to Hoxha, Memi & Hoxha Partner Andi Memi.

“In recent years, there has been a significant surge in tourism, particularly along the country’s coastline, which has led to a boom in the hotel and leisure industries,” Memi points out. “As a result, major investments are being made to cater to the needs of tourists, from the South to the North of the country.” According to him, Albania has recently attracted the attention of international investors: “in the tourism industry, investors are looking to participate either as direct investors in real estate infrastructure or through management companies in touristic facilities. This sector continues to expand, with significant growth potential.”

“Renewable energies, particularly solar power plants, have also gained increased interest in the last two years, possibly due to the exponential increase in energy prices all around Europe,” Memi continues. “There is a lot of interest in investing in energy projects in Albania, and the government has been expanding its focus on renewable energies, especially solar and wind. Over the past year, several tenders have been issued for grants and concessions for new power plants.”

According to Memi, the expansion of solar power farms is currently the main focus of the Albanian government, followed by wind power, although to a lesser extent. “Solar power is currently favored due to factors such as short construction time, economization of panel cost and efficiency, favorable regulatory framework, and significant solar hours,” he notes. “However, there is a need for more projects to be developed to ensure a diversity of environmental impacts.”

Memi highlights that the state has acknowledged the potential benefits of the energy sector and supporting it – “not long ago, Albania approved a new law on renewable energy, and the government has made changes to the decrees for authorization to streamline and improve the framework,” he notes. “The government has been very active in soliciting offers and capacities for renewable energies.”

“As a result,” Memi notes, “the two primary engines driving the Albanian economy continue to grow steadily. However, there are some emerging challenges that need to be addressed.” One significant shortfall, according to him, “is the shortage of qualified labor force, as many skilled workers are leaving Albania to seek better opportunities in more developed countries with open movement policies, such as Germany,” he says. “The shortage of qualified workforce has led to a significant increase in wages, which has become a major issue for the expansion of this sector. Recently, there has been an increased demand for immigration services from countries such as Bangladesh and Sri Lanka. The construction sector, in particular, is feeling the effects of the labor force gap,” Memi concludes. ■



In the tourism industry, investors are looking to participate either as direct investors in real estate infrastructure or through management companies in touristic facilities. This sector continues to expand, with significant growth potential.

Relative Tranquility and Surprising M&A Interest in Ukraine: A Buzz Interview with Oleksiy Didkovskiy of Asters

By Teona Gelashvili (April 18, 2023)

As Ukraine experiences a period of relative tranquility following a tumultuous year, its M&A sector has witnessed surprising developments, and ongoing discussions about war insurance are also showing promise, according to Asters Co-Managing Partner Oleksiy Didkovskiy.

“The past few months have been relatively calm in many Ukrainian regions, although the air raid sirens frequently go off, and the military movements in the Black Sea region remain active,” Didkovskiy begins. “Compared to the intense and frightening experiences of the previous year, the situation is more manageable now. Over the last three months, people have been gradually returning to Ukraine. While safety and security concerns persist, it is encouraging to see an increasing number of women returning with their families.”

The question that Ukrainian law firms are now facing, according to Didkovskiy, is what will be the next potential line of work: “our current workload is diverse and not concentrated in high volumes in areas such as regular corporate and M&A or real estate. However, we have noticed a growing demand for litigation work, primarily aimed at recovering damages.” According to him, “it is challenging to navigate the complexities and uncertainties of these cases, which is why local law firms maintain contact with international law firms so that they can collaborate effectively and financially as a team before these tribunals to successfully recover damages.”

Surprisingly, Didkovskiy notes, there has still been an increase in interest in M&A in the past two months. “From an economic and banking perspective, the situation is pretty challenging due to the increased regulations and difficulties in extracting resources from the country,” Didkovskiy says. “In light of that, investing capital locally seems to be a good idea, considering it is not possible to export the capital generated here. Even foreign investors cannot easily distribute dividends, resulting in a huge accumulation of money in Ukraine. Therefore, there is an increased interest in growing the company locally. Although unexpected, this is the reality that we are dealing with.”

“Additionally, over the past few months, investment banks and large international institutional investors have shown a particular interest in coming to Ukraine,” Didkovskiy adds. “However, it is unclear how much money is needed, and there are risks related to the ongoing war and other factors.” He highlights that “to address this, there are also talks of war insurance to secure the big international funds and investors from the natural war risks they are likely to face.”

Ultimately, Didkovskiy points to the agriculture and IT industries, as the most resilient sectors: “The agriculture sector has been active, and the IT industry continues to grow, particularly in the western regions. This is what we have observed, and we expect it to continue for the foreseeable future.” ■



Investing capital locally seems to be a good idea, considering it is not possible to export the capital generated here. Even foreign investors cannot easily distribute dividends, resulting in a huge accumulation of money in Ukraine. Therefore, there is an increased interest in growing the company locally. Although unexpected, this is the reality that we are dealing with.

The Pervasive Workforce Deficit in North Macedonia: A Buzz Interview with Robert Bachovski Sinkoli of Bachovski Sinkoli Attorneys

By Teona Gelashvili (April 20, 2023)



North Macedonia introduces a new minimum wage and price-freezing measures, as the country continues to grapple with workforce shortages, including in the legal profession, according to Bachovski Sinkoli Attorneys Managing Partner Robert Bachovski Sinkoli.

“Recently, there has been a change in the minimum wage, effective from April 1, with the new minimum wage set at EUR 330,” Bachovski Sinkoli says, noting that the minimum wage varies depending on industries. “The government has also announced a review of the minimum wage in six months, to ensure it is adequate to cover the cost of living.”

“On the other hand, price caps have been introduced on essential items such as food and energy,” he adds. “For example, there have been fixed prices on bread: however, this has led to protests from bread producers who claim they will not make any profits under this pricing scheme.” According to Bachovski Sinkoli, as a result, there have been instances where bread was not available in shops for a few days. “Similar price caps have also been observed in the energy sector, leading to concerns about the availability of heating,” he continues. “These price-freezing measures have caused disruptions in the market and have been met with mixed reactions from various stakeholders.”

Another interesting topic in North Macedonia, according to Bachovski Sinkoli, is the shortage of professionals in the legal system, including lawyers, judges, and notaries. “To illustrate, in the Basic Court of Prilep there are only three judges currently working, whereas official reports indicate that there should be at least 15 judges. This shortage of judges has resulted in delays in court procedures, particularly in civil, criminal, and commercial cases.”

When it comes to hiring lawyers, Bachovski Sinkoli points to “the perception that younger generations are more inclined to pursue careers in fields such as engineering, where they may find better opportunities outside the country. This trend may further impact the availability and quality of legal professionals, exacerbating the existing challenges in the legal system.”

According to Bachovski Sinkoli, the entire country is facing challenges related to workforce shortages. “To address the issue of workforce deficit, North Macedonia, along with Serbia and other countries in the Balkan region, initiated a new joint plan two months ago to attract investments under the Open Balkan scheme,” he notes. “This could potentially result in the removal of tax between the countries to promote open movement in the Balkans. Working together could be one way to overcome our deficits.” ■



The perception that younger generations are more inclined to pursue careers in fields such as engineering, where they may find better opportunities outside the country. This trend may further impact the availability and quality of legal professionals, exacerbating the existing challenges in the legal system.

Resilient Banking and M&A in Romania: A Buzz Interview with Alexandra Manciualea of Filip & Company

By Teona Gelashvili (April 20, 2023)



Despite the challenging global landscape, Romania's banking sector continues to show resilience – with M&A activity in line with the second half of 2022 – according to Filip & Company Partner Alexandra Manciualea.

“In the banking and finance sector, the major talking points are the fall of Silicon

Valley Bank and the takeover of Credit Suisse,” Manciualea begins. “These developments raised questions on their further impact on the European and the Romanian banking market. In addition to these global events, the Romanian market is also grappling with its own issues, such as the withdrawal – by the Romanian Financial Supervisory Authority – of the functioning license and the envisaged bankruptcy of Romania's market leader in third-party liability car insurance – Euroins.”

Despite these challenges, Manciualea says the banking sector in Romania remains resilient. “In March, Romania experienced a 14.53% inflation rate, which is comparable to other CEE countries, and there are hopes for stabilization in the second half of the year, which, however, depend to a great extent on the evolution of the global economic context,” she notes. “Additionally, non-performing loans in the Romanian banking market are currently manageable, with a low rate of 2.65% recorded at the end of last year. This represents a 0.7% decrease compared to the end of the previous year,” she says.

“The era of cheap money has come to an end, as financing conditions have tightened and the banking sector is adopting a more prudent and risk-averse approach,” Manciualea continues. “However, there is a growing interest in green financing, with banks keen to finance environmentally sustainable projects. Some banks have recently also issued their own sustainable bonds in the market.” And, according to her, “in the realm of

project finance, there is a notable interest in energy projects, particularly those involving solar and wind energy, indicating a positive outlook for renewable energy projects.”

As for M&A in the first quarter of 2023, Manciualea points to “the takeover of ENEL group operations in Romania by the Public Power Corporation – the main electric power company from Greece – announced in March and amounting to over EUR 1 billion.” She says the first quarter of 2023 is comparable to the third and fourth quarters of the previous year: “Romania's market has been busy with interesting deals, including overseas investments on which our team has advised, such as the acquisition by Banca Comerciala VictoriaBank in Moldova of BCR Chisinau and an investment agreement between DIGI Spain and a fund managed by Abrdn for the development of a fiber optic communications network in Southern Spain.”

The era of cheap money has come to an end, as financing conditions have tightened and the banking sector is adopting a more prudent and risk-averse approach. However, there is a growing interest in green financing, with banks keen to finance environmentally sustainable projects. Some banks have recently also issued their own sustainable bonds in the market.

“Deals of such magnitude contribute to a solid year in terms of market activity,” Manciualea says. “Despite concerns about market conditions, there is still liquidity in the market and an intention to continue with transactions. However, since money is more expensive, it is important to note that transaction values may be under pressure, particularly for those with a leverage component.”

In terms of general trends in banking, Manciualea says that fintech and digital finance have become a significant focus for law firms: “there has been a lot of regulatory activity in this space, with both fintech and banks developing digital solutions,” she notes. “Moreover, consumers are increasingly seeking easy one-click access to financial services, solutions, and products. To that end, we expect the collaboration between banks and fintech players will continue.” ■

Hard Work for Labor Lawyers in Serbia: A Buzz Interview with Danica Milic of NKO Partners

By Teona Gelashvili (April 21, 2023)



Remote work has become widespread in Serbia – and dominant in industries like IT – while the country is facing both layoffs and a shortage of workers, depending on the sector, according to NKO Partners Partner Danica Milic.

“In Serbia, remote work has recently been a primary discussion point,” Milic begins. “Remote work models have become widespread and even dominant in some industries, not only due to technical progress but also as a consequence of the COVID-19 pandemic. In particular, the IT industry has seen the wide adoption of remote work, with employers making efforts to accommodate employees who prefer this model, allowing them to work from home or other locations.”

The construction sector has shown potential for employment opportunities. There has been an influx of workers from different continents coming to Serbia to seek employment in construction and transportation, such as bus driving. A significant number of Serbian workers have left for Western countries, creating opportunities for foreign workers in these areas.

At the same time, Milic highlights that “the rise of remote work has also raised legal concerns, such as how to regulate it in contracts, how to manage working hours and supervision, and how to address health and safety issues.” Additionally, she says there are “concerns about the utilization of work-related tools and equipment, as well as the reimbursement of associated costs. These concerns highlight the need for organizations to carefully consider and internally regulate the legal implications of remote work, especially considering that Serbian law lacks clear and precise regulations on remote work, even though it allows for remote work agreements.” For example, “regarding health and safety, it is the employer’s responsibility

to ensure a safe workplace for employees, but specific provisions should be included to clarify that employees are also responsible for maintaining a safe and distraction-free home working environment,” she points out.

Furthermore, Milic adds that “post-pandemic, some companies have found the need for organizational changes, including restructuring and redundancy procedures. Lawyers have frequently been involved in creating redundancy programs for various companies over the past six months, as this need has become more widespread.” In addition to assisting with redundancy programs, she notes that lawyers “also help companies to explore alternative options for targeted employees before letting them go. This includes considering measures required by law, such as finding other types of employment within the company or helping employees change their qualifications through seminars and courses to transition to another company with different requirements.”

“Despite companies’ efforts to find work in different departments or sections and shift the workforce, unfortunately, layoffs have still been necessary in some cases,” Milic points out. “The most significant layoffs have been observed in production companies working with non-essential commodities. The implementation of upgraded technologies has resulted in reduced demand for labor on new machines, leading to workforce reductions in these industries.”

“Still, the construction sector has shown potential for employment opportunities,” Milic adds. “There has been an influx of workers from different continents coming to Serbia to seek employment in construction and transportation, such as bus driving. A significant number of Serbian workers have left for Western countries, creating opportunities for foreign workers in these areas.”

“Furthermore, the IT industry in Serbia has been experiencing growth and expansion, providing additional employment opportunities for individuals with relevant skills and qualifications,” Milic notes. “Despite the challenges faced by certain industries, there are still areas where employment opportunities can be found and pursued in Serbia.” ■

Green Energy, Criminal Justice Reform, and a Surprising Trend in Greece: A Buzz Interview with Nikolaos Anastopoulos of Politis & Partners

By Teona Gelashvili (April 21, 2023)

Advancing renewable energy initiatives, establishing remote companies, and adopting criminal justice reform are currently the key priorities on the legal agenda in Greece, according to Politis & Partners Partner Nikolaos Anastopoulos.

“In the past few months, Greece has experienced significant developments despite the challenges it has faced over the years, including the economic crisis, the impact of the COVID-19 pandemic, and the conflict in Ukraine,” Anastopoulos begins. “Despite these obstacles, Greece has made remarkable progress in recovering from these crises, leading to a surge of interest among foreign investors to establish businesses in the country.”

“A significant sector of the Greek economy that has been experiencing growth is renewable energy sources, which has been a long-standing industry in the country,” Anastopoulos notes. “Many lawyers specializing in corporate and finance are actively involved in project development, financing, and navigating the regulatory framework in the renewable energy sector.” He adds that this sector has become particularly active in recent months, “with increased interest and investment in renewable energy projects, highlighting the importance of sustainable and green energy solutions in Greece’s economic development.”

“In addition, recently, we have been receiving numerous inquiries from foreign investors who are interested in establishing a business in Greece, but without a physical presence in the country,” Anastopoulos continues. “They wish to work remotely from Greece but have their company incorporated here, to pay taxes and comply with Greek civil and tax law legislation. This trend has gained momentum after last year’s tax reform, which has made Greek tax rates more competitive compared to other European countries.” As a result, he says “this topic has become a prominent issue among lawyers in Greece in the past two to three months, as many employment-related challenges arise when establishing a business without a physical presence, both at the managerial and employee levels.”

Finally, Anastopoulos emphasizes that there are ongoing discussions in Greece regarding the penal system and penal code, as well as how the criminal justice system operates. “This has always been a topic of great interest, with debates on how to make the criminal system more stringent and contemporary.” At the same time, Anastopoulos says “legal professionals in Greece are actively engaged in these discussions, exploring ways to modernize and improve the country’s criminal justice system while maintaining its effectiveness in addressing crime-related issues.” ■



They wish to work remotely from Greece but have their company incorporated here, to pay taxes and comply with Greek civil and tax law legislation. This trend has gained momentum after last year’s tax reform, which has made Greek tax rates more competitive compared to other European countries.

The Clouds in Mostly Sunny Montenegro: A Buzz Interview with Milena Roncevic Pejovic of Pejovic Legal

By Andrija Djonovic (April 24, 2023)



Political turmoil and contentious policy changes could cloud the investment climate in Montenegro, but the economy is still performing well – primarily driven by the IT, energy, and tourism sectors – according to Pejovic Legal Partner Milena Roncevic Pejovic.

“Montenegro is currently in-between regular presidential and extraordinary parliamentary elections,” Roncevic Pejovic begins. “Following the most recent dissolution of parliament in April, and the collapse of two governments, we are looking at a snap election cycle this June.” As she reports, the country is experiencing such political turmoil that it has begun to affect the overall investment climate.

The citizenship-by-investment program, which was based on investing in pre-approved tourism projects that would generate significant income for Montenegro, ended on December 31, 2022, following negative assessments from the EU.

“The business community is feeling the effects of political instability and we have noticed a downturn in foreign investment inflows,” Roncevic Pejovic continues. “This has created market uncertainties for existing investments as well – no longer are the war in Ukraine and COVID-19 the dominant spoilsports for business in Montenegro.” However, she does expect that the situation will calm down somewhat after the June elections.

Still, Montenegro has been amending some of its policy endeavors, which could potentially reflect on investments as well. “The citizenship-by-investment program, which was based on

investing in pre-approved tourism projects that would generate significant income for Montenegro, ended on December 31, 2022, following negative assessments from the EU,” Roncevic Pejovic reports. Additionally, starting in January 2024, the real estate tax in Montenegro will switch to a progressive rate, moving away from the flat 3% currently in force. “The new brackets will include the same 3% tax for properties up to EUR 150,000 in value, 5% for those up to EUR 500,000 in value, and a 6% tax on all properties that are valued more,” she explains. “These changes are not something that the real estate market will take to keenly, given how attractive the old status quo was for investors.”

Furthermore, Roncevic Pejovic reports there is a draft law on solidarity contributions that might also put investors off. “Companies with annual revenue over EUR 5 million will be required to pay an extra 33% in taxes for the next two years, with the money to go to social welfare spending. This might clash with the investor’s notion of a competitive and predictable tax policy.” According to her, Montenegro is at a turning point, with investors still intent to get involved, but requiring “the trust and support of the authorities.”

Outlining the most vibrant sectors in Montenegro, Roncevic Pejovic points to the IT sector. “A lot of IT companies were recently incorporated, which is developing the industry very fast. Given the flexibility of remote work, we have seen a high number of IT experts relocating here,” she reports. “Additionally, the energy sector is strong, renewables and green energy in particular; wind power is the key generator of growth here, with the government strongly supporting development.”

Finally, the traditionally successful tourism sector is also developing rapidly. “Montenegro might just become a winter destination soon, given the development of the Kolasin ski resort, which will boast 250 kilometers of ski slopes once complete,” she says. “Moreover, a new cable car from the UNESCO world heritage site of Kotor to the Lovcen National Park – connecting mountain and seaside – will be completed soon, further adding to the country’s tourism credentials,” she concludes. ■

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THE DEBRIEF: MAY 2023

In **The Debrief**, our Practice Leaders across CEE share updates on recent and upcoming legislation, consider the impact of recent court decisions, showcase landmark projects, and keep our readers apprised of the latest developments impacting their respective practice areas.

This House – Implemented Legislation

Wolf Theiss Associate Oliwia Pecht reports on significant legislative changes in the labor sector in Poland that have come into effect in April 2023. “The introduction of remote work to the *Labor Code* took effect on April 7,” she says. “According to the new regulations, remote work may be agreed upon by the employer and the employee either at the conclusion of the employment contract or during employment. The employer will be also able to instruct the employee to work remotely in special circumstances – i.e., during a state of emergency, a state of epidemic, or a state of threat of epidemic, and for three months after their cancellation – and due to *force majeure* preventing safe working conditions. The employee will be entitled to the reimbursement of certain costs related to remote work.”

Additionally, Pecht notes that “on April 26, amendments to the *Labor Code* came into effect. The amendments implement two directives: the so-called *Work-Life Balance Directive* and the *Directive on Transparent and Predictable Working Conditions in the EU*.” According to her, “these amendments include introducing care leave for personal care of a relative and time off work due to *force majeure* for urgent family matters. The employee will have access to new tools to support their secure working conditions, such as a request after a minimum of six months of employment to change the type of contract to an open-ended employment contract or a contract with more predictable and secure working conditions. The employer will also be required to justify the termination of the fixed-term contract and notify the trade union organization of this justification. Until now, these solutions only applied to an open-ended contract.”

NGL Legal Associate Filip Wilinski emphasizes the recent updates in the field of Life Sciences in Poland, related to the new Polish act on clinical trials: “On March 30, 2023, the new law on clinical trials of medicinal products for human use was published in the *Journal of Laws*. It came into force on April 14, 2023, except for provisions relating to the establishment and operation of the Supreme Bioethics Committee for

clinical trials, which already apply since March 31, 2023, and scientific advice to be given by the President of the Office for Registration of Medicinal Products, Medical Devices, and Biocidal Products for conducting tests and trials necessary to prove the quality, safety, and effectiveness of medicines, which will come into force on July 1, 2023.”

This House – Reached an Accord

According to Wilinski, Poland is also moving towards implementing new regulations concerning compliance in the Life Sciences field in the country. “The act implementing the so-called *ECN+ Directive* in Poland will enter into force soon,” he notes. “On April 17, 2023, the act was submitted to the President of the Republic of Poland for signing.”

Wilinski also highlights the most significant changes introduced by the act: “The new regulations shall govern the liability of parent companies for the actions of their subsidiaries. If an undertaking violates competition law, an undertaking exercising decisive influence over the infringer may also be held liable. Determining whether the decisive influence is exercised will therefore be one of the mandatory findings in the course of any proceedings conducted by the Polish authority. Conducting proceedings also against an entity exercising decisive influence will depend on the discretionary decision of the President of the UOKiK.”

Additionally, according to him, the act sets rules regarding the associations of undertakings. “When a breach of competition law is committed by an association of undertakings, the fine will not be allowed to exceed 10% of the total turnover of the members of that association in the financial year preceding the year in which the fine is imposed.” Finally, he points to the limitation period: “Under the new regulations, the limitation period will be suspended on the date on which at least one undertaking involved in a competition-restricting practice is notified by the President of UOKiK of actions taken against it, including during explanatory proceedings not conducted against the undertaking. The regulations indicate that such events in the course of explanatory proceedings, such as requesting an undertaking to provide information, conducting



Claudia Chiper,
Partner,
Wolf Theiss



Filip Wilinski,
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NGL Legal



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Associate,
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Sasa Stojanovic,
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Radovanovic Stojanovic &
Partners

an inspection/search (dawn raid), or summoning for an interview, will lead to the suspension of the limitation period.”

In Romania’s Banking & Finance sector, the most awaited update is related to the adoption of the *EU MiCA Regulation*, according to Wolf Theiss Partner Claudia Chiper. “The long-awaited and debated *Markets in Crypto-Assets Regulation*, harmonizing the provisions governing crypto-assets across the EU, was finally approved by the European Parliament,” she notes. “This means that asset-referenced tokens, e-money tokens, and a catch-all category for tokens that are not falling within the preceding concepts – such as utility tokens and other cryptocurrencies including Bitcoin or Ether – will finally be subject to a uniform regulation and approach. In practical terms, the MiCA introduces a regulatory regime for (1) issuers of stablecoins; (2) issuers of non-stablecoins; and (3) entities providing services in respect of crypto assets (the co-called CASPs).”

“To enter into force, the MiCA will have to be approved by the EU Council followed by its publication in the EU’s official journal,” Chiper continues. “The first day of application will fall within 20 days of its publication in the EU’s Official Journal. Starting that date, the provisions governing stablecoins will apply after 12 months, while the provisions regarding CASPs benefit from an 18-month period for implementation, which may prove to be rather short considering the required authorization provisions.”

This House – The Latest Draft

Following the recent labor legislation that was enforced in April, Pecht points to the further related legislative updates that are being discussed: “legislative work is currently underway on three regulations that adapt the regulations on labor matters due to the above-mentioned amendments,” she says. “The first regulation provides for changes in employment certificates, and, among other things, the employment certificate issued to an employee is to include information on the employee’s use of time off work due to *force majeure* for urgent family matters. The second regulation amends the regulations on employee documentation, and so Part B of the employee’s personal file is to be expanded to include the employee’s request and the employer’s response to the employee’s request to change the type of employment contract to an open-ended contract or more predictable and secure working conditions. The third regulation standardizes applications for employees’ parental entitlements and the documents accompanying such applications, taking into account the amendments made to the labor legislation in this regard.”

Done Deal

Radovanovic Stojanovic & Partners Partner Sasa Stojanovic draws attention to a large M&A transaction in Serbia: “In April, the most significant deal in Serbia involved the acquisition of Expobank Belgrade by Adriatic Capital. The latter is the sole owner of Montenegro’s Adriatic Bank Podgorica.” ■

TECH SECTOR FOCUS: THE GROWING IMPACT OF THE ESG-DRIVEN DATA RACE

By Teona Gelashvili

With ESG gradually coming into focus, companies, industries, and whole countries are looking to the TMT sector for guidance. CMS Ukraine Partner **Olga Belyakova** and CMS Bosnia and Herzegovina Counsel **Sanja Voloder** share their insights.



CEELM: How do you see the interplay between ESG and TMT work? Will all companies become data-driven companies, regardless of industry? What does that mean for the work of TMT lawyers?

Voloder: Without a doubt, ESG is here to stay, and the interplay with the TMT industry is diverse. In our work, we are witnessing that ESG is affecting companies in this industry both through their relations with shareholders, employees, investors, etc., as well as in terms of their business: their products, services, and solutions. The current view is that, in many ways, this industry will (and carries the burden to) lead the change in ESG performance across industries, due to the widespread impact and use of the solutions and services it provides.

While it is difficult to make predictions across industries in our ever-changing business climate, it can be argued that the availability, quality, and the ability to analyze, manage, and utilize data shall become paramount for companies, especially considering the focus on ESG will expand. This is because regulatory and financier interest is shifting towards more sustainable businesses; partners, suppliers, and employees demand environmental and social governance and responsibility; and customers and consumers are attracted to those principles, with ESG performance often being directly correlated to business growth. Therefore, for a business to identify and demonstrate where it stands, how it will improve, or how well it is already doing in terms of its sustainability impact, ESG data is crucial.

Lawyers need to be aware of the significant impact ESG has on their TMT clients, in terms of the business model,

operations, and stakeholder relations, but also with respect to their existing products and services. Clients particularly value our ability to understand the multiverse of ways in which this industry impacts global sustainability, while also being able to take a company-specific approach to identify and address the ESG-related risks they are facing – or capitalizing on the opportunities. Therefore, a future-facing lawyer should already hold a solid grasp of the relevant ESG and sustainability issues and be able to keep up with the ongoing developments, both in terms of ESG frameworks and the tech solutions aiming to tackle them.

CEELM: What are the current challenges the sector is facing, in terms of data?

Voloder: Obstacles with respect to ESG data are not only faced by the TMT industry – this is a widespread and real challenge since data is critical across a company's ESG journey. Data is necessary to make the starting point assessment, identify and monitor thresholds, ensure the measurability of improvements, and, importantly, to report and communicate such efforts to the public, including competitors, investors, customers, suppliers, and the existing or potential workforce.

Considering the topic touches on such a vast set of issues and business operations, the efficient collection of accurate and complete data, verification, materiality analysis thereof, and reporting are a major challenge due to data dispersion and lack of uniformity (or too much, leading to unadjusted results) and the process generally being burdening on a business's operations, time, and financial resources. Doing this through the usual (unautomated) business tools causes errors, inconsistencies, and a lack of management over the collected



Olga Belyakova,
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CMS Ukraine



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CMS Bosnia and
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data – which leads to unreliability and inaccuracies. Therefore, the need for the development and integration of new technology and/or digital solutions is becoming essential.

CEELM: What are the opportunities and what's needed to come out on top in the current ESG-driven data race?

Belyakova: ESG is a hot topic, and it's because companies see value in sustainability programs. The impact of ESG policies and their timely implementation and actualization is indisputable: productivity gains, cost savings, reduced risk factors, a lower number of environmental accidents, etc. A smart ESG agenda

also helps businesses pay lower insurance premiums, get better loan conditions, and attract investments. Therefore, the number of international organizations setting sustainability standards is rapidly increasing, which brings cross-opportunities and ensures inter-sectoral cooperation.

The 'E' in ESG is particularly under the spotlight internationally, which leads to the creation of new business products like green financing, offering financial institutions a new vector of development. And green energy is no longer a mere trend, but an 'implied approach' in the data center industry for example. The tech sector enjoys growing opportunities, particularly in consumer goods, offering data tools for monitoring supply chains. And increased demand for high-quality sustainable real estate leads to building smart offices and developing scope 3 emissions calculators. It's not a secret that consumers increasingly favor products with better ESG credentials, which allows production companies to differentiate themselves with the help of their ESG action points.

To come out on top in the current ESG-driven data race, organizations should make use of various data analytics as

well as ESG reporting and management tools, be it artificial intelligence, machine learning, or other ESG-related software. The tech element of ESG will definitely become a driver of their development. Companies should also start thinking of having ESG-dedicated teams with relevant sector-specific skill sets, to help management take future-facing decisions.

CEELM: And what specific tools will come into play to achieve those goals?

Belyakova: Given how important the ESG agenda is for the majority of global enterprises, it's no surprise that TMT, and more specifically the IT sector, has picked up the trend and is already developing various tools to enhance ESG program implementation. We are now observing various software products that not only help analyze the gaps in companies' ESG policies, but also offer sophisticated analytics data of their environmental impact in the energy, oil, and gas and production sectors.

ESG data analytics and reporting tools are still at an early stage of development but are expected to grow by an order of magnitude in the next couple of years. AI solutions will likely become a driver in achieving ESG goals and offer unique tools such as qualitative analytics of ESG forecasting parameters, special ESG reporting tools, and algorithms that can offer early-stage risk analysis and risk prevention. Blockchain technologies can improve traceability throughout the ESG supply chain and scrutinize the ESG credentials of products, services, and goods. And digital twins already play their e-role in the energy sector – this technology will likely expand further due to its ability to help understand and predict energy consumption.

TMT companies will have a huge impact on the ESG agenda, given how much their business overlaps with other sectors. The rollout of 5G has already led to the exchange of more data using less power, and the need for energy efficiency will likely help build technologically smarter buildings and greener data centers. And all that gives ESG tech tools a huge space to grow into.

CEELM: Finally, how do you see the role of TMT lawyers in five years' time?

Belyakova: The pace and scope of digital transformation and the adoption of new regulations and business rules throughout the globe will make legal teams expand their technical skills, gain a compliance background, and closely cooperate with – or even include – narrow tech specialists to offer clients more focused expertise. ■

CEELM TOP 10: MOST-READ BRIEFINGS

The **CEELM Top 10** series looks back over the past ten years and celebrates the milestones we have achieved together. First up: most-read Briefings, with each article featuring a short description reflecting the authors' opinion at the time.

1. Restrictions Across CEE/SEE Countries Affecting the Real Estate Sector (April 30, 2020, Hits: 66,082)

By *Laszlo Kruepl, Partner, Schoenherr Hungary*

In response to the coronavirus outbreak, most CEE/SEE countries had introduced provisions to close certain premises, while only some had banned the termination of leases to protect tenants who had lost revenues. All countries declared a state of emergency and thus implemented measures to keep open essential retail shops, such as grocery stores and pharmacies, and essential services, such as home delivery and petrol stations.

2. EU: New Deal for Consumers - A Proposal to Strengthen Collective Redress (May 14, 2018, Hits: 63,660)

By *Phillip Wetter, Counsel, and Klara Kiehl, Partner, Schoenherr Austria*

In 2018, the EC proposed a "New Deal for Consumers" to bolster EU consumer rights and enforcement. The proposal included a Directive that would allow certain qualified entities to seek redress on behalf of consumers harmed by unlawful commercial practices (to make it easier for consumers to claim damages) enabling them to initiate collective representative actions, including injunctions, redress orders, or declaratory decisions.

3. State Aid in Ukraine: Results of The First Year of Enforcement, and Further Steps of The Regulator (August 2, 2018, Hits: 59,504)

By *Anna Artemenko, Head of Parliament's Adaptation Support Office, and Anastasia Usova, Partner, and Anna Vysbnevskaya, Junior Associate, Redcliffe Partners*

The state aid framework in Ukraine, its particularities compared to the EU's regime, and the results of the first year of state aid enforcement. The regulatory steps to be taken by the AMC for its further development. Opportunities and challenges that the state aid regime offered to businesses in Ukraine.

4. NPLs in Serbia (August 12, 2016, Hits: 57,227)

By *Nikola Poznanovic, Partner, and Nemanja Jovanovic, Associate, JPM*

Non-performing loans were one of the principal problems of the Serbian banking sector due to macroeconomic factors like unemployment, currency depreciation, and higher inflation rates since 2008. However, the Serbian banking sector was highly capitalized and liquid, so the stability of the financial system was not threatened. The government's 2015 NPL resolution strategy aimed to prevent NPL accumulation, improve conditions for market development, and overhaul the regulatory framework.

5. How the UK Criminal Finances Act of 2017 May Influence Ukrainian Business (April 3, 2018, Hits: 56,223)

By *Ario Dehghani, Head of Compliance, and Viktoria Shevchuk, Junior Associate, Redcliffe Partners*

The UK Criminal Finances Act 2017 had extraterritorial effects and could apply to activities outside the UK. Companies that failed to prevent the facilitation of tax evasion could be held liable, and the law could apply to subsidiaries, branches, or agents, no matter where they were located. An exploration of the implications of the act for Ukrainian markets, including its scope, penalties, enforcement, and compliance paths.

6. New Changes in Macedonia's Law on Construction Land to Ease the Sale of Land (December 2, 2016, Hits: 56,010)

By *Dragan Dameski, Partner, and Martin Boskoski, Senior Associate, Debarliev, Dameski & Kelesoska*

North Macedonia had introduced a law to enable the electronic execution of real estate purchase agreements, seeking to regulate sales of construction land and the manner of executing real estate purchase agreements. It introduced procedural innovations regarding alienation, long and short-term leases of land, the establishment of easements, and permanent use.

7. The New General Administrative Procedure Law in Macedonia (November 25, 2016, Hits: 55,952)

By *Dragan Dameski, Partner, and Martin Boskoski, Senior Associate, Debarliev, Dameski & Kelesoska*

North Macedonia had overhauled its administrative procedure framework with the 2015 Law on General Administrative Procedure. The law introduced tools like IT communication, access to a single point of contact, administrative agreement, and an effective system of administrative remedies. It sought to provide flexibility for administrative actions and enable citizen-oriented services. The authors expected the law would improve the transparency and professionalism of administrative procedures.

8. New Tools to Boost Diversity in International Arbitration (December 12, 2019, Hits: 54,943)

By *Krystyna Khripkova, Counsel, Integrites*

The lack of diversity and under-representation that had taken deep root in the legal profession worldwide also tarnished the image of international arbitration. Diversity means appreciating the uniqueness of each individual and admitting that different strengths come with those differences. Without a doubt, diversity in gender, age, ethnicity, race, culture, political and religious beliefs, sexual orientation, and socioeconomic status is important. Yet is the arbitration community ready to embrace all the good that comes with diversity?

9. Law on General Administrative Procedure (July 19, 2016, Hits: 54,948)

By *Jelena Malesenic, Associate, JPM*

Serbia's 2016 Law on General Administrative Procedure sought to modernize and simplify proceedings, making them more efficient, in keeping with European standards. The law significantly expanded the scope of previous legislation and introduced new principles and new content, as well as the concept of a single administrative point, which allowed parties to submit a single application and communicate with a single authority.

10. A Review of Anti-Corruption Developments in Ukraine in 2017 (February 12, 2018, Hits: 54,784)

By *Ario Dehghani, Counsel, Head Compliance, and Viktoria Shevchuk, Junior Associate, Redcliffe Partners*

In 2017, Ukraine implemented several anti-corruption steps based on its contractual obligations with the EU and the IMF.

An overview of anti-corruption steps taken, focusing specifically on e-declarations, legal entity anti-corruption programs, the national corruption prevention agency's recommendations, the anti-corruption court, as well as the anti-corruption strategy the country adopted for 2018-2020.

We asked Schoenherr Hungary Partner Laszlo Kruepl, the author of the most-read Briefing ever on the CEELM website, why he thought his article resonated so well with our audience:



Kruepl: The lives of people within the CEE/SEE region have changed since the coronavirus outbreak in 2020. All countries declared a state of emergency and implemented several public measures that affected everyone. Governments realized that a massive macro-economic downturn, along with a nationwide health crisis, had to be avoided and that it was necessary to protect all kinds of real estate users.

The topic of my article – to analyze how these measures affected the real estate sector in each country – derived from the fact that real estate is one of the most valuable assets of businesses as well as everyday people, and this sector was highly dependent on COVID laws. All these measures – the closure of public premises and retail/shopping centers, the keep-open obligations for pharmacies and other essential stores, the ban on terminating certain lease agreements – massively impacted everyone's lives at that time.

While I came across many analyses by different lawyers, a comparison between our countries in the region was missing. I thought there might be some commonalities in terms of how each country reacted to COVID and that it would be helpful for our clients and the readers of CEE Legal Matters to take advantage of the synergies within our Schoenherr network. Following a firmwide kick-off discussion, the members of the real estate practice group delivered terrific input to me that already served as a good basis for comparative analysis. This analysis was similar to our motto at Schoenherr: "Straight to the point". The fact that the article has reached over 66,000 readers and has become the most-read article in the Briefings category is a personal highlight for me, but also a testament to the teamwork within our firm.

THE CORNER OFFICE: THE NEXT BOOMING PRACTICE

In **The Corner Office**, we ask Managing Partners at law firms across Central and Eastern Europe about their backgrounds, strategies, and responsibilities. With the first quarter of 2023 wrapped up, we turned to the future and asked: **In which practice area do you expect the most growth – in terms of work volume – in the next 12 months?**



Oliver Werner, Managing Partner, CMS

Slovakia: We expect that compliance will certainly grow as a practice area in terms of importance for the CEE legal market. The CEE region has implemented various anti-corruption and anti-money laundering laws and regulations, which require companies to have robust compliance programs and internal controls in place to ensure that they operate within legal and ethical standards.

Moreover, the increased focus on white-collar crime and corruption by law enforcement agencies and regulators in the region further highlights the importance of internal investigations for companies. Effective internal investigations can help companies identify and address potential violations of the law or company policies, as well as detect and mitigate risks that could lead to reputational damage or financial losses.

Companies in the CEE region that fail to conduct effective internal investigations may face legal and financial consequences, including fines, sanctions, and reputational damage. Therefore, it is essential for companies operating in the CEE region to have a strong internal investigations program in place that includes trained professionals, clear policies and procedures, and effective reporting and escalation mechanisms.



Mentor Hajdaraj, Managing Partner, RPHS:

In recent years, the Kosovo market has gone through major development in the context of industry practices and new legal frameworks. In this regard, our firm aims to further increase its practice in M&A and Competition.

With the adoption of the new *Law on Competition* in 2022, there has been a new threshold and set of conditions foreseen by law, with a focus on the area of concentration. As a result of this, the Kosovo Competition Authority has taken a more active role in monitoring the compliance of

the companies with the new law. There is no doubt that in everyday M&A transactions, including those transactions where foreign companies are involved, reasonable guidance is needed since any wrong step might lead to an initiation of the competition-protection procedure by the KCA.



Oleksiy Feliv, Managing Partner, Integrites:

I see tremendous potential in the Real Estate and Construction practice. It will certainly become one of the busiest in our firm when the war ends with Ukraine's victory, and the country will undergo the most massive reconstruction in Europe since World War II.

At this stage, we see much interest both from domestic and foreign clients – they seek investment opportunities related to rebuilding critical, social and transport infrastructure, as well as housing stock. The industry will boom with private and institutional investors coming from around the world to support the Ukrainian economy and help it to handle the aftermath of the war.

We expect to see specific sectoral plans and programs introduced by the state, which will allow for setting the strategic and legal framework for the forthcoming reconstruction. Lifted restrictions and eased permit procedures, new developments in the land, agricultural and energy law, a significant number of disputes related to the compensation of damages, and investor incentives – all these factors will surely generate a considerable amount of work not only for Real Estate lawyers but also for the firm's cross practices.



Olexiy Soshenko, Managing Partner, Redcliffe

Partners: The answer mainly hinges on, and will be substantially very dependent on, when the Russian war will be over in Ukraine. As soon as it finishes, lots of work and effort will be dedicated to rebuilding Ukraine. It could, though, be rather difficult to

single out one particular practice area or industry. Lawyers in banking and finance, corporate, construction, real estate,

infrastructure, energy, as well as IT and fintech could all be very involved in this anticipated burst of activity.

Being realistic, however, it appears that the war may not finish within the very near term. In that scenario, I would expect that documenting damages caused by the Russian aggression, as well as preparing and initiating claims against Russia and its assets will be very active. That will involve work in local and potentially foreign courts, involvement in criminal proceedings, claims to the European Court of Human Rights, arbitrations based on Bilateral Investment Treaties, asset tracing, enforcing damage awards, etc. Such work will also continue after the end of the war.



Branislav Maric, Managing Partner, Kinstellar

Serbia: I expect the energy practice is going to grow the most, primarily due to the continuing interest by foreign investors in the Serbian energy market, especially in renewables. Given that the relevant energy

framework is about to be revised, which should open the way for the first auctions, this should further intensify the project work in the market and, consequently, among advisors.

Also, many projects that have not been planning to apply for auctions are waiting to formally secure connections, which process was delayed since the state-owned TSO was not willing to grant such requests before the current legal framework is revised in relation to the balancing responsibility/costs. Once the revised framework is formally adopted, it is expected that the connection issues will be resolved to a large extent across the market, which should be an impetus for the projects to move forward faster. Increased activity in the energy segment would also have a positive knock-on effect for work in the financing sector, as the project financing will have to be put in place so that projects can move into the construction phase.



Pal Jalsovszky, Managing Partner, Jalsovszky

Law Firm: An easy answer would be liquidation and insolvency. The current economic situation will prompt lots of businesses to the brink of bankruptcy, which would create work for lawyers. It is, though,

cause for reflection that we had the same expectation during COVID times which, finally, did not materialize.

I would, however, give a different answer in light of

tendencies that we see in the Hungarian market. We experience that many factors push wealthy individuals and private company owners to restructure their holdings and keep their assets safe. Economic uncertainties, the generation gap, and a perceived country and business risk are just some of those triggers. This appetite is, on the other end, accompanied by legally and tax-wise attractive vehicles and solutions such as trusts, private foundations, and investment funds. It all results in an extremely high demand for company/ownership restructurings and wealth management, which, I believe will continue in the forthcoming year(s).



Victor Constantinescu, Managing Partner, Kinstellar

Romania: Generally speaking, Kinstellar Bucharest is incredibly busy. I can't put my finger on one practice area, but would instead point to all work generated

by shifts in geo-political concerns that are prompting investments and activity in various areas: this takes the form of renewable energy for clean energy independence, friend-shoring and industrial re-capacity and relocation, and investment in other key sectors such as agriculture, infrastructure, and defense, to ensure long-term security and self-sufficiency.



Ewelina Stobiecka, Managing Partner, Taylor

Wessing Poland: Based on the trends we are seeing in the market today, several practice areas are likely to see growth in the legal industry this year, but if I had to pick one: cybersecurity.

With the increasing use of technology and the rise of cyber threats, cybersecurity is an area where technology and cybersecurity lawyers may have more work to do. This could include areas such as data privacy, cybersecurity regulation and compliance, intellectual property rights in the digital space, dispute resolution, and crisis management.

With the increasing reliance on technology and the Internet, cybersecurity threats have become more prevalent and sophisticated, and the consequences of a cyberattack can be devastating to both businesses and people. A successful cyberattack paralyzes business operations, resulting in financial and reputational damage, and the possible liability of board members and employees. In these areas, lawyers can expect more work that could be summarized as crisis management support.



Done Yalcin, Managing Partner, CMS Turkey: I anticipate a significant increase in the volume of work related to the Environmental, Social, and Governance practice. This is due to the growing significance of the ESG framework for companies, as stakeholders

are increasingly demanding greater transparency and accountability in corporate practices.

The pandemic has emphasized social and governance factors, leading to increased scrutiny of how companies treat employees and manage pandemic-related risks. Also, climate change and sustainability are now critical concerns for investors, governments, and consumers, driving the demand for legal services related to environmental issues.

ESG-focused legal professionals can provide expert guidance on ESG-related regulations and standards, such as the *Sustainable Development Goals*, the *Paris Agreement*, the Task Force on Climate-related Financial Disclosures, and the forthcoming COP 28, covering ESG reporting and disclosure requirements, stakeholder engagement, risk management strategies, and other related services.

The rise of impact investing and responsible investment has increased the need for legal assistance in navigating sustainable finance, green bonds, corporate social responsibility, and sustainability initiatives. As the demand for ESG legal services is expected to continue growing in the next 12 months, the ESG practice area presents a promising opportunity.



Panagiotis Drakopoulos, Managing Partner, Drakopoulos: We expect our M&A work volume to grow the most, despite unpredictability in the global post-pandemic business climate, the current turbulence in the banking system, and the ongoing war situation in Ukraine.

The acquisition appetite of foreign investors continues to grow steadily, with no visible signs of regression, targeting, besides real estate, tourism, and energy, which are the usual suspects in terms of FDI focus, also opportunities in services, agriculture, and manufacturing.

Given Greece's geopolitical significance in the SE Europe region and favorable business climate in the current global turbulent environment, this trend will most probably be dominant throughout next year.



Alina Popescu, Managing Partner, MPR Partners: The way we see the market trends and current context, technology, debt recovery disputes, and insolvency as well as the energy practice areas are the most likely to prosper.

First of all, technology legal work is now a must for all companies, big and small – with data privacy, e-commerce, digital platforms, AI liability, fair dealing, cybersecurity regulations, authorization of providers of equipment and software for 5G networks, and critical infrastructures being just a few of the aspects to think of, the sheer complexity of tech regulation nowadays and the continuous push for innovation on a variety of markets makes specialized technology law advice a must for all wishing to be 100% compliant.

Second, the volatile economy and the very global context are unfortunately fertile ground for disputes and insolvencies. These are more often than not managed with external counsel help, especially where intricate contractual structures and complex financial issues are concerned.

Last, but obviously not least, energy law will continue to be one of our star areas of practice, with the increasing deployment of resources towards green energy projects and the race to ensure energy supply resilience.



Balazs Dominek, Managing Partner, Szabo Kelemen & Partners Andersen Attorneys: European and regional economies need a fundamental restructuring of the production and distribution of energy. From an economic perspective, it is a must to regain industrial competitiveness, which was leveraged on cheap fossil energy before. In addition to economic concerns, sustainability is also a key social and environmental driver.

Sustainable and/or non-fossil energy production has been an ongoing issue for a while, but heavy barriers to the boom are imposed. The distribution infrastructure and systems need to be developed, the problem of storage and shortages of renewables must be sorted out, and so on. However, these barriers are technical issues in the first place, and these will also impose heavy regulatory and advisory work, as well as M&A opportunities. We expect Projects and Energy to be the practice area to grow most in terms of work for the next 12 months. ■



Legal



Tax



Social Security



Customs and Foreign Trade



Intellectual Property Law and R&D



Competition Law and Antitrust



MARKET SPOTLIGHT: ROMANIA



ACTIVITY OVERVIEW: ROMANIA

Firms with the most client matters reported by CEE Legal Matters.

Partners with the most client matters reported by CEE Legal Matters.



86



40

Silviu Stratulat



76



32

Alexandru Birsan



72



30

Ileana Glodeanu



67



28

Costin Taracila



61



25

Bodan C. Stoica



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SPIN-OFF CITY NO MORE

By Andrija Djonovic

The Romanian legal market seems to indicate a substantial downturn in law firm spin-offs, of late. **Musat & Asociatii** Managing Partner **Paul Buta**, **Popescu & Asociatii** Senior Partner **Gheorghe Buta**, and **Simion & Baciu** Managing Partner **Cosmina Maria Simion** share their thoughts on this trend, the reasons behind it, and the likelihood of it continuing.

Are There Fewer and Fewer Spin-offs in Romania?

“I believe that the number of notable spin-offs has decreased over the last couple of years,” Paul Buta begins. While he says that the reasons behind this would be challenging to identify, he stresses that “as an underlying theme, however, we can see a shift in the perception of the added value provided by legal professionals to businesses, from a legal support position to more of a business consultancy position, thereby requiring a more integrated, multi-disciplinary perspective on the issues businesses face.”

According to him, in a “more complex environment,” as Romania is right now, each issue warrants being “tackled from a wider array of perspectives, and leaving even one of those outside the analysis can have a severe impact on the outcomes. This means that the success of a project now requires a much more diverse range of inputs from more highly specialized attorneys working together in a close-knit project team.” As he explains, this is “much harder to provide in a new spin-off environment.”

The legal market is already formed and mature, competition is high, and it is very difficult, as a result, to launch at the same level, or even at a level only slightly lower than you were before the spin-off.

Agreeing with Paul Buta is Gheorghe Buta, who adds that one of the reasons for such a low number of spin-offs might be found in the fact that “the legal market is already formed and mature, competition is high, and it is very difficult, as a result, to launch at the same level, or even at a level only slightly lower than you were before the spin-off.” Moreover, he adds that “law firms, and especially the larger ones, take much more precise and effective anti-competitive protective measures, thus preventing or hindering spin-offs with takeo-

vers of clients, projects, or even lawyers.”

On the other hand, Simion feels that “the local market is one that constantly evolves, aiming at finding its identity and maturity, with clients engaging legal service providers that are best suited for a particular task or able to respond to a specific expectation, in a certain context and timeframe. This can lead to spin-offs or mergers – and our market has seen both in recent times.” Simion goes on to add that “such moves do not necessarily respond to economic factors exclusively, but also to particular situations and are neither a norm nor a rule in any market, but merely the signs of constant evolution and change, which should always be welcomed.”

Setting Up Shop Appears Difficult

Given the high levels of competitiveness in the Romanian legal market, there are many reasons why it is increasingly difficult to spin off. According to Paul Buta, it all eventually “boils down to the minimal scale that a new practice needs to be at, in order to be relevant. The challenges to establishing a new practice of sufficient scale to be relevant to more sophisticated clients are even harder to overcome now, given the difficulties with recruitment and the increasing costs of creating and maintaining a suitable working environment,” he elaborates.

“In general, we believe that the legal industry has become more competitive due to the different factors such as increasingly complex mandates, competition, etc.,” Gheorghe Buta chimes in. “All these have led to an increase in demand for specialized legal services, which has resulted in many new law firms entering the market, including the niche firms that are focusing on specific areas of the law.” Furthermore, Gheorghe Buta believes that “significant changes in the regulatory landscape” have only added to the myriad of difficulties making the lives of would-be newcomers more difficult.

“In my experience, predictability should be regarded as a desiderate and not a prerequisite,” Simion says, offering a

different take. As she puts it, four years ago, when discussing the then-current affairs with colleagues, considering what “the next events that would define the history of our adulthood will be – no one mentioned a pandemic that would force many of us to dive deep into our beliefs and priorities, nor a war near our country’s frontier that would prompt us to re-evaluate aspects we normally tend to neglect and take for granted, such as the availability of basic resources.”

And There Are Always the Clients

Looking at the board from a different perspective, it would appear that clients have altered their behavioral patterns as well. “More companies seem to have observed that the success of a project and its viability in the medium or long term can be severely impacted by risks that could have been internalized and mitigated from an early stage, if the risk analysis had been comprehensively designed and executed,” Paul Buta explains. “This does create incentives for companies to seek, especially for projects of note, a legal partner who can anticipate as diverse a range as possible out of those risks.”



Cosmina Maria Simion,
Managing Partner,
Simion & Baciu



Gheorghe Buta,
Senior Partner,
Popescu & Asociatii



Paul Buta,
Managing Partner,
Musat & Asociatii

On the other hand, Gheorghe Buta feels like not much has changed in recent times. “Neither in our own work nor in our constant analysis of the market, in general, have we noticed any major changes.” According to him, companies and businesses have always been on the lookout for quality legal services “at a price that they consider to be suitable for them.”

Simion feels that “there is no straight *yes* or *no* answer to the question of if and how these habits change. To formulate a response that adds value, it all should be placed in the relevant context of a particular company.” According to her, “general counsels and in-house teams, as well as other C-suite level executives engaged in the selection and procurement of legal services, are increasingly expressing desire and satisfaction towards lawyers who demonstrate expertise that is relevant to a specific industry, and the ability to enclose non-legal expertise into their thinking.”

Split Decision: Trend To (Tentatively) Continue

“This trend is likely to continue, albeit at a fluctuating rate, given the underlying reasons for this change,” Paul Buta says. “The legal market could have an even larger gap between providers of legal support, advising a higher number of clients on limited mandates, and providers of business legal consultancy services, who, having developed a close relationship with a lower number of clients, attend to the furthering on the long-term of these clients’ business needs from an over encompassing perspective in order to lower their overall business risks.”

Gheorghe Buta agrees, adding that he believes “that the downward trend in [spin-off] numbers, especially of the notable ones, will continue. We also believe that the companies’ habits regarding selecting legal services based on the quality and the volume of requested services, alongside the criteria of the appropriate price for these services, will be maintained.” Moreover, given the current geopolitical context, Gheorghe Buta feels that there is a “state of uncertainty and difficulty in managing the crises and their effects on economic and social life, including the legal services and the whole activity of lawyers.”

Finally, Simion remains a tad more cautious in making a decisive prediction: “While we are not in the business of prediction – quite on the contrary – I would consider it fair to say that the foreseeable future will prompt us to a number of rather noteworthy repositions, including through spin-offs and mergers.” ■

PE-ERING INTO ROMANIA

By Andrija Djonovic

With most of Europe facing turbulent times, Romanian markets are experiencing vibrant PE fund activity across a wide plethora of sectors. Popovici Nitu Stoica and Asociatii Managing Partner Florian Nitu, Wolf Theiss Partner Ileana Glodeanu, and Schoenherr Partner Madalina Neagu take a deep dive into the markets and their drivers.

Exciting Sectors Everywhere

“We’re experiencing a renewed and solid interest in the industrial and manufacturing sectors,” Nitu says, stressing that this is “true for almost all manufactured product and industrial markets. Food is also an area where a lot is going on, horizontally and vertically.” He also reports that the electricity, oil, and gas markets are going through a period of turmoil, with “distribution and supply businesses under huge stress, and divestment and exit decisions in the making, or already under implementation. Beyond renewables – which are generally selling forward – energy sector M&A projects are driven by consolidation.”

According to Glodeanu, “strategies could not be more varied than the times we live in. We see that software outpaced other sectors in deal volume growth and, generally, technology has been a driver for many transactions recently.” She explains that “in Romania, attractive targets in this space are IT outsourcing companies with stable and highly skilled teams, having western clients with healthy margins and activity in safe industries.” In addition to IT, she stresses that “renewables, charging stations, and ESG-friendly businesses are in big demand,” as well as “the healthcare and food sectors.”

To boot, the number of PE funds that are active in Romania seems to have grown, Neagu reports, “despite certain investment firms having fully exited the country.” She agrees with Glodeanu and Nitu, saying that these funds are putting a “stronger focus on sectors such as IT, technology, medical services, and B2B services.”

A More Cautious Market

Looking back, the situation seems to have changed somewhat over the past two years. “Equity cost changed dramatically,” Nitu says. “Key institutional players adopt a more prudent approach, while leveraged M&A suffers because of financing costs affecting the economic fundamentals of most of the envisaged transactions. The M&A sector is increasingly marked by the moves of strategic investors in the mid-trans-

actions market, while funds remain active in megadeals, with a high appetite for workouts and businesses conglomerate deals,” he explains.

Glodeanu reports that, on the “fundraising front, many teams are in the run to grab a piece of the EUR 400 million funding to be allocated to PE/VC and infrastructure funds via the resilience and reconstruction plans. Some PE teams disintegrated, and new alliances were formed. But I don’t envy PEs, as it is not easy to raise money in Romania, or the whole CEE region, these days.” According to her, the “key to success in fundraising is having access to private money and, for our region, this is a real challenge. Moreover, it is pretty difficult to finance (on top of equity), and it can be even more challenging to find good targets to invest in, although both sponsors and strategics have enormous pools of capital to deploy.”

“The current market environment poses a range of significant challenges, calling for a higher capacity of the investors to adapt, anticipate, and find creative ways of navigating uncharted territories,” Neagu says. As she puts it, “history suggests that it is the deal done in a downturn that generates superior rates over time, and this is what fuels the dealmaking in times like today.”

Specifically, Neagu explains that due diligence processes have become “more complex and are more focused on risk mitigation. Buyers seek to understand how equipped targets are to deal with various (including macro) uncertainties and how compliant they are with legal requirements. In contractual terms, this has translated into enhanced protection of the buyer through more complex representation and warranties, covering actual concerns such as cybersecurity threats, compliance, ESG, and the protection of human rights,” she explains.

In addition, Neagu says that pricing has also experienced a shift towards more “conservative approaches of earn-outs and other forms of payment deferrals.” According to her, there is an increase in competitive sale processes, “as targets that have already proven resilience attract the attention of multiple investors.”



Florian Nitu,
Managing Partner, Popovici
Nitu Stoica and Asociatii



Ileana Glodeanu,
Partner,
Wolf Theiss



Madalina Neagu,
Partner,
Schoenherr

ESG Changed Everything

“The ESG standard is by now an essential consideration in virtually all large and medium-size transactions,” Nitu says. “It is not only a due diligence imperative but, in many cases, an inherent condition for doing business. ESG standardization is indeed taking place not only in terms of processes but ultimately at the businesses’ DNA level.”

Agreeing with Nitu, Glodeanu notes: “as investors become more focused on sustainability and long-term value creation, companies that prioritize ESG factors are increasingly seen as more attractive investment opportunities.” According to her, this is primarily the case in the “technology, energy, and manufacturing sectors, where issues such as data privacy, algorithmic bias, climate change, and board and workforce diversity are becoming more prominent concerns. Romanian companies have started to focus on developing ethical and responsible solutions in their businesses.” Glodeanu reports that the Romanian Association of Asset Managers has developed a set of ESG principles that its members are encouraged to follow,

focusing on “investment processes, engaging with companies on ESG issues, and reporting on ESG performance.”

Neagu agrees with both, saying that “environmental and labor, anti-bribery and corruption, and anti-money laundering warranties are already present in many transaction documents, and investors have taken an even more cautious approach in expanding their scope to cater for ESG requirements.”

Doing Better Than Most

Looking ahead, Nitu says that “companies’ access to business development and expansion finance are likely to favor the PE funds that are more flexible in advancing expansion money into their investee targets. Flexibility and investment structures, ahead of the traditional PE fund offerings, will give an edge in a market that is not only competitive but also marked by carefulness,” he underlines.

“I believe the unprecedented current levels of financial sponsor dry powder, in parallel with well-capitalized strategic buyers, and the reversion to ‘normalized’ valuations – placed into the context where Romania has been a clear outperformer for the CEE region – should be good sources of deal optimism for us in the upcoming months,” Glodeanu posits. “While the last two quarters may not have been pleasant globally, sadly, so it could go over the next two quarters. Investors’ moods seem gloomy and overall perception would seem to indicate that CEE has dropped and will continue to drop on the investment radar.”

[There are] plenty of investment opportunities and PE funds are among the most knowledgeable players when it comes to navigating through the current climate.

Still, Glodeanu believes that “digital transformation will remain a global imperative, with business automation services, industrial tech, and AI constituting an opportunity for many deals. Healthcare and clean energy will also succeed in attracting equity for PE fund bolt-ons.”

Finally, Neagu says “the geopolitical situation, the mounting inflation and recession risks, and the real economy slowdown are just a few of the market trends through which PE funds are navigating nowadays, and those may take a toll on their fundraising plans in the near future.” Still, Neagu has a positive outlook, concluding that there are “plenty of investment opportunities and PE funds are among the most knowledgeable players when it comes to navigating through the current climate.” ■

MARKET SNAPSHOT: ROMANIA

A BIRD'S-EYE VIEW ON THE STATE OF ARBITRATION IN ROMANIA

By **Cornel Popa, Partner, and Cornelia Tabirta, Managing Associate, Tuca Zbarcea & Asociatii**



The *Romanian Civil Procedure Code (CPC)* explicitly regulates institutional arbitration within a discrete chapter named “Institutional Arbitration” (Title VII of Book IV) and includes six articles to that effect (Articles 616 – 621 CPC).

The most representative system of institutional arbitration in Romania is the system of arbitration courts attached to chambers of commerce and industry. The system of chambers of commerce includes the (1) National Chamber of Industry i.e., the Chamber of Commerce and Industry of Romania (CCIR); (2) the 41 county chambers of commerce; (3) the Chamber of Commerce of the Municipality of Bucharest; and (4) the bilateral chambers of commerce. The chambers of commerce enjoy autonomy, are non-governmental organizations, apolitical, and without economic purpose.

The CCIR conducts the entire system of commercial arbitration through the Court of International Commercial Arbitration attached to the Chamber of Commerce and Industry of Romania (CICA), the oldest and most popular arbitration institution in Romania, functioning since 1953.

In Romania, the number of disputes resolved through arbitration is not impressive. For example, for the CICA, there have been 402 registered cases between 2017-2019. CICA reported that most of the newly registered cases were construction arbitrations.

Also, 344 setting aside requests were filed at the national level before the 15 courts of appeal in Romania (this data reflects all arbitrations seated in Romania that have reached the setting aside stage) between 2017-2020. Out of the 344 setting aside requests, approximately 74% were registered before the Bucharest Court of Appeal (Bucharest CA), i.e., 252 requests, which confirms that most of the arbitrations in Romania are seated in Bucharest. Between 2017 and 2019, the number of setting aside requests at both the national level and the Bucharest CA level had a downward trend. In 2020, the number of setting aside requests increased exponentially compared to the number of setting aside requests registered in the previous year: by approximately 74% at the national level, respectively by approximately 109% at the Bucharest CA.



The average length of the setting aside proceedings at the national level was between 6.2 and 9.9 months, according to the data collected for the period between 2017 to 2020 from Romanian courts. The average length had a downward trend, with the shortest average length (6.2 months) being recorded in 2020. At both national and Bucharest CA levels, the year in which the shortest average length was recorded (2020) coincides with the year in which most setting aside requests were filed.

This data is collected and published within the project *Removing factors leading to the increase in caseload, identification of regulatory elements and the overload trends* (SIPOCA Code/MySMIS 752/129914), co-financed by the European Social Fund, through Operational Program Administrative Capacity 2014-2020, implemented by the Superior Council of Magistracy in cooperation with the General Secretariat of the Romanian Government.

There can be several reasons for the limited number of disputes resolved through arbitration, including the potential lack of trust, perception over the costs, lack of information, etc. For stimulating the resolution of disputes through arbitration, it is important to strengthen the transparency of the statistical data both at the level of arbitral institutions and at the level of Romanian courts – by making such data easily available among arbitration users and practitioners. The effort should be joint and sustained, involving all participants in the arbitral process e.g., lawyers, arbitrators, involvement from academia, state courts, arbitral institutions, etc.

The regular publication by CICA of statistics regarding its caseload and the profile of the cases it administers, as well as regular publication of statistics regarding setting aside proceedings resolved by Romanian courts and of the applications for court assistance and intervention in the arbitral process, would be invaluable. Such statistics could be published by state courts or even included in the yearly reports regarding the state of justice in Romania.

Judicial power support and trust are one of the basic pillars of arbitration. A sustained vote of confidence for arbitration would not only strengthen trust in this alternative dispute resolution mechanism but could also improve overall access to justice. ■

CONSTRUCTION WORKS THAT CAN BE CARRIED OUT WITHOUT A BUILDING PERMIT UNDER DRAFT URBANISM CODE

By Oana Albota, Partner, and Andreea Ciobanu, Senior Associate, Albota Law



The draft *Code of Territorial Planning, Urbanism, and Construction* (the Urbanism Code) has recently been approved by the General Secretariat of the Government, on March 29, 2023. Of course, the government's approval is just one of the steps in implementing the new rules, as the Urbanism Code must also be approved by parliament, promulgated by the president, and then published in the Official Gazette.

One of the aspects proposed by the draft Urbanism Code is the performance of certain construction works without the requirement of having a building permit in place.

For example, in rural areas, it will be possible to build – with only a notification sent to the local public administration authority competent by law to issue building permits (the municipality) – single-family dwellings for own use, with a ground floor, without a basement, and with a maximum area of 150 square meters. Such buildings are subject to compliance with the applicable planning regulations and based on standard plans provided by the public authorities, with respect for local specificity. The notification should be made by completing a notification form and attaching a technical execution project with simplified content. The submission of the notification form and related project can be done in writing or digitally.

Although this measure may seem a little controversial to some, as too much freedom could create chaos, many argue that it will lead to greater rural development and economic growth in rural areas. The legislative change supports those who want to build a smaller and more affordable home in the countryside, without having to wait for a building permit.

However, certain legal requirements still need to be followed in such instances. In all cases, notification regarding the execution of construction works shall be given prior to the commencement of the works. The notification stands as an affidavit given by the beneficiary that the conditions for carrying out the construction works have been met solely based on the notification. The beneficiary can start building the house at least 15 business days after the notification is sent to the local authority, even in the absence

of a response from the municipality. The time limit for completion of the notified construction works is three years from the expiry of the 15-day post-notification period.



Compliance with the applicable planning regulations and technical standards is mandatory and will be the responsibility of the beneficiary and of those involved in designing, building, and verifying the construction. The acceptance of completion of the construction works carried out based on the notification will be done between the contractor and the beneficiary and will be recorded in the National Constructions Registry, to be set up according to the Urbanism Code. The registration in the land registry of the construction works carried out on the basis of the notification will be made based on the proof of transmission of the notification and verification of registration in the National Constructions Registry.

In addition, with a notification sent to the municipality and without a building permit in place, it will also be possible to construct new buildings outside single-family dwellings, such as garages, covered terraces, pergolas, summer kitchens, kiosks, swimming pools, sanitary facilities, and the like, each not exceeding 50 square meters. These changes are more than welcome as they allow homeowners to modify and customize their homes without having to obtain costly and time-consuming approvals.

At the same time, the new draft code stipulates that certain repairs – such as the construction of new fences by demolishing existing ones only in accordance with applicable town planning regulations; the renovation and extension of kitchens and bathrooms; the enclosing of balconies in multi-family dwellings; alterations to partitioning or remodeling of non-structural internal walls, or exterior walls, if there is no change in the size of the house for single-family dwellings; facade remodeling, only if they don't have a supporting role; and others – can also be carried out based only on the notification sent to the city hall.

Notably, all the construction works mentioned above can only be carried out if the buildings are located outside protected built-up areas and historical monument protection areas. ■

ASSESSING ROMANIA'S OIL AND GAS MARKET: CURRENT PROGRESS AND LEGISLATIVE CHANGES

By Raluca Gabor, Managing Associate and Head of Energy, Stratulat Albuлесcu



Romania is a key player in the European oil and gas market, being the largest natural gas producer in Central and Eastern Europe. Romania has one of the largest processing capacities in Eastern Europe and recently progressed with the development of the Black Sea reserves, currently estimated anywhere between 42 to 84 billion cubic meters of natural gas.

The first delivery of offshore gas took place in June 2022 (the Midia Gas Development), while the contract for the transport of natural gas to be extracted from the Neptun Deep offshore perimeter was signed in March 2023. Romania also secured financing for developing its first gas distribution network able to transport green hydrogen in the Oltenia region and the project is scheduled to be commissioned mid-2026.

In terms of grid capacity, the national transmission system operator Transgaz S.A. (Transgaz) continues to make small but steady steps in achieving the modernization and expansion of the national gas transmission system by making use of the available European grants. Towards the end of 2022, Transgaz commissioned and started gas exports to the Republic of Moldova through the Iasi-Ungheni pipeline and executed the memorandum of understanding for the development of the natural gas Vertical Corridor that will enable bi-directional flows of natural gas between Greece, Bulgaria, Romania, and Hungary.

In the context of the rise of energy prices caused by the war in Ukraine, Romania introduced a complex scheme for capping gas supply prices, which also limits the freedom of natural gas producers in choosing the destination and price of their extracted gas and discourages natural gas wholesale trades. Under the scheme, gas producers have the obligation to sell against a fixed price (currently RON 150 per megawatt-hour) those quantities required for the consumption of household clients and heat producers ensuring the supply of the population, as well as those necessary for covering the technological consumption of Transgaz and of the concessionaire distribution operators.

At the same time, the gas release program – namely the program forcing gas producers to offer at least 40% of their annual production on the centralized market in addition to the auction calendar approved by the ANRE – has been extended by two additional years until December 31, 2024. A new gas storage obligation has also been introduced for gas suppliers, requiring they store at least 30% of the quantities needed for the consumption of end clients from their portfolio between April 1, 2022, and October 31, 2023.

At the same time, most wholesale trades of gas carried out for a price higher than the acquisition price plus a 2% profit margin are subject to a new windfall tax (called the contribution to the Energy Transition Fund). Moreover, successive trades of gas carried out with the purpose of increasing the price are now sanctioned with a fine equal to 5% of the annual turnover of the relevant participant.

Finally, with a view to implementing the *Council Regulation (EU) no. 2022/1854 on an emergency intervention to address high energy prices*, on December 29, 2022, Romania adopted a solidarity contribution on the revenues in the crude petroleum, natural gas, coal, and refinery sectors. The contribution is equal to 60% of the surplus profits for the years 2022 and 2023 and applies to taxpayers (and sometimes their affiliates) that carry out activities in the above-mentioned sectors, provided the revenues derived from such activities are equal to or greater than 75% of their turnover. The government's emergency ordinance implementing the solidarity contribution is currently awaiting approval by the Parliament of Romania. Although the ordinance was initially approved with amendments aimed to expand the number of participants falling under the obligation to pay the solidarity contribution, the parliament's amendments have been rejected by the president and are, thus, now under re-examination. ■

THE YEAR OF “GREEN” RATIOS

By Claudia Chiper, Partner and Head of Banking & Finance, Wolf Theiss Romania



Building upon the key principles set out in the *UN 2030 Agenda for Sustainable Development*, which included 17 sustainable development goals and 169 associated targets to be met by 2030, as well as on the provisions of the *Paris Agreement*, regulators in the EU have published the plan for sustainable finance (*Renewed Strategy on Sustainable Finance*, published in 2021 and based on the action plan originally published in March 2018). Achieving the economic transformation envisaged under the above instruments requires extensive funding, estimated by the UN at about USD 2.5-3 trillion per year.

Because the financial institutions will play an essential role in supporting the change to a greener economy, at the EU level the prudential legal framework applicable to credit institutions has been amended to include ESG risks and reporting requirements on ESG factors. Banks are required to assess their exposures to brown companies, their adaptability to change, and long-term business plans to take into account environmental, social, and governance factors. The change will happen gradually but planning ahead is key to European regulators in order to achieve the set goals.

As part of the package of legislative measures, in January 2022, the European Banking Authority (EBA) published the binding standards on ESG risk, requiring both quantitative and qualitative ESG disclosures. The first disclosure reports focusing on banks' exposure to transition and physical risks are due in the first part of 2023. The reporting includes, among others, the credit quality of exposure to real estate, top carbon-intensive firms, and banking book exposures subject to physical risks. These reports will be based on data available in 2022. The first reporting is on an annual basis, while thereafter the reporting will be made every six months. Further, starting in 2024 and based on data collected during 2023, reporting will include the Green Asset Ratio and the Banking Book Taxonomy Alignment Ratio.

The Green Asset Ratio (GAR) was introduced in 2021 and measures the proportion of green assets qualified as such under the EU taxonomy regulations compared to total eligible assets (irrespective of their alignment to EU taxonomy). Based on a

sample of 29 banks, the EBA estimated that the aggregate GAR was, in May 2021, around 7.9%.

The Banking Book Taxonomy Alignment Ratio (BTAR) indicates the alignment of a bank's exposure towards non-financial corporates not subject to the Non-financial Reporting Directive (NFRD) standards (i.e., as a principle, companies with less than 500 employees). The difference versus GAR is that this indicator includes, among others, lending to SMEs and lending to non-EU counterparties which are not subject to the NFRD.

According to the last *Climate Risk Dashboard for the Banking Sector in Romania in 2022* published by the National Bank of Romania, the exposure of the banking sector to companies exposed to transitional risk (i.e., risks deriving out of the uncertainty regarding the time and speed for the transition to a sustainable economy) has increased by 2.5% in reference to June 2021, while the carbon intensity of loans to climate-relevant sectors dropped by 14% in 2021. The same report states that green bank loans (reported since May 2022) made available to non-financial corporations amounted to approximately RON 976 million (almost EUR 200 million) in September 2022.

The first green and sustainability bonds worth RON 2.3 billion (approximately EUR 466 million) were issued in 2021, while three more issues followed in 2022 (by October) resulting in green and sustainability bonds totaling up to RON 1.7 billion (approximately EUR 344 million). According to the National Bank of Romania: “Most of the proceeds raised via these instruments will help achieve Sustainable Development Goal (SDG) 11 – Sustainable cities and communities (25.5% of total) and SDG 13 – Climate action (19.7% of total).”

The new GAR and BTAR indicators serve the purpose of assessing the current status and of paving the way for further changes, including the introduction of a mandatory level for each of these indicators and the further refinement of the criteria of evaluation of the “S” and “G” elements in the ESG concept. Until such steps are taken, a first glimpse at the “green” level of the assets of Romanian and other EU banks is about to be unveiled, while further work lies ahead in defining long-term ESG strategies at the level of both financiers and corporates who wish to access financing. ■

KEY ENFORCEMENT TRENDS AND TOP PRIORITIES OF THE ROMANIAN COMPETITION COUNCIL

By Georgiana Badescu, Partner, Schoenherr



The practice of the Romanian Competition Council (RCC) over the last few years can be summed up in a rather simple headline: many (more) cases and substantial fines.

While 2022 was not the most spectacular year in terms of total fines, coming in at slightly above EUR 36 million (compared to more than twice that number in each of the previous two years), it once again showcased the RCC's drive to pursue alleged infringements by both resident and non-resident companies and its affinity for new theories of harm.

It is no longer a surprise that the RCC has relied on the support of several high-profile national competition authorities to conduct raids in various European jurisdictions in recent years. This is based on the EU cooperation mechanism set out by European legislation, which allows the RCC to investigate and inspect non-resident companies for alleged infringements localized or having effects on Romanian territory.

What may come as a surprise, however, is that the fines that can be levied by the RCC at the end of the day (or of the case) can go up to 10% of the non-resident company's worldwide turnover. There is, of course, a legitimate question about the proportionality principle and how this important piece of the puzzle falls into place in an investigation scenario. Some welcome guidance is expected from courts in various pending cases, which is anticipated to shape the RCC's practice going forward.

The fact that the RCC is fully open to testing or even articulating new theories of harm also comes as no surprise. From no-poach agreements to potential abuses by disparagement or facilitation of alleged cartels, the RCC seems to be charting every waterway. These new theories will undergo scrutiny by the competent courts, which may likely impose a certain standard of proof that will dictate the RCC's future practice.

By the same token, in terms of standards imposed by courts, the end of 2022 marked a significant development for the protection of the legal professional privilege (LPP) under EU law. The European Court of Justice (ECJ) extended the protection afforded

to lawyer-client communications to all legal advice, regardless of whether it is given in the exercise of the client's rights of defense in an ongoing investigation or litigation, for example, or in a matter which later became the subject of an investigation (Case C-694/20, *Orde van Vlaamse Balies and Others v Vlaamse Regering*). This case law is expected to bring procedural changes to how inspections and searches are conducted by national competition authorities bound by the ECJ ruling.


“Come what come may, time and the hour run through the roughest day.” For all Shakespeare lovers out there, this is not a time for predictions, but rather a time to focus on the RCC's top priorities, which either stem from its past practice or announced directions. On this basis, we anticipate that consumer-facing activities will remain on the RCC's radar, and the recently announced investigations into butter, oil, and sugar producers are a vivid testament to this. Future pricing behaviors, including publicly announced price increases or surge pricing, are equally likely to catch the RCC's attention.

The authority has issued a warning addressed to trade associations not to use the communication platforms created by the association to discuss prices or issue any form of price announcements. Other markets, such as construction materials, telecommunications, pharmaceuticals, or energy, are and will continue to be closely monitored by the RCC. The examination of digital markets and the distribution of digital content is expected to intensify thanks to legislation in various European countries and increased attention from the European Commission and other national competition authorities.

Against this backdrop of ever-growing scrutiny, a steady compliance program, effective and tested across various relevant operations and lines of business, becomes ever more important. ■

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ATTORNEYS AT LAW

DEFYING UNCERTAINTY – THE ROMANIAN M&A MARKET IN 2023

By Cristina Man, Partner and Co-Head of Tech M&A, Stratulat Albuлесcu



Aligned with global trends, Romania's M&A market suffered an apparently steady slow-down in terms of deal numbers in 2022, and not much has changed in the first quarter of 2023. While experts were expecting 2023 to suddenly jump back to 2021 levels, in reality, the well-known global factors having contributed to the slowdown of the market are not dialing back just yet.

However, an interesting keynote is being reported by market analysts: in terms of deal volume and value, 2022 has been a record-breaking year for Romania. The same trend was also visible in funding rounds: fewer overall rounds completed, but the highest values recorded thus far, with investors focusing on series rounds and established companies, and less on seed or pre-series rounds in emerging entities.

In the context of global turmoil, it is worth asking which industries are still capable of producing record-breaking deals in 2023. We expect technology to maintain its leading position in Romania, despite the global challenges faced by this industry, with energy, power, and utilities continuing to rise. Healthcare and various industrial products are also solid contenders in creating some stability in the market. A particular concern is raised by real estate transactions, a sector where we have been witnessing a continuous decline, which most factors indicate should continue in 2023.

In this context, the market is also looking at the Romanian legislator to further reform the applicable legal framework, which in Romania is still lagging in terms of investor-friendly mechanics. We are continuously battling a playing field of, on one hand, outdated legislation, and, on the other one, legislative volatility and lack of predictability.

We are happy to note the recent amendments to the legal framework on Romanian companies and companies' registrar formalities, which are a step in the right direction, towards digitalization and reducing bureaucracy. Some of the highlights include (1) the simplification of registration formalities, thus removing the obligation to submit a series of forms and documents that needlessly prolonged the timing required for incorporating a company (e.g.,

name reservation, affidavits given by founders, management, and the first auditors respectively, specimen signatures given by management, or declarations of accepting the mandate by the directors, managers, or members of the management or supervisory board); (2) implementing online accessibility for all registration formalities for companies using electronic means of identification and electronic means of communication; as well as (3) a more straightforward merger or de-merger process that removes the competence of the tribunal, thus at long last making the process more predictable and, hopefully, to be resolved more quickly (previously, the expected timeline for implementing a merger or de-merger process was between four and six months).

Finally, a particular challenge we foresee in the coming year in terms of completing investments relates to the newly implemented foreign direct investments (FDI) screening provisions. The FDI screening legislation was passed in April 2022, but it wasn't until November that the secondary legislation regulating the FDI Screening Commission was passed. The thresholds and sensitive sectors that fall under the umbrella of FDI screening are broad and vague enough at this point to potentially qualify most transactions under this regulatory approval. Moreover, not only traditional transactions but also new investments, including greenfield investments, are subject to prior screening.

Given that the expected timeline for FDI screening can take up to 135 days, a lot of M&A deals will now face prolonged periods of time between signing and closing due to a standstill obligation being provided for, thus creating further pressure and market uncertainty. There is a strong need for further tailoring of the applicable framework to allow for a smoother screening and more integration with the dynamics demands of such deals. ■

REINFORCEMENT OF SOCIAL DIALOGUE ON THE RADAR IN ROMANIA AGAIN

By Roxana Abrasu, Partner and Head of Employment, Nestor Nestor Diculescu Kingston Petersen



In the past years, social dialogue in Romania has decreased in significance within labor relationships, considering the quite old-fashioned framework, having no collective bargaining agreements in place at the industry level, the lack of impactful voices

at the trade union level, and the lack of general awareness of the legal framework – and of its potential positive impact on how workplace representation and collective negotiations could contribute to better business performance. The end of 2022 brought a new major piece of legislation on social dialogue (*Law no. 367/2022*, called the *New Social Dialogue Law*), repealing the former social dialogue law and changing it entirely, with the aim of bringing the social partners (namely the employer and the employee representative bodies) to the negotiation table again.

The purpose of the new regulation is to redefine and extend the scope of collective relationships and to encourage them, both in terms of making trade union organizations stronger, easier to set up, more flexible, and more present (broadening the scope of participation in collective bargaining), as well as in terms of clarifying and resolving labor disputes quickly. The New Social Dialogue Law has several objectives to achieve.

First, making the creation, organization, and operation of trade unions and employees' organizations more flexible by reducing the number of members required to set up a trade union (ten employees from the same company or 20 employees from different companies in the same collective industry); by redefining the concept of representation in collective negotiations at company level – the trade union could obtain their representative status if it includes at least 35% of the total number of employees at the employer level – while the number was previously at least 50%+1); by recognizing both representative and non-representative trade unions as negotiating partners, while observing the principle of representation of the majority of employees, etc.

Second, strengthening the role of trade unions in the exercise of their prerogatives and redefining the institution of employee representatives by granting employees the possibility to elect their employee representatives in companies with at least ten employees (as opposed to 21, as was the case up until now) and where

no representative trade union organizations exist; by regulating procedural aspects as regards the election of employee representatives, including the minimum threshold required for the elections to be valid – namely to obtain the vote of at least half plus one of the total number of employees; by creating the possibility for employee representatives to benefit from hours allocated from their working time to carry out specific activities in order to fulfill their mandate, etc.

Third, regulating the possibility of joining or opting out of a concluded collective bargaining agreement – the law provides for the possibility of joining a sectoral collective agreement for non-signatory organizations, as well as the possibility of opting out (i.e., non-signing by the employers in the negotiating group of the collective agreement, although they participated in the collective bargaining).

Fourth, regulating the possibility for unrepresentative trade unions to participate in collective negotiations is provided by law, thus eliminating the limitation imposed on unrepresentative trade unions in the exercise of trade union prerogatives.

And fifth, regulating a clear procedure regarding the triggering, representation, and monitoring of collective labor conflicts and strikes. The possibility of starting the collective labor conflict is also provided in case of the non-existence of a collective bargaining agreement at the level of the company, and the organization of the strike is facilitated by eliminating the condition that such could be triggered only by the representative trade unions.

Among other important updates that are certainly worth mentioning is the introduction of a new legislative concept, namely an information meeting for employees – the employer has the obligation to allow, at least once a year, the organization of a public meeting to inform employees or workers of their individual and collective rights.

Last, but not least, employers are prohibited from interfering in employees' adherence to or establishment of a trade union, and cannot limit or prevent employees from exercising their rights in this respect. ■

THE RIGHT TO FLY THE ROMANIAN FLAG

By Adoriana Azoitei-Frumosu, Head of Data Protection and Business Ethics, Hategan Attorneys



While the war has caused extensive disruption to global shipping and is likely to intensify ongoing supply chain disruptions, port congestion, and crew crises caused by the COVID-19 pandemic, in a context where Russian ships are switching their flags amid sanctions in record numbers, an increased interest in local maritime and inland transportation has been noted, including ship registration in Romania, particularly that of barges. Thus, the Romanian registration provisions could be of interest to companies in the transportation field.

All ships, irrespective of the flag they fly, while navigating or stationed in the national navigable waters of Romania and Romanian ports are required to comply with the provisions of national legislation and the international agreements and conventions to which Romania is a party. This rule also applies to ships sailing or stationed in national waters that are not navigable. Any ship that is sailing in the national navigable waters of Romania must fly the flag of the state in which it is registered.

The right to fly the Romanian flag is granted to the following categories of ships: (1) those owned by Romanian legal or natural persons; (2) owned by natural persons nationals of a member state of the EEA or legal persons having the nationality of a member state of the EU or the EEA or legal persons having established in the EU or the EEA; (3) owned by foreign natural persons domiciled or resident in Romania or by foreign legal persons domiciled or resident in Romania or by Romanian subsidiaries of foreign legal persons; (4) owned by legal or natural persons, other than Romanian legal or natural persons, chartered by bareboat or leasing contracts for periods of more than one year, for Romanian or foreign legal persons or companies.

The authority that grants the right to fly the Romanian flag is the Romanian Naval Authority (RNA), through its harbor masters. After granting the right to fly the Romanian flag, the harbor masters shall register the ship in the particular registers according to the request, issue the ship's nationality certificate, and notify the RNA of the data in the register to be centralized in the register of records. The nationality certificates will be valid for the entire period during which the ship is entitled to fly the Romanian flag or until the change of owner and/or operator of the ship. As a

mandatory request, the ships flying the Romanian flag must keep a logbook or other logbooks according to the law, as appropriate.

One of the most important things to consider when beginning the registration procedure is the age of the ship. According to Romanian legislation, a ship older than 20 years cannot be registered as a maritime ship, and it is debatable if it can be registered as a ship navigating inland waters.

What are the necessary documents to submit to RNA for registration? There are two particular situations: *Ship ownership* and *chartered ships in bareboat leasing*. To have the right to fly the Romanian flag, the owner shall submit the following documents to the nominated harbor master: (1) the standard application, optionally including three name proposals; (2) the title document; (3) the inspection report for registration issued by the RNA, or the class certificate and statutory certificates issued by the RNA; (4) where applicable, a tonnage certificate; (5) for legal entities, the certificate of establishment issued by the competent authority; (6) for acquired ships, the document certifying the erasure of the ship by the competent authority of the state whose flag the ship was previously flying; (7) proof of the fiscal registration of the ship by the endorsement of the registration form by the Romanian fiscal authorities; (8) two photographs of the ship in waterline condition.

Additionally, if the ship is operated bareboat or by leasing, the ship operator shall submit: (1) the financial leasing contract or bareboat contract; (2) if the ship is burdened by liens and/or securities in rem, the express agreement of the respective creditors to the chartering of the ship and its registration in the bareboat/leasing register in Romania.

As mentioned above, to complete the registration procedures, the RNA must provide an inspection report. The inspection may be conducted by one of the technical inspectors from Romanian harbor masters in the harbor where the ship is currently located, even though the harbor is not located in Romanian territory. The owner shall bear all the costs for an inspector to travel and conduct the ship's inspection. ■

RESTRUCTURING IN ROMANIA – WILL THIS TIME BE DIFFERENT?

By Valentin Voinescu, Finance and Restructuring Partner, Nestor Nestor Diclescu Kingston Petersen



Restructuring, both from a financial and operational perspective, has been regarded as a wonderful “nice to have” by the Romanian market, for many years. Will this time be different?

In principle, everybody agrees that the Romanian business environment, and particularly Romanian entrepreneurial businesses, are in much need of corporate renewal and turnaround. There are very clear “symptoms” showing this need: chronic low profitability, increasing misalignment with the market, inefficient structuring of financing, and uninspired talent acquisition and retention.

On the side of Romanian-owned businesses, there are of course some notable exceptions that have even outperformed multinationals in markets naturally favoring the latter (Dedeman, a player in the DIY market, is probably the largest example). And there are state-owned enterprises performing surprisingly well and showing solid returns in the short run as well as promising results for years to come (a number of large energy companies qualify in this respect).

The General Picture for Romanian-owned Large and Mid-Sized Companies

For privately owned businesses, the owners are usually an aging population, who have reached a stage where diversifying the equity base, exits, and succession planning are options to be carefully considered, along with deep measures of corporate renewal to reverse stagnation and bring management into the modern age.

These entrepreneurs are basically the generation of “survivors,” who started in the early 90s after the Romanian revolution, made it to this day through rampant inflation (above 200% in the early 90s and staying above single digits for many years afterward, well into the 00s), strikes and riots, political instability, and two major economic crises (2008 and 2020), and are now facing yet another challenge, with high inflation, low growth, and a war at the borders that impacts political stability for the whole world.

For state-owned companies, there are many “dead” business models still out there in the market, causing the taxpayer to cover losses for politically kept-alive entities. The Romanian airline, the

Romanian post office, and many others are simply outperformed in the market and maintained without any horizon, dragging tens of thousands of employees into a career without hope.

Generally, these businesses exhibit many obvious dysfunctions, such as overextending (“diversification” in markets with no competitive edge clearly defined), clear mismatches between short-term and long-term debt and assets, improper management of working capital, overextension of capital expenditures in unprofitable areas, improper monitoring and optimization of cash, failures to dislocate and walk away from non-core enterprises when business focus is needed, etc.

The Test

The last time Romania took a test on its ability to encourage corporate renewal as opposed to outright liquidating business (even where there was still potential in the model), it failed dramatically. It was approximately a decade ago (2012-2013), when banks faced their largest count of non-performing loans, with some of the largest banks well exceeding 20% NPLs in their loan book. While some timid attempts were made to restructure the loans, in the end, the banks sold most of the NPL portfolios (with proceeds from 6 to 16 cents on the dollar) and, predictably, a massive wave of bankruptcies ensued, with more than 95% of companies going from insolvency into bankruptcy and liquidation, flooding the market with marketable and less marketable assets.

A lot has changed since. New legislation, *Directive 2019/1023 on preventive restructuring frameworks*, has been implemented in Romania last year, a project I participated in. Professionals are more pre-occupied with corporate renewal and turnaround. Banks are generally far more resilient and can have a broader range of choices when facing an underperforming borrower. Corporates are more aware of this important need to “face the music” and embrace change in order to survive. As the years of cheap overflowing liquidity have passed, and the costs of funding have exploded during last year – with all central banks going into restrictive policies very abruptly – companies are now being tested.

“This time is different” is jokingly referred to in the business world as one of the “famous last words” for investors, as history tends to repeat itself, and assuming otherwise is dangerous. Will it be different? We do see many more cases opening up for actual, out-of-court, proper restructuring, with key stakeholders in dialogue. Time will tell. ■



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Career:

- Filip & Company, Founding Partner, 2008-present
- Nestor Nestor Diculescu Kingston Petersen, Partner, 2003-2008
- Nestor Nestor Diculescu Kingston Petersen, Senior Associate, 2002-2003
- Nestor Nestor Diculescu Kingston Petersen, Associate, 1998-2002

Education:

- University of Bucharest, Faculty of Law, 1998

Favorites:

- **Out of office activity:** Reading, playing with my son, being in nature
- **Quote:** “What counts in life is not the mere fact that we have lived. It is what difference we have made to the lives of others that will determine the significance of the life we lead” – Nelson Mandela
- **Book:** *The Five Imitations* by Frank Ostaseski
- **Movie:** Anthony Minghella’s *The English Patient*

Top 5 Projects:

- The privatization of power distribution and supply companies in the regions of Banat, Constanta, Oltenia, and Moldova: legal assistance to the Government of Romania in the pilot privatizations in the power sector in Romania, which

What would you say was the most challenging project you ever worked on and why?

Filip: The undertaking, together with my partners and colleagues, of building and growing the law firm Filip & Company. It is the longest continuous project I have been involved in and it challenges me every day on how to keep the balance between focus and dedication to our clients and focus and dedication to our team members.

And what was your main takeaway from it?

Filip: As we build a law firm for a century, I learned to test and measure and select relationships, issues, opportunities, and solutions always by applying the long-term view.

What is one thing clients likely don’t know about you?

Filip: What clients do not know about me will be, on reflection, congruous with what they do know.

Name one mentor who played a big role in your career and how they impacted you.

Filip: I was very fortunate to work with many excellent lawyers when I started in the legal profession at NNDKP, and I learned a lot from each of them. The person whom I identify

resulted in the regulatory reform of the power distribution sector and the entrance of Enel, Cez, and Eon as strategic investors on the local energy market (between 2000 and 2005);

- Advising the Tiriac Group on the merger with the Bank Austria Group (subsequently UniCredit) of the Tiriac Bank (in 2005) and then its exit from UniCredit Tiriac Bank (in 2015): coordination of sale side assistance in a very complex multi-jurisdictional transaction, including the release of multi-layer options and joint-venture and security arrangements in one of the largest M&A transactions in the banking sector in Romania;

- Advising Kameran Ltd. on the sale of participations in a leading integrated packaging and paper group in Romania comprising the EcoPack and Ecopaper companies to DS Smith plc (closed in 2018);

- Advising Banca Transilvania in its successful acquisitions, through separate competitive tender processes, of several banks and other financial institutions which accelerated BT becoming the leading institution in the financial sector in Romania (three subsequent transactions between 2014 and 2023);

- Advising Super Slam Limited on the sale of the sanction rights over the combined tennis tournament ATP Masters 1000 / WTA Premier Mandatory in Madrid, Spain, and various ancillary assets and participations to IMG UK / the Endeavour Group (closed in 2022).

as my mentor is Ion Nestor. He is a man who achieved the highest professional stature and recognition while being connected with his authentic wisdom and inspiring the people around him with his vision and moral values, his passion, courage, openness, generosity, warmth, and fairness.

Name one mentee you are particularly proud of.

Filip: I really enjoy seeing my colleagues grow and succeed in what they plan for themselves – sometimes this means they progress with their career in our law firm, and other times they follow with studies and careers abroad or in other companies. Paying it forward is, for me, a way to express gratitude for all the support I received along the way in my life.

What is the one piece of advice you’d give yourself fresh out of law school?

Filip: Know and grow yourself; study and respect the legacy of the legal profession; and stay open and curious and keep learning about the larger-than-law environment. The legal profession is under tremendous pressure to adapt and evolve and the new generation of legal practitioners will be called to find solutions for changes and challenges never before experienced.



MARKET SPOTLIGHT: MOLDOVA

ACTIVITY OVERVIEW: MOLDOVA

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11



6



5



5



4



5

Octavian Cazac



5

Roger Gladei



4

Vadim Taigorba



4

Vladimir Iurkovski



3

Daniel Cobzac



3

Diana Neagu



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THE WAR AROUND THE CORNER: CHALLENGING MOLDOVA'S ECONOMY

By Teona Gelashvili

With the ongoing war in neighboring Ukraine, Bivol Sotchi & Partners Founding Partner Andrei Bivol, Gladei & Partners Partner Iulian Pasatii, and Efrim Rosca Asociatii Managing Partner Oleg Efrim look at how the conflict has affected Moldova's economic growth.

"Moldova was heavily affected by the Russian invasion of Ukraine," Efrim explains. "Inflation rose from 18.52% in February to 34% in September 2022, according to data provided by the National Bank of Moldova." Consequently, "our GDP experienced negative effects, particularly from the decline in activities such as agriculture (-40.5%), health and social assistance (-18.6%), production and supply of electricity and thermal energy, gas, hot water, and air conditioning (-34.4%), real estate transactions (-11.8%), and manufacturing (-7.0%," he adds. "Moldova's GDP decreased by 5.9% in 2022, and the economy is stabilizing after the energy crisis during the winter," Bivol notes. "Last year, inflation peaked at 34.62% in October and has been on a decreasing trend since then, reaching 25.91% at this point."

Trade & Agriculture

Among the hardest-hit areas of the economy, trade seems to have been significantly impacted. "The war in Ukraine felt like an electrical shock on trade in the Republic of Moldova, and significantly slowed the economic growth post-February 2022," Pasatii notes, adding that "particularly pressured are the exports, since reportedly around 50% of Moldovan agri-food was exported to Russia by crossing Ukraine. The same crisis affected imports. As a confirmation, the Ministry of Agriculture and Food Industry has previously estimated that, without the fertilizer imported from Ukraine and Russia, the production of staple foods – like wheat, corn, and barley – will drop by at least 30% this year alone."

"The immediate impact on trade was caused by the closure of Ukrainian ports," Bivol continues. "Most imported goods traditionally came to Moldova through the Ukrainian ports of Odesa and Mykolaiv. In the first months following the beginning of the war, many companies experienced shortages of goods and raw materials which led to immediate price spikes." He adds that "it took a few months until the logistical chains were redirected to ports in Romania, Poland, Turkiye, and other countries. These adjustments came with higher logistical

costs, which increased the shelf-prices of products."

Another impact felt in 2022, according to Bivol, was "the influx of road-transported goods from Ukraine, which were normally exported by sea, and which caused severe jams at all border crossings, slowing down the export of local production. Additionally, in the fall of 2022, Ukrainian agriculture products – which under normal circumstances were exported overseas – flooded the neighboring region, impacting local agriculture production that was already affected by a severe drought in the summer."

All of it, according to Efrim, "automatically generated a wave of price increases for products and services that were deeply reflected in the living standards for the citizens of Moldova, such as the circulation of food and industrial products that Moldova imports from Ukraine. When Ukraine was invaded, Moldova was greatly affected from this perspective. The tightening of monetary policy has increased the cost of finance for business, while, additionally, unfavorable weather conditions have affected agricultural production." According to Efrim, "another important downfall for trade was triggered by disruptions to regional and global supply chains, and regional trade routes, which affected the operations and financial performance of companies and our clients."

Foreign Direct Investments

In addition, the war has had a significant effect on the volume of foreign investment. "FDIs dropped by 33.1% in 2022," Bivol notes. "Due to the uncertainty caused by the proximity of the war, and high inflation and base rate, many foreign companies, especially in the IT sector, decided to move their local subsidiaries and offices to other jurisdictions. The overall investments in fixed assets in the economy dropped by 11.6%. Investments in the construction sector decreased by 17.2%. Investments in transportation and machinery dropped by -7.1% and -4.6% respectively."

Despite that, Pasatii highlights that "the levels of FDI re-



Andrei Bivol,
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Bivol Sotchi & Partners



Iulian Pasatii,
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Oleg Efrim,
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duced almost in half in the four-five months after February 2022, but steadily and significantly increased by the end of 2022, perhaps as an aftershock of the exodus of international companies from the Russian market,” with Efrim also pointing out that “over the past four years, the volume of investments into Moldova from Russia and the CIS region has diminished tenfold, making up only 1% of the total investment amount.”

Government Spending

Consequently, the lawyers point out that government spending has increased significantly in 2022. “The budgetary deficit at the end of the year was MDL 9,3 billion – approximately USD 510 million,” Bivol notes, adding that government spending was primarily targeted to mitigate the impact of the drought and the energy crisis, provide agriculture subsidies and household energy bill compensation, and support infrastructure.

“Government spending has shifted, at least in public perception, from the measures taken in response to the pandemic

to, firstly, facing the refugee crisis – as, reportedly, in the time span of one year, around 750,000 refugees crossed the Republic of Moldova’s borders in the aftermath of the invasion, 100,000 of which remained in the country – and, secondly, facing the energy crisis,” Pasatii points out.

“The budget deficit has been covered exclusively by external resources,” Efrim notes. “The majority of increased public expenditure, given the war consequences and their impact, is allocated to social sectors, primarily aimed at safeguarding the earnings of the most vulnerable populations that have been significantly impacted by inflation, triggered by the war and the regional context.”

A Beacon of Hope in 2023

Nevertheless, Moldova’s economy has seemingly exhibited some signs of progress recently. “The positive influences on GDP growth came from increases in activities like information and communications (+12.2%), financial activities and insurance (+16.0%), education (+8.4%), and accommodation and public catering (+39.1%),” Efrim says. “Exports rose by 8.6%, imports by 11.2%, and public administration consumption by 2.5%, while population consumption and gross fixed capital formation decreased by 8.9% and 8.6%, respectively.” Accordingly, Efrim says that despite the current challenges, “it is anticipated that in the near future, given Moldova’s EU candidate status and the efforts of the pro-European government, investments will only increase. There are already positive signs and market conditions that support this expectation, demonstrating the potential for growth and the country’s ability to attract more foreign investment.”

“Short-term recovery measures and long-term policy changes and reforms are two key components that crucially need to be implemented in the current status of the economy. And it seems – particularly because of the recent change of the Government of Moldova and the (stated) priorities of the new cabinet – that those two next steps and action items are expected to be completed in the next six to 12 months,” Pasatii notes.

“The Ministry of Economy is forecasting a 6% GDP increase in 2023, which would mean recovering the losses of 2022,” Bivol agrees. “Nevertheless, Moldova is an open economy with a strong agricultural component. The stability and the speed of economic recovery will depend on many outside factors like the weather, eventual escalations of the war in Ukraine, energy prices, and the risks of a worldwide economic crisis or recession.” ■

MOLDOVA'S LONG WAY HOME

By Teona Gelashvili

On June 23, 2022, the European Council granted Moldova the status of candidate country for EU accession. ACI Partners Legal Manager Carolina Parcalab, Bivol Sotchi & Partners Managing Partner Inna Sotchi, Efrim Rosca si Asociatii Managing Partner Oleg Efrim, and Gladei & Partners Managing Partner Roger Gladei explore the recent changes in Moldova resulting from its new status.

Hitting the Ground Running

After being granted EU candidate status, Moldova seems to have witnessed some immediate changes, on both legal and social issues. “There have already been many direct and indirect, not so obvious but significant changes after this important milestone was achieved by our country,” Efrim points out. “To name a few, Moldova received humanitarian assistance from the EU during the Russian aggression against Ukraine – the EU allocated EUR 13 million to Moldova for humanitarian aid – and the Council of Europe approved a new macro-financial assistance operation worth EUR 150 million for Moldova between 2022-2024. Additionally, a temporary trade liberalization was granted for seven agricultural products from Moldova, allowing increased exports to the EU without customs duties.”

The most significant immediate transformation in Moldova, which occurred overnight upon receiving EU candidate status, as described by Gladei, “is the feeling that [EU accession] is now irrevocable. Before we had dreams, plans (the 2014 association agreement), and facilities (the DCFTA and free visa regime), but now we have certainty. Not necessarily that it will happen in the short run, but it seems the old east-west ping-pong is over.” All of this, according to Gladei, “will lead to a cultural shift, from the post-Soviet extractive model to the modern inclusive model.”

Mapping the Long Road Ahead: A Nine-Area Plan

The expected legislative changes in Moldova for 2023, to secure its EU accession, are manyfold. “The European Commission in its opinion on the application for the accession of the Republic of Moldova to the EU formulated nine areas to be reformed,” Sotchi points out. “These nine areas are related to justice reform, the electoral framework, fighting corruption, deoligarchization and reduction of the influence of private interests, combating organized crime and money laundering, improvement of public services, the reform of

public administration, public finance management, involvement of civil society, and human rights.”

Parcalab adds that, consequently, “the Moldovan Government *Action Plan*, approved in February, announces a number of legal amendments required due to Moldova’s EU candidate status. The Action Plan for 2023 aims to respond to the Commission’s observations on Moldova’s application for EU membership.” According to Parcalab, “the government actively implements the Action Plan and has already prepared important draft laws to be presented for Parliament approval.”

“Though Moldova already has a relatively good track record in transposing and harmonizing EU legislation, a lot of areas are still to be aligned,” Parcalab points out. According to her, the major challenges related to the upcoming legislative reforms stem from the fact that “many legal concepts in EU company law, taxation, consumer protection, competition, and financial markets are still new to Moldova, and require careful research and understanding by public authorities, private entities, and courts to ensure their proper implementation and adaptation.” She hopes “this process is not performed blindly, at any cost. We hope that the harmonization process will take into account the local realities and specifics, to create a predictable and balanced legal environment that would stimulate economic growth and the country’s stability.”

The Roughest Terrain: Reforming the Justice System

Gladei, Sotchi, and Efrim all believe that, in the years to come, out of the nine areas, reforming the justice system will be an exceptionally challenging task. “The European Commission June 2022 ‘nine-steps’ approach has required Moldovan authorities to visibly advance on judicial reform, deliver on the corruption fight commitment, eliminate the influence of vested interests, advance public administration and public finance reforms, enhance civil society involvement, and strengthen the protection of human rights,” Gladei says. “The judicial reform – perceived as the most important while



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difficult – has already born fruit in the external evaluation of the integrity of judges and prosecutors, and new rules of selection for the Supreme Court judges. This effort aims to restore the trust in the judiciary, severely affected during the recent decades.”

Commenting on judicial reform, Sotchi adds that “achieving justice reform is a complex and difficult process for Moldova. Several factors contribute to the difficulty of this process. The judicial system in Moldova faces a shortage of resources and personnel. There is a lack of auxiliary staff, including assistants and clerks, due to the miserable salaries.” She also draws attention to the lack of modern equipment in courts, saying “it can affect the quality of the judicial process. Since the beginning of 2023, more than 15 judges have resigned from their positions. As a result, the cases examined by them are assigned to the other judges, who already have numerous cases to examine, which will result in either delaying the examination of cases or their superficial examination.”

Finally, Efrim emphasizes the role of the judiciary in the fight against corruption: “While there is evidence of a slight increase in efficiency in the investigation and prosecution of systemic and high-level corruption cases, the main challenge remains the finality of cases heard before courts, largely due to the adjournment of hearings and intentional delay of judicial review at the initiative of the defense, constraints in securing witness evidence in court hearings, and the uneven application of the law by courts. It will improve public trust, enhance the business environment, optimize resource allocation, strengthen the rule of law, and attract international support, leading to a positive impact on Moldova’s social, economic, and political landscape.”

The Growing Need for Legal Professionals

The newly attained EU candidate status, among others, is likely to lead to an increase in the need for legal expertise. “Firstly, there will likely be an increased demand for legal expertise as Moldova aligns its laws and regulations with EU standards, requiring businesses and individuals to navigate the new legal landscape,” Efrim says. “Secondly, closer economic ties to the EU may lead to more cross-border transactions for Moldovan businesses, resulting in higher demand for legal advice on issues such as contracts, dispute resolution, and compliance with EU law.”

On the other hand, “as a result of the Russian war in Ukraine, Moldova has become an unfavorable country for investments. Consequently, many people refuse to bear additional expenses, such as those for quality legal assistance,” Sotchi adds. “We expect that by obtaining the EU candidate status, and support from the EU, Moldova will become an attractive country for foreign investments which will result in more work for lawyers.”

Still, Gladei points out that lawyers are already offering new services to clients, “related to data protection and privacy – based on the GDPR extraterritorial enforcement – compliance and e-KYC, competition and regulatory clearance, local setup, and cross-border trade.” ■

MARKET SNAPSHOT: MOLDOVA

MOLDOVA BUILDS INTERCONNECTIONS TO PROVIDE FOR GENUINE COMPETITION IN ITS ENERGY MARKETS

By Emil Gutu, Competition Manager, ACI Partners



The spring of 2023 brought a genuine spring mood into the Moldovan energy sector. The overall feeling is that Moldova came out of the winter that, by many predictions, should have frozen it solid and is now eagerly looking forward to bright, although still occasionally frosty, days ahead.

The energy crisis that started with the reduction of gas supplies by Gazprom in October 2021 and culminated with the skyrocketing energy costs and blackouts caused by the war in Ukraine is still far from being over. But dark times usually bring the brightest opportunities. The Moldovan energy sector arguably experienced more technical, organizational, and legal upgrades in 2022 than in any previous year.

In the natural gas sector, Moldova ended its decades-long dependence on Gazprom. The state-owned energy trader Energo-com bought natural gas on the open market for the first time, the reverse flow on the Transbalkan pipeline became operational, and the first-ever natural gas reserves were created. By operationalizing the second interconnection to the Romanian natural gas grid, the foundation of genuine competition in the Moldovan gas market was laid down.

However, the unprecedented speed of building security reserves came with a price. As everyone in Europe rushed to fill up their gas storages in 2022, the gas price spiked, and consumers felt the pain. Moldova's government partially offsets the social impact by implementing a targeted energy costs compensation scheme for households based on their per-capita income and energy consumption.

The speed of changes in the electric energy sector was even less trivial. Beyond anyone's imagination at the beginning of 2022, the Moldovan energy grid, along with the Ukrainian one, was successfully synchronized with the Continental European Power System in March 2022. Regular commercial electricity flows between Moldova and Romania, both bilateral and through the organized electricity market, have started. Electricity market rules similar to those in the EU entered into force. However, practical issues concerning electricity markets operation, especially the balancing market, are still to be solved.

Exceptionally high energy prices have also stimulated the exponential growth of electric energy generation from renewable sources. Thus, the net metering mechanism will outgrow the allocated quota of 10% of the maximum distribution grid load by the end of this year. Subsequently, it will have to be changed for net billing arrangements. Several other changes to the *Law on the promotion of the use of energy from renewable sources* will have to be introduced shortly to answer the challenges brought about by renewable energy generation to the grid's stability. All these breakthroughs were long overdue, but it took an all-out energy crisis to make them happen. Moldova still has at least two significant areas for improvement in energy management.

Firstly, most urban residential buildings were built according to Soviet standards with little regard for energy efficiency. The average annual centralized heating bill in such apartment blocks is much bigger than the cost of electricity for a whole year. While most blocks have upgraded windows, their heating system is still vertically integrated (where one can control the room temperature only by opening the windows). Changing those centrally controlled heating systems to a horizontally structured one would incentivize the more efficient use of heating and energy savings through their being directly reflected in the individual household's heating bills. Secondly, the urban cogenerating power plants, about 50 years old, are physically and morally obsolete, inefficient, and increasingly unreliable. Switching to modern equipment requires, however, either significant public investment or innovative legal and organizational arrangements to accommodate competitive private investments.

Following the newly established interconnections with the European networks, more foreign operators are interested in entering the Moldovan electricity and natural gas markets. Coupled with the already traditional high investors' interest in renewable energy generation, it creates a growing workload for legal professionals, primarily those specialized in energy law.

The year 2022 showed us how unpredictable events in the energy markets can be. That is why technical and regulatory improvements for a more resilient and competitive future of the energy markets in Moldova should be a continuous priority, even though the all-mighty winter was navigated successfully. ■

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MOLDOVAN DATA PROTECTION LAW FOLLOWS FOOTSTEPS OF GDPR

By Iulian Pasatii, Partner, and Constantin Cretu, Junior Associate, Gladei & Partners



One of the most important recent buzzwords in Moldova, at the intersection of legal services and IT, is GDPR compliance and its associated complications (and opportunities) – to strictly follow both the GDPR (where applicable extraterritorially in Moldova)

and the Moldovan legal framework, which is partially aligned with the EU law.

Two recent legal amendments to the *Moldovan Data Protection Law 133/2011* – one enacted on January 10, 2022, and the other just voted in the second reading before the Moldovan Parliament two weeks ago – are finally solving several fundamental discrepancies between the Moldovan and EU laws.

Firstly, a detailed legal regime has been introduced in the Moldovan law for the cross-border transmission of personal data, allowing a free movement of data between Moldova, the EEA states, and the countries ensuring an adequate level of personal data protection, as approved by the Moldovan regulator. This list currently includes countries like Argentina, Canada, Israel, Switzerland, or the UK.

Secondly, the problem of transferring personal data outside of EEA and the approved countries has been solved by approving the Moldovan version of the standard contractual clauses (SCC) covering three data-transfer scenarios: controller-to-controller; controller-to-processor; and processor-to-controller.

Accordingly, if a controller/processor processes personal data originated in or transferred to the Republic of Moldova – and the processing operations are carried out in a country that is neither a party to EEA, nor on the Moldovan regulator approved list – it must sign the Moldovan SCC with the Moldovan counter-party. It must also proactively ensure that its own onward transfers to sub-processors provide adequate safeguards – even though the primary responsibility is on the controller and exporter of personal data to make assessments before allowing any personal data to be transferred outside of the EEA or the pre-approved list of countries.

Further, a significant legal amendment passed recently, which introduces the concept of “sub-processor” to Moldovan legislation, regulating that a processor shall not engage another

processor without prior specific or general written authorization of the controller; in the case of general written authorization, the processor shall inform the controller of any intended changes concerning the addition or replacement of other processors, thereby allowing the controller to object to such changes. Before this legal amendment, any third party involved in data processing operations on behalf of the controller, under Moldovan law, was required to sign direct data processing agreements with the controller, basically prohibiting processing subcontracts from being signed by the processors.

The same legal amendment elaborates that when a processor engages another processor for carrying out processing operations on behalf of the controller, the same data protection obligations as set out in the contract or other legal act between the controller and the (first) processor shall be further imposed on the other (sub)processor by way of a contract or other legal act – particularly providing sufficient guarantees to implement appropriate technical and organizational measures meeting the requirements of Moldovan law. Where that other processor fails to fulfill its obligations, the initial processor shall remain fully liable to the controller for the performance of that other processor’s obligations.

As a formal pre-approval step, to engage a sub-processor, the processor needs to have the controller’s written permission. The permission and terms of engagement of a sub-processor might be covered by the agreement between the controller and processor or documented at a later stage in a separate writ. If the controller has approved the engagement of a sub-processor, the processor shall sign a contract or other legal act requiring the sub-processor to meet the legal requirements under Moldovan law.

Naturally, the alignment of the Moldovan data protection law with the GDPR – with its complex case law and practical solutions – seems to be a good long-term solution for the Moldovan data protection legal framework. It remains to be seen whether the Moldovan practice will follow the same approach as in the EU. ■



PROPOSED AMENDMENTS TO THE MOLDOVAN RENEWABLE ENERGY LEGAL FRAMEWORK

By Sorin Dolea, Managing Attorney, and Alina Chirciu, Legal Intern, Dolea & Co.



In the context of global efforts to migrate towards a green economy, based on renewable energy, the Republic of Moldova aims to improve and complete the regulatory framework applicable to the use of energy from renewable sources. Against this background, the Moldovan lawmaker is currently examining the opportunities to amend

Law no. 10/2016 of February 26, 2016, on promotion of the use of the energy from renewable sources (Law 10/2016). These amendments are currently in the public consultation phase. Although the amendments are still publicly debated and have not been adopted yet, the proposed changes address actual practical issues for the renewable energy sector.

Current Issues Affecting Investments in Renewables

The sale-purchase contracts for electricity obtained from renewable sources do not include clauses regarding the reparation of damages caused to eligible producers of electricity from renewable sources in case of limitation of their access to the network. Any reduction of the capacity of eligible producers to supply their produced electricity in the network – and which affects the income of those eligible producers – should be correctly financially compensated.

Law 10/2016 does not provide the criteria that the Regulator must apply for the evaluation of the liquidity level of electricity on the market. And Law 10/2016 does not contain detailed rules regarding the content of the contract for the purchase of electricity from renewable sources. The draft contracts are developed and approved by the Regulator.

There are no mechanisms to protect the investor/producer from factors that might affect their cash flow. This creates a huge risk for investments in the renewable energy sector.

Any reduction in the eligible producer's ability to deliver the electricity produced to the network may affect its revenues. Accordingly, from the perspective of creditors or investors, it is important that the eligible producers have the right to compensation for such limitations. Law 10/2016 does not establish any principles or mechanisms for establishing compensations for the limitations applied to the eligible producer. This generates additional risks related to these limitations and affects the viability of renewable energy projects.



In the context of the reform of the electricity market in Moldova, with the transition to competitive organized electricity markets, it is necessary to strengthen the function of the Central Supplier: to ensure an increased degree of its solvency and to ensure the continuity and reliability of the application of the support scheme in case of transfer of this function to other entities.

It is also necessary to ensure the transparency of the financing and payment mechanism for eligible producers within the support scheme, as well as to eliminate the risk of potential cross-subsidies between different activities provided by the central supplier.

To ensure a more efficient process of evaluation and selection of bids at auction, the guarantees must be high enough to discourage participation in the auction by individuals or entities that do not *de facto* intend to implement renewable energy projects. At the same time, guarantees should not be excessively high, where they become a barrier for renewable energy project developers in terms of participating in the tenders.

Benefits Arising from the Proposed Changes

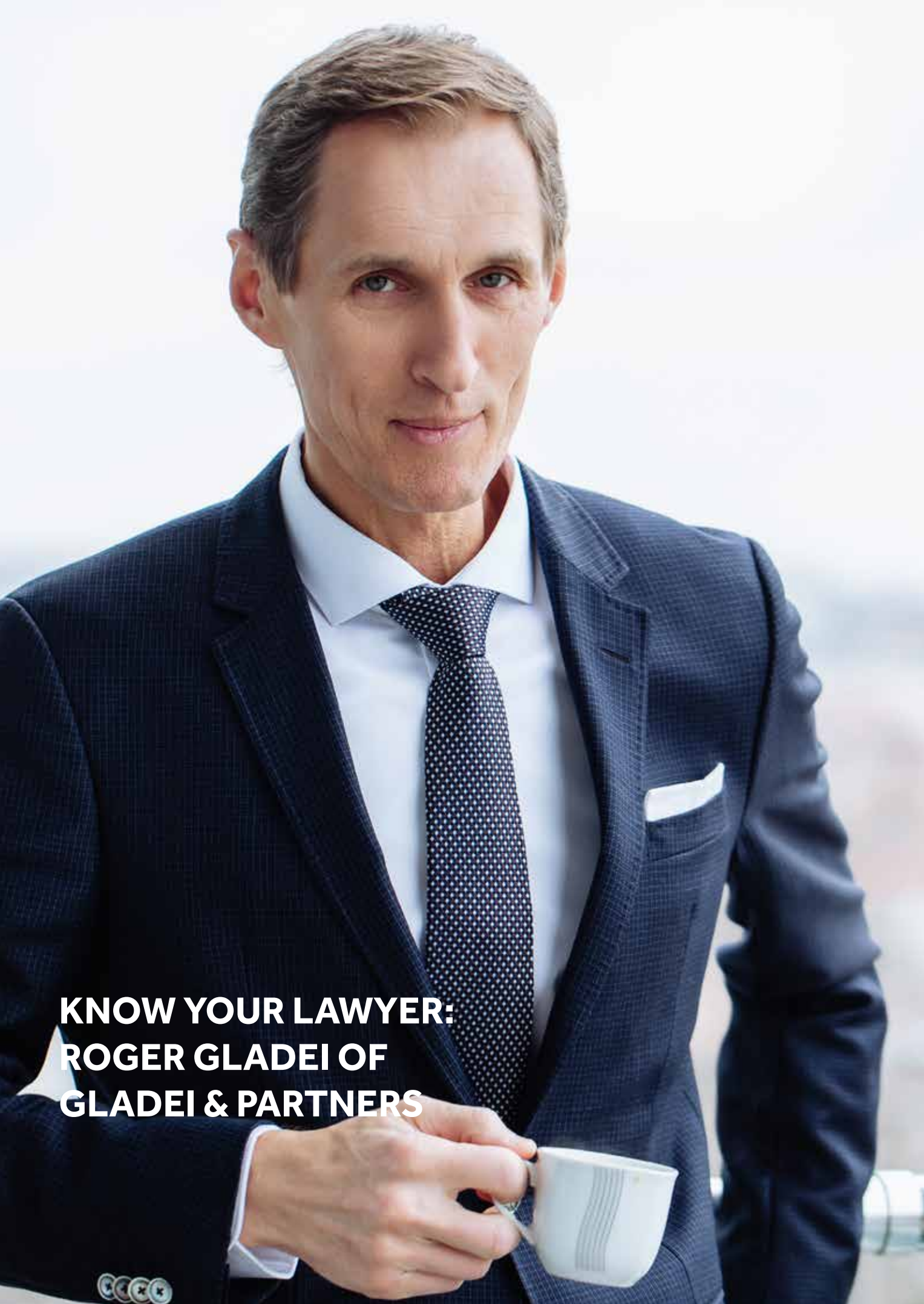
First, increasing investments in the field of electricity produced from renewable sources, which will encourage financing institutions to provide financial support for the implementation of such projects.

Second, attracting a larger number of potential investors, who will want to benefit from the support scheme for the production of electricity from renewable sources.

Third, the establishment of clear and unambiguous contractual conditions, which will ensure the stability and long-term financial viability of the eligible producers, which will also lead to the reduction of the financing costs of renewable energy projects.

And fourth: improving the degree of implementation of renewable energy projects, which will help the government avoid the need to organize repeated tenders.

Against this background, the overall aim of these amendments is to increase the confidence of potential international and private investors in the energy sector, which would support the overall development of the energy system in Moldova. ■



**KNOW YOUR LAWYER:
ROGER GLADEI OF
GLADEI & PARTNERS**



Career:

- Gladei & Partners, Managing Partner, 2008-present
- Turcan Cazac, Partner, 2006-2007
- Victoriabank, Counsel, Vice-President, 1995-2006
- National Police Academy, Assistant Professor, 1994-1995

Education:

- Grenoble Graduate School of Business, MBA, 2006
- Moldovan Academy of Economic Science, LLB in Finance, 2005
- Moldovan State University, LLB in Law, 1999
- Moldovan State University, LLB in History, 1994

Favorites:

- **Our of Office Activity:** Travel, yoga, neuroscience
- **Quote:** “Earn with integrity, spend with compassion” – Radhanath Swami
- **Book:** *Inner Engineering* by Sadhguru (Jaggi Vasudev)
- **Movie:** *Da Vinci's Demons*

What would you say was the most challenging project you ever worked on and why?

Gladei: I guess it's the pending lawsuit between the Moldovan independent Pre-vetting Commission and the judges who did not pass the ethical and financial integrity evaluation. Thus far, in less than three months in 2023, we've been representing the Commission in more than 20 cases, participating in more than 100 court hearings before the Supreme Court of Justice, sometimes even three or four hearings a day. That's a pretty different experience: to litigate with judges in front of the other judges.

And what was your main takeaway from it?

Gladei: This collection of cases is existential for Moldovan judiciary reform. Not that the failing candidates are corrupt or otherwise unworthy – it's rather a lesson to learn, where each and every judge aspiring to the highest auto-administration body ought to realize that the highest standards of integrity imply not only a zero tolerance to wrongdoings, but also an exemplary financial discipline and day-to-day conduct. Not an easy task, having in mind the post-Soviet legacy of double standards and 'parallel words.'

What is one thing clients likely don't know about you?

Gladei: That in high school I was the shiest pupil, blushing with no occasion, and that in university I was always the one

Top 5 Projects:

- Assisting Vetropack in the acquisition of the largest Moldovan glasswork, Glass Container: a multi-jurisdictional project involving corporate restructuring and ensuring technology spillover;
- Assisting the EBRD-led consortium in their acquisition of Moldova's largest bank, MAIB: a unique project based on special law and back-to-back state sale-purchase;
- Assisting MAIB in its share IPO: the first-ever Moldovan company IPO on a foreign stock exchange;
- Assisting the EBRD in its legal and business support to SMEs: a multi-jurisdictional (Ukraine, Georgia, and Moldova) project helping SMEs to survive during the pandemic;
- Advising the World Bank on the local insolvency regime reform: modernizing Moldovan insolvency laws and ensuring the survival of sound but distressed businesses.

to speak last (after all classmates had already been graded).

Name one mentor who played a big role in your career and how they impacted you.

Gladei: My father was and will remain (even after he passed away) my first and greatest mentor. Wise while humble, he was a true self-made man, who played what he prayed, remaining vertical in Communist times – not an easy task for an intellectual. Even when having become an accomplished man, he'd never forgotten his roots: I guess he'd always been keeping the inner spark of a free peasant (razes) alive.

Name one mentee you are particularly proud of.

Gladei: My current Partner, Iulian Pasatii. Stepping in years ago as a Junior Associate, Iulian's had a brilliant career. I guess his recipe is to always put heart and soul into what he's doing. Open-minded and creative, he's trusted by the clients and well-respected by his peers. I am as proud of him as I am proud of my kids.

What is the one piece of advice you'd give yourself fresh out of law school?

Gladei: Gain, then give. Your mission is to serve, to make the world better. So, wake up, make your bed, and go do.

EXPERTS REVIEW: BANKING/FINANCE

This issue's Experts Review section focuses on Banking and Finance. The articles are presented ranked by the number of credit cards per 1,000 adults in 2021, according to International Monetary Fund data.

The article from Turkiye leads the section, with 1,289.13 credit cards per 1,000 adults, followed by those from Slovenia and Croatia. On the other end of the spectrum, Kosovo, Montenegro, and Moldova wrap up the issue, with 97.73, 56.58, and 19.77 credit cards per 1,000 adults, respectively.

Country	Number of Credit Cards per 1,000 Adults	Page
■ Turkiye	1,289.13	Page 68
■ Slovenia	794.79	Page 69
■ Croatia	497.37	Page 70
■ Austria	476.21	Page 72
■ Ukraine	437.46	Page 73
■ Bulgaria	221.50	Page 74
■ North Macedonia	214.81	Page 76
■ Romania	179.78	Page 77
■ Serbia	178.31	Page 78
■ Czech Republic	155.10	Page 79
■ Hungary	150.00	Page 80
■ Latvia	141.19	Page 81
■ Bosnia and Herzegovina	139.11	Page 82
■ Lithuania	124.97	Page 83
■ Kosovo	97.73	Page 84
■ Montenegro	56.58	Page 85
■ Moldova	19.77	Page 86



TURKIYE: DIGITAL BANKING – THE INTANGIBLE FRONTIER?

By Zahide Altunbas Sancak, Partner, and Yasemin Keskin, Senior Associate, Guleryuz and Partners




In Turkiye, digital banking has become a hot topic in relatively recent times after the introduction of the Regulation on the Operation Principles of Digital Banks and Service Model Banking (Regulation), published in the Official Gazette dated December 29, 2021, issued by the Banking Regulation and Supervision Agency (BRSA).

The regulation sets out the principles and procedures of the operations of digital banks and service model banking in Turkiye. It regulates the activities and requirements for both digital banking and banking as a service (BaaS).

To operate in Turkiye, digital banks must obtain an operating license from the BRSA (similar to a regular bank), subject to the requirements provided under the Regulation and the Regulation on Indirect Shareholding and Transactions Subject to Permission of Banks published in the Official Gazette dated November 1, 2006. These general requirements include rules on capital adequacy ratios, management structure, internal control systems, information technology infrastructure, and business plans.

As for the special requirements for digital banks under the Regulation, first, digital banks must have a paid-in capital of at least TRY 1 billion (approximately EUR 50 million), which is extremely high in comparison to the minimum capital requirement for conventional banks (TRY 30 million corresponding to approximately EUR 1.5 million). This high capital requirement aims to ensure that digital banks have enough financial strength and stability to operate without physical branches. However, it may also create a barrier to entry for new players who want to enter the market with lower costs and more flexibility. In comparison, other jurisdictions that have introduced regulations for digital banks, such as Singapore or Hong Kong, have set much lower capital requirements starting from SGD 15 million (approximately EUR 9.5 million).

Moreover, digital banks can only extend loans to financial consumers and small and medium-sized enterprises, with some exceptions for foreign currency loans to larger enterprises. These aim to prevent excessive risk-taking by digital banks and to protect their financial stability. Digital banks also cannot provide physical custodian services other than those provided through



digital mediums, such as electronic wallets or cards. This means that digital banks cannot accept cash deposits or withdrawals from customers. Finally, digital banks must maintain at least one physical office for customer complaints. The physical office must be located at the headquarters of the digital bank and must be accessible to customers during working hours. These requirements aim to ensure a certain level of accountability and customer service for digital banks.

BaaS is another concept introduced to Turkish law by the Regulation, and it allows service banks to provide banking services to customers through interface developers, who are normally non-bank platforms such as financial technology companies and e-commerce service providers. In theory, it also allows customers to access multiple banking services through a single platform.

According to the Regulation, the agreement between the service bank and the interface developer must be approved by the BRSA to take effect, and meet the strict requirements outlined in the Regulation. Apart from the agreement, the Regulation mostly focuses on data privacy in the BaaS. In this context, the interface developer is required to obtain consent from its customers before accessing their banking information or performing transactions on their behalf and must also inform its customers in some respects, such as their role in the system, obligations, and fees. Finally, the Regulation strictly forbids banks from acting as interface developers.

In conclusion, digital banking and banking as a service (BaaS) are two concepts that have been introduced to Turkish law relatively recently by the Regulation, and the practice is still yet to fully catch up. While the Regulation aims to regulate the activities and requirements of digital banks and service banks in Turkiye, it may also pose some legal and commercial challenges and risks with the high capital requirements, strict requirements for the contract, and potential data privacy issues. It is yet to be seen whether the Regulation will be sufficient or compatible with the rapidly evolving technological developments and customer expectations in the financial sector, and it is vital for both regulators and market players to monitor the implementation and impact of the regulation closely and to adapt accordingly in the near future. ■

SLOVENIA: ARE ESG FINANCINGS AND ALTERNATIVE SOURCES OF LENDING THE ANSWER TO INCREASING BORROWING COSTS AND STRICT BANKING RULES?

By Mia Kalas, Partner, Selih & Partnerji



In the context of the ESG framework, under the planned allocation within the EU, Slovenia should (according to the EIB) allocate EUR 520 million per year to renewable energy sources and their efficient use, and EUR 780 million per year if we add transport, waste, and water to the equation. Considering such numbers, the investment gaps for achieving climate, energy, and environmental goals by 2030 and 2050 – which may seem very distant at this time, but we know how time flies – are quite large.

Namely, the volume of investments as a share of GDP in Slovenia, both for companies and the state, and especially for the population, is below the EU average and, in the last decade, significantly lags behind pre-2010 investments. The reasons are different, but it is known that state-sector investments have increased due to the crisis, while the main savers – the population – do not have much confidence in capital markets, not even in the new forms of ESG investments. We cannot talk about a “green euphoria” in Slovenia just yet. However, the situation seems to be developing rapidly.

Slovenian banks are gearing up internally to be able to take the largest part of the responsibility for the ESG transition of the entire economy. With some delay compared to more advanced markets, they are intensively working on the implementation of all ESG-related reporting requirements. Slovenian banks are also putting significant efforts into becoming “greener” themselves, both by educating their employees to increase their sensibility to ESG matters and by introducing measures aimed at reducing carbon dioxide emissions and paper usage, promoting health, etc. Finally, and most importantly, they are working on improving their loan portfolios from an ESG perspective. General ESG questionnaires have already been sent to Slovenian companies by most Slovenian banks. The feedback of Slovenian companies to this exercise was not entirely positive – in particular, companies cooperating with several banks complained about the heap of work needed to complete all the different forms received (some contained more than a hundred questions). On the other hand,

there are organized efforts for the harmonization of such questionnaires, led by the Slovenian Banking Association and supported by the regulator.

There is already some opportunity to achieve better commercial terms if ESG aspects are considered in depth within the credit approval process. However, at least for now, this usually means a longer and more complex approval process. One of the leading banks in ESG-colored financings primarily considers, for sustainable financing, those activities which materially and directly contribute to environmental goals, particularly to the adaptation to and mitigation of climate changes, as well as activities that are key for the zero-carbon transition. The latter may also include industries that are currently “brown” (cement, steel, chemical industries) and do not yet have technologically or economically viable alternatives, if it can be expected that, with the development of technology, rapid and substantial positive climate effects will be achievable.

As regards alternative sources of financing, the small Slovenian market is not very developed. We rarely see mezzanine or junior financing and similar. Equity financing, including via joint ventures, is more frequent, and there is some crowdfunding. Investment funds could take over the role of accelerating the finance and capital markets but are still struggling with the question of how to assume risk, instead of playing a more intermediary role. Nevertheless, we have recently seen a few financings by a Slovenian private equity fund, particularly in real estate (as expected, with notably higher interest rates compared to bank loans). Foreign investment funds generally give an advantage to larger projects and, usually, do not build the capacity and the knowledge of the local Slovenian market.

In view of the above, and additionally taking into account the relatively small Slovenian pension schemes, some market commentators perceive a risk that Slovenia might not seize all the advantages of the recent ESG trends. However, watching how ESG is becoming a hot front for Slovenian commercial companies as well, I do believe that – if taken seriously and carried out sincerely – ESG financing should play a decisive role in the green transition, and should also be of more interest in the new economic reality of increasing finance costs. ■

CROATIA: RESILIENCE FACING THE BANKING CRISIS – THE EU CREDIT INSTITUTION RECOVERY AND RESOLUTION FRAMEWORK’S ROLE

By Jasna Zwitter-Tehovnik, Partner, Ivan Males, Counsel, and Anze Molan, Junior Associate, DLA Piper Weiss-Tessbach



In today’s global economy, credit institutions play a critical role in providing financial services to individuals, businesses, and governments. However, the failure of a credit institution may result in far-reaching consequences, as we have recently seen with banking crises in Switzerland, the US, and, potentially, Europe.

In response, many countries have developed credit institution resolution procedures to ensure that credit institutions in distress are handled in an orderly and efficient manner, while minimizing the impact on the financial system. Understanding these laws and procedures is therefore of utmost importance for anyone involved in the banking sector.

In the EU, and particularly the Banking Union (BU), the credit institution recovery and resolution regime is part of a wider approach to the regulation of credit institutions which consists of three pillars. The first pillar serves the purpose of banking supervision, the second pillar consists of the credit institution recovery and resolution regime, whereas the third pillar focuses on the deposit insurance scheme. The three pillars are supported by the backbone of the so-called single rulebook, a set of legal rules governing different aspects of the BU. Broadly speaking, the single rulebook has two components: EU-level authorities and directly applicable regulations, and national-level authorities and directives that need to be transposed into national laws.

For most of the EU and BU, member states have implemented the relevant legal acts into national law. Croatia, being a member of both, is no exception. Focusing on the credit institution recovery and resolution, the relevant legal rules are contained in the *Croatian Resolution of Credit Institutions and Investment Companies Act* (Zakon o sanaciji kreditnih institucija i investicijskih društava – Resolution Act) which is largely based on *Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014* (BRRD), the primary EU directive within the context of this topic. Under the EU / Croatian resolution regime coupled with the relevant EU regulations, the resolution authority (either the Croatian National Bank or the Single Resolution Board) may generally apply four resolution tools: the sale-of-business tool, the bridge-institution tool, the asset-separation tool, and the bail-in tool. To apply those tools, the resolution authorities may exercise

a wide range of powers, including taking control over an institution under resolution and transferring its rights, assets, or liabilities to another entity.

Among other things, the Resolution Act contains an extensive set of rules excluding the applicability of general corporate law rules. These are especially relevant to the resolution authorities’ powers which involve many features that are traditionally subject to strict corporate law regulation. At first glance, it seems that the resolution authorities exercising such powers in Croatia are bound by the same corporate law rules that usually apply. However, considering those exemptions, a significant portion of corporate law becomes virtually irrelevant.

In the context of Croatian credit institutions, which mostly belong to international groups, the relevant tools may be the sale-of-business tool and asset-separation tool, which allow the resolution authority to carve out (good standing) Croatian subsidiaries and transfer them to another entity.

Overall, the credit institution recovery and resolution framework under the Resolution Act seems well-structured, appropriately transposing the BRRD, and, in conjunction with the relevant EU regulations, providing a sufficient framework for an efficient recovery and resolution procedure.

The banking crises that occurred in the US and Switzerland serve as a stark reminder of the importance of sound credit institution recovery and resolution frameworks. Although the scale of the recent banking distresses is not yet entirely clear, many fear that the current situation may trigger a global financial crisis of similar or even larger proportions to the one in 2008. Considering that the three BU pillars have been established with the explicit purpose of preventing such crises, the EU’s banking sector should be, at least in theory, significantly safer today. However, the legal rules underlying these frameworks can be complex and difficult to navigate, and it is crucial for credit institutions to seek professional legal assistance to properly interpret and ensure full compliance. By doing so, credit institutions can mitigate the risk of non-compliance and contribute to the overall stability of the financial system. ■





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AUSTRIA: NEW INVESTMENT FIRM ACT – THE END OF MIXING APPLES AND ORANGES?

By Jasna Zwitter-Tehovnik, Partner, and Martin Navara, Associate, DLA Piper Weiss-Tessbach



Investment firms, which operate in financial markets and provide investment services to third parties, were subject to the same organizational regulations as credit institutions, despite their different business and risk profiles. Their activities are regulated by MiFID II, which was transposed by the *Austrian Securities Supervision Act 2018*.

However, in 2017, the European Banking Authority published an opinion in response to the call for advice on investment firms. The product of this effort is the legislative packet called *Investment Firm Review*, consisting of the directly applicable *Investment Firm Regulation (EU) 2019/2033 (IFR)* and the *Directive (EU) 2019/2034*. The latter was transposed to the new *Austrian Investment Firm Act (Wertpapierfirmengesetz 2018, WPFG)*, which became legally effective as of February 1, 2023.

Both the IFR and WPFG provide a tailored regulatory framework for investment firms, legal entities providing investment services to third parties and/or executing orders on behalf of clients, which are required to comply with various obligations to ensure investor protection, market integrity, and the stability of the financial system.

The new law classifies investment firms into four categories. Category 1 and Category 1 minus investment firms – for the time being, not represented in Austria – require a banking license, must comply with credit institutions' capital requirements, and include systemic investment firms that provide banking-like services such as trading on their own account and issuing financial instruments on a firm commitment basis. The majority of Austrian investment firms fall under Category 3, which comprises small and non-interconnected investment firms. Category 3 investment firms are subject to exemptions from certain provisions of the WPFG. All other mid-sized investment firms falling under Category 2 investment firms are entirely subject to the customized regime of the WPFG.

The harmonization efforts set in at the capital and liquidity requirements. Under the full scope of application for the Category 2 investment firms, there are three equity thresholds relating to the number and scope of the offered investment services. Liquidity requirements are set at one-third of the fixed overhead

requirement, which must be at least one quarter of the preceding year's fixed overheads. However, the competent supervisory Financial Market Authority (FMA) has issued an implementing regulation for Category 3 investment firms, exempting them from liquidity requirements based on the nature, scope, risk content, investor protection, and complexity of their business. The FMA will grant these exceptions upon request, or automatically if the investment firm offers only certain investment advice.



To prevent investment firms from taking excessive risks, similarly to credit institutions, there are rules in place regarding remuneration and governance. However, these rules are not as stringent as those for credit institutions and, e.g., do not specify a fixed maximum ratio between fixed and variable remuneration. Instead, investment firms are required to set an appropriate ratio themselves. Investment firms must comply with reporting obligations, which vary according to their category and the complexity of their business. The new investment firm regulation introduces many distinctions that emphasize the importance of strong internal control and auditing, as well as the need for external advice.

Non-compliance with the new rules and obligations is sanctioned by the FMA. The fines may reach up to 10% of the total annual net turnover and up to twice the benefit derived from the infringement, or up to EUR 5 million in the case of individuals as responsible persons. To mitigate the risk of fines, the WPFG provides for transitional periods. The Category 2 and 3 investment firms are exempted from the capital requirements for a period of six months (i.e., until August 1, 2023). The one-month exemption period regarding the reporting obligations has already passed.

Under the new regime, investment firms are no longer required to meet the excessive capital and other requirements set for credit institutions. Alternatively, investment firms are subject to standardized capital requirements, reporting obligations, and a supervisory framework tailored to their unique business risks and activities and staggered according to the size and complexity of the business. The potential legal and financial consequences of non-compliance with the new regulatory requirements highlight the importance of seeking professional advice to navigate this regulatory landscape effectively. ■

UKRAINE: BANKING AND FINANCIAL SERVICES INDUSTRY DEVELOPMENTS

By Serhiy Chorny, Co-Managing Partner, Baker McKenzie Kyiv



Notwithstanding the ongoing war, the Ukrainian banking and financial services industry continues to operate without interruptions and shows great resilience and stability. Ukrainian legislation continues to develop at the same time, bringing the standards of banking and financial services closer to the EU requirements.

Thus, the new *Payment Services Law* became effective on December 1, 2022, (the original effective date of August 1, 2022, being pushed back due to the Russian intervention). This law marks a major development in the payment services industry and purports to harmonize Ukrainian legislation with the EU standards, particularly with the EU's *Payment Services Directive* (PSD2) and *E-money Directive* (EMD). The law sets out the principal rules for the provision of payment services and for carrying out payment transactions. The law provides a general framework for the functioning of payment systems in Ukraine, sets out an exhaustive list of payment services, defines categories of service providers and conditions for the authorization of their activities, determines the rights, duties, and responsibilities of market participants, and regulates oversight procedures for the payment infrastructure. Also, the law regulates the issuance and use of electronic money in Ukraine. As of today, the National Bank of Ukraine (NBU) has either updated or adopted new regulations implementing the provisions of the *Payment Services Law*, thus establishing a solid new base for the functioning of the payment services market in Ukraine.

These legislative changes were accompanied by significant developments in Ukraine's national payment infrastructure. On April 1, 2023, the NBU launched a new generation of the national electronic payment system, called SEP 4.0, which operates around the clock and is based on the international ISO 20022 standard. According to the NBU's SEP roadmap, all non-banking financial institutions are expected to connect to SEP 4.0 during 2023. In 2024-25, the NBU plans to expand the system's functionality and align it with the EU rules. This will include the implementation of an instant payment service for client settlements within Ukraine and the possibility of making cross-border transfers with the EU countries based on the SEPA Instant Credit Transfer.

As warfare caused by the Russian invasion continues, restrictive

measures with respect to cross-border settlements (including loan repayments and dividend repatriation) remain in effect. However, certain relaxations were introduced in 2022 as more territories of Ukraine were gradually liberated from Russian occupation. Thus, in August 2022, Ukraine's Securities Commission lifted most of its restrictions on the functioning of the local capital markets. Prior to these relaxations, the local securities market was effectively shut down, and only transactions with government bonds were allowed. Further, in September 2022, Ukrainian borrowers were permitted to make interest payments to foreign lenders, subject to certain conditions set out by the NBU. Although the repatriation of dividends and most investment proceeds from Ukraine abroad remains restricted, the repatriation of interest payments under domestic sovereign bonds received after April 1, 2023, has recently been allowed.

In March 2023, the NBU introduced new rules requiring banks to identify and document information about their clients' and counterparties' ties with the Russian Federation. This move purports to increase transparency among bank customers with ties to the Russian aggressors and reveal the hidden presence of the aggressor state in the Ukrainian market.

As regards the law firms that service the banking and financial institutions industry in Ukraine, most of them have resumed their normal operation. Among them, Baker McKenzie's Kyiv office is fully operational and provides services to clients on all matters related to their business in Ukraine.

The war has brought a sharp decrease in transactional work and an increase in regulatory consulting services, especially those related to sanctions and restrictions on cross-border settlements during martial law. However, major law firms are reasonably busy with a number of debt-restructuring transactions as well as with servicing certain significant credit deals concluded before the war. We're working for a leading Ukrainian grain exporter on restructuring its loan arrangements with a large group of international and domestic creditors, and assisting an international financial institution on project funding for the reconstruction of residential housing in a number of Ukrainian cities. There is also a relatively constant flow of regulatory work for Ukrainian commercial banks, international payment systems, and securities custodians. On balance, the Ukrainian legal market is quite active and ready for the commencement of the full-scale reconstruction of the Ukrainian economy after the war. ■

BULGARIA: FINANCING ALTERNATIVES BEYOND TRADITIONAL BANK FUNDING

By Daniela Petkova, Partner, and Sevdelina Rabuhchieva, Senior Associate, Gugushev & Partners



Although companies' financing in Bulgaria remains primarily bank-based, a transformation towards the growing importance of alternative financing has been observed in recent years.

On paper, the traditional method of obtaining a bank product seems more suited for a business, but a lot of red tape and rigorous bank standards discourage some companies. Among the key factors for avoiding bank funding are the potential need to provide collateral, the lack of credit history of companies in the early stages of development, the need for stable financial indicators, and, often, time-consuming processes.

The other funding options include raising funds through an IPO. The relatively small percentage of listed companies in Bulgaria indicates the difficulty of raising funds through capital markets. The availability of such funding means is challenging, as only businesses with good financial statements, a positive credit history, and a solid reputation can attract funds directly through the capital markets. Despite their proximity to capital markets, growth markets remain a viable alternative for raising finance. The Bulgarian Enterprise Accelerator Market (BEAM), which is an SME growth market, offers similar benefits to those of public enterprises on more favorable conditions.

Going beyond bank lending and capital markets, venture capital appears to be the most viable alternative. Both EU passport and sub-threshold fund managers under the *AIFM Directive* operate on the Bulgarian market, also including EuVECA fund managers under *Regulation (EU) No 345/2013* targeting unlisted companies with up to 499 employees and SMEs listed on an SME growth market.

Generally, VC funds invest in fast-growing companies in exchange for a minority ownership stake in them thus achieving (often long-term) capital appreciation. In many cases, VC funds offer convertible loans in place of direct equity investments and may additionally purchase shares from existing owners. VC funds' portfolios follow their investment policy, including the sectors in which they focus. This would, *inter alia*, determine the eligibility of a business for investment by the fund. The fund would normally perform a due diligence procedure before investment. The key factor in opting for venture capital funds is their support of their portfolio companies, as well as the added value of management providing advice and overall support based on their own experi-

ence. The price for this, however, comes with a potential loss of control over the company's management by the founders.

In addition to VC funds, there is a network of business angels who also support start-ups and early-stage companies and are flexible in terms of the amount they are ready to contribute. They often feature successful, self-made entrepreneurs intending to invest their own funds in potentially beneficial companies by acquiring ownership. The fast-growing entrepreneurship and start-up ecosystem in Bulgaria, including many NGOs and various business accelerator and incubator structures, largely contribute to facilitating the direct investor-entrepreneur relationships and respective investments. Even though it takes longer to find a suitable angel investor, the business can benefit from access to the investor's sector knowledge and contacts. The activity of business angels is not regulated in Bulgaria and commercial law applies when structuring such investments.

Crowdfunding (collective investment), whose legal regulation is relatively new in Bulgaria, is another alternative method of financing focused mainly on start-ups and SMEs. The Bulgarian *Public Offering of Securities Act* contains the essential requirements of *Regulation (EU) 2020/1503*, which harmonizes the legal framework of crowdfunding at the EU level. The crowdfunding service provider operates a publicly accessible digital platform that facilitates the connection between potential investors or lenders and businesses seeking funding. The activity of providing crowdfunding services requires a license from the relevant authority of the provider's establishment. Crowdfunding services can refer to loans, transferable securities, and so-called "admitted instruments for crowdfunding purposes." Unlike venture capitalists and business angel investors, who acquire significant control over company decisions, through crowdsourcing businesses are not required to give up such rights.

Besides the above, other traditional alternative means of financing, such as factoring and mezzanine finance, are also widely used in Bulgaria, particularly by already developed businesses in case of short-term liquidity needs or a need for expansion. Still, it should be noted that the actual consequences of shifting company lending from the banking sector to alternative sources, both for the Bulgarian financial sector and for businesses, are yet to be observed. ■



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NORTH MACEDONIA: CONVERSION OF THIRD-PARTY LOANS INTO SHARE CAPITAL CONTRIBUTIONS IN TRADE COMPANIES

By Marija Filipovska Jelcic, Partner, and Aleksandar Josimovski, Attorney at Law, CMS



Before the introduction of the latest amendments to the *Company Law of the Republic of North Macedonia* (Company Law) on April 29, 2022,

it stipulated that only loans provided by sole shareholders to their companies may be converted into share capital. The practice of conversion overseen by the Central Registry of North Macedonia (CRM) was strict. For example, loans taken over by the shareholder from the companies of the same group were considered ineligible for conversion.

Due to rising inflation, increasing market interest rates, limited sources for financing, as well as the need for improving the legislation for financing by business angels, Macedonian lawmakers revised this approach. As a result, the latest amendments to Company Law were adopted, introducing the possibility for third-party loans to be converted into share capital of the borrower.

Such conversion is subject to the fulfillment of previous conditions, and subsequent registration with the CRM. The Company Law regulates strict procedures and rules for conversion (e.g., the convertible loan provided by the third party must be monetary, the principal of the loan must be contributed via a share capital increase, certain documents must be provided to the CRM, including the convertible loan agreement, etc.).

The Company Law appears not to regulate certain matters, and to overregulate others, which may lead to ambiguity in practice, or slow down the execution of the loan and the registration procedure in front of the CRM. As an example, the Company Law does not regulate the accrued interest connected to the convertible loan agreement. Consequently, the obligation to pay the interest appears to be left to the borrower, which ultimately decreases the borrower's available cash flow, and the CRM has no regulation enabling them to harmonize the practice. Also, providing the convertible loan agreement may trigger certain confidentiality issues for the investor and the borrower.



Also, the procedure for the execution and consequent registration of the convertible loan provided by the Company Law appears to be formal (e.g., the law regulates the mandatory elements of the convertible loan agreement, such agreement is subject to notarization which creates additional obligations for the parties, in case of foreign loans the obligation for notification of the National Bank of North Macedonia is triggered, etc.).

The loan can be transformed into a contribution until the expiration of the third year after signing the convertible loan agreement, which is not necessarily favorable for the investors, especially in cases when the loan's maturity period exceeds three years. The lawmakers should maybe consider a more business-oriented approach (e.g., framing the rules, and leaving it up to the parties to contractually agree on the period during which the loan could be converted).

On the plus side, the Company Law allows the shareholders to agree that their shares in the company differ from their actual contributions in the share capital with the incorporation agreement, which may be useful information for investors.

Although more than 11 months have passed since the provisions for convertible loan agreements came into force, it appears that the CRM has not registered any conversions. Having the above in mind, it appears to us that an additional period would be needed for determining the effects of this amendment or any specific need to update it. ■

ROMANIA: CROSS-BORDER FINANCIAL SERVICES AND REVERSE SOLICITATION

By Gabriela Anton, Partner and Co-Head of Banking and Finance, Tuca Zbarcea & Asociatii



This article addresses the regulatory and legal issues which arise in the provision of financial services by a financial institution located in one country (the “home country”) to a Romanian customer, without the establishment of a local presence, such as a branch or subsidiary in Romania.

Traditionally, cross-border financial services in Romania were concentrated in the sophisticated end of the market, such as syndicated loans and investment banking. Electronic commerce, involving financial institutions targeting retail clients cross-border, the increased mobility of individuals, and the digitalization of financial services have led to exponential growth for cross-border retail banking.

Offering financial products or services to a client located in Romania may be subject to Romanian laws and the service provider will need to consider whether the activity requires licensing in Romania. The answer to these questions depends largely on assigning a geographic location to the transaction and activity, that is, whether the transaction or the activity “takes place” in the home country or in Romania.

As a rule, the Romanian legal framework which applies to financial services prohibits cross-border services, in the sense that it imposes the requirement to establish a Romanian subsidiary or branch, licensed by the Romanian competent authority to provide financial services in Romania. This means that Romanian laws and regulations apply to the firm’s activities undertaken on the territory of Romania, irrespective of the residency of the client – the so-called territoriality principle.

There are two exceptions expressly provided under Romanian law: (1) the passporting procedure, applicable for member state service providers which exercise the freedom to provide services (FOS) across the EU, including Romania; and (2) reverse solicitation, which is officially recognized pursuant to *Law 126/2018 regarding the financial instruments market*, implementing the *Markets in Financial Instruments Directive* (MiFID II). The passporting procedure is available only to those financial institutions that benefit from a harmonized authorization procedure at the EU level: credit institutions, payment institutions, e-money institutions,

investment firms, etc.

The exercise of the freedom to provide services (FOS) in Romania is subject to compliance with the Romanian legal enactments adopted for the purpose of protecting the general interest as well as with the banking secrecy rules. The list of the laws adopted for the protection of general interest is communicated by the National Bank of Romania to the home state authority and it is also published on its website. The list includes the main regulations which apply to banking services, mortgage loans, deposits, insurance, private pensions and investment services in Romania, consumer protection, AML, sanctions, and data protection. Although most of these laws and regulations apply only to Romanian firms or local branches, their inclusion in the list raises a question as to what regulatory perimeter is applicable to firms exercising the FOS in Romania.

Reverse solicitation tries to resolve the question of how to determine whether a service is provided “in the territory of Romania” when provided by a third-country firm to Romanian customers. The provisions from *Law 126/2018* dealing with reverse solicitation are based on the MiFID II concept and apply when the financial service is solicited by the client. More specifically, pursuant to *Law 126/2018*, only services carried out in Romania require prior authorization, and that will not be the case where a third-country firm provides services at the own exclusive initiative of a Romanian customer. The exemption applies only to those products and services specifically requested by the customer and the firm may not offer new products or services to that customer. To rely on reverse solicitation, the firm should not contact clients or potential clients in Romania – which means that any marketing activities in Romania or targeted to Romania would trigger the requirement to apply for authorization in Romania.

Although no other formal rules covering the concept of solicitation exist in Romania, we consider that this concept may be used as guidance for the interpretation of the territoriality principle with respect to other financial services, including banking services, as well. To solve the legal challenges and obtain clarity on the local requirements applicable to banking services (other than investment services) we would welcome formal guidance from the National Bank of Romania on this matter specifying when banking services or activities will be deemed to take place outside the territory of Romania and when they would be subject to local licensing requirements. ■

SERBIA: FINANCIAL AND BANKING MARKET OVERVIEW

By Igor Zivkovski, Partner, Zivkovic Samardzic



Serbia's banking sector faces another year of challenges. Global inflation in 2023, compared to the last quarter of 2022, records a slight slowdown, but one thing is indisputable – the main challenge in 2023, and not only in the banking sector, is the war in Ukraine. It was the trigger for the inflationary spiral to turn faster, through the increase in energy and food prices. Yet, despite no indication of the imminent end of the war, the first signs for the first quarter of 2023 seem encouraging.

Central banks around the world, including the European Central Bank, as well as the National Bank of Serbia, are fighting against inflation by raising reference interest rates, which results in raising the cost of loans in Serbia as well, due to the growth of the Euribor and Belibor. High interest rates could lead to a decrease in the demand for new loans and also a risk that existing debtors will struggle with the payment of monthly installments in the future. It is also well known that restrictive monetary policy has its negative effects as it slows down economic activity. There is a risk that the economy will slip into recession.

The consolidation of Serbia's banking market during the previous years was expected, yet surprising. The predictability emerged from the fact that, at the beginning of 2020, there were 26 banks as Serbian banking market participants. On the other hand, in 2022, the GDP of Serbia amounted to around EUR 63 billion, thus the presence of so many banks seemed to be excessive. Nonetheless, the surprising element was related to the earlier tendency of domestic banks being mainly acquired by foreigners: the newest trend is for banks with foreign capital to be acquired by domestic legal entities.

The most significant affair on the Serbian market during 2020 was the acquisition of a controlling stake in the largest state-owned Serbian bank, Komercijalna Banka, by Slovenian NLB Banka. Subsequently, the process of the merger of NLB Banka and Komercijalna Banka was implemented, which resulted in the fusion of the two entities into a new market competitor – NLB Komercijalna Banka.

Prior to the acquisition of Komercijalna Banka, another significant event was the acquisition of Vojvodjanska Banka by Hungarian OTP Bank. Not long after, OTP Bank also acquired

Societe Generale Bank, as the French group decided to vacate business in Serbia and the region. On April 30, 2021, this process was finalized with the merger of the two Serbian subsidiaries of OTP Bank into a single bank – OTP Bank Serbia.

At the end of 2021, Direktna Banka and Eurobank merged into Eurobank Direktna, increasing market share and presence thereby. The former Sberbank Serbia was acquired by AIK Banka in March 2022, i.e., after the beginning of the war in Ukraine, and eventually changed its name to Nasa AIK Banka. The acquisition process of Nasa AIK Banka was finally completed by AIK Banka nine months after the takeover occurred.

In August 2021, Raiffeisen Bank in Serbia acquired Credit Agricole Bank, including the leasing company – CA Leasing Serbia. In September 2022, Credit Agricole Bank changed its name to RBA Bank, and full integration is expected to occur by the end of the second quarter of 2023.

Although it seemed that the trend of mergers and acquisitions in the domestic banking sector would be temporarily stopped during 2023, in February, AIK Banka signed the SPA to take over 100% of the ownership of Eurobank Direktna. The completion of the transaction is expected this year, after fulfilling the regulatory requirements and obtaining the necessary approvals from the National Bank of Serbia, as well as other competent regulatory bodies. When this process is completed, a total of 20 banks will be operating in Serbia.

According to the statistics of the Association of Serbian Banks, considering the amount of their capital, Banca Intesa takes first place with EUR 897 million in capital. OTP Bank is in second place with EUR 854 million, while third position is occupied by NLB Komercijalna Banka with EUR 725 million, and AIK Banka is fourth with EUR 709 million in capital. Finally, the fifth bank by the amount of capital is Raiffeisen Bank with EUR 687 million. After the ongoing merger of AIK Banka and Eurobank Direktna, this domestic bank will scale up to first place in terms of capital, as the assessment of the Association of Serbian Banks is that the capital of AIK Banka thereupon will amount to EUR 1.02 billion. ■

CZECH REPUBLIC: UPCOMING NEW ADMINISTRATIVE OBLIGATIONS FOR PAYMENT SERVICE PROVIDERS

By Miroslav Dubovsky, Country Managing Partner, and Marcel Janicek, Senior Associate, DLA Piper



The Czech government is introducing new requirements and obligations for payment service providers based on the latest EU legislation. The new rules are expected to take effect from January 2024 and the legislative process is underway.

The *Czech Act No 235/2004 Coll. (VAT Act)* is being amended to align with *EU Directive 2020/284* (EU Directive), which aims to combat cross-border tax evasion and fraudulent behavior in e-commerce.

Online shopping and e-commerce are growing industries, which peaked during the COVID-19 pandemic. The EU Directive aims to combat illegal activity in these industries by imposing several new requirements and obligations on payment service providers.

Payment service providers have crucial information that can easily identify payment recipients. That information includes the amount, date, origin, and location of the payment. The EU thinks this information might be helpful for tax administrators to monitor and enforce tax obligations and combat cross-border fraud and tax evasion related to e-commerce.

Keeping and Reporting Data on Cross-Border Payments

Payment service providers will have to keep evidence of all cross-border payments and collect and keep information about the recipients of payments. A cross-border payment is one where the payer is located in an EU member state and the recipient is located in another member state or in a third country. But this obligation only applies if a recipient registers more than 25 payments in a 12-month period. The threshold was set to exclude insignificant, one-off, non-commercial payments.

Payment service providers will also have to submit these records quarterly to the Specialized Tax Office (SFU) or notify the SFU that no cross-border transactions have been made in the given quarter. The amendment also states that payment service providers will provide the data to relevant authorities online, via the tax portal, in electronic format, and with a structure published by the financial administrator. The provider has to keep the data for three years.

What Information Must Be Recorded?

Payment service providers have to properly identify themselves using their Business Identification Code (BIS) or another ID code. They also have to keep records of recipients' names, IDs, addresses, VAT or other national tax numbers, IBANs, or any other unique identifiers.



They have to record specific payment details, including the date, time, amount, and currency of the payment or refund, and the state of origin of the payments – and share this information with the relevant financial authorities.

Central Electronic System of Payment

The EU Directive requires payment service providers to store data for three years, giving member states enough time to detect and investigate VAT fraud. Data obtained by the SFU from payment service providers will be transferred to the Central Electronic System of Payment (CESOP). This system will contain all the data obtained by the tax administrations of each individual member state from payment service providers.

The system will aggregate all payment information related to VAT for individual payees, and give a more complex overview of payments received in the EU by payees (i.e., businesses) and from payers (i.e., consumers shopping online).

To What End?

The CESOP system will make it easier for EU financial institutions to cooperate with individual member states and it will help in the fight against VAT fraud and tax evasion. It imposes new obligations on businesses, which will incur additional costs to comply with the new rules. As with any technological solution, there's a risk of data leaks and the misuse of data. So, it will be critical that all information be properly and securely stored and administered. ■

HUNGARY: FINANCING FOR AGRICULTURE

By Gergely Szaloki, Partner, Schoenherr Hungary



Hungary's agricultural sector has a rich historical tradition but faces challenges due to insufficient financing. The European Union's *Common Agricultural Policy* (CAP) provides funding for farm restructuring and market support, while Hungarian farmers can seek financing from banks and cooperatives. The Hungarian government has also established various programs to provide financing for agriculture, including subsidies for machinery and technology investments and funding for training.

Agricultural Loans

Agricultural loans are a type of financing to support agricultural operations, including the purchase of land, livestock, equipment, seeds, fertilizers, and other supplies. One of the key advantages of agricultural loans in Hungary is that they are often tailored to the specific needs of the farmers. Although they typically have lower interest rates than other types of loans, they may require more collateral and a longer repayment period. Additionally, the government may subsidize some agricultural loans to support the sector.

Pre-Financing

Pre-financing is critical for agricultural projects in Hungary, yet it can be a lengthy process to obtain it. Pre-financing can come from various sources, including the European Union's CAP, banks, and financial institutions. Developing a comprehensive business plan that outlines the scope and objectives of the project, as well as the expected costs and revenues, is crucial for project owners as it serves as an elementary tool for demonstrating the viability and potential success of the project to potential financing institutions. However, smaller farmers may face difficulties accessing commercial bank financing due to a lack of collateral or credit history. To address this issue, the Hungarian government created various state-aid programs that offer loans for agricultural projects, including machinery, land, and livestock investments, at competitive interest rates also to small and medium-sized farmers and cooperatives.

Pre-Commitment of Crops

Pre-commitment of crops as collateral is a financial arrangement in which farmers pledge a portion of their future crop production

to secure a loan or other form of financing. This arrangement is often used when access to credit is limited, and farmers may not have other forms of collateral to secure loans. While pre-commitment of crops can provide farmers with access to credit without having to put up physical assets as collateral, there are potential drawbacks, such as crop failure or changes in market conditions. Thus, it is vital to consider the risks and benefits before entering into such an agreement.

State Aid

Hungary provides state aid to its agricultural sector to promote sustainable agriculture, support the development and competitiveness of the sector, and ensure food security. Direct payments are the largest component of the budget, providing income support to farmers and helping them cope with market volatility and production risks. Investment support programs encourage farmers to modernize their farms, increase productivity, and improve the quality of their products. Rural development programs aim to create jobs and promote economic growth in the sector.

As a traditionally agricultural country, Hungary has implemented various loan programs to support its farmers. The *Rural Development Program* (RDP), financed by the European Union, is one of the most significant. It provides financial aid to Hungarian farmers in the form of loans and grants, with an emphasis on endorsing sustainable agricultural practices. The RDP aims to facilitate agricultural investments and operational improvements, ultimately leading to rural economic growth and job creation. Besides the RDP, another crucial agricultural loan program in Hungary is the *Agricultural Credit Guarantee Fund* (ACGF). As a government-funded institution, the ACGF serves as a solution for farmers who encounter obstacles in obtaining financing through commercial banks. By providing an up to 80% loan amount guarantee, the ACGF enhances farmers' capacity to access funds efficiently and at reduced interest rates.

In summary, despite the challenges faced by Hungary's agricultural sector, there are various financing options that help farmers enhance their quality and productivity. By utilizing these financing options and preparing a comprehensive business plan, Hungarian farmers can modernize their operations and contribute to the growth of the country's rural economy. Overall, with appropriate planning and financing, the future appears promising for Hungary's agricultural sector. ■

LATVIA: AT THE FOREFRONT IN PROVISION OF EUROPEAN CROWD-FUNDING SERVICES

By Edgars Lodzins, Partner, and Krisjanis Buss, Senior Associate, Cobalt



At the end of 2021, the Regulation (EU) 2020/1503 of the European Parliament and of the Council of October 7, 2020, on European crowdfunding service providers for business (EU Crowdfunding Regulation) entered into force. In light of the regulatory requirements, existing crowdfunding platforms with prior authorizations under national rules shall receive authorization under the new regulatory framework by November 10,

2023.

Notwithstanding the impending expiry of the transitional period (which, in fact, was already extended by a year from November 10, 2022, to November 10, 2023), as of March 31, 2023, only 21 crowdfunding service providers have obtained an authorization to provide crowdfunding services in Europe. Among the limited number of entities included in the register of all crowdfunding services providers maintained by the European Securities and Markets Authority is a Latvian service provider: SIA CrowdedHero Latvia. Interestingly, even prior to the adoption of the domestic regulatory framework for granting authorizations for crowdfunding services, the Bank of Latvia announced that three to five Latvian-authorized crowdfunding service providers may soon enter the market.

This is a strong signal to all investors, project owners, and other market participants that Latvia has established a clear and coherent regulatory environment for the provision and obtaining of alternative sources of financing, especially since Latvia is the only country currently represented in the European register of crowdfunding services providers among such Central and Eastern European countries as Poland, Lithuania, and Estonia. Moreover, in addressing the participants of the Latvian Capital Market Forum 2022, Executive Vice President of the European Commission and European Commissioner for Trade Valdis Dombrovskis emphasized that Latvia is the EU champion of crowdfunding per capita.

Grounds for Application

Pursuant to the EU Crowdfunding Regulation, the provision of crowdfunding services generally involves three types of actors: the project owner that proposes the project to be funded, investors who fund the proposed project, and an intermediating organization in the form of a crowdfunding service provider

that brings together project owners and investors through an online platform.

The EU Crowdfunding Regulation is directly applicable and lays down uniform requirements for the provision of crowdfunding services; for the organization, authorization, and supervision of crowdfunding service providers; for the operation of crowdfunding platforms; and for transparency and marketing communications in relation to the provision of crowdfunding services in the European Union.

The Latvian *Crowdfunding Services Law*, in turn, prescribes a practical procedure for the issuance and registration of authorizations for the operation of crowdfunding service providers; their operation and liability in accordance with the EU Crowdfunding Regulation; and the rights, obligations, and powers of the Bank of Latvia as the competent authority to issue regulatory guidelines binding for crowdfunding service providers.

Latvian Regulatory Practice

Compared to conventional lending models, crowdfunding offers relatively quick access to additional funding. Furthermore, placing a project on a crowdfunding platform may serve as an effective promotional tool. As a country-specific feature, the Latvian *Crowdfunding Services Law* provides that the performance of the project owner's obligations may be secured by collateral. That collateral is registered in the name of the crowdfunding service provider, or a special purpose vehicle (SPV) established by the crowdfunding service provider, and includes a notation that the relevant mortgage or commercial pledge secures the investor's claim. Depending on the operating model of the crowdfunding platform, the implementation of a project may be divided into several phases and the project owner may set a separate required funding amount for each phase. In terms of investor protection, the project owner shall ensure that investors have access to all available project information and provide a mandatory four-day reflection (cooling-off) period for inexperienced investors, during which the investors can withdraw their offer.

Overall, the Latvian legal framework for the provision of crowdfunding services is well established, and it is expected that a number of new crowdfunding service providers will be registered and licensed in Latvia in the upcoming years. ■



BOSNIA AND HERZEGOVINA: INVESTING IN B&H FROM THE BANKING & FINANCE PERSPECTIVE

By Nadin Kantic, Partner, Ibrahimovic & Co



The banking system of Bosnia and Herzegovina incorporates the Central Bank of Bosnia and Herzegovina, commercial banks, and other financial institutions. The Central Bank defines and controls the implementation of the monetary policy of Bosnia and Herzegovina, and assists and maintains appropriate payment and accounting systems. It also coordinates the activities of the banking agencies of the B&H entities (hereinafter: regulators), which are responsible for issuing licenses for the operation and supervision of banks.

Frequent Problems of the Banking Sector

Various problems in the banking system of B&H hinder the development of the market economy as well as the creation of conditions for attracting foreign investors to the realization of investment projects. Therefore, banks often don't provide adequate service to entrepreneurs with their operations in an incompletely regulated system, where inconsistent actions cause additional problems and challenges in support of the real sector.

Consequently, even a simple operational activity such as opening a bank account (a prerequisite for starting a business or carrying out transactions) can be a challenge, given the inconsistency of the approach to the interpretation of regulations on preventing money laundering and financing terrorist activities.

One of the practical examples is that, if there is a non-resident entity within the group in the form of a private foundation, certain banks will also ask for information about the stake of the founder of the foundation – even though this is not prescribed by domestic or foreign regulations – so it is impossible to provide this information to the banks which, in the end, often results in an obstacle when opening a bank account.

Furthermore, it is not only the initial step of investing in B&H that is problematic: we have a similar problem in the opposite direction, where residents of B&H as natural persons have absolutely no possibility to transfer their funds for the established capital, i.e., in the name of establishing a company abroad, precisely because of the vagueness of the regulations as well as the interpretation of those valid regulations by the competent institutions.

(Non)Business with Cryptocurrencies

Contemporary trends in financial circles cause additional practical problems, especially in the area of dealing with cryptocurrencies, given that in the entities and Bosnia and Herzegovina this area is not legally regulated, which clearly follows from the following examples:

It bears pointing out that not a single institution from the banking system in Bosnia and Herzegovina gives specific warnings to foreign investors about the possibility of their project being obstructed by banks, and this is exactly what happened in 2018 to one investment project over USD 100 million, which aimed to collect foreign investments and invest in the production of electricity from renewable sources and the equipment for the production of digital space on the Ethereum platform, and the development of blockchain technology itself.

The District Commercial Court in Banja Luka, by a judgment dated December 30, 2022, required a Banja Luka bank to pay Bitminer Factory Ltd. BAM 256 million in damages due to a non-business relationship, i.e., the unilateral closing of the business account of a business entity, which had led to the failure of the investment project.

In the reasoning for the verdict, it is clearly stated that the bank behaved unprofessionally in this case because it first allowed Bitminer Factory to open an account and then, unilaterally, terminated the contract and returned the payments.

An additional example is that of a bank terminating the contract on a business account without any explanation, after having previously refused several times to accept the money that the client was supposed to receive from one of the world's well-known cryptocurrency exchanges. The bank justified the action by invoking its legal obligation to monitor and react when it notices suspicious transactions: given that the laws in B&H do not regulate cryptocurrency operations at all, nor can any company be registered for such business activities. However, the Competition Council later concluded that the bank went beyond its prerogatives on that issue.

Going forward, entity regulators should work on the more efficient functioning of the banking system, where they would lead banks to act with a higher degree of flexibility. This implies the construction of products and services that will correspond to the needs of clients and projects and their exposure to risk, otherwise, the B&H banking system will suffer significantly. ■

LITHUANIA: THE CREDITOR'S GUIDE TO SECURITY INSTRUMENTS

By Ausra Brazauskiene, Partner, Ilaw Lextal



The due performance of obligations in Lithuania may be secured by various security instruments. Pledge, mortgage, and financial collaterals all create a right *in rem* for the creditor, i.e., such a security, upon due perfection, becomes enforceable against third parties and withstands bankruptcy, reorganization, and similar procedures of the security provider. Other types of collateral, such as default interest, surety, guarantee, deposits, and other instruments agreed by the parties terminate immediately upon bankruptcy, reorganization, or similar procedures of the security provider.

Accessory Obligation

The pledge/mortgage obligation is an accessory obligation and depends on the existence of the secured obligation. It terminates automatically with the termination or invalidity of the main obligation (certain exceptions are applied in case of novation).

Secured Obligations

A pledge/mortgage can secure current or future financial (payment) obligations. Under Lithuanian law, one pledge/mortgage agreement may secure only one main obligation. Thus, in respect of each separate main obligation separate security agreements must be executed and perfected.

Parties to the Security Agreement

The *secured creditor* may be a foreign entity or natural person. A pledge/mortgage may secure financing provided by local and foreign creditors.

Granting loans to Lithuanian companies (without offering other financial services) is not subject to licensing by the Bank of Lithuania. However, a foreign entity licensed in another country or providing not only lending but also other financial services may be subject to passporting or local licensing requirements. Also, a security may be granted in favor of several creditors who are parties to the same obligation. Lithuanian law does not provide for the possibility to create parallel debt obligations as an instrument to enable the equal ranking of secured creditors' claims under different secured obligations in respect of the same collateral. However, parallel debt obligations validly created, existing, and enforceable under the applicable foreign law, are secured in practice by a pledge or mortgage in Lithuania. We are not aware of any case law where the foreclosure of security in favor of the security agent acting based on a parallel debt obligation was

refused because the obligation secured was *parallel debt* and not the original obligation of the secured creditors.

The *debtor and collateral provider* may be a natural or legal person. Private legal entities may generally have and undertake any civil rights and obligations. However, for the transactions to be valid they must: (1) not infringe the aims of the legal entity or borrowing limits; (2) be approved by all necessary corporate and regulatory approvals; and (3) be executed by duly authorized representatives of the company.

Lithuanian law prohibits a Lithuanian company (private or public limited company) to advance money or provide financing or security instruments in favor of third parties – if these acts facilitate or are aimed to facilitate the acquisition of shares of that Lithuanian company. Any security instrument (pledge/mortgage, financial collateral, guaranty, surety, etc.) shall be null and void *ab initio* if they breach the *financial assistance prohibition*. On the *corporate benefit issue* for third-party security, Lithuanian law requires that management bodies/officials of the company act in the interest of the company and its shareholders (participants). Any security transaction that contradicts the interests of the company or its shareholders or the aims of the company may be invalid. Thus, the existence and establishment of corporate benefit for the Lithuanian company acting as a collateral provider is crucial where security is provided for the obligations of a third party.

Types of Collateral

A mortgage can be created over: (1) the whole or a part of an existing or future immovable asset; (2) a business – the object of company mortgage may be a part or all material and non-material movable and immovable assets of the company; and (3) movable property and property rights – only if these movable assets are mortgaged together with immovable property.

A pledge can be created over: (1) company shares; (2) funds in bank accounts – the pledge of funds in bank accounts is usually combined with other security instruments (such as the power of attorney or other agreements), allowing the creditor to have access to the bank account of the pledgor immediately upon default; (3) intellectual property rights; (4) receivables – a pledge over receivables is usually combined with a conditional assignment of such receivables. That combination enables the secured creditor to maneuver in enforcement depending on the factual situation: either the assignment may be effected immediately upon notice, or, while enforcement of the pledge is subject to the grace period, but does not carry the risk of being challenged in bankruptcy situations; (5) property rights; and (6) pools of movable assets. ■

KOSOVO: THE BANKING AND FINANCE LEGAL FRAMEWORK AND THE WAY AHEAD

By Fisnik Salihu, Managing Partner, and Dardan Makolli, Legal Associate, RPHS



The banking and financial sector in Kosovo has undergone significant changes in recent years, including the introduction of new legislation for the industry. Kosovo has managed to build a sound and stable financial system, which has contributed to supporting the overall growth of the economy. In addition,

financial institutions have been very active in making significant progress in the implementation of advanced technologies and innovation following the latest CEE developments.

While the industry has seen considerable growth and made significant progress, new legislation has been introduced. The introduction of a new legal framework has played a key role in promoting innovation, growth, and sustainable industry. Currently, Kosovo has adopted a modern and comprehensive regulatory framework for financial services, closely following international practices, especially those of the European Union. The current legislative changes include legislation on e-documents, data privacy and cyber-security, consumer protection, and e-money.

Significant progress has also been made with the adoption of the *Law on Electronic Identification and Trust Services in Electronic Transactions*. This modern law regulates electronic identification, as the usage of data to represent natural or legal persons, as well as the usage of trust services in electronic transactions and documents. The adoption of the law aims to contribute to Kosovo's digital agenda and its investment climate by facilitating distant transactions, electronic payment, and electronic trading as a whole. The global COVID-19 pandemic had emphasized the importance of the adoption of such a law. In addition, the law has established the basis for digital transactions and offers new tools and mechanisms to Kosovo companies. By adopting the newly introduced tools, companies will benefit by shifting from traditional ways to a more innovative environment of doing business. In this regard, Kosovo has made significant progress in providing an appropriate and effective legal and regulatory framework for digital transformation and inclusion of the financial sector, by opening numerous opportunities to implement digital financial innovation.

The continuous development of electronic money and the advancement of the legal framework have contributed to improving the payments system efficiency. The registration of non-bank

financial institutions for the issuance of electronic money and payment of services has enabled the creation of contractual relations at a distance.

Despite the major improvements in the financial industry, there is still room for development and diversification in the market, which would have an impact on the industry and economic development. The *Law on Banks and Microfinance Institutions and Non-Banking Financial Institutions* is

in the amendment phase and is expected to be adopted this year. This new law, together with the upcoming legislative changes will have a significant impact on the diversification of the market and financing opportunities. Despite the current legislative changes, Kosovo has not yet adopted the *Law on Capital Markets*. That would be an important milestone, helping to establish the capital market and make the financial industry more attractive to investors. The foundation of capital markets and their proper functioning is key to strengthening the economy and maintaining Kosovo's financial stability. A developed capital market would also offer more investment opportunities, new financing alternatives for investors, and would contribute to the further development of corporations in Kosovo.

Another important aspect that needs further improvement is the insolvency and bankruptcy laws and their enforcement. These laws are crucial for the finance and banking sector as they provide a framework for debt recovery and debt restructuring. Therefore, improving them *Law on Capital Markets* will enhance stability and security for investors in the banking and financial industry.

In conclusion, Kosovo's banking and financial sector has made significant progress in recent years, thanks to the introduction of new legislation and the adoption of advanced technologies. The new legal framework has played a key role in promoting innovation, growth, and sustainable industry, while also contributing to Kosovo's digital agenda and investment climate. However, there is still room for further development and diversification of the market, particularly with the adoption of the *Law on Capital Markets* and the improvement of insolvency and bankruptcy laws and enforcement. By continuing to prioritize modernization, innovation, and comprehensive legislation, Kosovo's financial industry can offer more investment opportunities, new financing alternatives, and contribute to the country's further economic growth. ■



MONTENEGRO: ENGLISH LAW BREAKTHROUGH IN FINANCING

By Milica Popovic, Partner, CMS Serbia and Montenegro



For many years, we have witnessed how the laws of England and Wales were introduced in the Montenegrin financial legal system by the application of Loan and Market Association (LMA) templates in financing transactions. It was usually the lenders insisting on having the LMA standards in the loan agreement and for the laws of England and Wales to govern the loan agreement.

Although such practice has existed for quite some time, it has accelerated since mid-2000 in club deals or syndicated transactions. It is indisputable that the courts in Montenegro would accept the English law as governing law if it would come to enforcement in Montenegro, however, we never tested that in practice, given that collaterals are always governed under local law. The enforcement of collaterals is then governed under local law, and we did not have a chance to see what the courts' view on certain legal terms would be, as derived from English law.

However, in the last few years, we have been witnessing another trend. Local lenders in Montenegro request for the loan agreements to be governed under Montenegrin law, but based on term sheets designed and structured under the LMA standards and based on English law norms. Needless to say, that creates nightmarish work for lawyers, and it also opens a vast area of issues for which we do not have any precedent in practice.

To give a few examples: the enforcement of the hybrid jurisdiction clause – we are unaware of how the Montenegrin courts would treat such a clause in Montenegrin law-governed loan agreements. The concept of a hybrid jurisdiction clause which provides the lender with the right to deviate from the agreed forum and resort to another court or jurisdiction is clearly benefiting only one side. Such a clause is very frequent in English law-governed loan agreements, but we now see it in Montenegrin law-governed agreements as well. The Montenegrin law recognizes the autonomy of will in contractual relations, but one of the key concepts is also the equality of contractual parties. No clause should be upheld by the court if it is clearly benefiting only one party to the agreement. But we do not know what the actual position of Montenegrin courts would be.

Another example would be the introduction of detailed procedures which are relevant to the contractual relationship. That is very useful and facilitates the contractual relationship if the agreement is governed under English law and the judge presiding is a sophisticated judge or arbiter. However, in the situation where the judge in the Montenegrin court has a 200-page long agreement where all procedures are described in detail, and frequently are related to specific technical matters unknown to most judges, it is unclear what the outcome would be in such a proceeding. It might be a very long process whereby various court experts would have to aid the judge in understanding the relationship between the parties.

Having standard language in certain types of agreements is undoubtedly good, from a market participant perspective. It facilitates the negotiation process, provides predictability, and certainly saves time and money for all parties to the contract. However, using standardized contracts created and structured under the laws of one jurisdiction in another jurisdiction where such legal concepts are not genuine should be done with great caution. A good lawyer not only negotiates the contract and thinks of all options at the time of negotiation and signing, but also thinks about the life of such a contract in the jurisdiction where it will be enforced. Civil law jurisdictions such as Montenegro are not accustomed to liberal, market economy concepts that are genuine and natural to English or some other common law system.

Although law cannot be separated from life, and civil law systems clearly must adapt to market trends, such adaptation shouldn't be by force. Perhaps industries that favor common law concepts such as banking and finance, IT, IP, fintech, and others should invest some efforts in the education of the judiciary, to make them familiar with those concepts that are taken over from other jurisdictions such as England and Wales – in order to enable them to effectively run court proceedings in case such common law concepts have to be implemented within the Montenegrin legal system. ■

MOLDOVA: WOULD YOU FANCY ACQUIRING A QUALIFYING HOLDING IN A BANK? THE MOLDOVAN IPO EXPERIENCE

By Marina Zanoga, Head of Banking and Finance, and Viorica Bejan, Senior Associate, ACI Partners



In recent years, Initial Public Offerings on foreign exchange markets became a hot topic of discussion in Moldova. The Purcari Wineries Group, one of the biggest wineries in Moldova, got listed on the Bucharest Stock Exchange Market. Others are also tackling the prospects. An IPO on a reputable market means better corporate governance, transparency, prestige, and access to new sources of funding.

However, what are the prospects of a business in a highly regulated industry such as banks and insurance companies to succeed in an IPO, especially when acquiring a qualifying holding in such companies is to be pre-approved by the local regulator?

In Moldova, a participation is considered a qualifying holding when it represents at least 1% for banks and 10% for insurance companies of the shares and/or voting rights. Also, having a right to appoint the (majority of) the management board or otherwise exercise a significant influence over the management of the bank falls, as well, within the scope of the definition of a “qualifying holding”.

If in the case of insurance companies, the threshold is a widely accepted standard, in the case of banks the approach is much more conservative. Comparing the Moldovan approach to the standard European one, we may note that the minimum threshold for a qualifying holding is uncommonly low in Moldova, 1% in the case of banks, compared to the standard 10% in the EU. What does this mean in terms of an IPO?

Under Moldovan rules, any investor that intends to acquire more than 1% in the capital of a Moldovan bank is bound to obtain the prior approval of the Moldovan National Bank (NBM), regardless of the way of acquisition.

Within the pre-approval process, the proposed acquirer, among others, shall prove that they are of good reputation and have the necessary financial soundness. In such a way, the bank or insurance company in which the qualified holding is acquired will continue to meet its prudential requirements. Also, the market is protected from an inflow of money derived from dubious activities.



Failure to obtain the prior approval of the regulator, either intentionally or unintentionally, will result in the suspension of the shareholder's rights and the obligation to dispose of the shares within three months after the acquisition. As a rule, such an acquisition is subject to administrative measures to be applied by the NBM.

What does all this mean for the “uncompliant” shareholder? In terms of reputation, such a shareholder shall not hold, directly or indirectly, any shares in banks. Such prohibition is expressly set out by Moldovan law. It may seem as not relevant once the Moldovan border is crossed. A diligent investor may disagree. Regulators perform reputational cross-checks of players to enter highly regulated markets. If an investor has been uncompliant and forbidden to hold shares in a bank, even outside a particular region, the reputational consequences are significant in terms of its future holdings.

In terms of ownership rights, the local laws provide a genuine approach. A bank shall cancel the shares of the uncompliant shareholder and issue, in exchange, new shares. The newly issued shares are put up for sale by the bank, as a single batch, for a period of up to nine months. If those shares are not acquired, the bank shall sell the newly issued shares as separate shares within six months. Strict rules regulate the calculation of the selling price, which finally is materially diminished.

The funds resulting from the sale will be transferred to the former shareholders, after deducting the related costs and taxes. Hence, within a maximum of 15 months, the uncompliant shareholder might be legally dispossessed of the shares acquired in breach of law, for a compensation lower than the price “invested” in the initial acquisition.

This being said, the prospective acquirers intending to invest in a qualifying holding in a Moldovan bank (1% or more), including via an IPO, will have to consider and respect, in each case, the pre-approval rules. ■

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