



CEE

YEAR 7, ISSUE 6  
JULY 2020

# LEGAL MATTERS

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

Guest Editorial: Victor Gugushev of Gugushev & Partners ■ Featured Deals ■ Across the Wire: Deals and Cases in CEE  
On the Move: New Firms and Practices ■ The Buzz in CEE ■ Article: Greece Plays the Long Game

Inside Insight: Interview with Andras Busch of Siemens Energy Hungary ■ Article: Rebuilding and Reshaping in the Aftermath of COVID-19

The Confident Counsel: Online Presenting – Connecting During COVID-19 ■ Market Spotlight: Romania

Guest Editorial: Francisc Peli of PeliPartners ■ Article: Clear for Take-Off: (No) Sexism in Romanian Law Firms

Inside Insight: Interview with Florina Homeghiu of Policolor-Orgachim ■ Inside Insight: Interview with Madalina Juncu of Mondelez

Market Snapshots ■ Inside Out: RCS & RCS / Digi Communications Bond Issuances

Expat on the Market: Interview with Simon Dayes of Dentons ■ Market Spotlight: Moldova

Guest Editorial by Igor Odobescu of ACI Partners ■ Article: The Funambulists ■ Experts Review: Energy

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## EDITORIAL: IT AIN'T ALWAYS EASY

By David Stuckey

A few weeks ago we got what seemed to be a reliable message that a well-known firm with a presence across the region had closed one of its CEE offices. This came mid-afternoon on a Friday, but we sprung into action. We sent the firm several emails, and followed up with a phone call – we got no reply. We contacted that office, and the receptionist who answered told us only that there were no longer any lawyers working there.

So, we thought, it appears there's something to this.

But soon, and after we started writing up our story, we received an email from the CEE managing partner of the firm, who wrote that he was on his way to his holidays – it was, after all, late on Friday – but that the story was untrue, and nothing more than a “hoax.” Nonetheless, we remained unable to reach the Public Relations & Communications Manager at the firm, and soon after receiving the MP's email, the website of the office we had been told was closing was updated, so that the only lawyers left on it were actually based elsewhere.

What to do? A tip from a trustworthy source demanding anonymity, supporting evidence, and difficulty in reaching the individuals involved, plus a suspiciously (and suspiciously-timed) website update. But no official confirmation – and, in fact, a short and flat denial.

Don't forget, in *our* industry, being first with important news is critical. Breaking news means clicks and page-views, useful for marketing purposes, and is also valuable for creating – or burnishing – a reputation for being informed, flexible, and efficient. We claim to be “the go-to source for news and information about the lawyers and legal industry in Central and Eastern Europe,” after all. That means we can't just *sit* on big news, when we get it.

We learned that the hard way. Several times, in our first five years, we allowed ourselves to be persuaded to sit on similar stories, with promises that we would *definitely, absolutely* get an exclusive when the time was right, and would *of course* retain

the ability to publish the story first. Both times, those promises were forgotten, and we were ended up seeing the story published elsewhere – ironically, by publications that did not have the kinds of relationships with the firms that we did, which allowed the firms to plead for delays.

So in this case, between a rock and a hard place, we decided to publish. But we did so in what we thought was the most responsible and transparent way we could, by being upfront about the basis for our reporting, and we made a point of including the firm's denial. The article appeared on the CEELM website at 5:30 pm that Friday afternoon.

When the firm saw the article, however, it immediately started writing to us and offering to return our calls, and eventually – though politely – accusing us of acting unprofessionally. Monday, the firm issued a press release announcing the hiring of new lawyers for that ostensibly-closed office, meaning that, however reasonable our reporting was ... it was wrong.

Frustrated, but not wanting to continue to promote a story that turned out to be false, we removed it from the site.

While we might wish the firm had recognized the need to communicate to and cooperate with us a bit more effectively, this is not meant as a criticism. We know they have their own pressures and demands, and this is one of the few situations where our respective professional incentives put us at cross-purposes – their first priority is not our reputation or accuracy. That is *our* responsibility, not theirs. It is only meant to explain, to them, and to everyone else we work with, that ...

Well, you saw the title.

Also ... sorry about that. It's embarrassing, and we'll try to do better next time. ■



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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](mailto:press@ceelm.com)

# GUEST EDITORIAL: LEGAL BUSINESS IN CEE – HOW IT WAS, HOW IT IS, AND HOW IT WILL BE

By Victor Gugushev, Partner, Gugushev & Partners



When I was asked to write this editorial by CEE Legal Matters I started to wonder how I could describe the current situation in Central and Eastern Europe. The first half of the year will definitely remain marked by the global COVID-19 pandemic. However, this editorial will not be focused on the pandemic,

on measures taken (or not taken) by the governments in the region, or on what the consequences will be. Instead, I will try to provide an overview of the market, specifically as it relates to our business in this part of the world – and how I expect it to develop in the years to come.

Central (more) and Eastern (less) Europe can be described as a well-functioning and conservative place to provide legal services. Since the fall of the Berlin Wall, more and more of the Western way of doing legal business has penetrated into the eastern part of Europe – even to the Balkan region. As a result, changes in legislation have been implemented, and the way we present, provide, and execute our services has transformed. It is fair to say that the legal business is a follower, not a leader. Mostly our profession reflects and changes according to the needs of the other sectors – the needs of our clients. Very rarely do we, as lawyers, succeed in leading industries and shaping them according to our vision, instead of the other way around. That is why even we, members of a profession known for having big egos, have to admit that we follow the trends and the needs of the others.

We reflect the market. And I think CEE's markets are fairly conservative. Business in Central and Eastern Europe is not as aggressive as it is in our Western neighbors (even those on the other side of the Atlantic). Our part of the world is more focused on well-known sectors, such as real estate, energy, and general M&A (I call them “Green Sector” deals – well-known practices with established traditions). In recent years there have been a large number of projects in the banking, insurance, and TMT sectors (I call these “Yellow Sector” deals – we

already have some relevant practice and can qualify them as regular deals). Then we get to the “Red Sector” deals – rarely on the market, with no established tradition in Central and especially in Eastern Europe. This category encompasses sectors such as sports law, medical projects, competition, corporate governance, and the FinTech industry. Of course, we have some success stories in these sectors, but compared to Western Europe, Asia, and North America, these are only isolated cases, not everyday projects.

I strongly believe that in the next few years these Red Sector deals will increase their market share and we must be well-prepared in advance. Even in the light of COVID-19, we as lawyers have had to deal with daily questions that required some medical law expertise, such as cases concerning procedures for approval of new drugs, exports or imports of medical equipment, and travel bans and immigration problems, all of which have arisen frequently over the last two months. I remember a similar story with the boom of cryptocurrencies in 2017. Suddenly, for two quarters, Bitcoin, Ethereum, and other digital currencies became an important part of the financial market, in Central and Eastern Europe as everywhere else. I recall that we even had a client who received payments in cryptocurrency as part of a normal transactional deal.

It seems we like to be conservative, and for now that seems to be working pretty well, but the world around us will not allow it. Lawyers must reflect the market – and the market is getting more and more global and dynamic. The Black Swan effect occurs suddenly, and we have to act fast in order to secure our place on the train. I strongly believe that it is inevitable that virtual reality, data protection, and even AI regulations will determine the projects we work on in the future and the way we present, provide, and execute our services. Digitalization of our profession is starting, and we regularly provide services to clients we have never seen in person. The Internet of Things is on its way, and the legal business in Central and Eastern Europe is not changing as fast as we want – and as it should. However, as I said – we are simply followers, and probably we must wait a little longer, so we can follow properly. ■

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# ACROSS THE WIRE: FEATURED DEALS



## Latvia: Cobalt Helps Latvian Banking Industry Reach Agreements on Loan Repayment Moratoria

Cobalt assisted in the drafting of the terms and conditions of moratoria introduced by Latvian banks and liaised with the Latvian competition authority to obtain backing for the process.

Cobalt reports that, under the auspices of the Finance Latvia Association, a number of banks agreed to introduce standardized deferral of loan repayments in light of the COVID-19 crisis.

"We were humbled by the swift action, cooperation and good will we encountered at the supervising institutions. The Latvian competition authority, the financial supervision authority and the European Commission all put their best efforts towards minimizing bureaucratic hurdles. The post-COVID19 world could do with some of that sincerity and informality."

- Ugis Zeltins, Partner, Cobalt

The moratoria, available to natural persons and businesses, were announced on 29 April and 5 May 2020, respectively. Both moratoria are based on European Banking Authority guidelines allowing banks to address borrowers' short-term operational and liquidity challenges without incurring adverse consequences for capital adequacy.

Cobalt Partner Ugis Zeltins led the firm's team on the project. ■



## Croatia: Babic & Partners Advises on Rohatyn Group's Acquisition of Optimapharm

Babic & Partners advised the Rohatyn Group on its acquisition of Optimapharm from founders Igor and Gordana Cicak and investor Mezzanine Management.

Optimapharm, which was founded in 2006, is a Croatian contract research organization. Mezzanine Management has been operating in Central Europe since 2000 through offices in Vienna, Warsaw, Bucharest, Budapest, and Prague.

Mezzanine Management provided a EUR 10 million mezzanine facility in October 2018 and acquired a minority equity stake in Optimapharm through AMC Capital IV, a EUR 264 million fund, marking its first investment into Croatia. Over the next 18 months, the capital was used to support Optimapharm's expansion as well as add-on

"We are delighted to have assisted TRG in another very important transaction, after advising on their acquisition of several regional pet supply businesses in 2018. Our expertise, our experience in M&A and the life science sector, and our dedication to our client's goals really came to the fore on this deal where we were required to deliver legal input across many work-streams involved in extremely challenging Covid-19 pandemic driven times."

- Marija Gregoric, Partner, Babic & Partners

acquisitions in the Czech Republic, Switzerland, and Austria. The partnership saw Optimapharm increase its number of offices from 10 to 15.

Babic & Partner's team included Partners Marija Gregoric and Iva Basaric and Associate Ivona Vidovic.

Taylor Wessing also advised the Rohatyn Group. On the sell side, Go2Law and BDV advised Optimapharm founders Igor and Gordana Cicak and Wolf Theiss assisted Mezzanine Management. ■



## Lithuania: Cobalt Advises Lietuvos Radijo ir Televizijos Centras on Sale of Mezon to Bite Group

Cobalt advised Lithuania's AB Lietuvos Radijo ir Televizijos Centras – Telecentras on the sale of its data transmission and digital television business developed under the Mezon brand to Lithuania's Bite Group.

Telecentras has about 95,000 Internet service users and provides radio and TV broadcast transmission, data center, IT, infrastructure rental, telephony solutions, and other services.

Cobalt's team included Partners Elijus Burgis and Rasa Zasciurinskaite and Senior Associates Julija Timoscenko and Justinas Sileika.

Sorainen advised Bite on the deal. ■

## PENTERIS

### Poland: Penteris Advises on Apollo-Rida's Acquisition of Office Complex in Krakow

Penteris advised Apollo-Rida on the acquisition of three A-class office buildings in Krakow's Equal Business Park office complex from commercial real estate developer Cavatina Holding.

The complex is located in Krakow's Podgorze district, and offers a total of over 60,000 square meters of office space.

"To say this was a mammoth project is an understatement. Kudos and thanks to every member of the team for being able to support each other despite what was going on around us. Their ability to get the job done, competently, smoothly and cooperatively is something I am extremely proud of."

- Andrzej Tokaj, Senior Partner, Head of Real Estate Practice, Penteris

The Penteris team included Senior Partner Andrzej Tokaj, Partner Katarzyna Sawa, Senior Associates Izabela Bogucka, Iga Piotrowska, Sebastian Janicki, Kamil Stelmach, and Malgorzata Blahuciak, Associate Kamil Oskowski, and Junior Associates Alicja Dzienisik, Ludwika Olszewska, Lukasz Czerepak, and Agnieszka Wisla.

Dentons advised Cavatina Holding. ■

### Russia: Noerr Advises Bauer Media Group on Sale of Russian Publishing Business

Noerr advised the Bauer Media Group on the sale of its interests in its Russian publishing companies to its current Russian management.

The Bauer Media Group, which is headquartered in Hamburg, is Europe's largest magazine publisher. The portfolio it sold consists of interests in five

Russian entities and around 90 magazines in total. ■

### Austria: Schoenherr Advises European Commission on Legislative Options for Upgrading European Gas Markets

Schoenherr, acting as the leader of a consortium of European law firms, conducted what it describes as "a comprehensive study on the regulatory and administrative requirements for entry and trade on the gas wholesale market in the EU for the European Commission, Directorate General Energy."

The findings and recommendations are expected to help the European Commission enforce and improve the regulatory framework and also identify a possible future scope for EU-wide alignment of rules and practices on the wholesale gas market. ■

## karanovic/partners

### Serbia: Karanovic & Partners Advises 3Lateral on Land Acquisition in Serbia

Karanovic & Partners advised Serbian IT company 3Lateral on its EUR 7.7 million acquisition of a 6,500-square-meter lot from the City of Novi Sad.

Karanovic & Partners's team was led by Senior Partner Marjan Poljak and Senior Associate Ana Lukovic. ■

### Bulgaria: Georgiev, Todorov & Co Advises COMSED JSC on Ownership Restructuring

Georgiev, Todorov & Co advised COMSED JSC, the largest retail chain for toys

and children's accessories in Bulgaria, on a change in the ownership structure of the company, following the approval of Bulgaria's Commission for Protection of Competition. ■

## COBALT

### Estonia: Cobalt Advises Algeco Group on Acquisition of the Wexus Group

Cobalt, working alongside Norway's Wiersholm law firm, advised the Algeco Group on its acquisition of Wexus Group AS from Norvestor Equity AS.

Algeco, which is headquartered in London and has operations in 23 countries, is a business services company specializing in modular space. Wexus, which was founded in Norway in 2014, provides modular building solutions in the Nordic region.

"We are pleased to be part of the top-tier transaction team alongside Wiersholm in Norway that advised Algeco on acquiring the Wexus group and their modular building factory in one of the key Estonian industry sectors. Estonians have a long-lasting tradition of building innovative wooden modular units that have now become standard throughout Northern Europe, and we are certain that Algeco will benefit from this current addition for years to come."

- Jesse Kivisaari, Specialist Counsel, Cobalt

Cobalt's team included Partner Martin Simovart, Specialist Counsel Jesse Kivisaari, Associates Tiit-Gregor Mets and Johanna-Britt Haabu, and Assistant Lawyer Getter Villmann.

Norway's Schjodt law firm reportedly advised the sellers. ■

# ACROSS THE WIRE: DEALS SUMMARY

Date covered	Firms Involved	Deal/Litigation	Value	Country
22-May	BPV Huegel; Lenz & Staehelin; Simpson Thacher & Bartlett	BPV Huegel, working alongside Switzerland's Lenz & Staehelin law firm, advised Raiffeisen Informatik on the sale of shares in SoftwareONE Holding AG via an overnight accelerated book-building process. Credit Suisse AG, J.P. Morgan Securities plc, UBS AG, and KKR Capital Markets Partners LLP acted as joint book-runners for the placement. Simpson Thacher & Bartlett advised KKR on the deal.	Austria	CHF 350 million
22-May	Dorda; Eisenberger & Herzog; GSK Stockmann; Hogan Lovells	Dorda and Hogan Lovells advised ARE Austrian Real Estate on a joint project with UBM Development involving the development of part of the Aspanggrunde in Vienna's 3rd district and an area in Munich. UBM was advised by Eisenberger & Herzog and GSK Stockmann.	Austria	N/A
22-May	Schoenherr; Wolf Theiss	Schoenherr advised Investor United Benefits on the sale of the Wohngarten residential construction project in Vienna to ZBI Zentral Boden Immobilien Gruppe. Wolf Theiss advised the buyers on the deal.	Austria	N/A
27-May	Deloitte Legal; Lumsden and Partners	Deloitte Legal advised Magenta Telekom on structuring its cooperation with the City of Vienna regarding broadband coverage. Lumsden and Partners advised the City of Vienna on the deal.	Austria	EUR 1 billion
28-May	Brandt & Talos; Covington & Burling; Herbst Kinsky; Mcdermott Will & Emery; Wilson Sonsini Goodrich & Rosati; Wolf Theiss	Wolf Theiss and Covington & Burling advised MSD on its acquisition of Austrian biotech company Themis Bioscience. Brandt & Talos and Wilson Sonsini Goodrich & Rosati advised the selling shareholders on the deal, with McDermott Will & Emery and Herbst Kinsky advising Themis Bioscience.	Austria	N/A
9-Jun	Allen & Overy; BPV Huegel; Dorda; Rittershaus; Siwa Rechtsanwälte Szinger & Partner	BPV Huegel, working with SIWE Rechtsanwälte Sinzger & Partner, advised Dogado GmbH – a subsidiary of European Directories – on its acquisition of Austrian hosting provider Easyname GmbH. Dorda and Rittershaus advised the seller, Easyname's Founder and Managing Director Florian Schicker, and Allen & Overy's Frankfurt office advised European Directories.	Austria	N/A
9-Jun	Taylor Wessing; Wolf Theiss	Taylor Wessing advised the Korber Group and subsidiary Werum IT Solutions GmbH on their acquisition of the operations of Exputec GmbH and Exputec Kft. Wolf Theiss advised Exputec on the deal.	Austria	N/A
10-Jun	Cerha Hempel; Preslmayr	Cerha Hempel, working alongside German law firm Menold Benzler, advised Alfred Ritter GmbH & Co KG on its acquisition of a production facility belonging to Mars Austria OG in the Austrian village of Breitenbrunn. Preslmayr advised Mars.	Austria	N/A
11-Jun	Fellner Wratzfeld & Partner	Fellner Wratzfeld & Partners supported the biodiversity project known as "Mielo" and donated a large amount of the honey produced through the project to the parish of St. Stephen's Cathedral in Vienna.	Austria	N/A
11-Jun	Weber & Co.; Wolf Theiss	Weber & Co advised Wienerberger AG, a Vienna-based supplier of building materials and infrastructure solutions, on its issuance of EUR 400 million of 2.750% 2020-2025 Bonds. Wolf Theiss advised joint lead managers BNP Paribas, Raiffeisen Bank International AG, and UniCredit on the issuance.	Austria	EUR 400 million

Date covered	Firms Involved	Deal/Litigation	Value	Country
15-Jun	Schoenherr	Schoenherr, acting as leader of a consortium of European law firms, conducted what it describes as "a comprehensive study on the regulatory and administrative requirements for entry and trade on the gas wholesale market in the EU for the European Commission, Directorate General Energy."	Austria	N/A
26-May	Sorainen	Sorainen successfully represented Belomo, a Belarusian enterprise specializing in optomechanical and optoelectronic equipment, in arbitration before the International Court of Arbitration of the International Chamber of Commerce.	Belarus	N/A
3-Jun	BNT Attorneys; Sorainen	Sorainen advised ERGO Group on the sale of its Belarusian non-life subsidiary, ERGO Insurance Company, to the Euroins Insurance Group. BNT advised the Euronis Insurance Group.	Belarus	N/A
22-May	Maric & Co.	Maric & Co advised Shandong International and its Bosnian subsidiary SDHS-CSI BH Banja Luka on the Banja Luka-Prijedor-Novigrad highway construction project.	Bosnia and Herzegovina	EUR 300 million
28-May	CMS	CMS advised Korea's Solarian Holdings Ltd. on the acquisition of a 5 MW photovoltaic power plant in Bulgaria from FEC Perun.	Bulgaria	N/A
15-Jun	Kinstellar	Kinstellar served as legal counsel to the SOF Connect consortium on litigation related to its successful participation in the tender that resulted in its receiving the 35-year concession to operate the Sofia airport.	Bulgaria	N/A
19-May	Babic & Partners; BDV Legal; Go2Law; Taylor Wessing; Wolf Theiss	Go2Law and BDV advised Optimapharm founders Igor and Gordana Cicak and Wolf Theiss advised investor Mezzanine Management on the sale of Optimapharm to the Rohatyn Group. Babic & Partners, Taylor Wessing, and Nauta Dutilh advised the Rohatyn Group on the deal.	Croatia	N/A
15-May	Dentons; PwC Legal	PwC Legal advised Varroc Lighting Systems, a Czech manufacturer of headlamps, on the expansion of a syndicate of creditors which had extended the company a EUR 230 million loan. The banking syndicate was advised by Dentons.	Czech Republic	EUR 230 million
21-May	Kinstellar	Kinstellar helped CSOB to launch the we.trade finance platform in the Czech Republic.	Czech Republic	N/A
21-May	GT Legal; Trojan, Dolecek & Partners	GT Legal represented Fragile Media s.r.e. founder Daniel Kafka and the Etnetera Group at the sale of their combined 50% stake in Fragile Media to the Czech KnowLimits media and communications group. Trojan, Dolecek & Partners advised the buyers on the deal.	Czech Republic	N/A
22-May	Glatzova & Co; Kinstellar	Glatzova & Co advised the KKCG investment group on the sale of Conectart, a call center operator in the Czech Republic, to the Genesis Capital Group. The Prague office of Kinstellar advised the buyers on the deal.	Czech Republic	N/A
25-May	Travers Smith; Weinhold Legal; Wolf Theiss	Weinhold Legal advised the shareholders of Klikpojsteni.cz, a.s., including the private equity arm of Benson Oak Capital, on the sale of their 100% stake in Klikpojsteni.cz, a.s. to a company majority-owned by TA Associates and minority-owned by MCI EuroVentures. The buyer was advised by Wolf Theiss and Travers Smith.	Czech Republic	N/A
27-May	Allen & Overy; Dentons	Dentons advised CPI Property Group on a successful tender offer of bonds and the issue of EUR 750 million 2.75% Notes due 2026 under CPI's EUR 8 billion Medium Term Note Program. Allen & Overy advised joint lead managers Credit Suisse Securities (Europe) Limited, Deutsche Bank AG, HSBC Bank plc, Nomura International plc, and Unicredit Bank AG.	Czech Republic	EUR 750 million
3-Jun	Glatzova & Co	Glatzova & Co successfully represented the interests of paper products manufacturer Mondi Steti before the Constitutional Court of the Czech Republic.	Czech Republic	N/A
5-Jun	Kinstellar	Kinstellar advised US-based Novavax, a late-stage biotechnology company developing next-generation vaccines for serious infectious diseases, on its acquisition of Praha Vaccines a.s. from the Cyrus Poonawalla Group.	Czech Republic	USD 167 million
8-Jun	Dentons; Latham & Watkins	Dentons advised Sev.en Energy on the acquisition of US-based metallurgical coal producer Blackhawk Mining. Latham & Watkins advised Blackhawk on the deal.	Czech Republic	N/A
12-Jun	Kocian Solc Balastik	Kocian Solc Balastik successfully represented the Czech Republic's National Theatre in a rent dispute before the Czech Supreme Court.	Czech Republic	N/A

Date covered	Firms Involved	Deal/Litigation	Value	Country
15-Jun	Kocian Solc Balastik	Kocian Solc Balastik helped prepare contractual documentation for the Arete investment and real estate group related to the refinancing of the portfolio of its EUR 80 million CEE II sub-fund.	Czech Republic	EUR 80 million
18-May	Cobalt	Cobalt advised Change Ventures on its investment in fintech startup askRobin.	Estonia	N/A
18-May	Sorainen	Sorainen assisted SeAH Changwon Integrated Special Steel Corporation with an asset recovery process.	Estonia	N/A
26-May	Cobalt	Cobalt advised AS LHV Pank, an Estonian credit institution with shares are listed on the Tallinn Stock Exchange, on the establishment of its EUR 1 billion Covered Bond Program.	Estonia	EUR 1 billion
26-May	Ellex (Raidla)	Ellex Raidla advised NGO Back to Work on testing one of the world's first digital immunity passports – an application that enables users to securely share data when a person taken a COVID-19 virus test or an antibody test.	Estonia	N/A
29-May	Sorainen	Sorainen successfully represented the Polybius Foundation, which had conducted an initial coin offering, in a dispute involving one of the buyers, Maksim Velitsko, who was attempting to force a reversal of his token purchase.	Estonia	N/A
2-Jun	Cobalt	Cobalt advised Nordea Bank Abp on amendments to a EUR 280 million loan agreement with AS Tallink Grupp, an Estonian shipping company, that was signed in 2016.	Estonia	EUR 280 million
3-Jun	Sorainen	Sorainen advised transportation platform Bolt on a EUR 100 million investment from London-based investment firm Naya Capital Management.	Estonia	EUR 100 million
3-Jun	Ellex (Raidla)	Ellex Raidla advised the European Investment Bank on a EUR 25 million loan to the North Estonia Medical Centre.	Estonia	EUR 25 million
8-Jun	TGS Baltic	TGS Baltic advised Iron Mountain Inc. on the applicable time limits for the preservation of documents and obligations regarding the submission of documents to public authorities.	Estonia	N/A
15-Jun	Fort	Fort's Estonia office advised AS LHV Pank, a subsidiary of AS LHV Group, on its acquisition of Danske Bank's business unit operating the Estonian corporate and public sector credits, which at the end of April amounted to approximately EUR 312 million.	Estonia	EUR 312 million
15-Jun	Sorainen	Sorainen advised the Estonian technology company Milrem Robotics on raising EUR 5.5 million from a number of prominent Estonian investors.	Estonia	EUR 5.5 million
15-Jun	Sorainen	Sorainen Estonia advised Communications & Power Industries on the acquisition of SATCOM Technologies, the antenna systems business of General Dynamics.	Estonia	N/A
11-Jun	Sorainen	Sorainen successfully defended the interests of racing organizer NASCAR in disputes involving the registration of the company's trademark in Lithuania, Latvia, and Estonia.	Estonia; Latvia; Lithuania	N/A
25-May	Drakopoulos; Koutalidis; Your Legal Partners	Koutalidis advised Aktor Concessions S.A. on its successful bid to own, use, administer, operate, and exploit the Marina of Alimos. The concession, which is good for 40 years, was granted by the Hellenic Asset Development Fund. The HADF was advised by Dracopoulos & Vassalakis and Your Legal Partners.	Greece	EUR 177 million
28-May	Alexiou-Kosmopoulos; Dracopoulos & Vassalakis; Your Legal Partners	Dracopoulos & Vassalakis, Your Legal Partners, and Alexiou-Kosmopoulos have been appointed as legal advisors to the Hellenic Republic Asset Development Fund on the privatization of regional ports of Alexandroupolis, Heraklion, Igoumenitsa, and Volos through the sale of majority stakes in the state-owned port operating companies.	Greece	N/A
19-May	Allen & Overy; Gardos Mosonyi Tomori	Balazs Sahin-Toth, Counsel in the Budapest office of Allen & Overy, working pro bono in conjunction with Peter Gardor from Hungary's Gardos Mosonyi Tomori Law Firm and Hungarian solo practitioners Adel Keyge and Eleonora Hernadi, persuaded the Hungarian Supreme Court to uphold a lower court's decision that the Hungarian segregation of Roma students between 2003 and 2017 provided a lower level of education.	Hungary	N/A

Date covered	Firms Involved	Deal/Litigation	Value	Country
28-May	D'Ornano Partners; RSM Legal Szucs & Partners	D'Ornano Partners advised the Hungarian subsidiary of the Ruget group on the transfer of assets and the sale of real estate to Hungary's Ferzol Group. RSM Legal Szucs & Partners advised Ferzol on the deal.	Hungary	N/A
15-May	Cobalt	Cobalt assisted with the drafting of the terms and conditions of moratoria introduced by Latvian banks and liaised with the Latvian competition authority to obtain backing for the process and outcome of negotiation.	Latvia	N/A
20-May	Kronbergs Cukste Levin; Primus Derling; Vilgerts	Kronbergs Cukste Levin advised environment management group Eco Baltia on the sale of a controlling stake in the company to INVL Baltic Sea Growth Fund. Vilgerts and Primus Derling advised the buyers on the deal.	Latvia	N/A
29-May	Sorainen	Sorainen advised Nasdaq CSD SE on a cross-border merger with Nasdaq CSD Iceland hf.	Latvia	N/A
15-May	Sorainen	Sorainen advised Orkela on the conversion of the former Sv. Jokubo hospital in the Vilnius city center into a hotel.	Lithuania	N/A
26-May	Ellex (Valiunas); Euroteises Biuras	Ellex Valiunas advised Northern Ireland's Mzuri Holdings on the acquisition of 60% stake in Lithuanian window covering manufacturer Domus Lumina. Euroteises Biuras advised Domus Lumina.	Lithuania	N/A
27-May	Motieka & Audzevicius	Motieka & Audzevicius successfully represented the Republic of Serbia before the Lithuanian Court of Appeals in a case regarding the enforcement of Serbia's EUR 12 million claim against an unspecified Lithuanian company.	Lithuania	EUR 12 million
27-May	TGS Baltic	TGS Baltic successfully defended the interests of TV Play at the Supreme Administrative Court of Lithuania against the Radio and Television Commission of Lithuania in a dispute involving the "must carry" obligation under Lithuanian law.	Lithuania	N/A
28-May	Cobalt; Sorainen	Cobalt advised Lithuania's AB Lietuvos Radijo ir Televizijos Centras on the sale of its data transmission and digital television business developed under the Mezon brand to Lithuania's Bite Group. Sorainen advised Bite on the deal.	Lithuania	N/A
29-May	Clifford Chance; Dentons; TGS Baltic; Walless	TGS Baltic and Dentons advised the Ignitis group on its renewed EUR 1.5 billion medium-term debt securities program and EUR 300 million bond issuance. Clifford Chance and Walless advised intermediaries BNP Paribas, Citi, J.P. Morgan, and Luminor bank.	Lithuania	EUR 300 million
1-Jun	Sorainen; TGS Baltic	Sorainen advised Danielius Merkinas and Ceslovas Kazlauskas, the founders of NNL LT, on the acquisition of a 44% stake in NNL LT from Litcapital through an acquisition vehicle. TGS Baltic advised Litcapital.	Lithuania	N/A
8-Jun	Sorainen; SPC Legal	Sorainen advised venture capital fund Open Circle Capital on an unspecified investment in Lithuanian marketing startup Billo. SPC Legal advised Billo.	Lithuania	N/A
10-Jun	Cobalt	Cobalt advised APX on an unspecified pre-seed investment in Haslle.	Lithuania	N/A
15-Jun	Cerniauskas & Partners; Glimstedt; TGS Baltic	TGS Baltic advised venture capital fund Koinvesticinis Fondas and four other business angels on their investment of EUR 210,000 in Lithuanian start-up Funkciniai Gerimai. Cerniauskas & Partners advised Funkciniai Gerimai on the deal, while Glimstedt advised the business angels.	Lithuania	EUR 210,000
15-Jun	Ellex (Valiunas); TGS Baltic	Ellex Valiunas advised Quaero European Infrastructure Fund II on the acquisition of UAB Duomenu Logistikos Centras from energy company Ignitis Group and Litgrid. TGS Baltic advised the sellers on the transaction.	Lithuania	EUR 10.1 million
15-May	Kwasnicki, Wrobel & Partners	Kwasnicki Wrobel & Partners advised Lorentz Tech Limited on the acquisition of Cube ID, a Polish company specializing in identity management products.	Poland	N/A
15-May	Allen & Overy	Allen & Overy advised the Polish Development Fund on the implementation of Poland's "PFR Financial Shield for Small and Medium-Sized Enterprises" program that is designed to provide financial support for enterprises following the outbreak of the COVID-19 coronavirus pandemic.	Poland	N/A
18-May	Gessel	Gessel advised Systexan SARL, a fund managed by Enterprise Investors, on its exit from X-Trade Brokers Dom Maklerski S.A., including its conducting a public offer in the form of accelerated book-building worth PLN 111.2 million. Global coordinators were PKO BP and Ippopema Securities.	Poland	PLN 111.2 million

Date covered	Firms Involved	Deal/Litigation	Value	Country
18-May	Bird & Bird	Bird & Bird won the right to advise the Solidarity Transport Hub on its selection of key consultants for a new airport in Poland.	Poland	N/A
22-May	Act (BSWW)	Act BSWW advised AFI Europe on a lease of 900 square meters of office space in the V.Offices complex in Krakow to BrainShare IT.	Poland	N/A
22-May	Clifford Chance; DWF	DWF advised Solaque Holding Ltd. on the sale of two wind farms in Poland to Fonnes sp. z o.o., a subsidiary of Taaleri Plc. Clifford Chance advised the buyers on the deal.	Poland	N/A
26-May	White & Case	White & Case advised Kenbourne Invest II and Tollerton Investments Limited on the PLN 700 million sale of shares in Play Communications. BofA Securities and Santander Bank Polska S.A. - Santander Biuro Maklerskie acted as joint global coordinators and joint bookrunners.	Poland	PLN 700 million
28-May	Dentons; Rymarz Zdort	Rymarz Zdort advised a company controlled by a fund managed by Aberdeen Standard Investments on the refinancing of one of its Polish photovoltaic portfolio with an aggregate capacity of 55 MW. Dentons advised Erste Group Bank AG and ING Bank Slaski S.A. on the refinancing.	Poland	N/A
29-May	BCGL; Gessel	BCGL advised mBank S.A. on financing granted to PGB Holdco and its subsidiaries for the development and start-up of biogas plant facilities. Gessel advised PGB Holdco on the deal.	Poland	N/A
4-Jun	Allen & Overy; Ellex (Valiunas)	Ellex Valiunas advised Energy Solar Projekty sp.z o.o on its receipt of a EUR 36 million loan from the EIB and DNB Bank Polska. Allen & Overy advised DNB Bank Polska on the loan, which is designed for the development of a solar power plant project in Poland.	Poland	EUR 36 million
4-Jun	Baker Mckenzie; CMS; DLA Piper; White & Case	CMS advised Grupa Azoty Polyolefins on financing it received from Grupa Lotos SA and South Korea's Hyundai Engineering and Korea Overseas Infrastructure & Urban Development Corporation for the Police Polimery polypropylene project in Poland, as well as on the implementation of the project. Baker McKenzie advised Grupa Lotos and DLA Piper advised Hyundai and Korea Overseas Infrastructure & Urban Development on the deal.	Poland	USD 1.20 billion
4-Jun	Act (BSWW); Deloitte Legal	Act BSWW advised the Adventum International investment fund on the acquisition of a 17,000-square-meter office building in Wroclaw, Poland, from EFL Service SA., which is controlled by Europejski Fundusz Leasingowy SA. Deloitte Legal advised the sellers on the deal.	Poland	N/A
4-Jun	CMS; Eversheds Sutherland	Eversheds Sutherland Wierzbowski advised the Lithuanian electricity transmission system operator on an agreement regarding the construction of the Harmony Link submarine cable between Lithuania and Poland. CMS advised Polish power transmission system operator PSE on the deal.	Poland	N/A
5-Jun	Hogan Lovells; Linklaters	Linklaters advised Swedish real estate private equity firm NIAM on the sale of Silesia Business Park A and B in Katowice to the Philippine's ISOC Group, represented in Poland by Augusta Cracovia, which was advised by Hogan Lovells.	Poland	N/A
8-Jun	MGS Law	MGS Law advised Orange Poland on two Power Purchase Agreements concluded with German renewable energy projects developer WPD regarding wind farms WPD will operate in Jarocin (5 MW) and Krotoszyn (10 MW).	Poland	N/A
8-Jun	DWF	DWF advised Polish Enterprise Fund VIII, a private equity fund managed by Enterprise Investors, on an unspecified investment in the Vehis Group.	Poland	N/A
8-Jun	Gide Loyrette Nouel	The Warsaw office of Gide advised Archicom on its EUR 33.8 million sale of the City One office building in Wroclaw to an unnamed institutional investor.	Poland	EUR 33.8 million
8-Jun	Mrowiec Fialek & Partners	Mrowiec Fialek & Partners advised Polski Holding Nieruchomosci S.A. on the issuance of E series shares and on their admission to trading on the Warsaw Stock Exchange.	Poland	PLN 4.2 million
8-Jun	Dentons; Penteris	Dentons advised commercial real estate developer Cavatina Holding on the sale of three A-class office buildings in the Equal Business Park office complex in Krakow to a consortium managed by Apollo-Rida Poland. Penteris advised Apollo-Rida on the deal.	Poland	N/A

Date covered	Firms Involved	Deal/Litigation	Value	Country
8-Jun	Rymarz Zdort	Rymarz Zdort advised funds controlled by Aberdeen Standard Investments on the acquisition of a portfolio of 130 photovoltaic plants with a total capacity of 122 MW from Poland's R. Power Group.	Poland	N/A
11-Jun	Gide Loyrette Nouel; White & Case	Gide Loyrette Nouel advised Sierra Gorda on its entrance into a credit facility agreement of USD 200 million with Bank Gospodarstwa Krajowego. Gide also advised corporate guarantors KGHM Polska Miedz S.A., Sumitomo Metal Mining Co. Ltd, and Sumitomo Corporation. White & Case advised Bank Gospodarstwa Krajowego on the deal.	Poland	EUR 200 million
15-Jun	Bird & Bird; SRC	Bird & Bird advised mBank on an unspecified financing and refinancing transaction related to the construction of 28 solar farms in northwestern Poland owned by seven SPVs belonging to Denmark's Nordic Solar. SRC advised Nordic Solar.	Poland	N/A
15-Jun	Jara Drapala & Partners	JDP helped a consortium composed of Intercor, Stecol, and Sinohydro to win a tender announced by PKP PLK S.A. and involving the construction of part of Rail Baltica, a railway corridor connecting Berlin, Warsaw, Kaunas, Riga, Tallinn and Helsinki.	Poland	PLN 4.1 billion
18-May	Filip & Company	Filip & Company assisted Raiffeisen Bank on the May 14, 2020, listing of lei-denominated subordinated bonds on the Bucharest Stock Exchange.	Romania	RON 480 million
22-May	Stratulat Albuлесcu	Stratulat Albuлесcu successfully represented Hervis Sports & Fashion before a Specialized Tribunal in Cluj, winning an injunction for the deferred payment of part of the rent relating to the Vivo Shopping Center Cluj.	Romania	N/A
26-May	Buzescu Ca	Buzescu Ca successfully represented Alvogen IPCO S.a.r.l., and Alvogen Romania S.R.L. before the Bucharest Court of Appeals in their challenge to an application by Teva Pharmaceutical Industries Ltd. for a preliminary injunction against the sale of a drug Alvogen distributes.	Romania	N/A
27-May	Filip & Company	Filip & Company successfully represented Romania's Financial Supervisory Authority in a dispute against a former board member of the National Securities Commission involving labor and administrative issues worth over RON 1 million.	Romania	RON 1 million
1-Jun	Filip & Company; Linklaters	Filip & Company, working alongside Linklaters, advised the Romanian Ministry of Public Finance on the issuance of Eurobonds in two tranches that raised EUR 3.3 billion from international markets.	Romania	EUR 3.3 billion
18-May	Akin Gump; Clifford Chance	Akin Gump advised PJSC Lukoil on its issuance of USD 1.5 billion Eurobonds listed on the Main Market of the London Stock Exchange. Clifford Chance advised joint lead managers Citigroup, Societe Generale CIB, and Bank GPB International S.A. (Gazprombank).	Russia	USD 1.5 billion
25-May	Debevoise & Plimpton	Debevoise & Plimpton is advising PAO TMK, a producer of tubular products for the oil and gas industry, on the repurchase of its regular shares by subsidiary Volzhsky Pipe Plant JSC, and on the prospective delisting of TMK's global depository receipts from the London Stock Exchange.	Russia	USD 300 million
28-May	Vegas Lex	Vegas Lex won what it calls "two crushing victories" in the Arbitration Court of the North-Western District for pharmaceutical company Alium in disputes related to a contract for the construction of a large pharmaceutical plant.	Russia	N/A
28-May	Liniya Prava	Liniya Prava helped the VTB Group attract investors to Demeter Holding.	Russia	N/A
1-Jun	White & Case	White & Case advised Alliance Oil Company Ltd. on a tender offer and consent solicitation in respect of its USD 500 million 7.000% Guaranteed Notes due 2020.	Russia	USD 500 million
4-Jun	Clifford Chance	Clifford Chance advised the Russian Far East and Arctic Development Fund on a loan of RUB 5.7 billion (approximately USD 80 million) for the Amur hydrometallurgical plant, a subsidiary of Polymetal.	Russia	RUB 5.7 billion
9-Jun	Baker Mckenzie; Bryan Cave Leighton Paisner	Bryan Cave Leighton Paisner advised Kopy Goldfields AB on Russian matters related to its acquisition of authorized capital of the Russian gold mining company Amur Gold from HC Alliance Mining Group Ltd. and Lxor Group SA. Baker McKenzie advised the sellers.	Russia	N/A
11-Jun	Noerr	Noerr advised the Bauer Media Group on the sale of its interests in its Russian publishing companies to its current Russian management. The portfolio sold by BMG consists of interests in five Russian entities and around 90 magazines in total.	Russia	N/A

Date covered	Firms Involved	Deal/Litigation	Value	Country
15-Jun	Herbert Smith Freehills; White & Case	White & Case advised Russian online video streaming service IVI on financing it received from Alfa Bank. Herbert Smith Freehills advised Alfa Bank on the deal.	Russia	N/A
25-May	BDK Advokati	BDK Advokati has been appointed to act as the local representative for Google under the Serbian Data Protection Act.	Serbia	N/A
26-May	Samardzic, Oreski & Grbovic	Samardzic Oreski & Grbovic advised Bravos Holding on the acquisition of a high-class office building in Belgrade from DUTB.	Serbia	N/A
26-May	NKO Partners	NKO Partners advised Dr. Max, the largest pharmacy network in Central Europe, on a public-private partnership project involving the concession of 27 state owned pharmacies located in the City of Krusevac and the Rasina District of Serbia.	Serbia	N/A
27-May	Karanovic & Partners; NKO Partners	Karanovic & Partners advised Canadian precious and base metals exploration company Tethyan Resource Corp on its acquisition of ten percent of the shares and management control over the of the Serbian geological company EFPP. NKO Partners advised EFPP on the deal.	Serbia	N/A
27-May	NKO Partners	NKO Partners advised industrial real estate developer CTP on its EUR 2.1 million acquisition of six hectares of land in Kragujevac, Serbia, from the City of Kragujevac.	Serbia	EUR 2.1 million
3-Jun	Kinstellar	Kinstellar advised Korea's Kyungshin Cable on the construction of a 12,000-square-meter factory in the Serbian town of Smederevska Palanka.	Serbia	EUR 20 million
3-Jun	NKO Partners	NKO Partners advised Lola Real Estate on its acquisition of 9,376 square meters of land in a public tender procedure from the Belgrade Land Agency, then advised Lola Real Estate sole shareholder Loran Soco on the sale of the company to the Czech Republic's UDI Group. Sole practitioner Aleksandra Nedeljkovic advised UDI on the latter deal.	Serbia	EUR 7 million
15-Jun	JPM Jankovic Popovic Mitic	JPM helped Gastrans d.o.o. Novi Sad draft the Natural Gas Transmission System Network Code, which, with the consent of the Energy Agency of the Republic of Serbia, entered into force on May 30, 2020.	Serbia	N/A
28-May	White & Case	White & Case advised lead managers Barclays Bank, Citigroup Global Markets Limited, Deutsche Bank AG, HSBC, and Intesa Sanpaolo Group member Vseobecna Uverova Banka on the Slovak Republic's dual tranche issuance of EUR 2 billion 0.250% notes due 2025 and EUR 2 billion 1.000% notes due 2032.	Slovakia	EUR 4 billion
2-Jun	BTS & Partners; Ilhanli Baser	BTS & Partners advised Turkish logistics company Yolda and its founders on their receipt of an investment of USD 835,000 from Collective Spark, an investment fund focusing on tech companies, and various angel investors. Ilhanli Baser advised Collective Spark on the investment.	Turkey	USD 835,000
3-Jun	Abcoo; Baker Mckenzie; Baker Mckenzie (Esin Attorney Partnership); BTS & Partners; Dentons; Dentons (Baseak); GKC Partners; Verdi Law Firm; White & Case	White & Case and its associated Turkish firm, GKC Partners, advised interactive entertainment company Zynga Inc. on its USD 1.8 billion acquisition of Istanbul-based Peak Oyun Yazilim ve Pazarlama, A.S. Baker McKenzie, working with its Turkish affiliate, the Esin Attorney Partnership, advised Peak on the transaction. Dentons, along with its affiliate Balcioglu Selcuk Ardiyok Keki Avukatlik Ortakligi, advised Hummingbird Ventures CVA as the investor seller. BTS & Partners advised Endeavour Catalyst, as an investor seller, and Abcoo had advised Peak Founder and CEO Sidar Sahin.	Turkey	USD 1.8 billion
10-Jun	Allen & Overy; Gedik & Eraksoy	Allen & Overy and Gedik & Eraksoy advised Standard Chartered Bank and Bank of America as arrangers of an ESG-linked syndicated loan facility for Turkey's Garanti BBVA.	Turkey	N/A
15-Jun	BTS & Partners; Norton Rose Fulbright; Norton Rose Fulbright (Inal Kama Attorney Partners)	BTS & Partners advised the shareholders of mobile payment and bank transfer service provider Payguru on the sale of 100% of its shares to Tpay Mobile. Norton Rose Fulbright London and the Inal Kama Attorney Partnership advised Tpay Mobile on the deal.	Turkey	N/A
18-May	LCF Law Group	Ukraine's LCF Law Group became a legal partner of the Ukrainian Association of Renewable Energy.	Ukraine	N/A

Date covered	Firms Involved	Deal/Litigation	Value	Country
18-May	Kinstellar	Kinstellar advised UMG Investments on the acquisition of a minority stake in Feednova LLC, a Ukrainian company focusing on the production of feed additives for farm animals and pets, and the subsequent establishment of a joint venture with Effective Investments Group and other stakeholders of Feednova.	Ukraine	N/A
18-May	Vasil Kisil & Partners	Vasil Kisil and Partners successfully represented the interests of Czech national Vasil Sadocha in a case against Ukraine before the European Court of Human Rights.	Ukraine	N/A
21-May	Antika	Ukraine's Antika law firm successfully defended the interests of the Persha insurance company in a dispute involving the recovery of funds by subrogation.	Ukraine	N/A
22-May	Esquires Attorneys At Law	Ukraine's Esquires law firm successfully defended the interests of Diezelmashservice KR LLC in the first-instance Dnipropetrovsk District Administrative Court and then the Third Administrative Court of Appeal in a VAT dispute with Ukraine's tax authorities.	Ukraine	USD 100,000
27-May	Integrites	Integrites advised Sibelco on the acquisition of Ukrainian clay producers Euromineral LLC and Kurdyumovsky Plant PrJSC. The seller was advised by in-house counsel Yana Petrova.	Ukraine	N/A
1-Jun	Ilyashev & Partners	The International Trade Practice team of Ilyashev & Partners secured the introduction of provisional anti-dumping duties on imports to Ukraine of steel fasteners originating in the People's Republic of China.	Ukraine	N/A
3-Jun	Asters	Asters advised the EBRD on financing provided to Lantmannen Axa, a producer of breakfast cereals in Ukraine that is owned by Sweden's agribusiness cooperative Lantmannen.	Ukraine	N/A
3-Jun	Ilyashev & Partners	Ilyashev & Partners successfully protected the interests of Ukrainian Match Factory LLC in an anti-dumping investigation on the importation of matches originating in the Republic of Belarus and the Russian Federation into Ukraine.	Ukraine	N/A
10-Jun	Sayenko Kharenko	Sayenko Kharenko advised Dobrobut on the acquisition of the Doctor Sam medical network, which operates three clinics in Kyiv.	Ukraine	N/A
11-Jun	Sayenko Kharenko	Sayenko Kharenko advised the EBRD on its up-to-USD 60 million secured loan to the Fozzy Group.	Ukraine	USD 60 million
11-Jun	Asters	Asters successfully defended PrivatBank CB JSC, the largest bank in Ukraine by assets, in a defamation dispute with O. Dubilet, the former chairman of the bank's board, before the Civil Court of Cassation of the Supreme Court in Ukraine.	Ukraine	N/A



### The Ticker:

- Full information available at: [www.ceelegalmatters.com](http://www.ceelegalmatters.com)
- Period Covered: May 15, 2020 - June 15, 2020

### Did We Miss Something?

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

# ON THE MOVE: NEW HOMES AND FRIENDS

## Lithuania: Laura Augyte-Kamarauskienė Brings Lexem Team to Glimstedt

By Andrija Djonovic

Laura Augyte-Kamarauskienė, the founder of the Lexem Law Partnership, has brought her entire team to Glimstedt.



Glimstedt describes Augyte-Kamarauskienė as “an independent expert of the European Commission for Justice, Freedom

and Security since 2009.” According to the firm, “she is highly experienced in dealing with professional civil liability lawsuits and disputes arising out of factoring agreements and promissory notes has extensive knowledge of standard debt recovery process in Lithuania and abroad, of contract law (real estate, distribution, agency agreements, and other notarized transactions), and of the implementation of publicly funded projects and agreements.” In addition, the firm reports, she “has expert knowledge in the field of recognition and enforcement of judicial and arbitral awards in Lithuania and abroad and is an arbitrator recommended by the Vilnius Court of Commercial Arbitration. She is expected to fortify the firm’s Migration Law Practice and Dispute Resolution

Practice teams, in particular in cross border litigation, insurance, professional liability, and executive liability claims.”

Augyte-Kamarauskienė has a Master’s degree in law from the Vilnius University and a Ph.D. from the Mykolas Romeris University. Prior to joining Glimstedt, she spent almost eight years as the Chief Officer and the Deputy Director with the Ministry of Justice of Lithuania, almost two years as an Adviser with the Lithuanian Chamber of Notaries, and has helmed the Lexem Law Partnership since founding it in 2009.

“I have reached the highest peak in my professional career as a lawyer,” said Augyte-Kamarauskienė. “Therefore, I am very delighted right now to bring all my knowledge, experience, and expertise to Glimstedt with its long-standing traditions. I take this step in the career as a broad professional prospect that gives me an opportunity to achieve my future professional goals and to create added value for the firm at the same time, but on top of that - to continue to provide our loyal clients with highest quality legal services that have now been enlarged in scope due to support and backup from the firm’s international team.”

“We make efforts to help our clients cope with the effects of the COVID-19 pandemic, in having their activities swiftly resumed, and in grasping all new opportunities opening up,” said Glimstedt Managing Partner Solveiga Paleviciene. “This has inevitably triggered changes in our professional

team. Lawyers Marius Embrektas and Laura Augyte-Kamarauskienė are highly acclaimed experts in their fields whose competence, foresight, and experience are particularly valued among their clients and colleges.” ■

## Croatia: Anđelović, Siketić & Tomić Law Firm Opens for Business in Zagreb

By Andrija Djonovic

Former Glinska & Miskovic lawyers Ivona Anđelović, Petra Siketić, and Marko Tomić have left their former home to launch the new Anđelović, Siketić & Tomić law firm in Zagreb.

According to an AST Law Firm statement, the three lawyers “worked before in reputable full-service law firms, where we had the privilege to work as a team and got to know one another. Our earlier experience gave us the perspective of how both the legal industry and business works. We learned that the two, without justified reason, are not necessarily adequately aligned and that such approach of providing legal services is a bit outdated. Thus, when we recognized that we share the same values regarding our profession and relationship with our clients, as well as the vision of a somewhat different business philosophy and approach, a decision to start our own firm seemed to be the next logical step.”

In addition, the statement claims, “besides typical legal services, each of us

has developed a high level of additional skills and knowledge (including in areas of business, psychology, management, and organization), which enables us to provide legal advice by thinking outside of the (legal) box – thus, we come in very handy in negotiations, predictions of opposite parties’ moves and reactions, reaching business management decisions and keeping track of [clients’] daily business and tasks.”

Ivona Anđelović began her career with three and a half years at Porobija & Porobija, leaving that firm in September 2016 to join Glinska & Misković. She specializes in Dispute Resolution, Public Procurement, and Employment Law.

Like Anđelović, Petra Siketić began her career at Porobija & Porobija, which she left after almost four years in October 2014 to join Glinska & Misković. She focuses primarily on Banking/Finance (with an emphasis on Project Finance and Real Estate investments).

Marko Tomić began his career with a short stint at Laktić & Partneri, then joined Glinska & Misković in September 2014. He specializes in Company and Commercial law, M&A, Restructuring, IT and TMT, Data Protection, and Gaming.

All three graduated from the University of Zagreb. ■

**Moldova: Moldova’s Popa & Associates Merges with and Re-brands as Grata International**

By David Stuckey

Moldova’s Popa & Associates has become a fully integrated member of Grata International.

According to Grata International, Igor

Popa, who will head the Grata International office in Chisinau, “combines the functions of managing the firm with active involvement in projects of his team.” According to the firm, “with 18 years of experience in assisting foreign investors in Moldova, Igor possesses in-depth expertise of the local legal market.”



Igor Popa

“I’m extremely proud that after a successful period of association, during which we

synchronized internal management processes and quality standards, the parties made the right decision to fully integrate Popa & Associates into Grata International’s family,” said Aidar Sarymsakov, a member of Grata International’s Global Board. “From this moment, Popa & Associates, a brand name well respected in Moldova and other countries, transforms into Grata Moldova and opens a new page in the history of one of the leading firms in Moldova.”

Igor Popa, Grata International Senior Partner in Moldova, explained his firm’s decision to join the Central Asia-based international network. “We are taking the globalization route by merging with larger counterparts. This trend in expansion is being driven by the automation of legal processes and new technology tools. Our clients – multinational companies – need legal advisors who can assist with day-to-day activities as well as corporate life events across many jurisdictions around the globe. We believe that this integration will build a great synergy – the combined value and performance of Popa & Associates and Grata will benefit our clients and our

colleagues.

In addition, the former Popa & Associates announced, “to meet growing client requests, we will hire new lawyers in the following practice areas: Merger & Acquisitions, Banking & Finance and International Taxation.” ■

**Ukraine: AGA Partners and Avellum Reframe Relationship as Alliance**

By David Stuckey

AGA Partners and Avellum have announced that the two Ukrainian firms, which merged almost two years ago, will officially separate, continuing their relationship as an alliance.

The firms merged in July of 2018. “As of today,” Avellum announced on May 26, 2020, “AGA Partners team resumes operating under its brand.”



Mykola Stetsenko

According to a statement on the Avellum website, “the partners of both firms have made this joint decision to meet the present day challenges and new goals that each team has set for themselves. The alliance format will allow a more flexible approach to the legal market strategies of both firms, and maintain a close cooperation on joint projects.”

“We stay good friends with AGA partners and will continue to cooperate on common projects in the future,” said Avellum Managing Partner Mykola Stetsenko. ■

**Hungary: Erdos | Katona Open for Business in Budapest**

By David Stuckey

Erdos | Katona has opened its doors as a transactional boutique in Budapest.

The firm focuses on the work of Partners Gabor Erdos (the former Managing Partner of Deloitte Legal Hungary), Gyorgy Katona (who was, until the June 1st launch of Erdos | Katona, the Managing Partner of Katona Legal), Luca Bokor (the former Head of Banking at Deloitte Legal Hungary), and Balazs Varszeghi (the former Head of Energy at Deloitte Legal Hungary). Erdos | Katona also has, at the moment, three additional senior lawyers, and two junior lawyers.

According to Luca Bokor, “we believe that with this new boutique transaction-focused law firm we will be able to serve our clients more flexibly and effectively and Gyorgy is happy about the opportunity to team up and expand his firm with such recognized practitioners.” ■

**Ukraine: Brandsfield Brand Care Law Firm Opens Doors in Kyiv**

By Andrija Djonovic

Former Sayenko Kharenko Counsels Denis Krokhmalyov and Oleg Klymchuk have joined together to open a boutique intellectual property firm in Kyiv: Brandsfield Brand Care.

According to a Brandsfield Brand Care press release, the firm “specializes in brand protection and anti-counterfeiting, as well as IP and TMT matters for creative, innovative, and brand-driven businesses.”

Denis Krokhmalyov specializes in brand protection, anti-counterfeiting, and general legal support of different businesses, with consulting and 15 years’ in-house experience. According to the firm, “Denis has a unique background in implementing and managing brand protection strategies in 25 countries in Central and Eastern Europe, Central Asia, and the Caucasus region.”

Krokhmalyov has a Master’s degree in law from the Taras Shevchenko National University in Kyiv

and an MBA from the Kyiv National Economics University. Prior to this, he spent two years in-house with URS, three years with TNK-BP, seven and a half years with Procter & Gamble, and a year with Sayenko Kharenko.

According to Brandsfield Brand Care, Oleg Klymchuk’s practice includes “advising, prosecution, portfolio management, and litigation in various fields of IP law (copyright, trademarks, appellations of origin) as well as advising, administrative enforcement, and litigation in the field of protection against unfair competition.”

According to the firm, “Oleg also focuses on enforcement of brands and designs against imitations and unfair exploitation. Oleg’s experience also includes advising IT & TMT suppliers on intellectual property, commercial/trans-

actional, media, and advertising issues.”

Klymchuk holds an LL.M. from the Kyiv Intellectual Property Institute of National University Odesa Academy of Law. Prior to launching his new firm, he spent a year and a half with Alexandrov & Partners, almost six years with Noerr, a year with Asters, and six and a half years with Sayenko Kharenko. ■



Denis Krokhmalyov



Oleg Klymchuk



Wojciech Czyzewski

**Poland: Bird & Bird Launches Warsaw-Based Forensic Services Team**

By Andrija Djonovic

Bird & Bird has announced the addition of a new Forensic Services team in Warsaw.

According to Bird & Bird, “the team joins from PwC and is a decisive factor in supporting clients in challenging situations, such as internal investigations requested by management or owners, regulatory inquiries and investigations conducted by law enforcement authorities, as well as in disputes and due diligence reviews. The team can support internal and regulatory investigations, eDiscovery and Forensic Data Analytics, background checks, fraud prevention, and post fraud support, as well as M&A and disputes.”

According to Bird & Bird, the new team will include “Wojciech Czyzewski (Head of Forensic Services), who has over 14 years of professional experience, having managed projects for shareholders and Supervisory Boards, Jakub Kur (Head

of Forensic Technology), who has been advising Polish and international clients on identifying and managing fraud risks since 2012, and Marcin Miazga (Digital & eDiscovery Services Manager), who specializes in obtaining electronic evidence and investigative analytics for clients in various industries in relation to investigations and incidents.”

“Joining the law firm of Bird & Bird’s experts in the field of investigative services strengthens our competency in court proceedings and corporate investigations,” said Bird & Bird Partner Adam Kowalczyk. “Gaining in-depth knowledge and their professional analysis is a differentiating factor in supporting clients in difficult and sometimes crisis situations. I am delighted that the Warsaw office will be able to support the entire Bird & Bird network, including in corporate proceedings and investigations. Bird & Bird will join the select few global law firms offering such a comprehensive and integrated legal service.” ■

### Austria: Dorda Establishes Sustainability Practice Group

By David Stuckey

Dorda has established a Sustainability Practice Group, “bring[ing] together experts from various legal fields to provide targeted support to companies in their efforts to operate successfully and sustainably at the same time.”

According to the firm, “the Dorda Sustainability Practice Group is intended to ensure comprehensive support for its clients. Against this background, experts from all legal fields work together with a shared mission: To help companies use their resources in a sustainable, respon-



sible and reasonable way and thus to operate successfully in the long term. For example, the lawyers help identify ESG risks in M&A transactions, adapt to ESG compliance regulations and implement sustainable real estate projects and sustainable financing projects.”

“While sustainability offers companies many opportunities, it also presents them with completely new challenges,” said Partner Andreas Zahradnik, who co-initiated the Sustainability Practice Group. “It is therefore essential to have a powerful team that is familiar with all facets of the topic and can deal with it not only theoretically but also practically.”

“The already tight regulatory framework is also becoming increasingly tight in the area of sustainability,” added Dorda Senior Associate Christian Scholler, who co-initiated the group with Zahradnik. “We therefore expect that sooner or later almost all companies of a certain size will have to deal with the topic. So it pays off for companies from all sectors to be among the first to get involved, as long as the market can still be defined. We are reliably on their side to ensure compliance with the legal environment.” ■

### Russia: KIAP, DS Law, and Balashova Legal Consultants Split Up

By Andrija Djonovic

KIAP Law Offices, DS Law Law Offices, and Balashova Legal Consultants have de-merged, reframing their association as a “best friends” relationship.

The three firms announced that they would be merging at the end of 2019, reporting at the time that they would be operating going forward under the KIAP Digital & Smart brand.

According to a statement on the KIAP website, from November 2019 until March 2020, the firms “carried out large-scale work to integrate business in terms of the overall strategy, personnel, and marketing.”

Ultimately, “however, the COVID-19 pandemic made a significant impact on the economic situation on the market, narrowing planning horizons, and putting many industries in a state of turbulence.” ■

## PARTNER APPOINTMENTS

Date Covered	Name	Practice(s)	Firm	Country
15-May	Margit Lahevee	Corporate/M&A; Competition	BNT	Estonia
15-May	Marius Embrektas	Infrastructure/PPP/Public Procurement	Glimstedt	Lithuania
15-Jun	Sergiu Bivol	Corporate/M&A	Vernon   David	Moldova
15-Jun	Roman Ivanov	Banking/Finance	Vernon   David	Moldova
25-May	Sergey Vasiliev	TMT/IP	Gorodissky & Partners	Russia
25-May	Valentin Kirilov	TMT/IP	Gorodissky & Partners	Russia
25-May	Elizaveta Popova	TMT/IP	Gorodissky & Partners	Russia
8-Jun	Vadim Panin	Banking/Finance	Herbert Smith Freehills	Russia
8-Jun	Evgeny Yuriev	Corporate/M&A	Herbert Smith Freehills	Russia

## OTHER APPOINTMENTS

Date Covered	Name	Company/Firm	Appointed To	Country
2-Jun	Mario Krka	Divjak Topic Bahtijarevic & Krka	Senior and Named Partner	Croatia
29-May	Anita Horvath	Dentons	Co-Head of Corporate and M&A Practice	Hungary
5-Jun	Piotr Zawadzki	Penteris	Head of IP & DP	Poland
28-May	Victoria Dergunova	BGP Litigation	Head of Family Law Practice	Russia
15-May	Sahin Ardiyok	Balcioglu Selcuk Ardiyok Keki Attorney Partnership	Named Partner	Turkey

## IN-HOUSE MOVES AND APPOINTMENTS

Date Covered	Name	Moving From	Company/Firm	Country
4-Jun	Anna Blonska	Polish Development Fund	Polish Development Fund - Director of Legal (Investments) Office	Poland
9-Jun	Marek Szydowski	Grupa TVN	Komputronik S.A	Poland

## PARTNER MOVES

Date Covered	Name	Practice(s)	Moving From	Moving To	Country
20-May	Ivona Anđelović	Litigation/Disputes	Glinska & Misković	Anđelović, Siketić & Tomić Law Firm	Croatia
20-May	Petra Siketić	Banking/Finance	Glinska & Misković	Anđelović, Siketić & Tomić Law Firm	Croatia
20-May	Marko Tomić	Corporate/M&A	Glinska & Misković	Anđelović, Siketić & Tomić Law Firm	Croatia
1-Jun	Gabor Erdos	Banking/Finance	Deloitte Legal	Erdos   Katona	Hungary
1-Jun	Gyorgy Katona	Banking/Finance	Katona Legal	Erdos   Katona	Hungary
1-Jun	Luca Bokor	Banking/Finance	Deloitte Legal	Erdos   Katona	Hungary
1-Jun	Balazs Varszeghi	Banking/Finance	Deloitte Legal	Erdos   Katona	Hungary
18-May	Laura Augyte-Kamarauskiene	Litigation/Disputes	Lexem Law Partnership	Glimstedt	Lithuania
5-Jun	Agne Jonaityte	Banking/Finance	Solo practice	Primus Derling	Lithuania
29-May	Igor Popa	Litigation/Disputes	Popa & Associates	Grata International	Moldova
3-Jun	Raluca Nastase	Insolvency/Restructuring; Real Estate	Biris Goran	RTPR	Romania
2-Jun	Daniel Bilak	Corporate/M&A	CMS	Kinstellar	Ukraine
2-Jun	Peter Teluk	Corporate/M&A	Squire Patton Boggs	Sayenko Kharenko	Ukraine
5-Jun	Denis Krokhmal'yov	TMT/IP	Sayenko Kharenko	Brandsfield Brand Care Law Firm	Ukraine
5-Jun	Oleg Klymchuk	TMT/IP	Sayenko Kharenko	Brandsfield Brand Care Law Firm	Ukraine

**On The Move:**

■ Full information available at:  
[www.ccelegalmatters.com](http://www.ccelegalmatters.com)

■ Period Covered:  
 May 15, 2020 - June 15, 2020

**Did We Miss Something?**

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

Write to us at: [press@ceelm.com](mailto:press@ceelm.com)

# THE BUZZ

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

## Moldova

### Interview with Roger Gladei of Gladei & Partners



“Naturally, nobody in Moldova was prepared for this situation,” says Roger Gladei, Managing Partner of Gladei & Partners in Chisinau. “Still, even though the first reaction of

the Government was sporadic, in the end, they were able to put resources together and come up with an articulated response to the crisis.”

The state of emergency that was announced in Moldova on March 17 was cancelled on May 15, Gladei reports, noting that the intervening period was “challenging, but rich in opportunities.” According to him, “since the initial reaction by the Parliament wasn’t robust enough, the Government started wearing the pants and passed an emergency ordinance on business support in its first pool of actions. The ordinance was declared unconstitutional by the country’s Constitutional Court, howev-

er. I think there is a good lesson to be learned here: everybody just needs to do their job.”

Ultimately, Gladei says that the first reaction of the Government was prompt – but insufficient. “Salary taxes paid,” he says, “including insurance premiums and social contributions, could be partially repaid by the Government, but there was fair criticism that the mechanism employed was not the most effective. Employers would have to pay the taxes first in order to receive reimbursement – but the problem is that crisis-affected employers are short of cash to pay in the first place.”

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

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

“Even though the situation is not as good as it used to be, qualified lawyers are still busy,” concludes Gladei, adding that “even if they are able technologically to work remotely, we failed to keep up with the ‘stay home’ slogan entirely, since our clients (both existing and new) have been keeping us fully geared. Most existing clients elected to keep their projects rolling, and some even started new projects. The recent experience of closing the Moldcell acquisition – a cross-border complex M&A trans- ➤➤➤

action – amid a state of emergency was truly amazing, as we didn't know until the last minute if we would be able to complete it, as stones were falling from all sides. On the other side, a whole new wave of clients interested in learning how to adapt to new rules or how to restructure their contracts given the situation just recently showed up.”

“Against this background, we established a dedicated portal on our website to provide first-hand legal analysis of

the most stringent COVID-related legal issues,” Gladei says, proudly. “And we have now embarked on a new thrilling project, supported by the EBRD, providing legal assistance to Moldovan SMEs affected by the pandemic. It's natural to feel a duty to help people overcome their problems in times of need.”

“Things are starting to get back to normal in Moldova,” says Gladei optimistically. “The situation, no matter how

unfortunate it is, will shake up business and make way for new opportunities. It's important to always look for a way to transform a threat into an opportunity. This means that companies will have to shift towards more viable models, understand their weaknesses, and rethink their business. I think that after the crisis passes, Moldovan business is going to become more mature and competitive, opening the door to investment and growth.” ■

By Djordje Radosavljevic (May 28)

## Lithuania

### Interview with Interview with Rokas Bukauskas of PwC Legal



Rokas Bukauskas

“The Lithuanian Government has implemented multiple measures to combat the COVID-19 crisis,” says Rokas Bukauskas, Head of PwC Legal in Lithuania. “It all

started with postponing tax payments from the companies which were affected the most, then went on to providing compensation to employees and other measures.”

According to Bukauskas, “the Government has already borrowed significant amounts in the financial markets to finance these support measures.” In addition, he says, “some of the financing measures went through a slow implementation process because of the red tape involved. However, the public

sector institutions were keen to simplify complex procedures and requirements after receiving criticism from the private sector.”

Bukauskas reports that Lithuania is starting to open back up, but he says that of course things are still far from normal. “We are still under quarantine, even though we are now going through the relaxing process,” he says. “It's hard to determine whether the actions the Government took were good enough from this perspective. We'll have to wait a while and see. We have only had a rather small number of COVID-19 cases, so for now, the situation is under control.”

Bukauskas adds that the economy has stalled and most investment projects have been suspended for the last couple of months in Lithuania. Nonetheless, he says, “most of the strategic investments that began prior to the crisis continued.” In addition, he says, “we have an 11 percent unemployment rate here in Lithuania, but that's not as dramatic as it could have been. And we have passed

the pandemic's peak, meaning that we should not expect any additional drastic falls.”

“Lithuania is a larger economy than neighboring Latvia and Estonia,” Bukauskas notes. “As a result, the Government should be able to provide multiple possibilities for financing after the crisis ends. Of course, you can never really know whether any of the measures you impose are going to work in the long run. However, you still need to try different options and hope for good results. I hope that measures imposed by the Lithuanian Government will prove to be successful.”

In any event, Bukauskas, it's not all bad. “The possibility of new market players emerging and new investors coming is ultimately a good thing,” he says. “People will seek new business opportunities and focus on things such as anti-money laundering or compliance more in the near future. The change, while it will require time, will be an interesting thing to witness nonetheless.” ■

By Djordje Radosavljevic (June 1)

## Poland

## Interview with Aleksander Stawicki of WKB Wiercinski, Kwiecinski, Baehr



Aleksander Stawicki

“Apart from COVID-19, Poland is struggling with a constitutional crisis involving the Presidential election at the moment,” says Aleksander

Stawicki, Senior

Partner at WKB Wiercinski, Kwiecinski, Baehr. “Special legislation changed the voting system during the pandemic, in particular the organization of the election process and the way ballots are collected. This issue sparked a lot of controversy.”

“Another thing is that the elections were scheduled for May 8, right in the middle of the pandemic,” Stawicki says. “They never took place, however, and now discussions are proceeding about how and when to organize them. We have no idea what’s going to happen, although most probably we will go and vote the last week of June.”

Stawicki reports that there is an “on-going battle for the Polish judicial system as well.” According to him, “the Supreme Court president’s term of office expired and the process of appointing her successor was attracting a lot of attention.” This process is seen as having significant implications for the

country’s judicial independence, as the Supreme Court plays the vital role in the Polish system.

As elsewhere, the focus of Poland’s parliament has been on measures designed to combat the pandemic. “The Polish Government has implemented a number of so-called ‘Anti-Pandemic Shields’” he says, “containing a broad array of measures. These included, for example, suspensions of the majority of judicial and administrative proceedings, various state aid instruments to businesses, new rules for employment, and so on.”

But Stawicki says it’s not completely clear that the government’s actions were sufficient. “It’s always easy to just adopt new things,” he says. “The question is whether and how they work. There is quite a lot of criticism coming from the business community and there are questions about whether the government has done enough to save the economy. That is why we have recently witnessed protests in the streets of Warsaw.” In addition, he says, much of the legislation is unnecessarily complicated. “Our firm and a number of our largest competitors are now part of a pro bono project that helps small businesses navigate through the legislation and tough bureaucratic procedures they have to face,” he says. “On their own, they have difficulty understanding and following it. The question remains: ‘will they survive?’”

In the meantime, he reports, although “some significant closings are happening, mostly on the real estate market,”

in general “investors are waiting to see how the situation develops in order to know how to organize their assets and carry on working.” As a result, he says, “law firms are still working, but there are signals that the volume is significantly lower than it used to be for a number of them. That means that there might be changes in the legal market.”

At the end of the day, Stawicki remains confident. “I have a lot of hope in the Polish people. After the Communist regime, we proved ourselves to be entrepreneurial and hard working. We are used to taking care of ourselves. A long history of non-helpful Governments made us stronger – we never wait for somebody to help us, but rather take action ourselves.” As a result, he suggests this crisis is an opportunity as much as anything else. “This is another situation in which we will have to deal with our problems, despite the fact that we have not much help from the state and despite the difficult political situation that came at the worst possible time.” He sighs, admitting that “I’d much rather have one problem than face both at the same time.” Still, he notes, “at the end of the day, Poland is a big economy with a high number of well-educated, hard-working people. The internal demand is strong – when you go shopping, you see people spending and trying to get back to normal as soon as possible. I have faith in all of that. Historically speaking, we always win at the end, even if there are very difficult periods along the way.” ■

By Djordje Radosavljevic (June 3)

## Ukraine

## Interview with Valentyn Gvozdiy of Golaw



“Ukraine is gradually returning to normal operations,” says Valentyn Gvozdiy, Managing Partner at Golaw in Kyiv, but he admits the preceding period has been

difficult. “Most companies had to face many challenges of finding new ways to work in a short time span. Closing of industries and venues, self-isolations and lockdowns, strict bans on business activities, and public events were important measures needed to prevent and fight this virus. However, experienced managers understand the situation and fortunately knew how to cope with the issues that arose with the COVID-19 outbreak.”

Gvozdiy reports that, even though there were many challenges to face and little time to organize, successful solutions were found to help conditions return to normal as fast as possible. The Ukrainian Parliament approved anti-crisis measures in light of the COVID-19 outbreak to stabilize the economy. During the last few months, Ukrainian state authorities adopted and implemented specific laws and decrees aiming to prove benefits both for businesses and individuals, involving such areas as taxes and fees, tax audits, corporate management, court proceedings, and leases.

“The current high-priority goal for the Government is to enforce a regulatory framework that provides meaningful social and economic support to people

and businesses to recover from the crisis,” Gvozdiy says. “The measures already taken by the Government include an increase of income limits for single taxpayers, VAT exemption from the importation into and supply within Ukraine of medicines, medical devices, and equipment necessary to fight COVID-19. The list of tax audits, which may be carried out during quarantine, was expanded regarding such activities as accounting, licensing, production, storage, transportation of fuel, *etc.*”

Gvozdiy is enthusiastic about some of the technological tools that have appeared during this period. “Adjustments were also made to corporate governance,” he says. “Corporate management in the future will mostly be carried out using electronic systems, which will allow companies to continue providing business as usual. The National Securities and Stock Market Commission developed and introduced a temporary procedure for convening remote general meetings of joint-stock companies and corporate investment funds. Convening and holding remote meetings is to be carried out using electronic services and the depository system based on an agreement to be concluded between the issuer and the National Depository. This technological platform ensures the appropriate level of security of information transmitted through the depository system, as well as confirmation of the credentials of the shareholders in the process of holding remote meetings with an electronic signature.”

According to Gvozdiy, “holding general meetings remotely is a right, not an obligation, of joint-stock companies and corporate investment funds. Companies may refrain from holding a general meeting during quarantine and hold it till the quarantine ends up. The platform meets international standards and a high

level of team competencies, as well as creates a new service for remote voting to ensure a high level of continuous corporate governance while at the same time data protection.”

Even so, sighing, Gvozdiy says that the crisis has proved to be a tough test for local companies, which have struggled to keep up. Still, he is confident that the Government has taken swift steps to provide necessary solutions with minimal harmful effects on the Ukrainian economy. “The most important thing for the Ukrainian economy nowadays,” he says, “is to continue cooperating with the International Monetary Fund and other international partners to have an opportunity to finance the budget deficit and refinance current debt.”

“The reduction of costs is one of the ways the Government is rescuing the economy from high inflation and not to lose the investors,” he says. “I think this mechanism will eventually work. It’s always hard to find investors in such conditions, but we are happy to see that many companies from the EU – especially from Germany – are still able to work and that their managers can combat challenges successfully.”

The Prime Minister of Ukraine, Denys Shmyhal, recently announced that Ukraine is on its way out of the crisis, but extending the quarantine until June 22nd, 2020. According to Gvozdiy, the way out of the quarantine has been divided into five stages. “Two of stages have already begun,” says Gvozdiy, “but the next three are not set specifically in terms of dates. Anyway, the Government has allowed shops, shopping centers, and community services to start working again.” Gvozdiy adds that “we still need to speed up the recovery process and search for new opportunities within the market. The most ►►►

important thing, as always, is to continue attracting new investors, anybody who's willing to finance Ukrainian industries."

Gvozdiy concludes, optimistically, that

## Bulgaria

### Interview with Stefan Tzakov of Kambourov & Partners



Stefan Tzakov

"This comes as no surprise, but the main focus of the government is still the COVID-19 crisis," says Stefan Tzakov, Managing Partner at Kambourov & Partners in Sofia.

Although the situation in Bulgaria was not as bad as in some other countries, Tzakov says, it nonetheless "gave the politicians a good chance to show strength – and for the two months that we've had a state of emergency in place they have tried to do just that."

During the crisis, Tzakov says, the government has ushered in a lot of new legislation, although not without controversy. "The negative impacts of the crisis were felt across the board," he explains, "not just in the narrow specter of businesses that the government provided measures for." As a result, he says, a lot of his firm's clients expressed concerns about the stimulus measures "not being enough." Among other problems, he reports, is that "a lot of companies, which seem to be unaffected at first glance, still suffer due to their partners backing out of deals because their businesses have been affected. The ripple effects of the

"at the end of the day, the situation won't be as catastrophic as we once thought. The strongest businesses will survive, and because the state authorities

crisis need to be dealt with, not just the most obviously impacted areas."

Tzakov says that "financial burdens like taxes, social, and health contributions could have been further reduced, and some more exemptions could have been introduced. On the whole, I think that the circle of businesses designated as 'affected' should have been broadened." In his opinion, more flexibility is the key. "We could drag on disputes about whether or not this is a *force majeure* until the end of time, and nobody would be able to get their own day in court. I think that the government should have focused on more types of businesses in other sectors and that this would have circumnavigated a lot of issues."

Still, Tzakov says, some business sectors are doing well. "The banking sector is still going very strong and has been doing okay even during the pandemic," he notes. "Also, the hypermarket sector has been booming in the last few years in Bulgaria." He reports that large hypermarket chains have been purchasing land plots, investing in the development of new locations for stores, and continuing to open doors to consumers. "The demand for goods one can acquire in hypermarkets went up as the virus spread and more and more people started stock-piling and switching to a more domestic-based consumption, as opposed to, say, restaurants and the like." This drew political attention as well, with the government "placing incentives

took everything into account, I think that eventually we will recover the economy in a normal way." ■

By Djordje Radosavljevic (June 4)

to stimulate these chains to provide local producers with beneficial conditions. These weren't that kosher at all times, and even the European Commission weighed in to say that this is not in line with the principle of free movement of goods, but nothing has changed yet."

Tzakov says that the renewables sector is active as well, "reflecting the recent EU incentives initiative to end coal-fired power plants." According to him, "the renewable sector in Bulgaria is at its most active in the past seven years," and he says that some other ambitious energy projects are going on, including the establishment of the Balkan GasHub gas exchange. "This is aimed to counter the strong position Gazprom has had on the Bulgarian market, but we'll have to wait and see if it does in the long run." Also, he says, plans for the development of Bulgaria's second nuclear power plant are moving forward. "There have been some hurdles, like, for example, interested parties having to perform due diligence on-site and in-person because most of the documentation for the project is classified and exists as a physical copy only – no digital version – which means that it has to be inspected in person, but the good thing is that this is going somewhere." He reports that the project is more likely to actually be completed now, especially given the "EU trend of stimulating different energy sources than the ones we have now." ■

By Andrija Djonovic (June 11)

## North Macedonia

Interview with Tatjana Shishkovska  
of the Polenak Law Firm

Tatjana Shishkovska

“NATO accession and the green-light to opening EU accession talks were strong indicators of political stability in North Macedonia in March this year,” begins

Tatjana Shishkovska, Partner at the Polenak Law Firm in Skopje. “But the COVID-19 crisis has made things more complicated.”

Shishkovska reports that the parliamentary elections that were initially scheduled for April 12 are now expected to occur in July. But, in fact, they may be moved yet again. “We are currently at the end of the declared state of emergency, but, with the number of new COVID-19 cases rising every day, we might yet see another extension,” she says. “Until the elections do happen, the current political situation will be imbued with uncertainty and unpredictability, which will most certainly be a turn-off for investors.”

For the time being, North Macedonia still has a transitional government in place. “The transient government rules via decrees which have the power of law,” Shishkovska explains, “and the brunt of these decrees have been tackling the fallout of the crisis, in terms of public health and the economy.” The economic stimulus measures, she says, have been “focusing primarily on SMEs, whereas larger companies – the ones that create a lot of jobs too – have been

left out.” According to her, these larger companies, which are mostly export-oriented, are not on the “government’s radar right now.”

Shishkovska reports that the projections for North Macedonia’s economy currently predict “an 11% contraction in the GDP with no clear bounce-back analysis done as of yet.” All things considered, she says, it could have been worse. “I feel like we’ve been successful at absorbing the initial hit of the crisis – there have been no massive layoffs and it would seem that the service economy will be doing better once the country opens up a bit more.” Still, she says, it is “impossible to make a definitive prediction at this point; we are going to have to wait a few months more.”

Finally, Shishkovska says that “what the COVID-19 crisis taught us is that indeed the future came faster,” and she points to the fact that the legal market adopted a more digital approach to doing business “almost overnight.” According to her, “we, and I believe most law firms, switched to remote work, or half-in half-out, in order to reduce risks and exposure.” According to her, “this switch enabled us to retain the levels of productivity that are similar to what we had before the crisis, and I hope the good practice of digitalization stays in place even after the crisis ends.” ■

By Andrija Djonovic (June 25)

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## Hungary

### Interview with Peter Berethalmi of Nagy es Trocsanyi



Peter Berethalmi

“The most important thing right now is that the state of emergency was terminated,” says Peter Berethalmi, Partner at Nagy es Trocsanyi in Budapest.

Berethalmi says that the legislative focus of Hungary’s Parliament recently was “on dealing with all the government decrees that were passed during the state of emergency, as the government gave the Parliament back its full legislative power following the end of the state of emergency.” It is now up to Parliament to decide which decrees should be kept in effect and which rejected.

“A long piece of legislation was adopted by the Parliament already,” Berethalmi reports, implementing “almost word by word” the May 25 Government decree

restricting investments into Hungary from non-EU countries in order to “protect strategic entities deemed vulnerable to takeovers by foreign investors during a time of crisis.” Berethalmi calls this “probably the most important thing for us as lawyers,” and explains that the law is “not very clear, and strangely it affects some EU investments” as well.

“Still,” he says, “the government has loosened some conditions for investment, which previously warranted notifications and approval, likely to avoid being overwhelmed by applications.” Berethalmi reports that the law “probably catches even intra-group corporate restructurings,” and says that, especially with the recent Brexit, there are cases that are “quite complicated.”

Turning to another subject, Berethalmi reports that a new Bankruptcy Code is in the works. “There is draft legislation, which the government filed just last week, so that will definitely be a change.”

Finally, speaking of the COVID-19 crisis, he says that Hungary “cannot

suffer any more lockdowns.” According to him, “the governmental measures proved to be appropriate to save lives and protect the economy, which is not in a bad state at the moment,” but if another wave of the virus comes, leading to another lockdown, more serious problems could arise. “At first, people wanted more straightforward and clear incentives from the government,” he says, “but they came around and accepted that everything that was passed was adequate and timely. Small businesses expected more, but because of the lockdown being relatively short, the economy didn’t suffer that much and they were not hit badly. If another lockdown is to be, however, I’m sure that most businesses will expect more to be done than this time around.”

In the meantime, he says, “the automotive and tourism industries have been hit the most. On the other hand, retail is booming, especially via the Internet.” Of course, the pharmaceutical sector is going strong too, he says, especially in areas that are directly related to vaccine efforts. ■

By Andrija Djonovic (June 24)



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# GREECE PLAYS THE LONG GAME

The novel coronavirus has sent markets into a tailspin and forced the scrapping of many plans for this business year. Commercial law firms, their businesses closely tied to the way economies ebb and flow, have been forced to adapt.

This global phenomenon is in some ways particularly poignant in Greece, which was finally, after a decade of darkness, showing signs of returning to the light. Commercial Greek law firms, excited about the prospects of a highly-anticipated economic recovery, have discovered they'll have to wait just a little bit longer. Still, they insist, good times are just around the corner.

By Andrija Djonovic

## Early 2020 – Optimism Abounds

Hopes, at the beginning of 2020, were high. In 2019, Greece's GDP grew by 1.9% – the third year of growth in a row, after almost a full decade of economic decline following the 2008 global financial crisis. The country's unemployment rate dropped for the sixth year in a row, to 18.1%, from a high of 27.4% in 2013.

And the economic recovery of 2019 was “cross-sectoral,” says Alkis Mirkos, Counsel at Papapolitis & Papapolitis. “We had a lot of debt/equity deals, improvements in the tourism sector and the renewables sector, financial restructurings were booming, and M&A transactions showed *a lot of* promise.” He, like

his peers, was confident as the new year began. “This all led us to believe 2020 would be like that too – and for the first few months, it did seem to be going that way.”

Panagiotis Tzioumas, Partner at Greece's KLC Law Firm, remembers that hope well. “It seemed like, finally, our economy started taking a turn for the better, after almost a full decade,” he says. “We finally put the GDP dips that the economy had experienced behind us for good.” As a result, he recalls, “in January and early February, we expected there to be a lot of transactional work, investments pouring in, and foreign business coming in to position itself in Greece.” Indeed, he sighs, “we had a really good start to the year.”

Potamitis Vekris Co-Managing Partner George Bersis says he and his colleagues were similarly optimistic at beginning of 2020, and he identifies the political change in the country last year as part of the reason. “The current government is pro-EU, pro-investment, and pro-business, all of which inspired confidence,” he says, pointing to the uptick in FDI and the decrease in tax rates that followed the change.

This confidence fueled real hope going into the year, according to Bersis. “The crisis lasted for about 10 or 11 years, depending on how you look at it,” he says. “The rush of optimism after a great 2019 was something we couldn't hide.”

Then the virus arrived.





Alkis Mirkos

### The Other Shoe Drops

When stories about the virus first appeared, few imagined that what eventually became known as COVID-19 would be as problematic as it eventually turned out to be. “Nobody considered it a threat until it was already here,” sighs Ioana Michalopoulou, Managing Partner of Michalopoulou & Associates. “There was widespread belief that it would not hit Europe or Greece.”



Panagiotis Tzioumas

But hit it did, in March of 2020. The results, Alkis Mirkos says, were immediate and dramatic. “Our economic outlook was impaired. The tourism sector – one of the pillars of our economy – was struck, the SME sector was hit hard, the NPL market seemed to be growing. It looked grim.”

Unlike those in some other countries, the Greek authorities acted with impressive speed to enforce necessary social distancing and enact other useful public health measures. “Restaurants, cafes, shopping centers closed, public gatherings banned – this prevented the spread,” says Panagiotis Tzioumas.



George Bersis

“Our government responded very quickly and very well,” Alkis Mirkos agrees, “tackling the health crisis and introducing a lockdown to save lives.”

“The early shut-down, a proactive government with a strict approach that didn’t want to wait for things to happen in order to react to them,” George Bersis reports. “This was the key to preventing this from spreading fast and spreading deadly.”



Ioana Michalopoulou

The facts bear this out, as Greece was able to keep the infection rate and death count substantially lower than many of its neighbors. [See “COVID-19 Hits Europe” Box on page 32]. As a result, on June 15, 2020, Greece became among

the first European countries to reopen for tourists.

The Greek response involved more than critical public health measures, of course, and the economic measures the Greek government put in place to help businesses survive the crisis, including a stimulus of about EUR 24 billion, were valuable as well. “Stimulus measures for the economy, very similar to those that have been taken elsewhere in the region, like supporting enterprises, SMEs, workers, providing easier access to financing, reducing bureaucratic hurdles for citizens – all of these helped,” says Mirkos. “Principal repayment for bank loans was suspended, interest payments were subsidized, some taxes were deferred, and the Capital Market Commission took steps to prevent manipulation.”

In the meantime, the crisis has allowed the government to implement long-awaited improvements, Bersis reports. “Some things that had been put off for years were done in a manner of weeks,” he says. “The Government transformed itself in many aspects, mostly with the introduction of electronic communications with administrative and regulatory bodies – this will save a lot of time.”

While the government’s quick responses drew across-the-board praise, it appears not all sectors went into the deep freeze to begin with. According to Bersis, the Construction sector remained active during the crisis, and he reports that hopes remain high that the 2020 summer season will not be lost altogether for tourism. “Not a lot of cancellations for August onwards happened, nor a lot of dismissals and layoffs,” he says. “This inspires people to remain optimistic, but we’re not at the point of a ‘new normal’ yet.” Especially, he warns, because the real costs to the economy may not be

visible until the second half of the year, as the country reopens. “We will likely see a rise in bankruptcies and restructurings, as business sectors struggle to get back on track – but we have to wait and see what will happen before we can make any predictions.”

Nonetheless, nobody would describe the effect of the pandemic on the Greek economy as anything but unfortunate, and the International Monetary Fund predicts a 10% reduction in Greek GDP for 2020, compared to only 8% in Spain, 9.1% for Italy, and 5% for Turkey.

“Nobody considered it a threat until it was already here. There was widespread belief that it would not hit Europe or Greece.”

### The Best Laid Plans

Although the consequences of the COVID-19 crisis for the Greek economy were dramatic, business remained fairly good for at least the larger Greek law firms. At the end of the day, Ioana Michalopoulou says the worst fears didn’t materialize, although she thinks her firm’s specific focus may be part of the reason why. “To tell you the truth,” she says, “we haven’t been impacted nearly as badly as we thought we would be. But our business is mostly consultancy in the area of the health law – which has boomed.” The firm’s litigators were able to adapt to the closing of the courts as well, she says, insisting that, as a result, if anything, the firm has been doing *more* work than before. “Clients thought that because we were home we were always available,” she laughs, “so we were on call 24/7.”

Although larger firms were able to adapt, Panagiotis Tzioumas suggests,

Box A: COVID-19 Infection Rates and Death Count\*

Country	Population	Number of Confirmed Cases	COVID-19 Deaths per Million
Albania	2,877,906	1,672	13
Greece	10,424,732	3,148	18
Bulgaria	6,950,101	3,453	26
Serbia	8,738,546	12,426	29
Turkey	84,301,943	181,298	57
Hungary	9,661,188	4,077	58
Romania	19,241,808	22,415	75
North Macedonia	2,083,377	4,299	96
Italy	60,464,907	237,500	569
United Kingdom	67,872,439	298,136	618

\*As of June 16, 2020

smaller firms and boutiques may have had a harder time of it. “While most major firms were able to switch to a remote-based working environment,” he says, “smaller firms have probably struggled more.” Especially because, outside the Health Care/Life Sciences world, there was a noticeable slowdown in many sectors of the economy. “We still have no idea how the crisis will impact many areas of business and we have to wait and see if July brings more developments.” Smaller firms, working on smaller margins and often being less flexible, with a lower degree of tech readiness, may be more impacted.

Ultimately, that “flexibility” is key, Alkis Mirkos insists – primarily the ability to provide remote work opportunities. “Law firms were quick to regroup – those that could, at least,” he says. “We were the first to make the transition to working remotely, in order to protect our colleagues’ health as well as that of their families.” He reports that Papapolitis & Papapolitis has, since May 6, moved to a rotation-based system combining remote and office work, and is keeping up with the workload.

And Mirkos insists that the results have been positive. “We have been just as

efficient, if not more,” he says with a smile, though he adds that of course working from the office has its advantages, especially “making things easier in terms of teams coordinating and planning their work face to face.” He points out that, ultimately, it was less of a change than might be expected anyway, because transactional work is “a never-stopping game by its nature,” so it was not uncommon even before the crisis to work nights, weekends, and even on vacation.

George Bersis admits that he was very skeptical about the concept of remote work at first. “I didn’t think that people would be as diligent and transparent while working from home,” he laughs. “Boy, was I wrong.” In fact, he says, “people responded fantastically,” and he claims that Potamitis Vekris is actually seeing a surge in efficiency. “We have, since, opened up the office in a limited capacity – but we’re discouraging people from coming in and are incentivizing them to get more distance and work more from home.” A convert, now, Bersis says that they are likely to encourage remote work even after the crisis ends. “We’re probably going to support it more. It saves time commuting, allows for more freedom in planning your day,

it's good for the environment, and it's good for mental well-being as well."

The result, he says, is a kick-start into the future. "It would've probably taken the legal market an extra ten years to get to this point, so this is definitely a silver lining of the crisis."

Tzioumas agrees with Bersis that working from home is likely to remain a more common option in a post-COVID-19 world. "This could, in a way, be a good legacy of the whole ordeal," he says. "This could be a permanent feature of our work. Even schools are digital and remote now!" he says, smiling as his daughter walks in the room, fresh from an online class.

Ioana Michalopoulou takes the issue of working from home, and expands it to encompass a greater overall transformation. "The entire legal profession is on the verge of a very transformative change," she says. "We're getting court decisions by email, we can sign documents electronically, and file documents electronically – this was a pipe dream two months ago!" This change benefits all lawyers, she insists, the younger ones perhaps most. "The hybrid remote-office system is a unique opportunity for the newer generations to excel," she says. "They are mostly digital natives and do not require further education in order to adapt – unlike some of the older generations of lawyers." She believes that one way to adapt to the new normal could be to "hire people to work remotely, straight from their homes – if the legal profession can overcome its structural rigidities and the propensity towards office work."

Wherever they work from, and whatever their age, the assumption of most in the Greek legal market at the beginning of the year was that they would be growing, and adding staff. Many firms, in

fact, had recent done so, when COVID-19 attacked the economy.

Michalopoulou describes a "hiring craze" at the beginning of the year. "People hired more because it seemed like we were at the end of the tunnel before all of this. Now, with cuts in spending and performance – hirings will be influenced as well."

Tzioumas says that the KLC Law Firm, like many other prominent firms, expanded at the beginning of the year, expecting a great 2020. He sighs, noting that "our expansion plans shall now be reconsidered depending on the impact the unexpected arrival of a global pandemic will have on our work and revenues."

"At the beginning of the year, businesses were under capacity in terms of staff – a lot of work was there to be done so hirings were a normal occurrence – and a frequent one at that," Bersis says. Still, while he concedes that hiring has slowed in the last few months, he's not particularly worried about long-term consequences. "The next few months are not likely to see a lot of new hirings, but after that... we'll have to wait and see, but I think that we'll see an uptick!"

None of the firms we spoke to reported lay-offs, and Bersis is almost offended at the idea, explaining that "Potamitis Vekris has around 85 fee earners – these are people we invested heavily in, provided them with education and training for years – we cannot let them go just because there is a virus."

Mirkos is a bit more cautious, claiming that it may be "a bit too optimistic" to hope that there will be a hiring wave in the back half of 2020, but he also notes that the Greek market "has no structural weaknesses," and that the economic measures taken to protect jobs "will

greatly help." According to him, "if things continue in this vein the optimism that coursed through us just a few months ago – could be back for 2021, and we might see more hires."

### Hope Springs Eternal

COVID-19 shook up a lot of plans Greece had at the beginning of what looked like a great year. It seemed that finally, after almost a decade of economic turmoil, the country was going places, but the pandemic put much of that on hold. However, timely governmental response and the flexibility with which legal professionals were able to respond to the new realities minimized the crisis' effects.

"Some things that had been put off for years were done in a manner of weeks. The Government transformed itself in many aspects, mostly with the introduction of electronic communications with administrative and regulatory bodies – this will save a lot of time."

At the end of the day, most commercial lawyers in Greece see the COVID-19 crisis as an unfortunate delay in an inevitable recovery, rather than something longer-lasting and pernicious. Mirkos, enthusiastically, describes "some good heralding signs – we've seen forecasts of 7.9% growth in 2021 – so if nothing catastrophic occurs, we could be back on track next year."

In the meantime, people are keeping their focus on what's most important. "So, looking ahead, the first thing for us still remains – protecting our families and their health and lives," Tzioumas says. "After we do that, all is good." ■

## INSIDE INSIGHT: INTERVIEW WITH ANDRAS BUSCH, GENERAL COUNSEL AT SIEMENS ENERGY HUNGARY

By Andrija Djonovic



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

**Andras:** I started practicing law in 2005 as a trainee lawyer, after graduating from the University of Szeged. I got my basic education as a novice in the filed working for Noerr, until I completed my bar

exam in 2009, which is when I joined Siemens as an in-house lawyer.

I stayed as a Legal Counsel with Siemens for almost six and a half years, until 2015, when I joined Siemens Healthineers as Head of Legal and Compliance, and then in March of this year I migrated to the position of

General Counsel at Siemens Energy Hungary.

**CEELM:** What are the most significant changes you've seen in Hungary's legal market over your career?

**Andras:** It's more and more digital each passing year. Especially lately, court pro-



Andras Busch

cedures are undergoing a digital overhaul, and public procurement processes as well. These are some big changes for lawyers who are used to doing this in a different way, sometimes going through mountains of paperwork and filing documents in triplicate. Also, there have been a lot of legislative changes – enough to keep us on our toes, forever improving and educating ourselves in order to be able to provide clients with real, tangible advice, which can sometimes be tough.

**CEELM:** Why did you decide to join Siemens?

**Andras:** I always wanted to be an in-house lawyer. I think that this position – leading the business, not just counselling it at key junctures – this gives you a great inside perspective into how businesses operate.

**CEELM:** Tell us about Siemens Energy Hungary and about its legal department. How big is your team, and how is it structured?

**Andras:** The company is a newly demerged company, active since March

1, 2020, so there aren't a lot of us – we are but a three-person team. We are currently discussing how to proceed based on legal areas we ought to cover. We have three active sites in Budapest each with its own needs – two of which are factories, requiring daily handling and legal advice.

After the COVID-19 crisis passes we will have to see what the new setup of the market is and what it looks like.

**CEELM:** What is your typical day at work like?

**Andras:** Back when I used to work as a trainee there were a lot of major projects which required writing legal opinions, doing very deep legal checks, and evaluating legal problems. In-house, on the other hand, means that you have to advise the business itself on how to proceed based on this advice – not just analyze the legal reality and leave it at that. What I learned as an in-house lawyer in the very beginning is that you have to provide not only advice but also structure the situation – you cannot clutter the field with a 20-page legal opinion when the management needs a yes/no answer.

This sometimes means that you have to think of the broader picture – focus on other topics which are relevant to the business and prioritize daily duties which include a lot of managerial work as well. Still, I don't just perform managerial duties for the department – I also do operative tasks as a lawyer for the management.

In the past month and a half, however, most of the work has involved following the legislative updates via the Legal Gazette – mostly looking for changes to the employment laws. Sometimes the changes were happening so fast we had to timestamp our advice so as to have

the management know the exact hour and minute!

**CEELM:** What was your biggest single success or greatest achievement with Siemens in terms of particular projects or challenges? What one thing are you proudest of?

**Andras:** That's a very good question! I've been with Siemens for more than ten years now, so there are quite a few projects that I'm fond of. Still, I have to mention one from the very beginning involving a merger of two factories in a regional company. The end result was that a 400-person company became a two thousand employee behemoth with three sites in Budapest – all in the course of one year! These were very exciting times.

**CEELM:** How would you describe your management style?

**Andras:** What I have learned, especially now, is that what must be done first is identify the problem and make decisive calls. I like to label all the issues and provide the management with this layout – often times I know that all they're waiting for to proceed with a decision is the legal opinion, so there is no time to spare.

I often feel like legal has to be faster than ever before, given the pace with which the world runs these days – business is a living thing now. I like to take a step back whenever I can and take in the big picture, get the broader perspective on things, in order to be able to best direct the team and what we do.

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

**Andras:** What else could I answer: The Devil's Advocate. ■

# REBUILDING AND RESHAPING IN THE AFTERMATH OF COVID-19

As Europe begins a tentative re-opening following several difficult months of quarantining, social distancing, and working-from-home, we spoke to CMS's Warsaw-based Employment Partner Katarzyna Dulewicz and Vienna-based Dispute Resolution Partner Daniela Karollus-Bruner for their perspective on the process.

By David Stuckey

**CEELM:** Katarzyna, let's begin with you. The pandemic has resulted in a change of the ways many companies operate. Have you seen a major shift in the advice that CMS's Employment teams are providing to clients? Are particular sectors busier on the employment side than others?

**Katarzyna:** Yes, we have seen a shift in what our teams advise and we are providing significant legal support on coronavirus-related topics. This includes advising on working from home, which has become a pattern in Europe, and health-and-safety measures that firms must adopt when organizing work at home and returns to the office. Many

companies are now seeking effective tools to cut down employment costs while still aiming to keep staff. We see protective behavior across all businesses. Most European countries have adopted friendly *ad hoc* legislation subsidizing firms and allowing them to trim salaries or shorten the working week. Suspending bonus payments and extra benefits





Katarzyna Dulewicz

is also the norm. On the other hand, most firms are not cancelling termination plans they had already budgeted before the pandemic. The separation of employees in a touch-free world and a shortage of personal meetings are a challenge, and we provide significant number of instructions on how to safely deal with these actions.

We have also seen more work from employers in the retail and industrial sectors. These were immediately impacted due to store closures.

**CEELM:** What trends do you expect to see in relation to large cross-border employment restructurings by international investors in CEE?

**Katarzyna:** I expect to see more cross-border employment topics. The pandemic has made remote working very popular. The physical presence of all employees in the workplace has transpired to be less important, and so it will become more common to hire employees to work remotely from different locations in the world. I also believe that due to the pandemic's long-term consequences, many companies might temporarily or permanently limit their operations – or even cease to exist. This

will presumably trigger many individual redundancies and group dismissal procedures across all of CEE.

**CEELM:** What do you think businesses will take away from the pandemic, especially in terms of implementing effective employee structures and taking advantage of restructuring opportunities in CEE?

**Katarzyna:** A significant number of businesses will now rely more on remote working, which can be just as effective as working in an office. In addition, this solution offers businesses significant savings by limiting the necessary office space. We have already seen a number of firms deciding to implement remote working on a larger scale, by allowing their employees to permanently work entirely from outside the office or to split their working time 50/50. I expect that a greater number of companies will follow suit in the next few months. I also assume it will soon be a major concern for many CEE states to set out some general legal rules on remote working, as currently many of them, including Poland, do not regulate this issue at all.

**CEELM:** There are government support schemes that companies benefit from across most countries in CEE/SEE. One of the most significant of these schemes relies on the concept of so-called “short-time work.” What is this, and how effective do you think the implementation of it has been in CEE so far?

**Katarzyna:** Many CEE states have successfully put together various state subsidy programs. Although the programs vary in their details, they rely on the common concept of short-time work, which is of German origin. Their main aim is basically the same across CEE – to allow companies to reduce

their employees' working time. At the same time, firms are able to maintain headcounts by receiving state subsidies.

While the primary goal has been mostly achieved and many jobs have been saved, many now wonder if the state subsidies were not merely a temporary solution. For example, state subsidies in Poland are granted for a maximum of three months, during which the company cannot terminate employment with an employee for whom it receives the subsidy. But once the subsidy ends, the limitation will no longer apply, and the company will be able to part ways with the employee. The question is whether, and for how long, governments will support failing businesses if there is a second wave of the pandemic in the autumn which forces Europe to close down again.

“The pandemic has made remote working very popular. The physical presence of all employees in the workplace has transpired to be less important, and so it will become more common to hire employees to work remotely from different locations in the world.”

**CEELM:** Daniela, turning to you – what is the most common concern for business in the transaction phase, before final recovery?

**Daniela:** The most common concern in the wake of the current COVID-19 pandemic is maintaining liquidity until transactions successfully close. Keeping a steady cash flow is not only necessary in order to avoid illiquidity and having to file for bankruptcy before completing the transaction, but is also required to



Daniela Karollus-Bruner

"The most common concern in the wake of the current COVID-19 pandemic is maintaining liquidity until transactions successfully close. Keeping a steady cash flow is not only necessary in order to avoid illiquidity and having to file for bankruptcy before completing the transaction, but is also required to keep the business running and maintain client relationships during the pandemic."

keep the business running and maintain client relationships during the pandemic.

**CEELM:** What needs to be considered by companies facing restructuring, and are there any specifics when currently filing for insolvency?

**Daniela:** On the one hand, many states have instituted COVID-19 relief funds, which companies may apply to for subsidies or other forms of financial aid. Such measures may provide vital liquidity to the company and thus prevent bankruptcy, at least in the short-term.

On the other hand, many countries have either fully suspended the obligation to file for insolvency (for instance, Slovenia, Croatia, and North Macedonia), or have at least limited the statutory reasons that lead to such obligation. For instance, in Austria over-indebtedness is not currently a mandatory reason to file for insolvency, as long as the company still has sufficient liquidity.

**CEELM:** Can companies count on the deferral of planned payment instalments, and the deferral of taxes and social security contributions?

**Daniela:** In Austria, natural persons may defer planned payment instalments in insolvency proceedings for up to nine months; corporations may not.

Taxes and social security contributions may be reduced or even fixed at zero upon request in Austria and Serbia. Payment in instalments is possible in many countries (for example, Austria, Serbia, Montenegro, and (for taxes only) North Macedonia). The same goes for deferral of taxes (for example, in Croatia, Turkey, and Slovakia).

**CEELM:** What measures exist for cost reduction?

**Daniela:** In Austria, at least, there are several measures that may be used to reduce costs during the COVID-19 pandemic: (i) Reduction of rent: tenants may request a reduction or even a complete suspension of rent payments during periods of (state-ordered) company closures; (ii) Termination of contracts based on *force majeure*: even if contracts do not provide a *force majeure* clause, case law allows contracts to be terminated due to pandemics under certain conditions; (iii) Invalidity of contractual penalties: debtors are not obliged to pay any contractual penalty

(provided for in a contract concluded prior to April 1, 2020) if they are either significantly impaired in their economic capacity or are unable to perform due to the restrictions placed on working life as a consequence of the COVID-19 pandemic; and (iv) Obligation not to distribute profits in LLCs: losses incurred by the LLC in the new financial year as a result of a pandemic can justify a (possibly partial) distribution ban of dividends to shareholders.

Many countries implemented state-aid measures in the employment sector. Employees may be ordered (in, for instance, Slovenia) or voluntarily agree (in, for instance, Austria) to work short-time, in which case the state will refund part of the salary. Croatia and Turkey provide state aid for employers and/or employees.

**CEELM:** What do CEE markets offer in terms of credit deferrals, bridging loans, and deadline extensions?

**Daniela:** In Austria, at least, private persons and micro-enterprises are eligible to defer payments under loan agreements for a period of three months. Bridge loans used for short-time work salary payments are not subject to potential claw-back actions by the insolvency administrator. The maximum deadline for filing for insolvency has been extended from 60 to 120 days after bankruptcy occurs; other deadlines may be extended by the court upon request.

In Slovenia and Slovakia, a moratorium on loans was implemented, which forces banks to grant a moratorium for nine to 12 months. Most of the Croatian banks have internally implemented a three-month moratorium. Turkey provides guarantees for corporations in certain sectors; Slovakia issues such guarantees to Slovak banks. ■

# THE CONFIDENT COUNSEL: ONLINE PRESENTING – CONNECTING DURING COVID-19

By Aaron Muhly



Once upon a time, you were a pretty good speaker, dominating the law conference circuit. Now, you find yourself holding webinars in your pajamas. Things got weird, fast.

If you are feeling disconnected from your audiences, you are not alone. It's hard to build a positive relationship with your audience when they, and you, have been reduced to boxes on a video screen, many of which have crappy wi-fi connections.

Fortunately for you, I have been slogging along with trying to master this online speaking world for over six months. At first, it really sucked. However, I now find myself in situations where I actually prefer running trainings and webinars online. In this article, I would like to pass on some valuable discoveries about how to connect with your audience by simply asking questions, and how to strengthen your connections with non-verbal communication.

## Building Connections with Questions

Before the coronavirus, I hated legal presentations because they rarely involved discussions with the audience (outside of the lame Q&A sessions). Nowadays, I don't mind them so much, because I can politely just shut off the webinar and read something interesting.

If you don't want your audience shutting you off, you need to quickly build a strong connection by pulling them into your presentation via the 2-Level Question Technique. This technique involves, first, asking the audience a general question. Then, after quickly reviewing their responses, asking specific audience members follow-up questions.

For example, I began a recent negotiation course by asking participants to describe their biggest problem with negotiating online. (*Zoom Tip:* I instructed them to communicate their responses via the chat function.) Not surprisingly, I got a lot of interesting answers like: "I struggle with bridging the gaps (e.g., language, legal understandings, different cultures);" "I find it difficult to build rapport with the other party;" and "I have too many people trying to negotiate together as well as a confused

translator."

For the second level, I asked each of the participants to turn on their microphones so that we could discuss their answers. With this simple approach, I transformed a potentially boring lecture into an engaging discussion that was immediately relevant to my audience.

## Maximizing Your Non-Verbal Communication

Even if you build a good connection with your audience, you might unconsciously weaken it by failing to take advantage of the non-verbal communication tools available to online speakers. If you aren't doing so already, I strongly recommend you work on the following methods.

**Camera Level:** Although it might feel cool to be hunched over your laptop like a start-upper, you eliminate all of your positive body language (e.g., shoulder and hand gestures). To avoid this, put your laptop on top of some books and sit back in your chair. Your audience will not only appreciate seeing your gestures but you will look more relaxed and confident.

**Lighting:** If you don't have good lighting in your home office, your audience won't receive important communication from your facial expressions. You can fix this by putting a desk lamp behind your computer and pointing it at an angle towards your face.

**Eye Contact:** Although you might feel comfortable watching people's faces when you speak online, it's not a great feeling for your audience – they are looking for eye contact from you. If you want to address their need and look confident as well, practice speaking towards your camera. (*Zoom Tip:* You can shrink the pictures of your audience and move them close to your camera. This way, you can still look at them while looking at your camera.)

## Final Thoughts

With these tips, you will definitely find it easier to connect with your webinar audiences, and they will truly appreciate your efforts. Better yet, you will find this advice useful for building strong relationships in all of your videoconferencing activities, whether they be client meetings, negotiations, or BD networking. ■

# MARKET SPOTLIGHT ROMANIA



# GUEST EDITORIAL: 2020 – THE BEGINNING OF A NEW CYCLE

By Francisc Peli, Managing Partner, PeliPartners



The Romanian legal market got overheated in the past couple of years. The numbers went up and competition increased. The industry got more sophisticated and a variety of success stories unfolded.

Some change in conditions was to be expected though – the legal industry is strictly correlated with the economy, and the economy grows in cycles. Hence, there was a lot of talk about a correction.

The correction was postponed time after time and law firms started to plan as if growth would last forever. This is only understandable: the hope that tomorrow will be better is the engine behind any human enterprise. Success compels people to budget for more success.

In all fairness, nobody anywhere in the world was able to predict that we would spend Q2 in a lockdown answering questions about *force majeure* and planning a safe return to the office. Neither in our industry, nor in any other. But the correction is now here, and we need to deal with it.

The immediate effect was the suspension of some large-scale transactions. Several of them – primarily in financial services, energy, logistics, real estate – were weeks from signing. Most of them will come back in one form or another.

In the short term, several sectors of Romania's economy will experience a contraction – leaving law

firms to redirect or adjust their resources. This is always a painful exercise as specialization (a must in good times) makes it difficult to adapt in times of distress. The game of big numbers is temporarily gone. Adaptability will be the test to pass; firms with initiative will find it easier to navigate.

In the long run, managers will be more careful with recruitment and will recall that caution is a good friend as it was in 2008-2012. The effects in our industry will not show from one day to another. It is a slow-motion movie – you can see the trends developing over time but you cannot expect to see significant changes in the short term. If you compare today's *status quo* to what our market looked like 20 years ago – and again ten years ago – you will see that the structure of the market has changed dramatically. But no dramatic move occurred from one day to another.

Change sometimes comes through spectacular leaps, but progress almost never does. Progress requires an understanding of change, careful planning, and seamless execution. And always a large amount of talent put to work day after day. Luckily, the Romanian legal market has its fair share of talent – thus, progress in one form or another is guaranteed.

Coronavirus is not a game-changer. It is merely a safety car on the racing track. Inertia will be an enemy for slowing down and then accelerating again; although the Romanian legal market will be shrinking for the foreseeable future, the return to speed of law firms once the safety car is off the track will be fueled by name, reputation, and talent. In that order. ■

# CLEAR FOR TAKE-OFF: (NO) SEXISM IN ROMANIAN LAW FIRMS

According to the 2019 CEE By the Numbers issue of the CEE Legal Matters magazine, almost two third of all lawyers and almost half of all partners at ranked Romanian law firms are women. As Romania's population, economy, and (therefore) legal market are much larger than its chief competitors in both categories, its achievements in this area are particularly significant.

Romania's most prominent female managing partners insist that, indeed, sexism, in the Romanian legal industry, is essentially a non-factor.

By **Andrija Djonovic**



### Beginnings

Manuela Marina Nestor started practicing law “back in the old days, before the 1989 revolution.” Back then, she says, she and husband Ion Nestor worked for RomConsult, “one of the first foreign trade state enterprises at the time.” Her work for RomConsult took her “all across Northern Africa and Western Europe, which gave me an amazing opportunity to learn about other cultures, economies, and ways of doing business.” Nestor credits this experience as critical in enabling her and her husband to launch Nestor Nestor Diculescu Kingston Petersen, which “immediately after the revolution offered legal services which went far beyond what was mostly done at the time.”

Working what she describes as “14/15 hours a day, sometimes seven days a week,” proved worth the effort. In true *sic parvis magna* fashion, NNDKP is among the most successful and well-known independent law firms in Eastern Europe. “I am very proud to have been one of the first to lead on this front,” she says, “back when the legislation of our country changed and allowed for independent law firms.”

A full decade after Manuela Nestor launched her firm, Miruna Suciu made her way onto the Romanian legal scene in 1999, starting as an associate with Musat & Asociatii after graduating from the University of Bucharest Law School. At Musat, she says, “I was lucky enough to have been exposed to large privatization projects, M&A transactions, and complex undertakings in the banking & finance sector.” She stayed at the prominent Romanian firm for over 16 years before leaving to start her current firm, Suciu Popa, with Luminita Popa, and she reports that, “the experience I gained by the time we founded Suciu

Popa in 2016 gave us a good starting point.” She says that “the Romanian economy was doing great at the time,” which enabled them to hit the ground running. “We grew steadily each year, so the firm was already quite strong and very stable when the pandemic struck this March and the market became engulfed in a cloud of unpredictability.”

For her part, Oana Ijdelea, co-Managing Partner of Ijdelea Mihailescu laughs, “my story starts in what now seems to be ancient history.” Ijdelea, who recalls “wanting to be a lawyer since the second grade,” spent two years in the mid-2000s as an apprentice with Buzescu Ca, which she says “had high profile clients, [and] worked on some very important deals – all of which helped me grow very much at a young age.” Still, after two years, Ijdelea felt it was time to move on.

“In 2008, I started my own law firm and I had no clients,” she smiles. “I did a lot of *ex officio* work which led to me learning a lot more than I thought I would – and this kind of finished my learning experience.” In 2010, Ijdelea says, she was joined by a special colleague. “My father, Emilian, was one of the most respected business consultants in Romania. He participated in drafting many pieces of legislation in the immediate aftermath of the revolution – some of which are still in use today!” Ijdelea credits her father as a major influence. “This is what I think shaped my professional life and my ethics the most.”

Some nine years after opening the doors of her firm, Ijdelea decided to team up with Anca Mihailescu, who had spent the previous six years working as an associate under Manuela Nestor. “We met each other while she was still with NNDKP,” Ijdelea recalls, “working on an energy project on opposing sides. After she left NNDKP, we got in touch

for lunch a few times and ended up deciding to give Ijdelea Mihailescu a go.”

For her part, Mihailescu’s path into law started in an economics high school. “Everybody in my class wanted to become an accountant but I quickly realized that it wasn’t for me,” she recalls. “A friend’s sister went to law school at the time, and this connection turned my attention to law – so I decided to visit the University of Bucharest’s Law School and see what it was all about.” She recalls that “the second I entered the building I had this weird feeling of being home. This was something that I wanted to do – I knew it.”

After graduating in 2008, Mihailescu spent a couple of months as a junior associate with Linklaters and, after the firm left Romania later that year, moved to DLA Piper. “Working in a law firm back then, handling the blowback of the financial crisis – that really made me who I am, professionally.”

In 2011 she joined NNDKP, where, she says, “I got a lot of exposure right off the bat, being involved in large M&A transactions, and I eventually ended up focusing a lot on Energy.” After six years, Mihailescu says, she felt that “it was time for me to move on to other, uncharted challenges.” Less than a year later she partnered up with Oana Ijdelea.

### A Conducive Climate

From 1947 until 1989, Romania was a deeply communist state, well behind the Iron Curtain. The fall of Nicolae Ceausescu’s regime brought many changes and improved many areas of life – but they made sure not to throw the baby out with the bathwater. “Communists had many sins,” says Manuela Nestor. “But from the point of view of promoting women, they had a completely egalitar-



Manuela Marina Nestor



Miruna Suci



Oana Ijdelea



Anca Mihailescu

ian attitude.” Nestor is aware that this is “not something one finds very often, these days, looking at more developed, Western liberal democracies.” According to her, “even back then, we never felt that being a woman is something which presents an obstacle to achieving a high-ranking position.” Indeed, she reports that the majority of judges, prosecutors, and public officials in many administrative departments were women – “which is still the case today.” As a result, she says, “I found it only natural that I could lead a firm with my husband, so I had no hurdles that I can speak of.”

Suci also says that she also moved forward with her career, free from gender-based difficulties or challenges. “I have to say, when it comes to this particular subject, I never had any obstacles.”

For her part, Anca Mihailescu is not so sure. She agrees that Romania is well ahead of many Western countries in this regard, but she says that a recent experience has opened her eyes to subtle forms of discrimination that, in previous years, she might have waved off or ignored. “One year ago, in June of 2019,” she says, “I attended a conference in New York where I had the opportunity to listen to a seminar about the #MeToo movement. Hearing how women are sometimes treated in business, as lawyers especially, was a very shocking moment for me, I almost could not believe the stories to be real.” She returned from the conference paying new attention to the issue, she says. “Once I came back to Romania I started going back through my entire life, to see if anything of the sort had ever happened to me.”

“I’ve never heard of any horrors happening here, anything akin to what

I heard at that panel in New York,” Mihailescu continues. “Things seem better here, but I’m not sure how much.” She’s not in denial, of course, and she concedes that growing up she occasionally encountered “macho men” who played to what she describes as “patriarchal Eastern European archetypes,” but she says she “never paid much attention to them. It was as if there was a wall I erected to keep all of these buffoons out.” She credits this wall for helping her shut out distractions, but she admits that, perhaps, “because of it – I hadn’t really noticed if anything bad was going on.”

Indeed, her shield protected her from some resistance to her plans coming from an unexpected source, as, growing up, her “very protective” father tried to her dissuade her from her intended path. “He didn’t feel I should go to law school, or be emancipated in such an extreme way,” she says, “which was not such a good thing to experience, but it didn’t stop me. I had my wall.”

On reflection, Mihailescu suggests that she may simply have been overlooking some of the particular obstacles thrown in the way young women pursuing professional goals. “Life was probably not as easy and good as I’ve led myself to believe,” she says. “I realize now that women do face problems and challenges.” And, she says, the mental barrier she used to protect herself, “may not be the best thing going forward. I believe that little girls and young women should be aware of what exists out there and not be expected to accept this as a normal thing.”

But she insists this shouldn’t be framed only as a women’s issue. “These things can happen to men too – the harassment, the abuse. This is a matter of combating abusers. The best way to do

that is to raise awareness of the issue.”

While increased awareness is important, at the end of the day Mihailescu says that “working in a large, international firm – which I’ve had the good luck of working for a big part of my professional life – has its benefits.” She believes that large law firms accentuate the business side of things to the degree that any friction is frowned upon, let alone anything along gendered lines. As a result, she too says that, “never has any of my male colleagues ever made any comments that were in any way inappropriate.”

**Clients, not Colleagues**

Of course, the ways women are treated as employees can be different from the ways they are treated as employers, but here as well most prominent female managing partners in Romania wave away inquiries about sexism, with many insisting that the only problems came from *clients*, rather than colleagues – and even then were more related to age than sex.

“Honestly, I never had any issues – I always found it easy to work with men,” notes Suciu. “Perhaps, when I was younger, I may have had problems handling clients – but that was a business experience thing, never a gender issue.” This was especially true since, when she and Luminita Popa founded Suciu Popa, “around 70% of my colleagues in the firm were women – though since then we have brought in several male attorneys, which brought the ratio to 50/50.”

Manuela Nestor has a similar perspective. “The difficulties in managing men never came to me from my employees or colleagues, but rather from clients, sometimes,” says Nestor. “Some clients, depending on their own specific cultural background to a degree, have a tendency to see me as a woman first and as a

**Borne Out by the Numbers**  
**Top 10 CEE Countries in Female Representation at Ranked Law Firms\***

Percentage of Female Partners at Ranked Law Firms	Percentage of Female Lawyers at Ranked Law Firms
1. Croatia: 50.43% (59 women out of a total of 117 partners)	1. North Macedonia: 74.77% (83 women out of a total of 111 lawyers)
<b>2. Romania: 48.91% (180 of 368)</b>	2. Moldova: 66.07% (37 of 56)
3. Bulgaria: 42.25% (90 of 213)	3. Latvia: 63.78% (206 of 323)
4. North Macedonia: 41.94% (13 of 31)	<b>4. Romania: 63.37% (955 of 1507)</b>
5. Turkey: 38.42% (136 of 354)	5. Montenegro: 62.50% (35 of 56)
6. Belarus: 36.73 (18 of 49)	6. Turkey: 60.18% (928 of 1542)
7. Greece: 36.48% (143 of 392)	7. Croatia: 59.23 (231 of 390)
8. Latvia: 35.16% (32 of 91)	8. Bulgaria: 57.39% (396 of 690)
9. Lithuania: 33.67% (66 of 196)	9. Slovenia: 55.73% (180 of 323)
10. Slovenia: 32.94% (28 of 85)	10. Lithuania: 55.00% (385 of 700)

\*Source: 2019 CEE By the Numbers Report

lawyer second.”

She remembers an anecdote from her early days, while still at RomConsult, that toughened her. “In 1985, we made a trip to Libya for business. All of my colleagues at the time were men – engineers and technicians – I was the only lawyer on the team. Now, being a 26, blonde, blue-eyed girl on an all-male team going to Libya was a baptism by fire,” she laughs. “It was funny to see how the other side of the negotiating table worked around the fact that they had to talk to a woman all the time.” She says that, in order to attend a formal dinner at the end of the trip, she insisted on being “considered as if I were a man – all the other women attending were seated on the far side of the room, near the kitchen.”

Still, Nestor makes a point of clarifying, “this sort of gender bias – it never existed in Romania.”

Oana Ijdelea, reports that she has had “delicate situations, although not recently.” She explains that “I think that I am a beautiful woman – and when you are young, and you dress nicely – people sometimes did not give me much credit, thinking that I was not capable.” She says that she was “very eager to prove myself and move beyond these trivialities.” She continues. “I think that

the bigger obstacle is that people tend to equate age with knowledge, which goes against you when you are young.” Regardless, Ijdelea says, she learned to block out and ignore such reactions, and they happened less and less. “These days,” she says, “nothing of the sort could never happen.”

Ijdelea Mihailescu agrees. “The men with whom we do business are goal-oriented, the business stakes and the legal complexity of the projects are usually very high,” she says, “so there’s no room for transgressions. Then there is also the matter of selecting your circle, and choosing to work with people with whom you share basic principles of life.”

**The Infamous Work-Life Balance**

Whether or not they are challenged by unwarranted assumptions, working women who are mothers often have extra demands on their time. The highly-prized “work-life balance” that so many lawyers struggle to find can be especially difficult for female lawyers with children to achieve – perhaps *particularly* when those lawyers also manage highly successful law firms.

And, of course, manage other women. “Our firm is 55% women,” Nestor says. “So it is, at the same time, not an easy

place to run and an extraordinary place to run.” She continues. “Lawyering is a way of life, more than a profession,” she says, and this difference often has unfortunate consequences on the personal lives of those who choose it. “This is a difficult subject,” she says, “but many of the most successful lawyers are divorced. The drive of the work, the enormous pull it has – it often proves to be too much for people to balance successfully.” She describes herself as unusually fortunate in this regard, having started NNDKP with a husband, who understood that “there would be tough moments, sleepless nights spent in the office, having to choose work over private obligations like family events – often.”

Still, Nestor reiterates that she chose this life, and she says that her firm’s management makes it a point to make sure NNDKP’s employees are aware what’s ahead of them, in addition to offering special forms of assistance – though, she says, the driven lawyers they work with are generally uninterested in taking advantage of them. “For example, we have parental leave as an option our employees can take – but people do not want to leave work,” she says. “This has nothing to do with gender. We are actively creating programs that encourage people to stay home, or work from home so that they can have more family time – but they still wish to come to the office.”

Miruna Suciu says that her firm too goes out of its way to support employees trying to find a work-personal-life balance, and that she and her colleagues are “very understanding and supportive of partners and employees being able to take their kids to school, to the doctor, or meet any other family obligation. This is required in order to keep the team and the individuals engaged and recognized for far more than their

work title.” This mindful approach, she believes, leads to better results. “People will feel included and they have the chance to grow more genuinely attached to the firm values.”

Interestingly, Suciu says that one of the upsides of the current COVID-19 pandemic may be that “people have become more tolerant and understanding of the fact that their business partners, consultants, and service providers have lives outside of work, especially with all the online meetings where kids keep barging in.” These occurrences serve to bridge the gap to “perceiving more clearly that employees or business people have a personal life and that they need space for that – space that often times is blurred by office work and tasks – and a balance must be struck.”

She knows the challenges well. “I’m a mother of two children – 10 and 11 – and sometimes it can be tough to manage them, along with managing a firm,” she says, as her kids crash the interview and laughter fills the room. “We also have two dogs, a cat, and a parrot – so imagine all that!” She says that she takes her kids to the office once in a while if “no other safe option is at hand, but this obviously cannot be a profession-wide solution given the client-facing nature of the work.”

Keeping on top of all the demands of both the law and motherhood, she says, requires “all the help you can get,” but, she says, “you also have to love what you do.”

“Everything changes with parenthood,” Oana Ijdelea adds. “I’m not a parent myself, yet, but I understand that each person has an individual approach to how they ought to balance this role with their business one.” And Ijdelea believes that the kind of support Manuela Nestor reports getting from her husband is critical, whether coming from

a spouse or other family members. “I have to be the only woman that’s happy that her mother-in-law lives with her,” she laughs.

“The perfect balance between the professional and the personal does not exist,” Anca Mihailescu says, “but the trick is to constantly try to achieve it.” The key, she says, is not always to divide your time equally, but to remain aware when the demands of one have started to overwhelm the other, and to address imbalances when they arise. “This leads to a symbiotic relationship between home and the office,” she says, “and that way you won’t feel guilty for neglecting either.”

“We must foster understanding here, and I think Romania is doing rather well on this front,” Mihailescu concludes. “Little girls growing up should have this idea in their minds that they can succeed, that they ought not to feel less capable or less important because of their gender.” To do so, an understanding of the societal pressure that exists on mothers to stay at home and take care of their children is important, and that “rearranging the duties around the kids [and] giving the fathers more importance in the entire process of raising a kid [will] make people feel better and be better parents *and* better lawyers.”

Ultimately, Suciu insists, Romania’s track record in such issues is admirable. “The legal market is pretty balanced here, in terms of gender diversity,” she says. “A lot of girls go to law school and become great lawyers later. What is different is, when you compare Romania to other longer established markets, this part of the world seems to be less exclusionary towards women, and there are little-to-no promotion gaps, wage gaps, hiring gaps ... we’re doing quite well.” She smiles. “But of course many things can still be improved.” ■

## INSIDE INSIGHT: INTERVIEW WITH FLORINA HOMEIGHIU OF POLICOLOR-ORGACHIM

By Radu Cotarcea

**Florina Homeighiu spent the first decade of her career in private practice before, in 2017 moving in-house with the Coca-Cola Hellenic Bottling Company – Romania, initially as Senior Legal Counsel, then, in 2018, as Country Legal Manager and Compliance Officer. In May of 2020 she joined the Policolor-Orgachim group.**

**CEELM:** Let's start with a few words about your career to date.

**Florina:** It's all quite straight forward. Right after I graduated from the University of Bucharest, I passed the bar exam and started working at a law firm (throughout my career, I worked with both Romanian firms and the local offices of international firms). When I decided to move in-house, I was driven by the desire to be closer to the business side of things – to see how all the other functions come together to put products on the market and see all the other things which are not available to an external lawyer. At the same time, I continued my academic studies. I obtained a Business Law LL.M. at the University of Bucharest and a Ph.D. in Administrative Science from the National School of Political and Administrative Studies Bucharest, and I recently completed the Executive Program at the IMD Business School in Lausanne. I recently decided to move to the chemical industry, to take on a regional role.

**CEELM:** What drew you to the Policolor-Orgachim group?

**Florina:** First of all, I was drawn to by the challenge of coordinating two countries – I didn't have a regional role until now. By coordinating the legal matters of our Bulgarian business I will learn



entirely new areas of law: from regulatory affairs to how the company works locally and their best practices. Another challenging thing is that the legal team at Policolor-Orgachim is not only comprised of lawyers, but also engineers who know the products in and out and who have a solid grasp on specifics related to the chemical industry, such as:

labeling, authorizations, composition, and so on. I am pleased to work for companies which have created history (Policolor was established in 1965 and Orgachim in 1901), generated innovation in paints, varnishes, and resins, while being friendly with the environment. Policolor's products are present in more than 3,000 traditional retail stores,

at large DIY networks in Romania, and in over 1,000 car service stations in the country. The company currently has a network of stores in both Bulgaria and Romania and operates two large production units: the new Policolor factory in Bucharest and Orgachim's established operation of the Bulgarian city of Ruse and is a regional leader in the field of paint and varnish technology in South-East Europe.

**CEELM:** Why does the in-house legal team include non-lawyers?

**Florina:** The scope of what we need to oversee is quite vast. Our team needs to look out for compliance in terms of trademarks, chemical composition requirements, specific authorizations, and so on. Pure legal knowledge is not really enough as you need to truly master the technical side of things as well. The rationale was that someone coming from a technical background needed to work alongside the legal team to offer those insights. I don't think it's realistic to expect any lawyer to know every detail related to production – from compositions to health and safety considerations, and so on.

**CEELM:** And are these engineers working with the legal function full time?

**Florina:** They have mixed responsibilities, not purely within the legal function. They work with the R&D, commercial, and operations departments as well, but in terms of organizational structure/reporting lines, yes, they work in the legal department, under my coordination.

**CEELM:** What did you find most difficult to leave behind at your old job?

**Florina:** I think the most difficult part was to leave my old team behind. I recruited almost all of them myself, to

begin with. I also built a good relationship with many group legal colleagues, the general manager of Coca-Cola Hellenic Bottling Romania, many members of the local management team, and the other functions – from finance to procurement, marketing, and sales. It was also a very familiar place. After a few years, I knew the company and its operations well, not just locally, but also internationally.

**CEELM:** What were the first few elements on your agenda when joining Policolor-Orgachim, and what do you still need to do to fully “settle in”?

**Florina:** The very first step was to develop an induction plan to meet my legal and compliance teams and many people from both countries, as soon as possible. The goal was to sit down with them all and understand the business and what the hot topics are, and to establish a collaboration and learn the projects. What is on the agenda – both ongoing and upcoming? What are the deadlines of ongoing projects to know what needs to be addressed immediately, and what I can plan a step-by-step approach for? I've already taken part in board meetings and I think I've made good headway in collecting as much information as I can to help organize my pipeline and identify what needs to be put into order.

**CEELM:** And what are the first elements to be addressed on your agenda now that you've started gaining a clearer idea?

**Florina:** I already entered in the commercial and production side of the business, plus some regulatory projects. My intention is to update some of our internal procedures, to have a thorough contract review (including template creation, where applicable), develop internal trainings, *etc.* These are really the

“The very first step was to develop an induction plan to meet my legal and compliance teams and many people from both countries, as soon as possible. The goal was to sit down with them all and understand the business and what the hot topics are, and to establish a collaboration and learn the projects.”

main areas I am looking at the moment.

**CEELM:** What about in terms of getting to know the team?

**Florina:** I'm having face-to-face meetings with members of my teams where possible. I am catching up with my Romanian team on Zoom and over the phone almost daily to get to know, first and foremost, their backgrounds, what areas they are covering, and if they have any ongoing challenges. With Bulgaria, I have had “connecting” calls and Zoom sessions so far, since travel is obviously restricted. I also want to understand as much as possible about the other business functions, from marketing to production. For example, I was keen to get details from the marketing and sales teams on both ongoing campaigns and the general status of the market.

**CEELM:** In terms of your specific role, how does it compare to handling legal matters for a food & beverage company?

**Florina:** The final product is totally different. As a chemical producer, there are a lot of requirements from the Ministry of Health and various environmental authorities, for example, in terms of

what products you can put on the market and how, labels, *etc.*

Contracts for supplies and the like are quite similar, as well as everything relate to corporate and commercial matters in general (from trade registrations to commercial contracts and keeping board minutes). Commonalities are also in the marketing campaigns – from a mechanical standpoint, they are quite similar to what I used to work with in the past. HR and labor law, particularly topical in this period, are similar. Lastly, the structure of the management team is the same as at my previous company.

At the end of the day, my legal background helps me adjust to whatever industry I'm in – the same way that a private practice lawyer advises clients across different industries. All that really varies is which specific area of law you apply most often.

*"At the end of the day, my legal background helps me adjust to whatever industry I'm in – the same way that a private practice lawyer advises clients across different industries. All that really varies is which specific area of law you apply most often."*

**CEELM:** How large is the in-house legal team you are currently working with and how is it structured?

**Florina:** In Romania there are seven people, counting both lawyers and engineers. In Bulgaria, we have nine. The difference in size is because the team in Bulgaria is more specialized to cover different health and safety and regulatory

matters. The Romanian team members are also specialized, but in a different way, which is slightly broader.

**CEELM:** As you are relatively fresh in the role with the Policolor-Orgachim group, what is your approach to external counsel? Have you/will you run an audit of past external advisors' work? Are you planning on turning to some of the partners you worked with in the past, or will this be a case-by-case decision when the need arises?

**Florina:** There are some legal services contracts with external advisors that are still in force. Currently, I am not planning on changing anything. I want to see how things are going and assess if the existing advisors can support us in any new expertise areas that may come up. I may be looking to create a panel at some point down the line. For now, I feel it would not be wise to take a project from someone and move it to a new lawyer mid-process. There is already knowledge in place, so at this stage I will work with what is already in place.

**CEELM:** And when you carry out your assessments, what are the main things you will be looking at?

**Florina:** Naturally, the quality of responses, the work performed, the costs, and the nature of collaboration during the projects. I'll also want to know what areas of expertise they can provide – not only what they currently cover. My preference is to work with one firm or a few firms that can cover as much as you need – from labor law to environmental. That way, you get to work with your advisors for a wide variety of projects and they get to know you and understand your business. It is a "win-win" situation and generates a closer and very good long-term collaboration.

**CEELM:** On the flip side – when you receive proposals or capabilities statements, what is the one aspect you are least interested in?

**Florina:** For me, it's the size of the team. The way I see it, even if a firm has a large team in place, those team members are not likely to be all "mature" in that specific area of expertise. Plus, the reality is that, most of the time, you are only working with one or two lawyers from a specific department in that law firm, so the size of the overall team matters less. Rankings would be another that comes to mind. They can give a range, sure, but I find that, sometimes, they cannot reflect the character or professional background of a lawyer.

**CEELM:** On the lighter side, of all your past team-building exercises, which was the most enjoyable for you – and why?

**Florina:** Probably one of my all-time favorite was a company legal training/international conference in Brussels (when I was part of CMS Cameron McKenna's team). I loved it because of the content and the fact that we also had a chance to go to Bruges for a one-day trip only with the Romanian legal team; it was the first time I saw both of those cities. Another was the 2018 group legal conference of Coca-Cola Hellenic in Croatia, with all the legal managers from all countries and group legal representatives. External speakers were invited and we had very nice discussions. I cannot forget the leadership conference that took place last year in Moscow – useful sessions, including one day dedicated purely to the legal team from all group countries, with dinners and outings in a big and very nice city. Yes, I enjoy traveling a lot! ■

## INSIDE INSIGHT: INTERVIEW WITH MADALINA JUNCU OF MONDELEZ

By Radu Cotarcea

Juncu has been with Mondelez since 2018, when she joined it on secondment from Stratula & Asociatii. In April 2019, she took on her current role.

**CEELM:** Can you give us a brief overview of your career?

**Madalina:** I have dreamed of being a lawyer since my early school years. At that time, I didn't know much about the diverse options and opportunities that the legal profession offers.

I graduated from one of the best law universities in the country, UAIC Iasi [the Alexandru Ioan Cuza University], where I had the chance to be guided by great professors who helped me understand the legal world. Also, I was President of the local branch of the European Law Students' Association, and my college years were dedicated to legal volunteering. I think this was an important part of my development, on both a personal and professional level.

Thereupon, I pursued a Master's degree in Law from the University of Bucharest. I was admitted to the Bucharest Bar in 2016 and joined the Stratula & Asociatii law firm. In March 2018 I joined Mondelez Romania as a secondee from the firm. When my secondment ended in April 2019, I decided to stay with the company.

**CEELM:** Were you always keen on moving in-house, or was there something in particular about Mondelez that drew you in?

**Madalina:** I started at Mondelez more



than two years ago, while I was still a junior lawyer, so my path in the legal field was still undefined and my position at the company was a temporary assignment for one year. When I started, I was keen to return to my law firm and become a litigation lawyer. However, as it often happens in life, things changed along the way.

The time I spent on secondment at Mondelez enriched my business acumen and added great value to my professional development. Also, one of my colleagues from the firm had been on a similar assignment a few years back and she always remembered the experience as challenging but amazing.

Thus, from my first months as a lawyer,

I was open to the idea that at one point I might get the chance to see what it means to be in-house, specifically with Mondelez. I admired the company and the values they promoted, their wide range portfolio of tasty products, and their consumer-focused approach, even before working for them. Therefore, it was a perfect match at the perfect time when I joined Mondelez in March 2018.

**CEELM:** What are the main differences between working as an external lawyer and in-house?

**Madalina:** During my internship, I worked mainly as a consultancy lawyer, with little direct experience with litigation, and I was lucky enough to have great mentors, so the transition was not

that difficult.

As an external lawyer you have several clients with different business models, areas of activity, and specific requests. As an in-house counsel, the business, represented by colleagues from every department, is your client.

First, I needed to translate my legalese to a common language, to be understood by every professional regardless of their area of specialization, and to give short, on-point answers. Also, you need to have a holistic view of each matter and to assess how each step will influence the way the entire company functions. Another learning process was balancing business interests in compliance with the legal provisions where the law is ambiguous.

**CEELM:** How do you think working in both worlds has shaped the way you work with external counsel?

**Madalina:** I think it helped me see both sides of the coin with their advantages, disadvantages, and challenges.

I know how external lawyers perceive their clients' matters and what they aim to provide and I can easily translate the legal language to a business language, and to apply the legal advice in practice. Most importantly, working in both worlds has helped me evolve as a contact point/mediator between external lawyers and business people so I can easily assess how and what to ask from our external counsels.

**CEELM:** While we are on the subject, what are the main considerations you take into account when selecting outside counsel for a new project?

**Madalina:** I think it's having a good reputation and image on the market

combined with diverse areas of legal expertise and specialized departments/lawyers.

**CEELM:** You are the sole member of the in-house legal team in Romania. What does a regular day in the office look like for you?

**Madalina:** I must mention that we have a great legal team. It is not local; it is at the Central European regional level, with colleagues based in different countries.

Usually, prior to COVID-19, I would arrive at the office, have a coffee with my colleagues, check my emails, make my to-do list for the day, and check my calendar to see what meetings I had. This, of course, if we're speaking of a regular day. There are many days with special situations, ad-hoc urgent meetings or calls and visits from authorities, and in those moments there is no schedule, only fast thinking and fast acting.

My time is mostly divided between sales and distribution matters, and all aspects related to marketing (promotions, marketing materials) and consumer protection (product compliance in general, labeling, etc.).

During the current COVID-19 crisis, since I work from home, my day also includes a cat over the laptop in the most important calls. He even types on my behalf sometimes.

**CEELM:** From a legal/regulatory standpoint, what would you identify as the main ongoing challenges you dealing with, and how are you tackling them?

**Madalina:** One of the main challenges at the moment is the update Romania's Law 321/2009 regarding the trading of food products. For years now, there has

been a prohibition on retailers invoicing suppliers for various sales and marketing services related to their products. Now things have changed but there are still several ambiguities as to what can and cannot be done to promote suppliers' products against a fee and the entire market is trying to adapt and re-implement such services. We do hope some norms of implementation will follow.

On the other side, it will be interesting to see how Directive (EU) 2019/633 on unfair trading practices in business-to-business relationships in the agricultural and food supply chain will be implemented.

Other than that, labeling is always a challenge as the same product can be distributed in several markets and national legislation is constantly changing.

**CEELM:** Do you see any significant legislation on the horizon, and – if so – how are you preparing for it?

**Madalina:** For the future, on both the national and EU levels, I see many initiatives regarding product compliance, labeling, and commercial relations between manufacturers/distributors/retailers – and each of them will represent a focal point for us as a company. Our goal is always to provide great products, keeping in mind the best interests of the consumers, and my role is to ensure we do this in strict compliance with the legal framework.

Also, it will be a challenge to see how we adapt the business and return to the office post-lock-down. The global pandemic forced everyone to adapt instantly and to find new ways of working. Thus, in this respect we will also need to see what the new normal will be for all of us. ■

# MARKET SNAPSHOT: ROMANIA

## THE TELECOM SECTOR IN ROMANIA – AN UPDATE

By **Cristina Cretu, Co-Head of TMT and Data Protection, and Madalina Moldovan, Associate, MPR Partners**



The COVID-19 outbreak showed that technology lies at the backbone of our society and that the role of electronic communications services and networks in supporting our economic, educational, and social needs has increased exponentially.

The National Authority for Management and Regulation in Communications (ANCOM) 2020 Action Plan mentions several topics expected to impact the telecom market. However, due the COVID-19 outbreak, the implementation of some of these topics will most probably be postponed.

The two topics of interest right now are: (i) the transposition of Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code (the “Electronic Communications Code”); and (ii) setting the maximum fixed call termination rates based on a cost calculation method.”

### Transposition of the Electronic Communications Code

Despite having the nature of a directive, the rules provided by the Electronic Communications Code will apply in each Member State with a vision of an inclusive single market.

Given the fast-changing technological and market developments, the European Commission needs to periodically update the framework regulating the telecommunications field. The Electronic Communication Code is the result of a “regulatory fitness” exercise consisting of a review of the existing regulatory framework in order to simplify and adapt the current structure to the new market reality, where the provision of communications services is no longer necessarily bundled to the provision of a network.

In a nutshell, the objectives of the Electronic Communication Code are: (i) to pave the way for the next generation of very high capacity networks, including fixed, mobile, and wireless

networks; (ii) to stimulate competition and strengthen the consumer rules by, among others things, making it easier to switch between service providers; and (iii) to ensure effective protection of consumer rights by promoting, among other things, better tariff transparency and comparison of contractual offers.



The Electronic Communications Code will need to be transposed to national law by December 21, 2020. According to ANCOM’s Action Plan, a draft law was planned to be ready by March 31, 2020. Due to the current circumstances, however, it has not yet been launched for public consultation, and in public statements, ANCOM has announced that it plans to have the law transposing the European Electronic Communications Code adopted by the end of the year.

### Caps on International Calls within the European Union

ANCOM has published for public comment draft measures for fixed telephony operators to cap their tariffs at 0.097 euro-cents/minute for domestic calls, calls initiated from within the European Economic Area (EEA), and calls initiated from networks outside the EEA. The measures should apply starting from August 1, 2020.

The current maximum fixed call termination rate is 0.14 euro-cents/minute and has been determined based on a cost model established with the aims of promoting competition, maximizing consumer benefits, and stimulating efficient investment in infrastructure.

The proposed fixed call termination rate has been determined based on the updating of several parameters in the previously used cost calculation model and of the cost of capital.

The proposal to decrease these tariffs by 30 percent follows ANCOM’s efforts to develop a competitive telecom market in Romania, with attractive and convenient offers for the users. ■

## ROMANIA OPENS UP THE POSSIBILITY FOR NEGOTIATED POWER PURCHASE AGREEMENTS

By Bryan Jardine, Managing Partner, and Flaviu Nanu, Counsel, Wolf Theiss Romania



The Romanian Government has recently brought important amendments to the energy regulatory framework by way of the new Government Emergency Ordinance no. 74/2020, effective May 19, 2020. According to the new regulations, new energy producing facilities, both renewable and conventional, commissioned after June 1, 2020, would be allowed to sell their output outside the current centralized energy market, at negotiated prices, with the observance of competitive rules. The amendment is intended as an exception to the general principle set out by Energy Law no. 123/2012 that transactions with electricity are carried out on the competitive market, in a transparent, public, centralized, and non-discriminatory manner.

The changes have been anticipated following the issuance of the Regulation (EU) no. 943/2019 regarding Regulation (EU) 2019/943 of the European Parliament and of the Council of 5 June 2019 on the internal market for electricity and Directive (EU) 2019/944 of the European Parliament and of the Council of 5 June on common rules for the internal market for electricity and amending Directive 2012/27/EU. The European enactments introduce the concept of over-the-counter market and the entitlement of market participants to enter into long-term electricity supply contracts negotiable over the counter, subject to compliance with Union competition law, as well as other long-term hedging products tradable on exchanges in a transparent manner in order to ensure protection against price volatility risks and mitigate uncertainty on future returns on investment.

A first step was taken with the issuance of ANRE Order no. 236/2019 approving rules for the elimination or reduction of the impact of measures or policies which may restrict the price formation on wholesale electricity market. However, in order to permit a complete harmonization with European regulations, amending Energy Law no. 123/2012 was necessary, and this was performed through the GEO 74/2020. Although the amendments of GEO 74/2020 are still at the level of principle, they open up significant opportunities for new investments in the Romanian energy sector by introducing the ability of participants to enter into predictable bilateral power purchase agreements (PPAs) that would ensure the bankability

of new energy projects.

While this measure has been welcomed by major market participants, one can notice drawbacks. For instance, as the intention is meant to incentivize future/upcoming investments, it does not support existing operational production facilities, which will be bound to continue trading their power output solely on the centralized market, without being able to resort to long-term PPAs. From this perspective, GEO 74/2020 introduces a separation – if not a discrimination – between production facilities commissioned prior to and after June 1, 2020. Considering that the arguments for the issuance of GEO 74/2020 included the necessity to act fast in the context of the COVID-19 outbreak and address the short-term economic contraction associated thereto, one may question if GEO 74/2020 can meet this objective as long as all energy producers operational as of June 1, 2020 are excluded from its application. Historically, the restriction of trading outside the centralized energy market was a hallmark of the Energy Law in its original stage. While the restriction was implemented as a protection mechanism for new investors and was a source of guaranteed income, the measure may be viewed as anachronistic and no longer justifiable from an economic standpoint.

of new energy projects.

Despite the limitations mentioned above, the Romanian energy sector, declared as strategically important at a national level by Romanian Energy Strategy for the 2018-2030 period, will still constitute one of the most investment-enticing sectors for the medium and long term in the wake of the measures enacted by GEO 74/2020. While there is still room (and need) for secondary regulations, it is expected that interest in developing new production capabilities will increase. The Romanian energy regulator – ANRE – must issue implementation norms within 30 days from the Government Emergency Ordinance becoming effective, detailing the specific conditions in which PPAs may be entered into. In mid-June 2020, the upper chamber of the Romanian Parliament (the Senate) repealed the provisions of GEO 74/2020 regarding PPAs, while introducing the possibility for developers of energy projects to enter into contracts for the sale of the power output, even in advance of obtaining the energy production license. The rationale for the rejection is not fully apparent. GEO 74/2020 has now been passed on for further analysis and debate to the lower chamber of the Romanian Parliament (the Chamber of Deputies), which will have the decisive say on this matter. ■

# THE ROLE OF PRIVATE EQUITY AND VENTURE CAPITAL IN THE POST-COVID-19 WORLD

By Marian Dinu, Country Managing Partner, DLA Piper, Romania



## Something Needs to Be Done

Whatever assessment one may have regarding the shape of the post-pandemic recovery, everyone seems to agree that one thing in particular needs to be done. Governments and central banks have already begun doing it, and even the slow-moving ship of the European Union has departed port. What is this thing? The creation and distribution of money, on an unprecedented scale (who would have thought that this word, “unprecedented,” still had any meaning after more than ten years of monetary easing?).

What is new this time is that the central banks will not be left to fight the economic malaise alone, as governments will use their fiscal and monetary policy tools to stimulate the economy as well. As governments are highly indebted, we will no doubt witness a merger of the two instruments, with fiscal easing back-stopped by central bank government bond purchases. One way or the other, a tsunami of funds will hit the economy. The question is whether the financial system has all the channels and capillaries necessary to nourish the economy and can safely distribute the money where it is needed.

PE and VC investors are some of the essential conduits for this flood of money to find its way into the economy. The question is how they will step up to this task.

## Private Equity Feeding Frenzy?

Private Equity funds have entered this crisis in a better shape than in 2008-2009. At that time, a lot of funds were caught riding a very high valuation wave, which crashed into the return of the PE firms, an experience that led to a significant slow-down in PE activity in CEE for several years afterwards. This time, PE firms have significant “dry powder” and their portfolios are in better shape. The market has been good for PE firms, with deal-flow supplied by generational changes in CEE entrepreneurial businesses and by exits by the smaller PE firms to larger ones once the portfolio companies outgrow their initial PE owners. Also, while leverage is important to any

PE transaction, leverage was used more conservatively in CEE – private equity in CEE has always been more about growth than about optimization of capital structure.

Once the sky clears on the pandemic front, it is not unreasonable to expect PE firms to go hunting again. There will be opportunities both in new deals and in bolt-ons consolidating the markets of portfolio companies. Availability of bank financing will be key for larger deals, but a lot of the small-to-medium transactions will likely proceed even as all-equity deals.

From a legal standpoint, deal terms are likely to change (along with bargaining power, which is shifting from sellers to buyers). We are likely to see virtually no locked-box deals for a while, a higher prevalence of earn-outs in transactions, and wider “material adverse change” (MAC) clauses.

## Venture Capital – is Tech Overvalued?

In any crisis, technology companies are usually suspected of overvaluation. This is again the case, and although travel-related tech businesses have already been hit very hard, other technology companies are soaring still higher. Clearly, the world is in a phase-change transition, which is not just about COVID-19. The rise of automation and AI were trends that were apparent even before COVID-19 and which will go on undisturbed, as will the rise of new models of mobility and social interaction. The world of 2030 will be quite different from the world we live in now. Venture capital investors are casting a wide net in the hope of catching true game changers. Venture capital in CEE was already a very interesting space before COVID-19. Should we discount it as something that will not work in the new environment? Absolutely not. On the contrary, the crisis will bring around some of the most interesting opportunities we have ever seen in CEE in this area. The maturity of the ecosystem, the disruption of old models, the availability of public (EU) funds to support entrepreneurship and venture investing, and the fact that the crisis will turn more former employees into entrepreneurs, are strong reasons to hope that a new, bigger, wave of venture investments will start.

With a strong CEE platform, DLA Piper is well positioned to support private equity and venture investing in the region. ■

## COMPLIANCE IN ROMANIA

By Charles Vernon, Managing Partner, and Mihai Stan, Senior Associate, Vernon | David



Regardless whether you are a new start-up hoping to become the next “unicorn” or a renowned international corporation, Romania’s ever-changing business and legal environment will impose various issues and hurdles upon your organization’s compliance and ethics culture.

From BP’s USD 20.8 billion fine for the Deepwater Horizon accident, to Volkswagen’s USD 14.7 billion fine for false diesel emissions, to Airbus’ USD 4 billion fine for bribery and corruption, keeping a company on the right side of the law and reducing employee malfeasance is always a challenge.

With rules and regulations constantly changing and developing to ensure Romania’s market is in line with EU and international best practices, increased authority and resources available to regulators to pursue breaches and to impose large and “company killing” fines and sanctions, and enhanced cooperation between Romanian and EU/international regulatory/law enforcement bodies, compliance needs to be at the top of any organization’s management agenda. Furthermore, Romania, Moldova and other S.E. European countries are still seen by regulators and international organizations as having high levels of corruption, white collar crime, and employee misconduct. The US Foreign Corrupt Practices Act, the UK’s Bribery Act, France’s Sapin II rules, and the EU’s growing anti-money laundering efforts are only a few of the numerous rules and regulations that may be applicable. This in addition to the Romanian laws regulating company activities. With three lawyers on staff who are Certified Compliance and Ethics Professionals (CCEP-I), Vernon/David has worked on numerous compliance matters and fraud and employee malfeasance cases, including compliance investigations involving the FCPA and matters before the Romanian National Anticorruption Directorate. We believe that a strong, active, and effective compliance program adds real value to your organization. The implementation of compliance programs and procedures as well as the development of a compliance culture strengthens the organization’s reputation and significantly reduces the risk of regulatory non-compliance or worse, serious criminal charges.

With this in mind, there are some key elements that any compliance program should include.

■ First, develop a code of conduct which informs employees in a clear, simple, and straightforward manner about your

organization’s requirements and expectations, as well as its core values. It is very important that this code be implemented and supported in the company’s internal rules and procedures.

■ Policies, guidelines and rules need to be tailored to your organizations’ needs, the applicable regulatory environment, and ongoing business. Clearly a hospital will have different needs and requirements than a grocery store.

■ Senior management should perpetuate a “tone at the top” approach to compliance which reflects the organization’s commitment to ethical and legal business conduct, as well as compliance with the letter and spirit of the law and relevant policies. This tone should be made clear throughout the organization’s entire business operations.

■ Develop, maintain, and constantly improve a compliance monitoring program which provides management with reassurance that key compliance issues or risks are being actively and adequately managed within the organization (including through regular trainings, awareness campaigns, or specific guidance and examples).

■ Set up multiple channels through which employees can seek guidance and raise concerns, such as hotlines or direct contact with the ethics and compliance officer/department.

■ Make sure you have proper investigation procedures and standards in place to address issues related to the authority of investigators, requirements for all employees to cooperate, and strict confidentiality of proceedings/investigations;

■ Create and maintain clear and objective standards when disciplining employees. Not only should the “punishment fit the crime,” but every employee must be treated equally. The CFO must face the same treatment as the secretary. We also find that developing an incentive program to reward employees for actively reporting wrongdoing and implementing the organization’s policies works well.

Finally, as noted above, compliance programs are not “one size fits all” and not only about corruption. Programs should be designed to address a company’s specific activities and their real risks. Remember the examples above? BP’s problem was related to health and safety and Volkswagen’s problem was environmental and operational. A good compliance program is about helping the company and its employees reduce risks and comply with the law. ■



## INCREASED SANCTIONS FOR COMPANIES THAT DON'T COMPLY WITH OVERTIME LAWS IN ROMANIA

By Iulia Stanciulescu-Ilie, Partner, CEE Attorneys / Boanta, Gidei si Asociatii



On June 18, 2020, the President of Romania promulgated a law amending the Labor Code, two years after the country adopted legislation increasing the sanctions for

employers who do not comply with the legal requirements for overtime work. According to the new amendments, the fine for non-compliance in such cases is between EUR 310-620. The amended provisions entered into force on June 21st 2020.

The tighter sanctions were necessitated by the fact that, while the existing fines for non-compliance with the legal provisions regarding overtime work were already between EUR 310-620, they applied regardless of the number of employees working overtime and there was no correlation between the amount of the fine and the number of overtime hours or the number of employees who did overtime work.

Although this amendment is designed to ensure proportionality between the fine and the extent of the violation, its actual consequences will appear soon in labor litigations. We expect to see challenges to the amendment initiated either by an employer already sanctioned under the new legal provisions or in response to an employee's request for compensation for overtime work. Thus, the employer will be under the permanent threat of a fine. This issue risks to be even more controversial, since the law does not mention a maximum fine for violations involving multiple employees and provides no criteria for individualizing the sanction for each employee.

In an attempt to prevent these possible future problems, the President of Romania has requested that the amendments be re-examined prior to promulgation, requesting that Parliament return to the newly introduced amendment. The formulation "for each person identified as performing overtime work" was criticized

for a lack of clarity and predictability of regulation and lack of correlation with the essential condition – that the additional work violate the legal provisions.

Although difficulties in qualifying the overtime work without fulfilling legal requirements existed in the past, they are still present in terms of evidence – and the burden of proof in employee claims for compensation for overtime work will be evenly distributed between the employee and the employer.

In this context, of the employers being more liable, the conclusions of the European Court of Justice (in Judgment C-55/18 - Federacion de Servicios de Comisiones Obreras (CCOO) / Deutsche Bank of May 2019), are even more relevant: the application of the Court's ruling has become essential in litigation regarding overtime work that does not comply with applicable legislation.

For employers, having an objective, reliable, and accessible system to measure the duration of daily overtime work can make the difference between being fined or not in response to claims by employees that they had been required to work overtime in violation of the law.

Given the current situation, irrespective of the risk of possible overtime payment claims, employers should pay attention to creating sound documentation of the work schedule of each of their employees. They can do this by introducing clear rules on overtime work, in the framework contract, individual contracts, internal regulations, and job descriptions, both if the overtime is regularly requested by the employer or performed only in exceptional circumstances. ■

## NO DULL YEAR IN BANKING

By Carmen Manuela Peli, Partner, PeliPartners



The decade that just ended brought significant changes to the banking landscape in Romania. The banks were pushed to restructure their loan portfolios, consumer litigations increased exponentially, the cost of business increased, and Fintech companies started (although timidly) to take a slice of the pie. Populist legislation was enacted to protect consumers years after banking services were contracted. And a wave of acquisitions forced by the increased costs led to changing rankings at the top of the banking sector.

This year came with unexpected challenges, particularly in the form of the well-known COVID-19 virus. Romania applied an emergency status and entered into lock-down from March 16 until May 18, and although some activities have been gradually released, others remain restricted or prohibited.

To alleviate the risks and costs faced by debtors, the Government enacted a legal moratorium for payments owed under credit agreements. Any such debtors could request the application of the moratorium for a period of up to nine months, until the end of 2020. The conditions for the application of the legal moratorium have raised many questions, including, for example, which type of agreements fall under the scope of the new law, what type of creditors are required to comply with the law, what payments may be delayed, and what are the differences in the treatment of certain loans. Many companies and persons affected by the pandemic (or by the lock-down and social distancing measures) have applied to have their debts suspended. In addition, some banks have awarded conventional payment suspensions to clients that did not formally request the application of the moratorium.

Other legislative acts were adopted with the aim of helping small and medium enterprises overcome economic difficul-

ties in the context of the COVID-19 pandemic. A state aid scheme was approved allowing SMEs to benefit from credit facilities for both investment and working capital guaranteed by the Romanian state covering a maximum of 80% of the financed amount (up to RON 10,000,000 for investment loans and RON 5,000,000 for working capital loans (smaller caps may apply depending on the average expenses registered for the working capital over the past two years)). The Ministry of Public Finance is subsidizing 100% of the interest on the above-mentioned loans/credit lines starting from the date the loan was granted and until March 31, 2021. The interest subsidies can also be extended for the subsequent two years (*i.e.*, 2021-2022), but only if the economic growth estimated for this period is below that registered in 2020. Banks are now intensely busy with the approval of credit files for SMEs.

As a result, banks are now supporting their clients with payment moratoria, while at the same time receiving state support in exchange for extending credit to SMEs.

Against this background, we expect that banks may need to consider strengthening the requirements to grant new loans or extend existing loans that are not covered by the state. We also expect the banks to require a more in-depth analysis regarding risks and mitigants in respect of such loans. Companies active in industries that have thrived or that were not affected during the pandemic will be advantaged. At the same time, we believe that the banks may need to take a closer look at their clients' activities and projects and anticipate if and where difficulties may appear. This would require a thorough due diligence and understanding of their clients' business.

The mergers & acquisitions and portfolio acquisitions transactions in the banking sector will likely continue, but we expect banks to act prudently. Targets with more homogeneous products might be in a better position, as they allow for an easier due diligence and assessment. ■

# THE IMPACT OF COVID-19 ON EUROPEAN ARREST WARRANTS: RECENT ROMANIAN CASE-LAW

By Mihai Mares, Managing Partner, Mares & Mares



The pandemic caused by the new coronavirus (SARS-CoV-2) has profoundly challenged all justice systems, including Romania's. The country's judicial bodies had to quickly assimilate and implement numerous special measures instituted as a result of the state of emergency, followed by the state of alert that was declared at a national level.

International cooperation in criminal matters is perhaps especially relevant in this new state of affairs as a result of the closing of domestic borders to prevent the spread of COVID-19. Accordingly, this article aims to present the impact of the current epidemiological risks on the execution of European arrest warrants (EAW) by Romanian judicial authorities, as reflected in recent case-law from the Romanian competent courts.

## Pandemic Risks as Grounds for Non-Execution of EAW.

Our review of case-law reveals that invocations of pandemic risks as grounds for non-execution of EAW were generally unsuccessful. For instance, in one case, it was expressly held that invoking poor prison conditions in connection with the contamination of the area where the requested person would be surrendered were not considered valid grounds to refuse to execute the EAW, especially since allegations were not proven in any way by the requested person. As such, the challenge to the ruling by the Timisoara Court of Appeal that the requested person be surrendered to Italy was dismissed by the High Court of Cassation and Justice (HCCJ, Criminal Division, decision no. 170/2020).

## Pandemic Risks as Grounds for Postponed Surrender

However, in quite a few instances, the Romanian courts ordered the surrender of requested persons postponed.

Romanian Law no. 302/2004 on international judicial cooperation in criminal matters, as republished in May 2019, provides under Art. 114(1) with reference to Art. 58(2)(c), that the surrender may be postponed, among other reasons, when, on account of special circumstances, the immediate surrender would have serious consequences on the surrendered person or their family. Such postponement may only be ordered once

and for a duration of three months at most. Hence, based on these provisions, this ground for postponed surrender was considered justified by some courts.

Specifically, these courts noted that the exceptional state of affairs caused by the COVID-19 pandemic may be construed as representing a special circumstance that would cause the immediate surrender to have serious consequences on the health of the requested person. Moreover, considering the state of emergency instituted in both Romania and Italy and the temporary ban on flights, the immediate enforcement of the EAW issued was not considered possible (Bucharest CA, 2nd Criminal Division, judgement no. 56/2020; similar rulings include: Galati CA, Criminal and Minor-Related Division, judgements nos. 49/2020, 64/2020, and 65/2020).

By contrast, other courts deemed there were no explicit provisions under Romanian law exactly suitable for the current pandemic circumstances. But while this apparent procedural void prevented one court – Ploiesti CA – from ordering surrender postponed, and ordering the execution of the EAW issued by France instead – which was not reversed by the HCCJ in the appeal phase (decision no. 194/2020), another court (Alba Iulia CA, Criminal Division, judgement no. 26/2020) held that the most appropriate legal mechanism to be applied domestically was the very one provided under EU law.

Consequently, the Alba Iulia CA judge relied on the indirect effect of Art. 23(4) of FWD 2002/584/JHA relating to temporary postponement for serious humanitarian reasons and interpreted the Romanian law in accordance therewith. It was added that this procedural option was due to procedural economy and utility reasons, as a surrender would be entirely ineffective in the pandemic context, considering the legal time-limits required to carry out this procedure. Moreover, the same court stated that, by adopting this solution, the issuance of a new EAW will no longer be necessary and there are sufficient guarantees for the enforcement of the EAW issued by the German authorities once the causes for suspension have ceased – namely, when the restrictions have been lifted.

In light of the examples indicated above, it appears that Romanian case-law relating to the execution of EAW when COVID-19-related risks arise still needs time to stabilize, so that a predictable approach be reached to some extent, especially when identifying the applicable legal grounds. ■

## EMPLOYMENT RELATIONS IN ROMANIA: BETWEEN VIRAL REDUNDANCIES AND GOOD NEWS

By Mara Moga-Paler, Head of Employment, Schoenherr Romania



The Romanian labor market before the COVID-19 pandemic was very competitive. On the one hand, foreign companies closely monitored the opportunities of a developing market and local labor force, while on the other hand, the tradition of people traveling abroad in pursuit of happiness and the flood of young and bright minds out of the country had spread enough to make recruitment a difficult process and to significantly affect the labor market in general.

On a regulatory level, the principles of the current labor laws were set in 2003 and have been adjusted since then to accommodate market conditions following the 2008 financial crisis and to implement new rules enacted at the EU level. Generally, Romanian labor law is aligned with the EU rules. Also, courts of law that traditionally had been sympathetic to employees have been working to develop a more balanced approach – one that gives even more consideration to the rulings of the Court of Justice of the European Union.

In this context, the COVID-19 outbreak found Romania on a path of steady economic growth.

The lockdown measures imposed starting on March 16 were strict, and many companies switched into survival mode. The Romanian Government quickly enacted several financial support measures to help companies keep their employees. Nonetheless, due to the lack of visibility on short, medium, or long-term developments, many companies decided to dismiss employees. Currently, more than 400,000 people in Romania are unemployed, accounting for approximately 8% of the active labor force – with the most affected industries being manufacturing, automotive, retail, and construction.

Another 600,000 employees are still temporarily laid-off (a number that has actually shrunk from more than 1 million in mid-April) and are expected to return to work soon. From March 16 to May 31, the state provided the temporary layoff allowance owed by employers affected by the pandemic to employees, irrespective of industry. As of June 1, the subsidy will be provided only in those industries that are subject to

restrictions, such as retail, leisure, media, and entertainment. Upon returning to work, the state may continue subsidizing up to 41.5% of their salaries for another three months, while limiting the company's right to terminate their employment until the end of 2020. However, the future of the current employment relationships for these workers, and many others, is still questionable, as many companies are now contemplating redundancies.

Paradoxically, a higher unemployment rate does not worry everybody to the same extent, as companies see potential for easier access to valuable human resources than they have had for years.

In terms of HR processes, the momentum created by the COVID-19 pandemic forced companies to find creative workarounds. The lockdown measures required employees to work from home where possible. Specific legislation in this area has existed in Romania since 2018, but tele-working remains uncommon. For companies that had previously started to implement it as a benefit or as a pilot project, the governmental measures requiring companies to suddenly implement work-from-home structures did not come as a major surprise. But many others needed to find the resources to implement the WFH policies that would allow them to remain efficient and profitable during the pandemic. Starting early next year, we expect to see court practice developing around tele-working arrangements, especially as regards the highly-debated matter of who bears the costs.

Also, in response to the pandemic, many companies digitalized their internal processes and revisited their policies, procedures, and practices to determine which were truly beneficial and created added value for the company and which just led to more bureaucracy. The HR function gained more visibility and a stronger say in company life. In addition, the pandemic also required public authorities to finally embrace digitalization, encouraging more efficient communication with businesses.

While companies and public authorities are both still coping with the legislative and business changes that have come as a result of COVID-19 – sometimes at a discouraging pace – we trust that the valuable lessons learned since March 2020 will significantly improve employment relationships in the long run. ■

## ROMANIA'S REAL ESTATE – OLD AND NEW CHALLENGES IN TRANSACTIONS

By Oana Badarau, Partner, PeliPartners



A popular meme these days is “<<2020 is the year I am going to...>> 2020: <<Hababa. Na.>>”.

Over EUR 1 billion in ongoing office real estate-related deals was reported at the end of 2019 alone, yields were compressing, and everyone was busy solving traditional transactional issues, such as “will the project be delivered on time,” “how is it secured,” “how do we tackle residual title issues,” “urban planning lacks planning,” and so on. Predictions for the 2020 Romanian economy were optimistic, and in terms of the investment market, the heavy election calendar was expected to be more of a timing nuisance in fulfilling conditions precedent which required input from local authorities than a serious concern for acquisition intentions.

Then Brexit fever hit. The market was concerned less about a direct or significant impact (given how real estate investments are structured in Romania), than it was with “little things” such as title insurance policies that were governed by English law. Insurers seeking to ensure contract continuity were required to invest significant resources in reorganization, to ensure business processes were not disrupted, and to make policy beneficiaries comfortable with the new set up.

And then another kind of fever hit. Focuses shifted rapidly from looking for assets to buy to preserving value and liquidity, while activity in entire sectors stopped and everyone was concerned about personal safety.

For many weeks, real estate owners were in the middle – between tenants refusing to pay rent on one side (either on account of the total shutdown or mass remote working), and banks still demanding loan reimbursement on the other side.

This was more visible in retail, but no field escaped unharmed. Authorities attempted to help, but any overnight solution found (and often changed again overnight) while trying to keep many balls in the air is imperfect.

As always, parties sitting down at the same (virtual) table and negotiating the best compromise for their specific relationship helped more than any legally prescribed off-the-shelf solution.

Surprisingly, and despite certain issues along supply chains, activity on construction sites continued at a fairly good pace. Considering the 450,000 square meters of office under construction in April 2020 in Bucharest alone, this was one of the outcomes making the whole situation slightly more bearable. It seems that landlords will be able to meet delivery obligations to their new tenants ... but will the new tenants be able to keep their (minimum) 5-year deals?

Investment activity has obviously slowed, as uncertainty is a considerable disincentive. While the short-term impact of the crisis is still unraveling, everyone is trying to anticipate the long-term impact. Will recovery be fast (and full) or will we see major changes in paradigms affecting the transactional market on the long run?

The last three months showed us that work-from-home is bearable only in the short term, that online shopping is less satisfactory than strolling through malls, that logistics is a critical sector whether we admit it or not, and that everyone is eager to travel – so traditional office, retail, logistics, and hospitality industries are not going anywhere.

Recovery may not be fast, and we have probably not seen the end of the medical crisis, but with some adapting to a new normal, we will be back to discuss Brexit, fire permits, restitution claims, and urban planning in no time. ■

## WHEN THE WORLD STOPS...AND EVERYONE LOOKS FOR THE MIRACULOUS REBOOT KIT

By Ioan Chiper, Head of Finance, Projects and Restructuring, DLA Piper, Romania



The Spring of 2020 was about to blossom when the world got trapped in a global shutdown as a result of the COVID-19 pandemic. The private sector tried to adapt by activating continuity plans. Working from home and interacting online with colleagues and customers has become the new paradigm for service businesses. In addition to a wide

range of social distancing restrictions designed to contain the virus have spread (including closing down or significantly limiting public access to many commercial, government, and leisure facilities), Romanian authorities have instituted various specific temporary relief measures, such as unemployment benefits; moratoria on consumer and corporate debt, business rent, and utilities expenses; state aid schemes representing loan and guarantee facilities for small and medium-size enterprises (SMEs); guarantees for mortgage loans; filing deferral for tax returns and rescheduling of income and property tax; and waivers of mandatory insolvency filing and extension of certain stages in pending insolvency cases.

While a gradual return to the “normal” business routine is expected to bring about an increase in production, trade, travel, and consumption, the pandemic-generated disruption of the global supply chains could still significantly affect the operation and cash flow of many business players. Liquidity shortages may prompt foreclosures and insolvency cascades across various business sectors, with systemic insolvency risks starting to loom. Are private and institutional stakeholders prepared to brace for this scenario? What are their turnaround options? The court and enforcement systems are not designed to function under the pressure of hundreds and thousands of simultaneous foreclosures or corporate insolvency filings. Court dockets are already clogged with extremely complex insolvency cases featuring collective creditor participation and negotiations, intricate disclosure and reporting duties, court supervision, and many checking points. The legal process still demands physical attendance, and social distancing rules applicable in courts are already expected to generate extended case calendars. An avalanche of extra filings would increase the time span of insolvency cases even further. As preserving value as a going concern is essential, debtors entering insolvency

face rather gloomy prospects – particularly SMEs, for which insolvency financing is less available and considerably more expensive. Furthermore, even pre-insolvency alternatives require court supervision and approval under the current law.

Against this background, out-of-court restructurings seem a flexible and accessible tool for debt resolution and preserving going concerns. In the absence of a court-driven process, debtors and their major creditors (lenders, suppliers, and tax collection agencies) may work out restructuring arrangements based on their own timelines and under the protection of confidentiality. Although restructuring negotiations are case-specific, it is worth noting that in 2010 Romanian authorities endorsed two sets of non-binding principles and attendant guidelines for voluntary out-of-court restructurings regarding mortgage loans and corporate debt. Even so, their existence is hardly known in practice. They are currently available in Romanian on the National Bank of Romania’s webpage. Given the current context, Romanian authorities and lender associations may want to advertise the availability of such aiding tools more vigorously, with a view to creating a predictable, orderly, and reliable practice.

Successful out-of-court debt restructurings often require additional funding and other inducements, and special situation funds may be better placed for investing in distressed assets, including by divesting loan portfolios from banks. In this context, Romanian authorities may want to reconsider the limited tax deductibility of losses generated by debt trading that was instituted in early 2018, and also the current tax treatment of corporate debt forgiveness as taxable income, which are viewed as significant disincentives. As a mid- and long-term goal, viable court restructurings could be achieved by a structural reform of insolvency law, which should aim at creating specific, fast-track court reorganization proceedings for small and medium businesses. The World Bank and UNCITRAL’s Working Group V: Insolvency Law has already produced proposals and guidelines for implementing this objective.

In addition, Romanian authorities may want to consider a national modular business continuity plan for pandemics and other material disrupting contingencies. Lessons learnt from the COVID-19 experience could be put to good use in the prevention or limitation of future economic losses generated by similar events. ■

# INSIDE OUT: RCS & RCS / DIGI COMMUNICATIONS BOND ISSUANCES

By David Stuckey

On February 11, 2020, CEE Legal Matters reported that **Filip & Company**, working with **Freshfields Bruckhaus Deringer**, had advised **RCS & RDS / Digi Communications N.V.** on its issuance of two series of senior secured bonds with a total value of EUR 850 million. **Clifford Chance Badea** and **Cleary Gottlieb Steen & Hamilton** advised the lead arrangers, which included **Citibank**, **ING Bank N.V.**, and **UniCredit Bank S.A.**

## The Players:

- Counsel for RCS & RDS / Digi Communications N.V.:  
Alexandru Birsan, Partner, Filip & Co.
- Counsel for Citibank, ING Bank N.V., and UniCredit Bank S.A.:  
Radu Ropota, Counsel, Clifford Chance Badea





Alexandru Birsan

**CEELM:** Alexandru, how did you and Filip & Co. become involved in this matter?

**Alexandru:** RCS & RDS/Digi is a very old and important client of ours. We have worked for them on their IPO, several international bond issues, large financings, and large acquisitions, as well as major disputes. This mandate is a continuation of that relationship.

**CEELM:** What about you, Radu? How did you and Clifford Chance Badea become involved?

**Radu:** We acted in the past as Romanian legal counsel for the financial institutions in relation to other important and successful transactions of Digi Communications N.V., namely (i) the issuance of Digi Communications N.V. (at that time Cable Communications Systems N.V.) of EUR 350,000,000 5.0% Senior Secured Notes due 2023, guaranteed on a senior secured basis by RCS & RDS S.A. (in 2016); (ii) the subsequent tap issue of EUR 200,000,000 5.0% Senior Secured Notes due 2023 (in 2019), and the (iii) the initial public offering of shares of Digi Communications N.V. and the listing on the Bucharest Stock Exchange (in 2017). In all these transactions, we worked alongside Cleary Gottlieb Steen & Hamilton LLP, U.S. legal advisers.

Thus, I think our involvement in this matter was a natural continuation of our previous work and we were approached by the Cleary team to team up once more, which appear to have been favored by both Citigroup (as global coordinator) and RCS & RDS S.A.

**CEELM:** What, exactly, was the initial mandate when you were each first retained for this project?

**Alexandru:** Well, it was exactly the mandate that we executed – issuing a very large bond out of RCS & RDS rather than Digi Communications – refinancing and “onshoring” their HY debt.

**Radu:** The initial mandate was to advise Citigroup and the joint book-runners in relation to a new Rule 144A/Reg S bond to be issued by either Digi Communications or RCS & RDS S.A., intended to launch in January 2020, and mainly to conduct a due diligence review of the Romanian sections of the data room (virtual and physical), to review the offering memorandum, to review the transaction documentation (e.g., the indenture governing the notes, the Purchase Agreement, and the Intercreditor Agreement), and to review the security documents and corporate authorizations. As you will note, once the structuring discussions were settled and the decision for the Romanian company – RCS & RDS S.A. – to act as issuer was made, the initial mandate did not suffer any deviations.

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

**Alexandru:** We actually had two teams on this deal. One advising the issuer, in which Olga Nita and myself were the principal coordinating lawyers, and we had valuable contributions from Roxana Diaconu, Andreea Banica, Codrina Simi-



Radu Ropota

onescu, and Anca Badescu; the issuer team had to do everything from transaction structuring, prospectus drafting, contract drafting and negotiation, to listing and dealing with regulators. A second team, led by our colleagues Monica Statescu and Carmen Dutescu, advised the trustee and the agent on this deal.

**Radu:** In order to ensure the best and most efficient outcome, we tried to the maximum extent possible to involve the same people that took part in the previous transactions mentioned above. Thus, the core team was comprised of Associate Gabriela Muresan, Partner Madalina Rachieru (who is Head of the Capital Markets team in Bucharest), and myself. Gabriela was in charge of general disclosure in the offering memorandum, while Madalina and I were responsible for the structuring aspects of the transaction, the contractual documentation, and the overall coordination and supervision of the project. The due diligence team consisted mainly of Associate Mihnea Niculescu and Senior Associate Andrei Caloian, who were also responsible for the corresponding disclosure in the offering memorandum. When required, we involved other members from other departments as well – for example colleagues from our Litigation department such as Senior Associate Stefan Dinu –in relation to

various punctual legal analyses.

**CEELM:** Please describe the bond issuances in as much detail as possible, including your (and your firm's) role in helping make it happen.

**Alexandru:** This was one of the largest bond issuances ever by a Romanian issuer, and due to its size it certainly needed the liquidity provided by international markets. Ultimately this was structured in two series of senior secured bonds, totaling EUR 850 million. The first bond issue amounted to EUR 450 million with 2.5% interest per year, maturing in 2025, while the second bond issue amounted to EUR 400 million with 3.25% interest per year, maturing in 2028.

Due to certain quirks of Romanian law we needed to structure a number of things differently than on previous issues by the Digi Group, which were done from the Dutch entity. Also, as this was marketed to international high yield investors, we needed to do things differently than in previous issues by Romanian issuers, which were addressed to the Romanian market, where investors do not perceive the specificities of Romanian law as particularly cumbersome.

The transaction happened in an extremely alert timeline and took full advantage of the last market opening before the coronavirus crisis hit.

**Radu:** While the Group is no stranger to capital markets transactions in general, and to high yield bond transactions specifically, this is the first time the bonds have been issued by RCS & RDS S.A., the Romanian company. Two series of bonds were issued, *i.e.*, (i) EUR 450,000,000 2.50% Senior Secured Notes due 2025 and (ii) EUR 400,000,000 3.25% Senior Secured Notes due 2028.

The bonds benefit from the guarantee of the Dutch parent company – Digi Communications N.V. – and the guarantee of Digi Tavkozlesi es Szolgaltato Korlatolt Felelossegu Tarsasag and Invitel Tavkozlesi Zrt., both from Hungary, as well as Digi Spain Telecom, S.L.U., from Spain.

Thus, the transaction involved a Romanian issuer and certain Romanian law provisions governing noteholders' meetings, guarantors from three different jurisdictions, security agreements governed by the laws of four different jurisdictions – Romania, the Netherlands, Hungary, and Spain – an inter-creditor agreement under English law, and a purchase agreement and indenture agreement governed by New York law. This speaks to the complexity of the transaction, with legal counsels on both sides from five jurisdictions being involved.

Given that the issuer is a Romanian company and that Romania is the core market for the Group, the Romanian-law-related work-streams represented an important part of the transaction. In terms of the transaction structure, we needed to put in place a construct that could integrate English and New York law concepts with Romanian law concepts, with the final aim of making the transaction structure work. We successfully achieved that with the concentrated efforts of our team and the Filip & Co, Cleary, and Freshfields teams. Also, we were able to achieve that while also keeping up with the ambitious timing proposed at the beginning of the transaction.

**CEELM:** What is the current status of the issuances?

**Alexandru:** The issuance has successfully closed.

**Radu:** Currently, the bonds are admitted to trading on the Irish Stock Exchange (operating under the trading name Euronext Dublin).

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

**Alexandru:** This type of transaction is highly complex, and it had many moving parts, in six or seven countries. Managing it all on a very tight timetable is a fairly difficult exercise with no room for error, but I would not say it was frustrating. I would say that it is fun ... now that it is over.

**Radu:** When a project is successfully finalized it is hard to feel or say that something was frustrating. Challenging? Of course! This is always the case for multijurisdictional projects and this one was no exception. As mentioned above, the most challenging part from a legal perspective was to align Romanian law concepts (some of them regulated by obsolete rules, such as those related to the meetings of noteholders) to US law concepts and international practice in order to develop a construct that would work seamlessly from all perspectives. A significant part of the work was invested to achieve this sometimes in late night calls between the Cleary team, the Filip & Co team, and ourselves.

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

**Alexandru:** There were a number of key technical points that needed to be structured for the international market for the first time and this required all the main lawyer teams on the deal to agree on very fine points, which is never easy and is typically a bit of a nightmare. This time around, however, we were extremely lucky to have excellent col-

leagues on all sides of the deal, people who had enough intelligence, self-confidence, and commercial spirit to overcome tricky legal issues as a team. I have to say, that was quite a nice experience.

**Radu:** Yes, there were parts of the process that seemed smooth, however I would not say they were unexpected. Communications with the Cleary team on one side, and with Filip & Co on the other, were always easy. This is because of the familiarity with RCS & RDS / Digi (from previous transactions), and the familiarity and ease of adaptation to inherent issues of multijurisdictional transactions (as we all have experienced this in the past), as well as the familiarity between the various team members (again, from previous transactions). So it was easy for all us to get on the phone and brainstorm, negotiate, and agree to the most suitable terms in our respective clients' interests and in the interest of the transaction as a whole.

*"This type of transaction is highly complex, and it had many moving parts, in six or seven countries. Managing it all on a very tight timetable is a fairly difficult exercise with no room for error, but I would not say it was frustrating. I would say that it is fun ... now that it is over."*

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

**Alexandru:** No. The final result was substantially better than the initial mandate as we managed to raise more money, at

better prices, on better terms, and quicker than originally anticipated.

**Radu:** As mentioned above, our initial mandate did not suffer significant deviations. The timing of the transaction was slightly delayed, the approach to some of the work-streams needed to be adjusted from what we initially contemplated, and more resources needed to be allocated to address this and keep up with the timing, but all in all, the initial mandate was respected.

**CEELM:** Radu, what specific individuals at Cleary instructed you, and how did you interact with them?

Radu: Yes, the Cleary team had a coordination role in this project. Actually, it was pretty much the same team that we have worked with since the 2016 transaction and involved mainly Aseet Dalvi, Andrew Hurwitz, and James Healy. So the interactions via calls or e-mails were smooth and always constructive.

**CEELM:** You've each been complimentary to each other so far, but here's a formal opportunity to expand on that. How would you describe the working relationship with each other on the deal?

**Alexandru:** We had an excellent relationship with our colleagues at Clifford Chance Badea going into this transaction and this was one of the strong points of the deal – that we managed to resolve almost everything quickly and painlessly. Also, we worked extremely well with Freshfields (on our side) and Cleary Gottlieb on the banks' side, as the main international counsels on the transaction. The entire group really worked as one team (while protecting the interests of their respective clients, of course) which saved a lot of time, hassle, and, frankly, money for the clients.

**Radu:** Our working relationship with Filip & Co goes a long way back and I think I speak for them as well when I say that we have developed a very good working relationship over time and we are always happy to work across from them. Having a similar work ethic, a strong legal background, and a commercially-oriented approach for sure helps. Discussions and negotiations took place over the phone – we have each other's mobile phone numbers and it was very easy to track each other whenever there was the need to settle any points. We worked through the issues this way throughout the entire process and there was nothing major left to settle when the transaction was scheduled for launch.

**CEELM:** Finally, looking back, how would you each describe the significance of the issuances?

**Alexandru:** The deal was very important in creating a new reference transaction for Romanian issuers, in terms of size and commercial terms, but also in terms of legal structure. Once the waters clear a bit, I am quite certain others will use this transaction to do their own very successful deals.

**Radu:** I would say that the issuance of the two series of bonds was an important legal achievement in term of how the transaction was structured, but also a commercial achievement, as it allowed the company to take the benefit of the opportunity window not only to successfully close the transaction but also to borrow funds at a lower interest than previous issuances. Also, this was the first transaction of its kind – a 144A high yield bond – implemented by a Romanian company. ■

## EXPAT ON THE MARKET: INTERVIEW WITH SIMON DAYES OF DENTONS

By David Stuckey

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

**Simon:** I started in London in 1985 with the firm that is now called Taylor Wessing, and I specialized in transactional finance before CEE went through the changes in 1989. My career seemed to keep leading me into new environments, and I worked on a number of longer-term foreign transactions and had secondments with one US bank – Bank of America – and one European bank – Bank Austria (now part of UniCredit).

Taylor Wessing had a law office in Bucharest, and in 1997 I was asked to come out to see what finance opportunities there might be. To our surprise, we began to win some real work, and I was in and out of Romania for the next six or seven years, before moving to Bucharest for good in 2004. My wife Cornelia is Romanian and, after three years based in London, we were happy to come back here.

I joined CMS as an international finance partner after returning to Bucharest, and by January 2020, seven members of the former finance team at CMS found ourselves at Dentons, including Simona Marin who has been my transactional finance partner for more than five years. At Dentons, Simona and I continue to focus on cross-border financings into CEE – and beyond.

**CEELM:** Was it always your goal to work in Romania?

**Simon:** No, not originally. It took me a

while to realize that I loved the environment and the atmosphere of Romania. Until then, all I felt was how refreshing it was not being in the UK. But now I am sure I would never have settled in Central Europe if I had not first landed in Bucharest. There is something liberating and down-to-earth about Romania, and I love Bucharest's blowsy charms.

There are times when I am working on few or no Romania-based transactions. Our clients tend to have regional specialities (*e.g.*, renewable energy) that are not aimed at one particular country. But while I love working in the region, I would not want to live anywhere but Bucharest. It is wonderful to be sat centrally within CEE – it is just as easy to get to Athens as it is to get to Warsaw or Vienna or Kyiv or Belgrade, and having business interests in these (and other) cities is a pleasure too.

**CEELM:** Tell us briefly about your practice, and how you built it up over the years.

**Simon:** When I first started in Bucharest, we were delighted to win any finance law work in Romania, but we argued that we added the most value on cross-border transactions involving English law that required transaction management and project finance (which was my sector in London). In those days, our main clients were the banks in Bucharest.

As time went on, we began to advise the Romanian banks' parent banks (in Vienna, Athens, Paris, Amsterdam, *etc.*) and these banks then began to invite us



Simon Dayes

into transactions wider in CEE. Multi-lateral financial institutions also began to involve us in transactions as far afield as Central Asia and Africa. We gathered that our clients saw us as a credible alternative to the London law firms, who might not have as much knowledge as we did of the particular sector or market.

Now we focus on key clients who need advice on cross-border financings into Dentons jurisdictions, and we benefit from Dentons' global footprint. Our team provides the English law advice on the cross-border lending, and our Dentons colleagues in the country where the project is developed advise on the law there. In theory, the whole world is our playing field.

**CEELM:** How would clients describe your style?

**Simon:** All of us should keep remembering that we are in business for pleasure as well as for progress, and remind each other to share humor, even in the most critical negotiations. Most transactions have anomalies or take unexpected

directions, some have surreal or humorous personalities or events. I think that we build stronger bonds with clients not only by huddling to discuss strategy and tactics but also by sharing a good chuckle now and again.

**CEELM:** There are obviously many differences between the English and Romanian judicial systems and legal markets. What idiosyncrasies or differences stand out the most?

**Simon:** It has been a privilege in my career to have worked in different countries, across different business cultures, and with a range of people and priorities. *Vive la difference!*

As English lawyers, perhaps we flatter ourselves by saying that common law encourages flexibility and new transaction structures. This can be challenging in some civil law jurisdictions where

"Being an expatriate lawyer working across jurisdictions is helpful when clients are looking for reassurance that a new structure in one country is workable, or has parallels, in another. So we have the opportunity to gather up solutions from different situations and help apply them in different contexts."

any journey is more comfortable on a smooth, well-trodden road and untested methods or documents make people uncomfortable.

Another major difference is that transactions here are more dependent on trust among the parties than cold words on a page. That is meaningful not only

for the LOI and contracts but long into a business relationship.

**CEELM:** How about the cultures? What differences strike you as most resonant and significant?

**Simon:** Coming from an island, it is difficult to get our arms around just how many different languages and cultures are crammed onto one land mass, and how huge the changes can really be when you cross one of the many CEE borders.

**CEELM:** What particular value do you think a senior expatriate lawyer in your role adds – both to a firm and to its clients?

**Simon:** The topical subject now is how the business community can recover from the void left by the COVID-19 pandemic. Quite a few of us remember the 2008 credit crunch and how long it took to reclaim the lost ground. But the shock, particular to young lawyers, of the pandemic seems to many as unprecedented. To me, the situation has parallels with the UK real estate crash of 1990, and I identify with the younger lawyers. Back then, all transactions were stopped overnight, and the deal pipeline dropped to zero. After a while, finance lawyers realized that they had to re-invent themselves as restructuring specialists to survive, and we wondered whether the career trajectories that we had been nurturing were gone forever. Now, of course, older dogs like me can assure the younger generations that life and the law goes on, and that we are all likely to have to live through future periods of instability.

More generally, being an expatriate lawyer working across jurisdictions is helpful when clients are looking for reassurance that a new structure in one country is workable, or has parallels, in

another. So we have the opportunity to gather up solutions from different situations and help apply them in different contexts.

**CEELM:** Do you have any plans to move back to the UK?

**Simon:** None at all! I have never regretted emigrating to Romania and I suppose Brexit confirmed some of my fears of where the UK might be heading. One of England's great exports is its law and courts. I have been a lucky beneficiary of that, and thought it painful to watch some erosion of this position. I think that English law and courts will still be the preferred option in Europe, Africa, and Asia, much like New York law and courts are in the Western Hemisphere.

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

**Simon:** We are lucky enough to have regional clients in Athens, and this can sometimes give us welcome warmth, and seafood, when snow is on the ground in Bucharest. It is always good to find an excuse to give some training to clients in Athens in January or February.

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

**Simon:** Why not use its diverse architecture to get a feel for Bucharest and its rich history? I would suggest exploring various quarters and parks of Bucharest with visitors on foot. Include the old town and the "embassy district," take a promenade down Calea Victoriei, react to the astonishing "people's palace", without forgetting to enjoy fine restaurants and cafe terraces along the way. The wealth of (often overlooked) Art Deco, Modernist, and Brancovean architecture alone makes a visit to Bucharest worth it. ■

# MARKET SPOTLIGHT MOLDOVA



# GUEST EDITORIAL: A NOSTALGIC OUTLINE FROM A MOLDOVAN LAWYER IN MOLDOVA

By Igor Odobescu, Partner, ACI Partners



I was born in Moldova and obtained my first degree in law from a Moldovan university 20 years ago. Since its independence in 1991, Moldova – a small landlocked country located between Ukraine in the East and Romania in the West – has struggled to survive, being torn apart by various geopolitical interests, political havoc, corruption,

and economic fluidity. The legal industry has struggled as well. Although a lot has changed in my time as a lawyer, I cannot confidently say that the legal industry in Moldova has witnessed tremendous growth.

These days, the Moldovan legal market is still dominated by local law firms and individual practitioners. There is an exiguous number of lawyers with sufficient experience and knowledge to professionally address complex projects in line with the best industry standards.

Back when I began my career 20 years ago, lawyers were mainly associated with court representations. There was little-to-no demand for lawyers experienced in contract law (one-page contracts were the rule at the time), let alone other areas of expertise.

In time, however, and with the first wave of foreign investments, and even though the legal framework was not ready to accommodate the investment structures investors were accustomed to from more advanced settings, lawyers were required to display a different set of competences and skills. Investors needed lawyers fluent in English, experienced in due diligence, deal structuring, contracts, mergers and acquisitions, who could also address client goals and concerns.

And this kind of knowledge and competences could not be

acquired from local universities or from other local practitioners. Under such circumstances, when the Internet was just debuting, getting access to information was a challenge. A good speciality book was worth a few months' salary. I remember grasping the information and knowledge that I needed, piecemeal, to educate myself, to avoid becoming just another lawyer in Moldova.

A few years after my graduation I was very lucky to be admitted to a Master's degree program at one of the finest law universities in the Netherlands. That was a different world - students with access to good learning opportunities simply cannot imagine how lucky they are! I could only dream of that kind of opportunity when I started working in the legal profession.

Now, access and availability have become less of an issue. Although still limited in number, some good legal practices have been established, meeting the demands of the most exquisite clients. Our legal learning opportunities may have not improved much over the last 20 years, but foreign universities are closer and more accessible to my co-nationals than they were before. Also, with the advanced use of the Internet and other new technologies, self-education and distance learning have become very popular and efficient, especially when combined with existing jobs.

Some say that lawyers will soon be replaced by Artificial Intelligence, which may be true in a progressive world, where the legal system is perfected and adapted to the needs of people and businesses. But I would argue that a good lawyer is not one who knows and professionally operates with the law, but one who discerns creative and professional solutions to meet the demands and expectations of clients, considering the imperfections and peculiarities of the existing legal framework – which can prove to be a hard nut to crack in Moldova. ■

# THE FUNAMBULISTS

## MOLDOVA WALKS A TIGHTROPE BETWEEN THE EU AND RUSSIA

By Djordje Radosavljevic



### A Fortunate or Unfortunate Positioning

Central and Eastern Europe lies at the crossroads between East and West, with countries struggling to free themselves from the lingering shadow of their five-decade-long association with the Soviet Union while still, where possible, benefiting from their relative proximity to Russia's riches. This is true perhaps nowhere else as much as Moldova, a small, land-locked country trapped between Romania and Ukraine.

Indeed, Moldova – Europe's poorest country, with a nominal GDP per capita for 2019 of only 3,300 international dollars – often finds itself struggling to define its role independent of the economic, geo-political, and cultural pressures put on it by the Russia/CIS countries on one side and the European Union on the other. Its positioning is as much a strategic asset as a problem, though, and the country has free-trade agreements with the EU and the Commonwealth of Independent States, as well as with Turkey and the Balkan states.

In fact, Moldova has, in recovering from a 2014 banking crisis and the effects on its economy of Russia's financial downturn and the conflict in Ukraine that led to a recession in 2015, begun to stabilize, and the ties to the West that started to form in the years before that crisis hit have begun to grow stronger. Indeed, a majority of the country's population now identifies as pro-EU – especially in the country's cities – and the great majority of foreign direct investment into the country comes from EU member states.

The most significant factor in this turn to the West in recent years, according to most, was the 2014 Association Agreement entered into by Moldova and the European Union, which came into ef-

fect in 2016, in the process establishing a “Deep and Comprehensive Free Trade Area” between the EU and Moldova, removing import duties for most goods traded between the two, and asserting a commitment to “broad mutual access to trade in services for both partners.” In large part as a result of this agreement, FDI, which had dropped from USD 338 million in 2014 to only USD 91 million in 2016, began to recover, amounting a total of USD 228 million in 2018, and then a historic high of USD 593 million in 2019.

Still, and although Moldova's membership in the Soviet Union ended 29 years ago, the country's ties to Moscow remain strong as well. The country is currently governed by a Russian-friendly coalition, and Moldovan President Igor Dodon – the former chief of Moldova's Socialist party – has been identified as “pro-Russian.” In fact, in an attempt to support President Dodon, on April 17 of this year, Russia granted Moldova a loan of EUR 200 million (which the Moldovan parliament then ratified on April 23). Moldova also has observer status with the Russia-dominated Eurasian Economic Union.

Of course, nothing is black or white. Attracting FDI – from whatever source – is a common goal of all parties, and President Dodon has stated that, despite his personal friendship with Putin, “in Moldova it is almost impossible to be only pro-Russian or only pro-European.” According to Dodon, “the overwhelming majority of our citizens want to be friends both with the Russian Federation and the European Union.” Thus, he has insisted, “the foreign policy I have been promoting for the last years is a balanced one, meaning, on one hand, implementing the association agreement with the EU, and re-establishing the strategic relations with the Russian

Federation on the other.”

Given the importance of FDI coming from both the EU and Russia to Moldova's fragile economy, and the historic ties (and investors coming from both), we asked leading commercial lawyers in Moldova to share their thoughts on the twin sources of investment, and how the legal industry in Moldova has adapted to its unique circumstances.

### Russia's Waning Influence

Although Russian commercial influence on the Moldovan economy remained strong in the first years after the 1989 fall of the Berlin Wall and the country's 1991 declaration of independence from the Soviet Union, that influence is now much weaker. “The situation was different in the early 90's, when a lot of the investment came from the East,” says Roger Gladei, Managing Partner at Gladei & Partners. “However, the situation took a massive shift afterwards, and now most of it comes from the EU and the US.”

In fact, as late as 2015 Russia remained the largest source of FDI in Moldova, with 28% (although even then European countries contributed 61% of all FDI). Still, by 2019 Russia was only the seventh largest source of FDI (following Romania, the UK, the Netherlands, France, Estonia, and Italy, in that order).

As the moment, according to Igor Odobescu, Founding Partner of ACI Partners, “although Russian firms are generally present on the market, there isn't a single sector in which they are more popular than the EU.”

Ultimately, Moldova may simply be too small a market for Russian investors to bother with, suggests Alexandar Turcan, Managing Partner at Turcan Cazac. “If we look at the list of top 100



Roger Gladei



Igor Odobescu



Alexander Turcan



Oleg Efrim

Russian companies,” he says, “then we can recognize only a few names that have actually invested in Moldova (like Gazprom, Lukoil, and Yandex). Large Russian companies traditionally have showed little interest towards the Moldovan market due to its small size and lack of mineral resources.”

Oleg Efrim, Managing Partner at Efrim, Roca & Asociatii, says that “it’s interesting to note that Russian companies showed more presence last year than in the previous few years. Still, in sectors such as Banking or Energy, EU investments were decisive.”

Gladei confirms that there are almost no Russian banks in Moldova, and indeed, that “the Banking sector is where most of the strategic investment from the EU comes from.” Other strong sectors for the EU, he reports, “are ICT, Telecom, Manufacturing – particularly in the export-oriented free economic zones and industrial parks – and Energy, where also only a few minor Russian players are present.”

And it appears that even the few high-profile investments that *are* made by Russians are controversial. The 50-year concession to run Moldova’s only international airport – the Chisinau International Airport – is a particular source of scrutiny. Many Moldovan authorities and media watchdogs have challenged both the legality of the concession and the ultimate ownership of the company holding it, Avia Invest. Indeed, in February of this year, under pressure from Moldovan authorities, Russian billionaire Andrey Goncharenko said he had given up his shares in the company owning 95% of Avia Invest. Nonetheless, both President Dodon and Prime Minister Ion Chicu have cited the need to terminate the concession contract, and have accused Goncharenko of being a front for local business

tycoon Ilan Shor, who is now a fugitive in Israel. “There are no investors from Russia [in the airport] and never have been,” Dodon said in an interview on Radio Free Europe last December.

With Russia’s decline, the European Union has stepped up its investment in Moldova, and the 2014 Association Agreement is a frequently-cited factor in the country’s recent growth. “The deal signed with the EU in 2014 makes for a cooperation that has contributed to changing the Moldovan export and FDI landscape, and has the potential to continue to do so,” says Ludmila Ciubaciuc, Senior Legal Associate at PWC Legal in Chisinau. “The future of FDI coming into Moldova depends on the government’s commitment to the continued implementation of the Association Agreement, the country’s political climate, and the economic dynamic both in western and eastern neighbors.”

But not everyone is so enthusiastic about the Association Agreement. Daniel Cobzac, Managing Partner at Cobzac & Partners, describes it as “limiting our country’s Government when it comes to choosing partners,” and he reports that “the Agreement is not very welcomed by the ruling Socialist Party, since it’s viewed as a matter of political influence.” Ultimately, though, even he suggests Moldova’s future lies with the West. “Even though the pro-Russian Government is trying to prepare the grounds for more Russian investment, I see no way of this succeeding.”

Either way, according to Efrim, “even more investment is likely going to come from the EU than it has up to this point.”

### The Legal Industry Does Not Discriminate

The political and cultural ties between Moldova and the Soviet Union that



Ludmila Ciubaciuc



Daniel Cobzac

dominated the middle part of the 20th century meant that for many years Russian was a second language in Moldova (after Romanian), and laws were historically published in both languages. As a result, Efrim says, “the older generation of lawyers have no problems speaking Russian – that might only be an issue, sometimes, to the younger generations.”

In fact, Efrim reports that, even today, “we require new hires to know either of the two languages [English and Russian], given the fact that our clients will need assistance and answers in one of the two. Knowing both would be perfect. We tend to make BD trips to both markets, and our promotional products in Russian at this moment include offers for legal services if they are required by a specific client.”

“Our lawyers speak Romanian, English, and Russian languages, so lawyers on our team are assigned to work on pro-

jects from both [the EU and Russia],” reports Ludmila Ciubaciuc. “When looking for new hires, knowledge of both Russian and English is important to us,” she says.

Still, there’s little doubt which language is *most* important to the modern practice. “Each candidate has to take an English test,” Ciubaciuc says, “and only individuals who score high enough are then selected for additional interviews, [but] we don’t give tests on candidates’ Russian knowledge level.” In addition, she says, “most of our promotional material is made in English and Romanian,” though she emphasizes that “we sometimes contribute articles in the local newspaper or magazines dedicated to the business community in Russia as well.”

Beyond language, most believe the idea of significant cultural differences between East and West are overblown. “No particular differences stand out,” insists Alexander Turcan. “Good Eastern companies have adopted the Western corporate culture, so that language is often the main difference. The legal needs are generally the same, too.”

Roger Gladei agrees, noting that “legal-wise, both markets speak the same language, and the same approach to business and culture makes almost all differences disappear.”

Igor Odobescu stakes out a middle ground. “While maybe some cultural differences exist, at the end of the day big investors are quite professional and used to the current standards in the industry,” he says. “This might not be true for smaller ones, though.”

But not everybody is so sure. Oleg Efrim, for one, insists that “the culture of doing business is different – the classic Russian way of working is distinct from the European one in due diligence,

approach, mindset, and perspective.” Still, he is quick to note, “strategically, these differences are getting smaller.”

Daniel Cobzac believes some differences exist as well. “With Russian companies, things happen faster,” he says. “There is no central body that makes decisions, nor many people to consult with.” By contrast, he says, “with EU companies every decision requires that they obtain the approval of a supervisory body, hence things happen slower.” He reflects. “We recently advised a client who exported goods to the Netherlands. Because he was a bit late, the purchaser didn’t want to wait half an hour, which cost our client. This could never have possibly happened in Russia – they just don’t like to waste their money like that.”

In addition, Cobzac reports, the *kind* of legal services clients from Russia require is different than those from the West. “It’s common for Russian businesses to usually ask for legal services in connection with large-scale transactions (*i.e.*, business acquisitions), while European companies require a more diversified portfolio of legal services, like setting up a business, regulatory compliance, employment law matters, and real estate transactions.”

**Looking Forward**

“In the next 10 to 15 years we will not become members of the EU,” President Dodon has said. “Even if part of our population – meaning young people – want immediately to become members of the EU this will not happen. So we need to be pragmatic.”

Pragmatism. Balance. Focus. For leading Moldovan law firms, keeping their options open and making sure they are ready and able to serve clients from both the West and the East is a critical element of their success. ■

# MARKET SNAPSHOT: MOLDOVA

## M&A DEALS: TRENDS AND DEVELOPMENTS

By Roger Gladei, Managing Partner, and Dan Nicoara, Senior Associate, Gladei & Partners



The time is gone forever when our lawyers would sit down in a physical data room to dig through tons of documents provided by the target's head of legal or corporate secretary. We will miss the personal contact, but it's fair to say that the due diligence process has become more streamlined and efficient

in Moldova, making it possible to shrink the timing of M&As and close deals in weeks rather than months.

Having learned from the painful experience of legal negligence in the early days of Moldovan acquisitions (particularly at the privatization stage), which resulted in disputes and even property vindication, foreign investors have become more diligent and prudent, preferring to go for professional advice from day one (or even before) of an investment project in Moldova. In addition, a purely Moldovan element, the "billion theft" from the banking system, has caused investors to take pains to do their homework properly, instructing Moldovan counsel to look into all dark corners of potential target companies.

The large-scale acquisitions landscape has been dominated in recent years by banking deals. The state needed to clean the banking system from the non-compliant shareholders who had managed to populate the largest banks in early 2010s, posing systemic risks. So the remedy chosen was revolutionary: a special law passed in December 2017 that shielded the acquirers of systemic banks from legal attacks from former shareholders. In such 1-2-3 legal dribbling, shares of non-compliant shareholders were to be annulled, new shares issued, and the state was to purchase the new shares and sell them on to ultimate investors.

Reputable investors fell in love with the scheme and the two largest banks found new owners shortly thereafter: first in 2018, with the acquisition of a controlling stake in Moldova-Agroindbank (Moldova's largest bank) by an EBRD-led consortium (a transaction selected as the Deal of the Year for Moldova by CEE Legal Matters), then in 2019, with the

acquisition of a majority stake in the second largest bank, Moldindconbank, by Bulgaria's Doverie Obedinen Holding.

Although dealmakers predicted that in 2020, as the COVID-19 cloud loomed, Moldovan M&A would stall, in fact April 2020 saw the acquisition of the country's second largest ICT operator – Moldcell – by CG Cell (a member of CG Global), in a combination of equity and shareholder loan purchase deal.

As local law allows parties to shop both jurisdiction and forum, the overwhelming majority of Moldovan cross-border M&A transactions are English-law governed, with LCIA or other reliable arbitral tribunals set as dispute resolution fora.

Sale-purchase framework agreements (backed by local law transfer instruments) are quite often followed by shareholders, and less often, by share put and call agreements. Drag-along, tag-along, or first refusal right provisions are widespread but untested in Moldovan courts, which are left aside.

With 50 double taxation treaties in place, the Republic of Moldova has actually invited investors to shop the tax jurisdiction as well. No wonder investors, including reputable ones, have preferred structuring investments via tax-friendly jurisdictions like the Netherlands or Cyprus, and that banking regulations have been shaped to accept SPVs from transparent jurisdictions.

Looking ahead, 2020 foreshadows more challenging times for dealmakers. The year got off to a strong start, but many coped with increased volatility in equity markets, decreasing valuations, and local economic and political uncertainty.

We believe Moldovan authorities will be seeking strictly to enforce merger control regulations, given the record levels of fines of up to EUR 1 million imposed in the past. The competition council and other branch regulators will also seek to bolster their foreign investment regulations. Also, considering



the political discussions currently held on merger control for sectors deemed to be of national interest (such as airports and energy companies), future transactions may well be subjected to increased government scrutiny.

Businesses planning to expand or restructure through M&A in 2020 or beyond will do so against a background of changing

political, trading, and social conditions. Despite the challenges, however, since Moldova is also rich with companies in the SME sector, where there is rarely a natural succession plan, these companies will need either a trade exit or a management buy-out. The outlook for M&A in Moldova therefore remains promising. ■

## MOLDOVAN EMPLOYMENT LAW IN THE AGE OF THE PANDEMIC

By Diana Neagu, Partner, and Eduard Gurin, Associate, Vernon | David



The COVID-19 pandemic has revealed a certain degree of inflexibility and lack of vision with regard to employment regulations and rules, especially in Eastern Europe, where countries which were slower to adjust than their Western European counterparts.

Unfortunately, Moldova was no exception, and Moldovan businesses have frequently found themselves in positions where there were no obvious legal and commercial options available to their specific situation during this pandemic.

For example, Moldovan legislation provided no real and effective means of allowing employers to change an employee's work-place or to establish a remote working relationship with an employee without that employee's written consent. This forced employers to choose between pushing the boundaries of the law and send employees to work from home, even though no legal guidelines existed, or terminating/suspending their employment agreements and, consequently, in many cases, effectively suspending their businesses.

In May, we and other leading businesses participated in a series of discussions with the government to modify and adjust the Moldovan Labor Code to address these problems and to help businesses during this time of need. While not all of our recommendations were accepted by the government, we believe that the amendments that were accepted and implemented have been helpful to those businesses that were able to effectively "work from home" – an arrangement which could not be implemented before the necessary legal framework was added.



For example, a new type of individual labor agreement was introduced: telecommuting. This effectively allowed a working relationship between the employee and the employer in which the employee can perform his/her tasks from home or any other location he or she chooses. In addition, the government created a framework allowing employers, during states of emergency, to temporarily change employees' work places without amending the employment agreements (which would require the approval of the employee).

During our work advising the World Bank and the Moldovan State on updating the Labor Code, we gained valuable insight into the issues and problems with the current employment rules. With that in mind, we believe that several other amendments should be made to the Labor Code to help employment relationships during pandemics or economic crises. For instance:

Implementing the German "kurzarbeit" (adjusted to Moldovan realities). This would allow an employer to establish a reduced and flexible work schedule for all or some of its employees (without the specific consent of each employee) when the employer's activity does not have regularity or consistency. Obviously, the eligibility criteria and the effects for the employer would have to be adjusted to the financial abilities of the Moldovan government (for example, a reduction of the percentage of the salary subsidized by the government), while still providing effective help to local businesses and protection to their employees.

Increasing the duration of "technical" unemployment (*i.e.*, the

temporary suspension of the employee by the employer, due to economic reasons, where the employee is still paid a percentage of his/her salary, but may be recalled at short notice). Currently, the maximum duration for technical unemployment is four months in a year. However, since we are now beginning our fourth month of the pandemic, this period is clearly too short. Given economics forecast with respect to the prolonged effects of Covid-19 on the global economy, four months would appear to not even cover the actual pandemic period, let alone to allow any time to “recover” from the economic effects.

Transfer. Allowing employers to transfer employees to other divisions within the same town and in the same position, with-

out requiring the employees’ written consent.

Allow work at “0”. Offering employers the ability to pay only for the work actually performed for a maximum period of one month (but not less than the national minimum wage).

We are confident that, in the aftermath of the pandemic, the Moldovan government will be willing to take a more modern approach towards labor regulations as the challenges faced by employers proved detrimental not only to the business community, but to employees and governmental revenues as well. Allowing more flexibility for employers during times like these will help the business community to rebound quicker and, with a little luck, get us all back to normal. ■

## REAL ESTATE: NEW STANDARDS OF SUPERFICIES RIGHT

By Daniel Cobzac, Managing Partner, and Elena Vintea, Lawyer, Cobzac & Partners



The new version of the Moldovan Civil Code, which came into force pursuant to the Law to Modernize the Civil Code and to Amend Certain Legislative Acts 133/2018 (the “Law”), reformed several features of the private law and turned out to be a real challenge for all kind of individuals and organizations, from natural persons and entrepreneurs to public authorities.

The modernized Civil Code includes a significant innovation in the field of Real Rights. The starting point of the civil real estate relationship reform has been the return to the principle *superficies solo cedit*, meaning the immovable is deemed the plot registered in the Real Estate Register under a distinct cadastral number, upon which the things and any other objects firmly attached (the “Objects”) are a component part. Since March 1st 2019 the Law gives the Objects’ owners a superficies’ right over the plot, regardless whether they have a legal or contractual right of possession or use over the plot or not. Unless otherwise provided by law or contract, the owner’s right *in rem* covers only the use plot’s part necessary for exploiting the object registered separately in the Real Estate Register. The adjusted Law on the Implementation of the Civil Code compels

the parties to negotiate and set the term of the superficies right, or have it be fixed by the court.

Inevitably, the new regulations are likely to increase the number of real rights lawsuits and overburden the Real Estate Register keeper.



A different approach exists for plots owned by the state or administrative-territorial units. Apart from private-to-private relationships, the owner’s legal superficies right over a plot owned by the state is deemed established for a period of 99 years. Except as provided by law, regardless whether the owner has concluded a tenancy agreement with the local public authorities or not, he becomes *de iure* a superficies and is bound to pay state-regulated rent till the expiry of his ownership, unless its amount has not been set by contract.

By enhancing fluency in the relationship between Real Estate investors and public authorities, the reformed Civil Code facilitates the development of the Real Estate sector. Thus, investors have been exempted from the bureaucratically burdensome procedure of arranging legal relationships with the authority-landowners.

According to a Regulation-Project of the Chisinau Municipal Council that is about to be approved, local public authorities (LPAs) cannot urge owners to sign contracts granting a superficies right. For new contracts, LPAs have already conceived the main mandatory contract clauses in the new Regulation, such as: LPAs do not guarantee against eviction nor guarantee any characteristics of the plot; LPAs may require the demolition of any buildings or improvements made on the municipality plot at the termination of the contract, without paying any damages; the LPAs have the right to terminate the contract with three months' notice; the LPAs have the right to unilaterally increase the amount of rent if it is required by the law. In the absence of a contract, the amount of the superficies rent shall be set by the LPAs' decisions and charged to both the present owners and subsequent acquirers, unless the subsequent acquirers challenge the LPAs' decisions in court. Also, a specialized municipal subdivision is assigned to develop

and approve geometric plans for the plot's parts encumbered with the superficies right. Nevertheless, the LPAs have not even nearly exhausted the solutions for real-life cases.

However, a problem occurs when an enterprise intends to change the legal relationship arising from a pre-existing tenancy contract into a grant of superficies right. Though the enterprise has a legally arisen superficies right, the LPAs will continue to keep the tenancy agreement in force until its expiration. Obviously, the enterprise should not be deprived of the superfiary's legal privileges as long as the tenancy agreement remains effective. Amendments to the LPAs' Regulation are thus required, and we have submitted an argumentative brief in this regard.

Summing up, assuming the parties concerned will comply with the legislative framework, the new regulations aimed at streamlining the real rights relationships will achieve their goal. ■



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# EXPERTS REVIEW: ENERGY



The subject of Experts Review this time around is **Energy** – and, as the great majority of articles that follow focus specifically on the subject of Renewable Energy, they are ranked in order of the percentage of overall electricity production generated from renewable sources, by country, as of 2016.

Thus, as Albania generated a world-leading 100% of its electricity from renewable sources in 2016 – difficult to do better than that – the article from that country is first, and the article from Austria (which generated a still impressive 74.3% of its electricity from RES) is second. The article from Kosovo, which generated only 4.3% of its overall electricity from RES in 2016, is last.

For reference, the world generated 23.7% of its electricity from renewable sources that year.

(Data comes from the International Renewable Energy Agency, except for the Czech Republic, where it was gathered from Statista.com).

■ Albania (100%)	page 80
■ Austria (74.3)	page 81
■ Montenegro (58.8%)	page 82
■ Latvia (54.2%)	page 83
■ Lithuania (49.4%)	page 84
■ Romania (41.4%)	page 85
■ North Macedonia (36.7%)	page 86
■ Turkey (32.9%)	page 87
■ Bosnia & Herzegovina (31.55)	page 88
■ Slovenia (30.6%)	page 89
■ Serbia (27.6%)	page 90
■ Russia (16.9%)	page 91
■ Bulgaria (15.7%)	page 92
■ Czech Republic (13.6%)	page 93
■ Hungary (10.1%)	page 94
■ Ukraine (5.6%)	page 95
■ Kosovo (4.3%)	page 96

## ALBANIA: TOWARDS RENEWABLE ENERGY

By Genc Boga, Managing Partner, and Alketa Uruci, Partner, Boga & Associates



In 2015, Albania harmonized its legislation with EU Directive 2009/72/EC through law no. 43/2015 “On Electrical Energy Sector” (the “Energy Law”).

The Energy Law governs the generation, transmission, distribution, and supply of electricity, and regulates competitiveness in the electricity sector, open access to the market, and the criteria and procedures applicable to the granting of licenses, together with consumer protection provisions.

To stimulate renewable energy, Albania approved law no. 7/2017 “On Encouraging Utilization of Energy from Renewable Sources” (the “RES Law”) in compliance with the Energy Community Treaty and Directive 2009/28/EC “On Renewable Energy Sources.”

The RES Law provides various “Incentive Schemes” in order to reach targets related to the amount of electricity produced from renewable sources. These schemes achieve this goal by reducing the costs of such energy, raising the price at which it can be sold, and increasing the volume of purchased energy through obligations for the use of renewable energy, or other means.

Albania’s Renewable Energy policy is composed of two strategic documents – one document covering 2018-2030 and one covering 2018-2020. The country has set an objective to increase the production of renewable energy to 38% of gross final energy consumption for 2020, while for 2030 the renewable energy should account for 42%.

The main challenge producers of renewable energy face currently is the uncertainty of the price at which they will be able to sell the energy they produce.

### Feed-In Tariff for Small Solar and Wind Energy Producers

The mechanism used to promote the construction of photovoltaic plants (up to 2 MW) and wind energy plants (up to 3 MW) is the feed-in tariff. The tariff is set by the Albanian Energy Regulator Authority (ERE), through a methodology based on the cost of the project to ensure a reasonable investment rate of return.

ERE approved the tariff/price for energy produced from photovoltaic plants for 2017 and for 2018 in the amount of EUR 100/MWh and EUR 71.2/MWh, respectively. The feed-in tariff for projects authorized during 2018 was approved by ERE only in December 2019, creating uncertainties for investors. ERE explained that the delay was

caused by the fact that the price was decided only following a review of the application documents during the year on the expected investment cost. ERE did not approve a price for energy produced from wind energy plants for 2018 and 2019 due to a lack of applications.



A new method of solar power production being utilized in Albania is the floating PV plant. There are currently two projects that have already received preliminary authorization. For projects signed in 2019, ERE approved a price of EUR 100.025/MW, which represents a favorable tariff compared to the one for 2018 for land-based PV plants.

### Energy Price for HPPs

The methodology for the feed-in tariff for existing producers with priority (HPPs with installed capacity up to 15 MW) was approved through a Decision of the Council of Ministers of 2017, and the new tariff for each year is adopted annually through a decision of ERE.

The feed-in tariff is based on the price of energy in the Hungarian Power Exchange (HUPX). The formula for calculating the tariff (ALL/kWh) is: The average annual market price in advance (HUPX / DAM) of electricity in the band profile of the previous year of the HUPX of electricity in euro cents / kWh multiplied by the bonus for the promotion of renewable resources in the amount of X multiplied by the average EUR/ALL exchange rate for the previous year.

Through a recent amendment in May 2020, the Council of Ministers lowered the previous bonus coefficient in the methodology from 1.30 to 1.20 for the remaining part of 2020 and subsequent years. This decision led ERE to change the energy price purchased from priority HPPs, repealing its previous decision from January, thus lowering the price. The sudden change creates a liquidity risk for many producers, directly affecting their ability to repay the investment.

Thus, while PV plant producers have only an initial risk associated with the price, which, once approved, will remain unchanged for 15 years of production, priority HPPs already know the price when entering production, but are under constant threat that the government may change the methodology or potentially decrease the price of energy from HUPX.

The decision to lower the bonus was harshly criticized by producers. While it is uncertain if the methodology will change again in the future, it creates a negative precedent for investors concerning the security of their investment. ■

## AUSTRIA: EXPECTED CHANGES OF FOREIGN INVESTMENT CONTROL IN AUSTRIA

By Johannes Trenkwalder, Partner, and David Kohl and Marco Selenic, Associates, CMS Vienna



The COVID-19 pandemic has revealed the vulnerability of supply chains worldwide, creating an increased awareness of the need to protect critical domestic infrastructure. On April 3, 2020, the Austrian Parliament adopted a motion encouraging the Minister for Digital and Economic Affairs to put forward (“as soon as possible”) a government bill

designed to protect companies in key industries from takeovers by third country entities. Eight weeks later the resulting bill was presented to the public.

### Background

In Austria, control of foreign direct investments is regulated by Section 25a of the Foreign Trade Act – FTA (“*Außenwirtschaftsgesetz*”). The low numbers of applications under Section 25a FTA show that under the current regime only a few foreign investments satisfied the criteria necessitating formal approval: As of June 17, 2019, only eight applications under Section 25a FTA had been submitted. Significant transactions, such as the purchase of more than 25% of Telekom Austria Group by a Mexican ultimate beneficial owner, which acted through an SPV, were structured to avoid triggering the obligation to apply for approval under Section 25a FTA.

The former OVP-FPO government intended to introduce significant changes to the FTA in 2019 to reflect EU Regulation 2019/452, which established a framework for screening foreign direct investments. The “Ibiza-Scandal” and the subsequent early election of a new government, however, delayed these plans. The COVID 19 pandemic has caused the pressure for a swift revision of the foreign investment regime to rise again.

### The Current Foreign Investment Regime in Austria

Official approval is generally required under the FTA for investments with the following features: (i) The target company has its corporate seat in Austria; (ii) The target company is (simply put) a limited liability company, a stock corporation, a Societas Europaea (SE), or a partnership (note: asset deals also require official approval under the FTA); (iii) The investor is incorporated in or is a citizen of a non-EEA country (and Switzerland); (iv) The target company is active in a sector which concerns security and public order, including (but not limited to) defense goods, security services, energy supply, water supply, telecommunications, education, and healthcare; and (v) The acquisition involves more than 25% of shares/voting rights or a controlling influence of the target company.

The approval by the Minister for Digital and Economic Affairs is required for such investments before the transactions can be executed. If such approval is not obtained, the purchase agreement is deemed void and the transaction will be reversed.

### What Will the Future Hold?

The Austrian government has recently published a draft of a new Investment Control Act (ICA), to replace Section 25a of the FTA. The new draft, which is currently in the review phase, provides for (among other things) the following relevant changes: (i) *Thresholds*: The 25% threshold remains at this level for most sectors, but was lowered to 10% where critical energy infrastructure, water, critical information technology (5G), R&D in the pharmaceutical/medical devices sector, or certain defense-related sectors are involved. (ii) *Application obligation*: Although at the moment only the purchaser is required to file an application under 25a FTA, in the ICA draft the obligation to file an application applies to the purchasing entity as well as the target company; (iii) *Expansion of scope*: Although Section 25a FTA currently applies to entities operating within sectors relevant for security and public order, the draft stipulates that investments will be subject to the FTA if they are likely to affect security or public order, thus extending the scope of application significantly (in addition, the assessment of whether security or public order are affected requires the consideration of an extensive and non-exclusive list of relevant sectors); and (iv) *Committee*: Although the current approval process lies within the Federal Ministry for Digital and Economic Affairs, the ICA widens the decision-making process by involving a committee of representatives of several ministries, including Digital and Economic Affairs; Finance; Climate Protection, Environment, Energy, Mobility, Innovation and Technology; European and International Affairs and Social Affairs, Health, Care, and Consumer Protection. The committee can prescribe requirements that need to be fulfilled to receive approval.

Even though the details of the new ICA are not yet certain the following can be said: The formerly rarely applicable obligation to file for approval under Section 25a FTA will become a standard check box that needs to be ticked off in many transactions where non-EU/EEA purchasers are involved. ■



## MONTENEGRO: OVERVIEW OF MONTENEGRO'S ENERGY SECTOR

By Igor Zivkovski, Partner, Zivkovic Samardzic Law Office



Montenegro is continuing to develop its energy sector by creating appropriate legislative, regulatory, institutional, and financial frameworks to encourage greater investment from the private sector. As part of

this process, Montenegro is moving towards harmonizing its energy legislation with that of the European Union, the Energy Community, the World Energy Council, and the International Energy Agency, recognizing energy as a pillar of the country's overall, sustainable, and long-term stable development, with evident positive macro-economic effects.

Also, the Law on Amendments to the Law on Energy (the "Law") is expected to be adopted in 2020. The Law will simplify and shorten the procedure for connecting users' facilities to the electricity system, and to specify the legal framework for the stock-exchange-form of electricity trading. The Law will also clarify the provisions governing the pursuit of gas and thermal energy sources and set out more favorable conditions for the production of electricity from renewable sources.

To achieve the goal of developing the energy sector it is also necessary to maintain, rehabilitate, and moderate the existing infrastructure and create new infrastructure for the production, transmission, and distribution of energy, based on the principles of the fulfilling international technical standards, improving energy efficiency, reducing losses, making better use of renewable energy, and decreasing the negative impact on the environment.

According to official data, Montenegro has significant coal reserves and potential renewable energy sources including hydro-power, wind, biomass, thermal energy, and solar radiation, while possible oil and gas reserves are still in the exploration phase.

Montenegro produced more than 60% of its electricity from renewable energy sources in the last two years. The main sources of renewable power generation in recent years have been the Piva and Perucica hydropower plants.

The Electric Power Industry of Montenegro is planning to invest a total of EUR 700 million in the construction of new renewable energy capacities, as well as in the reconstruction of other power plants in accordance with environmental standards.

The plan for the period from 2020 to 2024 is divided into three development directions. The first refers to the diversification of existing electricity production, with a continuous increase in the share of renewable energy sources, through the construction of the Gvozd wind farm and Briska Gora solar power plant. The second consists of the construction of new hydroelectric power plants, which primarily refers to the Komarnica hydroelectric power plant and the reconstruction of five existing hydroelectric power plants owned by the EPCG. The third direction includes the improvement of the operation of the Pljevlja thermal power plant ("TPP Pljevlja") and the environmental standards in that city.

TPP Pljevlja is the first Montenegrin condensing thermal power plant designed with two units, although only one unit has been built. In September 2019, the Government of Montenegro halted the construction of the second unit of the TPP Pljevlja for environmental reasons, after which the EPCG decided to reconstruct the first unit of TPP Pljevlja, which should be completed by 2022. This improvement should ensure that all emissions and products of combustion of coal and chemical processes in the production of electricity will be below the permitted limits, in accordance with the regulations of Montenegro and strict EU directives.

It is also important to emphasize that new energy supply capacities have progressed with the launch of the 50 MW Mozura wind farm, Montenegro's second largest, and with the issuance of several licenses to build and operate solar power plants, including a large 250 MW solar plant at Briska Gora, which will be one of the largest in Europe. Also, closing the deal for the construction of a 100.8 MW commercial wind farm in Brajici is expected to occur soon.

In 2019, Montenegro managed to produce electricity for ten consecutive days exclusively from renewable energy sources, joining a small group of countries in the world to have done so.

Montenegro will be able to produce 100% of its electricity from renewable energy sources in the near future if it continues to develop in this manner, and this development of the energy sector will be a good influence on other countries in the region. ■

## LATVIA: LEGITIMATE EXPECTATIONS OF ENERGY PRODUCERS IN LATVIA DISREGARDED

By Sandis Bertaitis, Partner, and Arturs Caics, Senior Associate, Fort Legal



The mandatory procurement of electricity (a “feed-in tariff,” or FIT) is one of the main schemes implemented in Latvia to support the production of renewable energy. FIT is a guaranteed right to sell a certain annual amount of electricity to the public entity for a fixed period of time at a price that exceeds the market price. The advantageous system is made available to combined heat and power

(CHP) plants of high efficiency and producers using renewable energy. FIT is an important component of each renewable energy project, as renewable energy production without these rights is uncompetitive.

In 2017, a negative media publicity campaign was launched against several energy producers claiming that these producers did not fulfill their obligations to construct CHP units within the specified term. Consequently, Latvia’s Ministry of Economics started an investigation, ultimately concluding that these producers were not able to fulfill their obligations and withdrawing their FIT rights. The producers disputed the Ministry’s decisions by submitting claims to an administrative court. As a result, a number of court proceedings were initiated.

The main subject of the dispute was whether the producers were able to fulfill their obligations entitling them to maintain the FIT support; specifically, the requirement that producers must begin the production of electricity by a specified date.

Until 2017, in order to fulfil these obligations, producers had to submit permits to the Ministry that were issued by the electricity system operator entitling them to connect their CHP units to the system. These permits could be issued only following successful tests by the operator assessing the CHP unit’s performance and energy production. Thus, this permit was accepted as basic proof that the producer was able to ensure the production of electricity through the CHP process.

In addition, the Ministry acknowledged the ability to begin electricity production without installing full capacity of the CHP unit.

Many of the producers which were deprived of FIT support had received the necessary permits before the necessary date, but had not acquired the official acceptance certificate – the formal document issued by the building authority confirming that all construction has

been completed. However, they had received letters from the Ministry informing them about specific obligations as well as written confirmation from the Ministry that they had successfully fulfilled those obligations.

In December, 2017, the Ministry changed its interpretation of the applicable regulations, in the process adding several additional obligations, such as: (i) a requirement that producers acquire the acceptance certificate and other documents confirming that the CHP unit was put into service; and (ii) the production of useful heat, which was delivered to the user.

During the proceedings, the producers referred to the consistent practice and interpretation applied by the Ministry for almost ten years, and to the Ministry’s explanations and confirmations regarding the obligations, as supporting what they claimed were legitimate expectations. Additionally, the producers noted that deprivation of FIT rights was disproportionate considering that they were otherwise unable to recover their investments in the energy production projects and thus put at risk of insolvency.

However, the court not only accepted the position of the Ministry, but also expanded the producers’ obligations. In several cases the court concluded that the producers had an additional obligation to put into service a CHP unit with full capacity and ensure the uninterrupted production of the electricity as of the specified term.

The court applied the interpretation which had been established only in December, 2017. In doing so, the court concluded that producers acted contrary to the regulations and were not able to fulfill their obligations. The court also noted that even though some producers acted according to the Ministry’s instructions they still could not have legitimate expectations to actions which were not in compliance with the regulations.

The court’s ruling means that producers should be more careful and not rely only on the explanations provided by the responsible state institution, which alone are not enough to form the basis of legitimate expectations.

It should be added that a number of the aforesaid cases are now being adjudicated by the Supreme Court of Latvia. Therefore, there still is hope, although limited, that the court will recognize the legitimate expectations of the producers. ■



## LITHUANIA: GREEN ENERGY DEVELOPMENT IN LITHUANIA – CHALLENGES AND OPPORTUNITIES IN THE CONTEXT OF COVID-19

By Simona Oliskeviciute-Ciceniene, Partner, and Ignas Jurkynas, Associate, Cobalt Lithuania



The ongoing COVID-19 pandemic and various related restrictive measures have created an extraordinary human, business, and legal situation in Lithuania. The Energy sector (like all others) has become subject to various restrictions and challenges, including restrictions on the movement of workers, partner liquidity issues, reduced demand for energy resources, *etc.* As everywhere else in

Europe, Lithuanian electricity market participants have faced a significant decrease in wholesale electricity market prices. Moreover, it is already clear that COVID-19 has negatively affected the international supply chain, as the energy market participants experience disruptions and delays in the performance of contracts and project delivery. In these extraordinary circumstances, industry players (including operating power plant operators, project developers, and so on) have a reasonable expectation that the government will take the effect of the ongoing international crisis into account if developers do not bid in time in auctions or miss their project deployment deadlines.

However, despite the gloomy introduction, we are highly pleased and proud to report that even against the background of this unexpected crisis, Lithuania is maintaining its direction towards green energy. Our small and young country is among the five most ambitious countries in the European Union in terms of renewable energy targets for 2030, and it is projected that by that year, 45% of all the electricity consumed in Lithuania will be produced from renewable energy sources.

While it can be assumed that all of these are loud phrases and formal numbers in political strategies, the actual transformation of the energy sector – including the regulation and development of actual production capacity – in Lithuania is obvious. With the latest changes in regulations, Lithuania has followed the Danish, Dutch, and German examples of encouraging local electricity generation development. The Law on Electricity and the Law on Energy from Renewable Sources created the conditions for residents and local communities to manage and develop power plants using renewable resources for energy production – to produce, consume, and accumulate energy in their storage facilities and sell the energy produced. In order to encourage businesses and households to become prosumers and self-supply green electricity, procedures have been simplified and

streamlined. Prosumers can currently install power plants using renewable energy sources with a capacity of up to 500 kilowatts (kW). Building power plants with a capacity of less than 30 kW requires almost no permits and the process takes up to three weeks – whereas a year ago it took up to six months.

Thus, it is expected that these communities will be more and more involved in the development of small-scale renewable energy, and locals will have more opportunities to attract investments in renewable energy.



In addition, the government is also paying attention to large-scale energy generation. This Spring, the Ministry of Energy began to prepare a draft resolution for coordinating locations in the Baltic Sea where it is expedient to develop wind farms. Although legislation governing offshore power generation, permit procedures, auction rules, and many other important documents has not yet been adopted, it is expected that the first auctions for offshore wind power will be announced in 2023. The power plants should be built and start generating electricity by 2030.

Active changes are also taking place in the electricity trading market. The Parliament of Lithuania unanimously approved amendments to the Law on Electricity, meaning that the regulation of retail electricity prices for household consumers will be abandoned in stages by 2023. This means that there will be a transition from a regulated retail electricity market to one that is based on competition. Along with the abandonment of electricity price regulation for household customers, smart meters will also be introduced. Smart electricity metering systems, smart grids, and a common platform for data collection and exchange will, in the long run, make it much easier for residents to monitor and assess their electricity consumption needs and choose the most appropriate electricity supplier offer.

What does all this mean for business? In our view, these significant regulatory changes clearly indicate that local renewable energy production remains a state priority. This justifies the expectation that the transition to clean energy will accelerate over time and thus benefit all stakeholder groups – the state, consumers/communities, and business. We sincerely hope that the favorable investment conditions in the energy sector can restart and will serve to revive a stagnant economy in a sustainable way. ■

# ROMANIA: WHERE DOES THE ROMANIAN GAS MARKET STAND WITH RESPECT TO MARKET LIBERALIZATION?

By Oana-Alexandra Ijdelea, Partner, and Ana-Maria Albu, Associate, Ijdelea Mihailescu

## Overview



In the second part of 2018, significant provisions limiting the ability of Romania's domestic gas producers to freely sell their gas were put forward. While the industry immediately and adamantly demanded that these detrimental measures be canceled, the response of the state was slow and signs of willingness to correct the new laws came only after the

intervention of the European Commission.

In this light, the Government decided to adopt a gas release program, presented as a step in the transition towards re-liberalizing the market.

## History in Short

Looking back at how Romania got where it is now, we see that first came the obligation of domestic gas producers to conclude sales agreements on centralized markets for a given quota of their annual production (CMO). For onshore producers, the CMO, which was introduced via amendments to Law 123/2012 (the "Electricity and Gas Law"), is at least 50% of the gas contracted and delivered within the respective year and may be increased on a yearly basis by the National Energy Regulatory Authority (ANRE). For offshore producers, pursuant to the provisions of Law 256/2018 (the "Offshore Law"), the CMO is 50%.

Second, came the Emergency Government Ordinance 114/2018 (EGO 114) which introduced, for a period of three years, among other things, a price cap of RON 68/MWh and the obligation of delivery with priority to certain end users.

## What Mid-Year 2020 Looks Like

Certain corrective measures are included in the draft National Integrated Plan for Energy and Climate Change 2021-2030, which, even after it is approved, will still need to be made effective by law. Currently, all ongoing initiatives aimed at eliminating or tempering the provisions of EGO 114 are stuck in Parliament.

In early 2020, the Government attempted to push forward the liberalization of the gas market by eliminating the regulated price of RON 68/MWh for the sale of gas to end-clients and producers of heat. This effort however was partially hijacked by the passing by ANRE of Order 79/2020 ("Order 79"), which entered into force on June 1,

2020.

Order 79 introduces (even before the expiration of the price cap set by EGO 114) a gas release program valid until December 31, 2022, which in reality is another form of regulated price for the sale of gas by producers with a previous annual production in excess of 3,000,000MWh, as: (a) 30% of the 2019 production must be put for sale on centralized markets; (b) the gas is offered for sale as a standardized product in a transparent, public, and non-discriminatory manner on electronic platforms through a double competitive auction procedure; and (c) the maximum starting price to be offered by producers is: (i) from June 1 to December 31, 2020, the last settlement price published by the Central European Gas Hub AG and a percentage of the weighted average price of similar products registered on the centralized markets of Romania in the last working day of the previous month; and (ii) from January 1, 2021 to December 31 2022, a percentage of the weighted average price of similar products calculated on the Romanian centralized markets for the previous six months.



## Interplay of National Legislation and Breach of EU Law

Order 79 only complements existing secondary legislation and, without amending the CMO of the Electricity and Gas Law and the Offshore Law, sets additional overlapping and ambiguous obligations for domestic producers, reinforcing these laws as a genuine export ban.

On the other hand, as previously stated, the prices for end-clients are to be liberalized as of July 1, 2020. This means that suppliers will be free to negotiate gas prices with clients in a competitive environment.

From an EU Law perspective, Order 79 adds to the amount of Romanian legislation that is in breach of EU law, which prohibits any quantitative restrictions on exports and all other measures having similar effect.

## Looking Ahead

Recently, Government officials recognized the harmful and long-lasting effects of EGO 114 and the need to revisit all forms of the CMO in order to re-start the liberalization of the Romanian gas market. It is clear that the unique context generated by the COVID-19 pandemic and the state of commodity prices require firm and swift decisions in this respect, more than ever. ■

## NORTH MACEDONIA: STRATEGIC INVESTMENTS IN NORTH MACEDONIA – NEW OPPORTUNITIES FOR POTENTIAL INVESTORS IN RENEWABLES

By Marija Filipovska, Partner, and Dusan Bosiljanov, Attorney at Law, CMS Skopje



The adoption of the new Law on Energy of North Macedonia in 2018 established the foundations for stability, competitiveness, and economic functionality of the energy sector. In addition, the Energy Law declared the promotion of renewable energy sources and encouraging energy efficiency a priority. This, in a short time, has contributed to increased investment in the field of renewables.

In fact, since the adoption of the Energy Law, several procedures for construction of photovoltaic power plants have been realized, including: i) the construction of 35 MW photovoltaic power plants on state land; ii) the construction of a 10 MW photovoltaic plant in TPP Oslomej; and iii) the construction of a photovoltaic power plant of 100 MW in the former TEC Oslomej coal mine. With all these investments, as well as the planned 20 MW photovoltaic power plant in REK Bitola, installed capacity of 200 MW is expected, which is a strategic priority of North Macedonia. These investments confirm the country's commitment to invest in renewables and attract additional interested investors in this area.

To additionally improve the conditions for large investments in general, and to attract foreign and domestic capital, the Parliament of the North Macedonia in January this year adopted the Law on Strategic Investments of North Macedonia (SIL). The SIL is designed to encourage, attract, and create conditions for conducting strategic investments, and to offer new opportunities for potential investors.

Pursuant to the SIL, on May 2, 2020 the Government of N. Macedonia announced a public call for submission of requests to determine the status of a strategic investment project (the "Public Call"). As part of the call, the Government stipulated the criteria and areas for obtaining the status of a strategic project in N. Macedonia.

Namely, SIL defines a strategic investment project as an investment of: (i) at least EUR 100 million on the territory of at least two or more municipalities; (ii) at least EUR 50 million in municipalities with a seat in a city, municipalities in the City of Skopje, and the City of Skopje; and (iii) at least EUR 30 million in municipalities with a seat in a village.

As an exception, strategic investment projects (SIP) can also be those that are implemented under inter-state agreements; those implemented and funded in co-operation with the European Union or the Ministerial Council of the Energy Community, or those funded by international financial institutions where the investor is a state administration body.



According to the SIL and the Public Call, execution of a SIP is a matter of public interest. Hence, the SIP: (i) must comply with the environmental standards; (ii) must not be contrary to the Constitution of North Macedonia and ratified international treaties; (iii) must fall within the strategic priorities of the Government of North Macedonia.

Projects in the field of energy with infrastructure are among the priority areas covered by this Public Call. As a result, potential investors in the field of energy get an additional opportunity for investment that would be set as a SIP by the Government of N. Macedonia.

The final deadline for submission of the application for SIP is January 31, 2021, and the Public Call stipulates the documentation and approvals which must accompany it. The Commission for SIP founded by the Government is authorized by law to evaluate and make final decisions on applications. Briefly, once the Government grants a project this status, it must propose a draft law for the implementation of the SIP to the Parliament of North Macedonia. After the Parliament adopts the law, the Government will conclude an agreement with the strategic investor.

The main purpose of the SIL and the Public Call is to encourage, attract, and create conditions for the implementation of strategic investments in North Macedonia, which in general is expected to result in economic growth, employment, and application of new technologies and innovations.

With this opportunity, potential investors in renewables could initiate a large investment cycle in the country. This could have a positive impact not just on the energy sector, but on the country's competitive advantages, economic growth, and on the living conditions of citizens of N. Macedonia in general. ■

# TURKEY: “FORCE MAJEURE” DECISION FROM TURKISH ENERGY MARKET REGULATORY AUTHORITY FOR UNLICENSED ELECTRICITY GENERATION – PROLONGATION OF DURATIONS

By Done Yalcin, Partner, CMS Istanbul



Government institutions in Turkey are continuing to take various measures to mitigate the economic impact of the ongoing COVID-19 pandemic. At its meeting on April 2, 2020, the Energy Market Regulatory Authority (EMRA) adopted a new decision (the “Decision”) accepting the COVID-19 pandemic as a “*force majeure*” event under

Article 35 of the Electricity Market Licensing Regulation (the “Licensing Regulation”) and Article 19 of the Regulation on Unlicensed Electricity Production in the Electricity Market (the “Unlicensed Regulation”). The decision was published in the Official Gazette on April 4, 2020.

EMRA granted a one-off, three-month extension of the deadlines for the fulfilment of the following obligations for legal entities holding pre-license and production licenses (where the relevant deadline in question was on or after March 10, 2020): (1) Pre-licensing and pre-construction periods under production licenses and construction periods or the postponement periods for commitments set out in

the provisional Article 15 of the Licensing Regulation; (2) Periods for the fulfilment of obligations during the pre-licensing period or due to production license amendments; (3) Periods for the fulfilment of obligations due to merger or division procedures; (4) Periods for the fulfilment of obligations for issuing a production license as a continuation of a previous license; (5) Periods for the submission of necessary information and documents for the pre-licensing or licensing applications; and (6) Periods regarding applications determined in article 18.2 of the License Regulation.

In addition, the EMRA also granted a one-time three-month extension for connection agreements pertaining to planned electricity generation facilities within the scope of the Unlicensed Regulation for connection agreements scheduled to expire on or after March 10, 2020. These new measures should have a positive impact on the energy industry and will ease the obligations of license holders, which should help business continuity.

*For more information on how these new rules can apply to your business or extension application proceedings, contact your regular CMS advisor or Turkey CMS expert Dr. Done Yalcin. ■*

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## BOSNIA AND HERZEGOVINA: THE GAS SECTOR IN BOSNIA AND HERZEGOVINA – REGULATORY FRAMEWORK AND OBSTACLES FOR MARKET DEVELOPMENT

By Petar Mitrovic, Partner, and Amina Dugum, Senior Associate, independent Attorneys at Law in cooperation with Karanovic & Partners



Bosnia and Herzegovina (BH) is a contracting party to the Energy Community. As such, it has undertaken the obligation to align its energy sector legislation and transpose the Third Energy Package

in the gas sector, among others. Such alignment in the gas sector requires the adoption of state and entity-level legislation to ensure unbundling, third party access, the liberalization of the wholesale market, end-consumer protection, and adequate interconnectivity.

However, almost 15 years after the Energy Community Treaty, BH still remains far away from complying with its requirements in the gas sector. One of the structural problems is the lack of state-level legislation. To date, the legislation regulating the gas sector exists only at the level of the entities (Federation Bosnia and Herzegovina (FBH) and Republic of Srpska (RS)) but not at the level of BH, although the deadline for adopting a state-level Law on Gas expired in 2017.

Currently, the FBH continues to apply the 2007 Regulation on the Organization and Regulation of the Gas Sector in Federation of Bosnia and Herzegovina which regulates the organization, rules, and conditions for carrying out energy activities in the natural gas sector, the rights and duties of natural gas sector participants, the separation of the system operator's activities, third party access to the natural gas system, and the opening of the natural gas market. The Regulation is outdated and fails to transpose any key principles of the gas *acquis*. Additionally, there is no gas regulator in the FBH.

As opposed to the FBH, RS enacted its entity-level Law on Gas in 2018, transposing the unbundling and certification requirements and relevant provisions on capacity allocation, transparency, and congestion management from the Third Package.

In order to meet the requirements of the Third Energy Package, it is necessary to regulate gas sector topics at the level of BH. Due to the ongoing lack of alignment with the *acquis* in the gas sector, BH is in a serious and constant breach of its commitments as a contracting par-

ty to the Energy Community Treaty. The lack of state-level legislation, which has long been an issue of concern to the Energy Community Secretariat, has resulted in the initiation of several infringement cases against BH and poses a significant obstacle to the development of the gas sector at a national and regional level, thus jeopardizing the achievement of the key objectives of the Energy Community Treaty.



Why is BH still missing state-level legislation in the gas sector? Formally, because the FBH and the RS cannot reach the consensus necessary to adopt a state-level Law on Gas. The reasons for this, as in many similar cases in the past, lead us to chicken and egg dilemma. The roadmap set by the Secretariat and the relevant BH and entity-level authorities outlines the need to adopt a state-level Law on Regulator of Electricity and Natural Gas, Transmission, and Electricity Market (the "Law on Regulator") and a state-level Law on Gas. The RS has withheld its approval for the adoption of a state-level Law on Regulator and has instead adopted an entity-level Law on Gas, giving its entity level authorities the competences which should properly be delegated to the state-level authorities. On the other hand, the FBH does not provide the consensus necessary for the adoption of a state-level Law on Gas.

The development of the gas sector and much-needed construction of new gas infrastructure in order to ensure the security of supply and diversification of gas routes and sources, the modernization and adequate maintenance of existing gas infrastructure, the management of gas price competitiveness, and the standardization of key gas topics, remain hostage to the political relations between the two entities.

Hopefully, this crisis will not last much longer and entities will find a way to overcome the disputes and enable further development of the gas sector.

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

# SLOVENIA: A PATH TOWARDS EFFICIENT ENERGY CONSUMPTION

By Tine Misić, Partner, and Hrvoje Smicibrada, Senior Associate, ODI Law

## Overview



Efficient energy consumption, reducing CO<sub>2</sub> emissions, and energy from renewable sources have been in the spotlight of the European Union for a while now. Although the Republic of Slovenia has not attained the goals envisaged by the EU by 2020 – *i.e.*, a 20% share of energy produced from renewable sources (*i.e.*, 20% increase in energy efficiency

and 20% reduction in CO<sub>2</sub> emissions) – it remains above the EU average in that regard. Renewable energy sources amount to less than 3% of the overall energy produced in Slovenia, with the rest acquired through nuclear power (40%), fossil fuels (33%), and hydro energy (25%), allowing for substantial growth of the former in the future.

Still, without significant investments into renewable energy sources, Slovenia will not be able to attain the EU-envisaged results of 32% energy produced from renewable sources by year 2030 either. In February 2020, Slovenia adopted a new strategic plan, setting forth national development and energy efficiency plans (NEPN), until the year 2030. According to the NEPN, the pertaining goals predominantly emphasize lowering CO<sub>2</sub> emissions. As per NEPN, the production of energy from nuclear sources is to remain unchanged until 2030, and the plans to construct a new nuclear power plant will only be addressed in 2027. After the (impending) completion of an ambitious decade-long project to construct five hydro power plants on the lower Sava river, NEPN does not envisage the imminent construction of new hydroelectric power plants either.

To achieve the envisaged efficiency, NEPN therefore relies on reducing fossil fuels usage by up to 36% by 2030 (compared to 2005), to be achieved by increasing investments into those renewable energy sources which are currently sparsely used, such as solar, windmill, and waste co-incineration plants, resulting in renewable energy sources amounting to 27% of final electricity consumption by the year 2030, thereby almost achieving the pertaining EU goals.

## Trends and Investment Plans

The NEPN-set goals, substantiated through the local Energy Act, are thus to be achieved through a two-fold process, namely (i) increasing investments into renewable energy sources; and (ii) reducing CO<sub>2</sub> emissions, as briefly outlined below.

First, investments into renewable energy sources such as windmill plants and solar plants are to be expected in the next decade, in spite of some past environmental issues related to the former, and economic issues related to the latter in light of subsidies being cut-down.

It is also worth noting that construction of all objects connected to the public energy grid that exceed 1MW power output are subject to an Energy Permit evidencing that strict safety, regulatory, and compliance standards set forth by the EU and Slovenia are met, which has often proved to be a stumbling block for investors, with certain legislative amendments expected to mitigate such issues. Subject to positive public feedback, investment into a new nuclear power plant can also be expected in the next decade.



## Reduction of Emissions

Goals concerning energy efficiency cannot be attained without simultaneous emission reductions. In order to achieve the reductions envisaged by NEPN, the Slovenian Eco Fund was established. The Eco Fund promotes the reduction of emissions by drafting and implementing the programs for improving energy efficiency, such as: (i) energy consumption efficiency; and (ii) transition from fossil energy sources to electricity.

As an EU Member State, Slovenia is obliged to reduce energy consumption by 1% each year. In order to ensure this increase in energy efficiency, the Energy Act prescribes, among other things, that suppliers of electric and heat energy are obliged to ensure that the final customers save energy. In order for suppliers to attain such savings, investment in energy-efficient projects is required, or monetary contributions made to the Eco Fund.

In order to promote the transition from fossil fuels and further increase energy efficiency, the Eco Fund provides various financial incentives, such as loans and grants for households, private undertakings, and the public sector. The most popular incentives among households include subsidies for the purchase of electric/hybrid vehicles and subsidies for efficient home heating (*e.g.*, insulation, heat pumps, *etc.*). Private undertakings can apply for competitive financing (loans), while the public sector can benefit from grants.

## Conclusion

Slovenia has set forth challenging goals for energy efficiency in the upcoming decade, which can only be attained by simultaneous investments into renewable energy sources and further emissions reductions. Consequently, suppliers are obliged to ensure savings for consumers or invest into energy efficient projects, and/or provide monetary contributions to the Eco Fund, with the latter distributing financial incentives accordingly. ■

## SERBIA: HOPING FOR GREENER DAYS

By Petar Mitrovic, Partner and independent Attorney at Law in cooperation with Karanovic & Partners



Reducing greenhouse gas emissions (GHG) from the energy sector is critical to mitigating climate change. Studies have shown that the electricity sector will play a key role in this mission, primarily through decarbonizing electricity production, which is heavily dependent on the massive deployment of renewable energy.

Serbia has pledged to decrease GHG by 9.8% by 2030 compared to 1990 levels.

Although deficiencies in data quality and data availability for the GHG inventory (as published by the Energy Community Secretariat) make that data difficult to properly verify and assess, it is clear that the heavy dependency on coal in electricity generation represents one of the main obstacles for Serbia to reach its targets.

Up to 60% of all electricity generation capacities are large-scale thermal power plants. The share of electricity originating from coal in the total mix is even higher – in the last couple of years usually amounting to between 70% and 75%, depending on hydrology.

The historical reliance on coal and deeply rooted (and at the same time deeply wrong) perception that electricity produced from coal is much cheaper than electricity produced from renewable energy sources encourages opposition to closing even the dirtiest plants in the country.

It is clear that this situation cannot last forever. Serbia recognizes the need to make a transition to a more sustainable energy sector and plans to completely phase out the seven oldest and least efficient thermal power blocks by 2024. These blocks annually generate in average 6,000 GWh. This shortfall will need to be covered, ideally from new installed capacities in Serbia rather than from import.

Although Serbia is not yet ready to completely part ways with coal, it has set the deployment of renewables as one of its top priorities.

The previous period was pretty successful for renewables. The incentives package (based on the feed-in tariff) that was finalized in 2016 and improved in 2017 came as the result of strong efforts to create a consistent, comprehensive, and bankable framework for supporting renewable energy. The package managed to achieve the joint goal of investors, lenders, and the Government – a comfortable environment

for the growth of renewables projects in Serbia.

The feed-in tariff incentives package expired at the end of 2019. As a result, new projects cannot count on incentives at the moment.

Although Serbia should continue its efforts to reform the sector and make renewables projects sustainable on market terms, at the moment it remains necessary for the Government to make a new incentives package for support to renewables available. Serbia has requested the assistance of the EBRD with the preparation and implementation of a new incentives package based on competitive renewables auctions.

Previous endeavors have shown that the critical factor for the realization of (large-scale) projects is an incentives package that meets bankability criteria. Thus, the new package would need to provide for an adequate allocation of risks among the parties to ensure that the party most able to bear the risk actually does so. Ensuring that the support entity is of adequate creditworthiness, that reasonable deadlines are in place for the finalization of projects, that protection exists in the case of *force majeure*, and that reliable dispute resolution mechanisms are put in place are critical if we want to see new blades spinning. The creditworthiness of the support entity will draw even more attention than before, considering that the recent experience with (arguably ungrounded) invocations of *force majeure* provisions under feed-tariff PPAs sent a strong signal that Elektroprivreda Srbije (the current off-taker of green electricity) has serious liquidity issues.

One thing is certain – the new package will envisage a competitive process for awarding incentives, rather than the first-come-first-serve system that Serbia has historically employed. A competitive process would promote cost-efficient development of wind projects by achieving competition among reputable developers, resulting in lower financial burdens for consumers. A competitive process would also provide greater transparency and equal chances for projects.

By the time this article is published, work on the preparation of the new package should have already begun. Despite the general elections scheduled for June, it will be important to maintain the momentum and intensify efforts to have the new package ready by the end of 2020, so that Serbia can organize the first auctions as early as mid-2021. And, in doing so, make a bold step towards transitioning to sustainable energy.

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

## RUSSIA: GREEN ENERGY UPDATE FROM RUSSIA

By Evgeny Yuriev, Partner, and Elvira Vanieva, Associate, Herbert Smith Freehills, Moscow



Climate change and sustainability have become trending issues in Russia with the government encouraging “green” projects. The Russian authorities have been steadily implementing legal acts confirming Russia’s commitment to high standards of energy efficiency and setting out practical steps to be undertaken to achieve these. In this article we summarize the most notable developments and most anticipated legal acts in the sphere.

### GHG Regulation

Unlike the EU, Russia does not have a carbon credit trading system. Given that emissions peaked in 1990, before the Soviet Union’s collapse, and 1990 levels are set as a benchmark, Russia has not been forced to cut its emissions by the international community. However, emission levels are going to grow along with Russian industry, and therefore the issue is becoming more relevant and pertinent and carbon trading will have to be implemented.

Russia formally joined the Paris Agreement in 2019. As part of the measures implementing the Paris Agreement, a draft federal law seeking to establish a regulatory framework for greenhouse gas (GHG) emissions was introduced that same year by the Ministry of Economic Development. Under the draft law the state is responsible for regulating GHG emissions by establishing targets for reduced direct emissions and/or increased absorption of GHG across the Russian Federation generally and, in particular, across various sectors of the economy. Under the draft law, the government is proposing a permit system for direct emissions of GHGs and economic mechanisms to regulate GHG emissions and their absorption, including mechanisms of transfer and the trading of units of emissions and absorption.

However, the draft law was not supported by key industry players. In particular, the carbon credit trading system has been criticized. The Ministry of Energy commented that the draft law needs refinement, and that – in particular – targets for reduced direct emissions may be introduced only after careful analysis of statistics of GHG emissions within at least three years after implementation of the relevant law.

In September 2019, Russia’s Vice Prime Minister stated that the relevant law is expected to be adopted within a year.

The Ministry of Economic Development has prepared a draft long-term development strategy for Russia which will cover the period until 2050, with the aim of lowering the levels of GHG emissions. An “intense” scenario provides for economic measures for GHG emissions control.

### Support of RES

In 2013 a long-awaited mechanism incentivising the use of RES, similar to one of the mechanisms used for traditional energy generation, was introduced. This mechanism aims to ensure the financial viability of the RES investments through the conclusion of Capacity Supply Contracts (DPMs) by renewable energy project developers with wholesale purchasers.



Under the capacity trading mechanism, RES generators are entitled to participate in annual tenders for the sale of capacity and, if the bid is successful, they will be able to receive capacity payments guaranteeing return on their investments within a period of 15 years.

The current DPM program was initially designed for a period until 2024. According to the Ministry of Energy, the positive results of the implementation of the first stage has led it to extend the program until 2035. Certain amendments to the existing model were announced, including making full payment for the power delivered to the wholesale electricity market subject to the target indicators of the level of export of basic and auxiliary equipment.

### Green Bonds

The Russian market for sustainable debt financing has been growing rapidly in the recent years.

In August 2019 the Moscow Exchange established a Sustainability Sector for the financing of projects in the sphere of environmental and social sustainability. To be admitted, an issuer must establish the specific purpose of their offering in the prospectus, report bona fide use of the funds on an annual basis, and submit an external review confirming that the bond complies with standards for green or social issuance.

The sustainability sector of Moscow Exchange went live in November 2019 with the first green bond issued by Center-Invest Bank. In addition, that year Russian Railways issued the company’s first green bond and the first international green bond issued by a Russian company.

Green energy and sustainable development will inevitably develop significantly in Russia given the increasing role of climate issues in the global agenda. It is yet to be seen how Russia, with its traditional focus on conventional energy sources, is going to adapt to transition to the new era. ■

## BULGARIA: ELECTRICITY PRODUCTION IN BULGARIA AFFECTED BY THE PANDEMIC

By Radoslav Chemshirov, Co-Head of Energy, Schoenherr Sofia



The main concern in the energy sector in Bulgaria, as in the rest of the EU, has shifted from constantly-increasing electricity prices to a significant drop in those prices during the pandemic. The Independent Bulgarian Energy Exchange (IBEX) reported the lowest prices in Europe – from below EUR 4/MWh to approximately EUR 12/MWh – for the day ahead market during the first weekend of April. Although these record-breaking figures have not stayed constant, the reduction of electricity consumption in the industry sector is still prolonging the trend, which is obviously here to stay. Electricity prices from approximately EUR 14 to EUR 35 for the first week of May are still way below the weighted average price of EUR 48.64/MWh for the day ahead market for 2019.

Such low prices are negatively affecting all market participants, especially electricity producers. It could be disastrous for one of the biggest generators, the state-owned Maritza East II – a 1,620 MW thermal power plant which has been suffering financial losses anyway for the past seven years, and which can hardly sell any electricity under current market conditions. Even the biggest producer, the state-owned 2,000 MW Kozloduy nuclear power plant, the profit of which has always been used to cover losses in the sector, is being forced to sell electricity below cost.

Renewable energy producers are also starting to feel the impact of the low electricity prices that have been introduced to the free market in the last two years. The main incentives for investment in renewable energy projects in Bulgaria – the feed-in tariff (*i.e.*, a guaranteed preferential price) and long-term power purchase agreements – were cancelled in 2018 for power plants with installed capacity of 4 MW or more and in 2019 for smaller plants. Those producers were obliged to sell their electricity on the IBEX either directly or through the coordinator of the respective balancing group. In addition, they receive a feed-in compensation premium set by the Bulgarian Energy Regulator as the difference between the cancelled feed-in tariff for the power plant and the electricity market forecast price (the price the producers should be able to receive on the IBEX according to a

forecast made by the Regulator). The electricity market forecast price for the regulatory period from July 1, 2019 to June 30, 2020 is set from EUR 42.62 to EUR 49.26 (depending on the energy source, *i.e.*, wind, solar, *etc.*), which has significantly exceeded the actual market price during the coronavirus pandemic.

If a renewable energy producer is selling its produced electricity directly on the IBEX on the day ahead market platform, it is currently dealing with a significant reduction in income.

Most renewable energy producers have opted for the legal exception and are selling electricity not directly on the IBEX but through their balancing group coordinator. But they have problems too. The market practice is to conclude power purchase agreements for a fixed price for the entire regulatory period (from July 1, 2019 to June 30, 2020). As these power purchase agreements were concluded during better times, the fixed prices significantly exceed the current market price, but the legal requirement is that the balancing group coordinator must sell the electricity on the IBEX. Due to this market situation, some of the balancing group coordinators (also acting as electricity traders) are trying to force a renegotiation of the terms of the power purchase agreements.

While renewable energy producers are anxiously waiting for the new regulatory period, which is expected to bring a higher feed-in compensation premium, Bulgaria's Parliament allowed the Energy Regulator to prolong the current regulatory period by an additional two months (until September 2020).

Such hard times for the sector may have some positive upshot, at least, if the government uses the low price of electricity to pass unpopular legislative amendments to finalize the full liberalization of the market. The energy market in Bulgaria has been fully legally liberalized and all consumers, including households, are considered eligible to purchase electricity from the free market. Still, most households and some businesses connected at the low-voltage level (around a third of consumption in Bulgaria) continue to purchase electricity from end suppliers at regulated prices. ■

## CZECH REPUBLIC: FUTURE OF ENERGY IN THE CZECH REPUBLIC - LEGAL PROSPECTS

By Lukas Janicek, Partner, and Lukas Vymola, Associate, CMS Prague



The EU has been preparing for a substantial transition of its energy sector to address the urgency of climate change. The Czech Republic has proposed raising the share of its renewable energy sources (RES) in the gross final energy consumption from the current 15% (approximately) to 22% by 2030 to contribute to the EU-wide goal of obtaining 32% of gross final energy consumption

from RES by the same year. This means there will be a focus on developing RES in the Czech Republic, and the Czech government also plans to substantially strengthen the role of nuclear energy while allowing the coal-fired energy to decline.

This energy transition is likely to bring many business opportunities in upcoming years. For the transition to be as smooth as possible, the legal framework will have to adapt to current as well as to future trends. We have recently seen a number of legislative initiatives being prepared in the Czech Republic which reflect these trends, although there is still much (legislative) work to be done.

The centerpiece of these legislative changes is an amendment to Act on the Subsidy of Renewable Sources of Energy (the “RES Amendment”). The Czech government approved the RES Amendment in late April 2020. If adopted, the RES Amendment will significantly change the system of subsidizing RES in the Czech Republic. For new projects, it proposes abandoning the feed-in tariff system and keeping in place only hourly green bonuses for RES with an installed capacity of less than 1 MW (6 MW in the case of wind energy). For sources with a higher installed capacity, the RES Amendment proposes introducing an auction system in which the bidder agreeing to deliver the required capacity at the lowest price will be granted the subsidy. It is anticipated that this new system will apply to new energy sources put into operation in and after 2021. Additionally, the amendment provides the basis for supporting biomethane production in the form a green bonus.

From 2008 to early 2011, the Czech Republic experienced a rapid development in solar power plants, which benefitted from a subsidy that did not reflect the falling costs of solar power plant construction fast enough, making the plants very lucrative for investors. This peri-

od is usually referred to as the “solar boom.”

Various Czech politicians (including the current Czech president) are vocal critics of the costs to the state budget caused by the “solar boom.” As a result, and in accordance with series of decisions issued by the European Commission between 2014–2017, the RES Amendment will set out a mechanism for retrospectively assessing the adequacy of the state subsidy for RES put into operation between January 1, 2006 and December 31, 2015 to address the alleged “over-compensation,” which will be measured on the basis of the internal rate of return of the sources. The most recent version, approved by the Czech government in late April 2020, appears to be least favorable for solar power plants.



Furthermore, the Czech government has also been taking steps to build a new nuclear reactor at the Dukovany nuclear power plant. It has been announced that a tender to build the new reactor should commence later in 2020 and should be finished by the end of 2022. The ambitious plan is that construction should start in 2029 and be completed by 2036. The Czech Ministry of Trade and Industry has been instructed to draft a new law on measures for transitioning to low carbon energy (the main principles of which are yet to be announced).

The Czech government is also preparing an entirely new Energy Act. In October 2019, the Czech Ministry of Trade and Industry presented the principles of a new Energy Act, designed to address the transition of the energy sector and decline in the use of carbon energy, to the government. A draft of this new Energy Act is not yet publicly available.

On January 1, 2021, an amendment to the Act on the Conditions for Trading with Emission Allowances, transposing recent EU legislation, will come into effect. Among other things, this amendment implements an innovation fund which will help companies and households finance certain energy innovation projects. It was previously reported that about CZK 100 billion – approximately EUR 4 billion – will be made available to the fund over the ten-year period, but the final figure has not yet been determined. ■

## HUNGARY: THE RESULTS OF THE FIRST METAR TENDER

By Kristof Ferenczi, Managing Partner, Peter Gullai, Associate, and Laszlo Bujaki, Junior Associate, Kinstellar Budapest



In March, 2020, the Hungarian Energy and Public Utility Regulatory Authority (HEPURA) published the official results of the first tender procedure of the Hungarian Renewable Energy Support System (METAR), in which bidders were encouraged to apply for state subsidies in (i) power plants between 0.3 MW and 1 MW capacity (the “Small Category”) and (ii) power plants between 1 MW and 20 MW capacity (the “Large Category”)

Approximately 170 bids were submitted to the HEPURA: 40% of which were successful, 30% of which were declared invalid, and approximately 30% of which were valid but did not win any subsidy. In the Large Category, 11 of the 45 accepted bids reached 127.4 GWh/year. Most Large Category bids were submitted in the range of 5-10 MW, and only a few were submitted with a nominal capacity of above 19 MW. The highest successful winning price in the Large Category was 22.75 HUF/kWh, which is considerably lower than the 26.08 HUF/kWh bidding price limit.

It is quite remarkable that the majority of bids came from small and medium-sized enterprises, with no bids coming from large players on the Hungarian energy market. The reason for key players’ lack of interest might be that they did not find the 20 MW capacity limit in the Large Category attractive enough. Meanwhile, the high interest of SMEs in the METAR tender could be explained by the fact that this tender is the only one that provides subsidies for smaller investors, as neither the METAR KAT nor the so called Administrative Premium System supports categories below 1 MW.

It is also worth mentioning that recent changes in the Hungarian renewable legal support scheme (*i.e.*, the introduction of full balancing responsibility for renewable generators as of April 1, 2020) and significant currency exchange rate fluctuation may be risk factors in financing projects. As to the first factor, in Hungary, a specific compensation system has been introduced in order to mitigate the severe financial consequences to solar power plant projects arising from full

balancing liability. Pursuant to the new rules, the compensation is a fixed amount not to exceed the amount of the balancing charge which would be payable by the producer. The compensation system will be available only until December 31, 2025. As the second factor, the EUR/HUF exchange rate had significantly increased at the time of the submission of the bids since the end of 2019.



In addition, solar power plant manufacturers are also affected by the COVID-19 crisis, including the resulting shortage of raw materials and appropriate staff, and related disruptions in transportation may also cause uncertainties and possible higher procurement prices in the market.

Despite these difficulties, the first METAR tender can be considered a success, as it both provided investors with an up-to-date overview of the Hungarian market and generated competitive pricing.

It was declared a technology-neutral tender, although all but one bidder plans to build solar power plants. The high representation of photovoltaic panels is in line with the Hungarian National Energy Strategy of Hungary, but there are issues to be addressed by the regulator before the next METAR tender, such as the promotion of other renewable technologies and projects larger than 20 MW, which are likely to attract foreign investors.

No official information is available on the announcement of the next METAR tender, but given the popularity of the first tender and the recent classification of many solar power plant projects as projects of national interest by the Hungarian Government, strong interest is likely. ■

# UKRAINE: UKRAINIAN RENEWABLES SECTOR – LIQUIDITY CRISIS

By Glib Bondar, Senior Partner, and Anna Mykhalova, Associate, Avellum



In recent years, international and local investors have been extremely active in the Ukrainian renewables sector – particularly in solar and wind projects – resulting in a significant amount of project finance and M&A activity in this sector.

As of April 30, 2020, the total installed capacity of renewable energy facilities amounted to 7.1 GW, of which 4.7 GW were installed in 2019. According to rough estimates, the share of foreign investors in installed renewable projects reached approximately 30%. The investment growth led to an increase of up to 5.5% in the share of renewable energy in Ukraine’s total energy generation. Moreover, the number of producers of renewable energy (“RES Producers”) continues to grow. According to the state company that performs the statutory obligation to off-take all electricity from the RES Producers under a “green tariff” (the “Guaranteed Buyer”), the capacity reserved under executed pre-PPAs amounts to 12 GW, of which 4 GW is expected to become operational in 2020.

## Financial Sustainability of the Guaranteed Buyer

An unprecedented surge of RES projects along with the launch of a new model of electricity market, which turned out to have some flaws, triggered liquidity problems for the Guaranteed Buyer.

Initially, the new electricity market model required the Guaranteed Buyer to purchase electricity under a green tariff at the cost of the compensation it received from the transmission system operator (TSO). The TSO, in turn, compensated the Guaranteed Buyer from funds it received to provide transmission services to electricity market participants. Eventually, the proceeds from electricity market participants proved to be unstable and insufficient to cover the payments under the green tariff.

As a result, the Ukrainian Government imposed additional temporary public service obligations (PSOs) on electricity market participants to help the Guaranteed Buyer during the transition period. These PSOs required the Guaranteed Buyer to purchase cheap electricity from Energoatom (nuclear electricity) and Ukrhydroenergo (hydroelectricity) at threshold prices and re-sell most of it on the DAM/IDM at higher prices. Any profit the Guaranteed Buyer generates through PSO performance must be used to make payments under the green tariff.

However, the imposition of PSOs has been insufficient to resolve

the liquidity problems. As of April 30, 2020, the Guaranteed Buyer has approximately USD 451.2 million in outstanding debt to the RES Producers.

## Proposed Solutions

Eventually, the Ukrainian authorities concluded that amending the current green tariff support system would be necessary to stabilize the sector. To avoid imposing a unilateral solution, which could affect the confidence of investors in the stability of Ukraine and lead to potential investment arbitrations, Ukrainian authorities and RES investors agreed to develop a balanced solution with the mediation of the Energy Community Secretariat’s Dispute Resolution and Negotiation Centre.

The mediation process is designed to elaborate a Memorandum between Ukraine and the RES Producers. According to the Ministry of Energy, the Memorandum will allow for the voluntary restructuring of the green tariff system (*e.g.*, a reduction of the green tariff with or without extending its term) and provide a new framework on liability for imbalances and curtailment compensation. In addition, the Memorandum is expected to provide that solar and wind projects commissioned after the execution of the Memorandum would no longer be able to benefit from the green tariff system but instead would have to participate in an auction system. For reference, the applicable laws provide that the green tariff may still be granted to those projects which have pre-PPAs that were executed prior to December 31, 2019, provided that they are commissioned within two years (for solar projects) and three years (for wind projects) after execution of the pre-PPA. The Memorandum is in the final stages of discussion and is expected to be signed in May 2020. The Memorandum would constitute a basis for a draft law, which would then be presented to Parliament for consideration.

If Parliament adopts the law based on the Memorandum, this will both break the deadlock in the liquidity issue and may help Ukraine remain attractive for investors in the renewable energy sector. Some international market players have already expressed their readiness to continue investing in renewable projects in Ukraine once the uncertainty in the regulatory framework is resolved and the auction system is launched. Given the previous strong support of private developers such as Sctatec, VR Capital, NBT, Vindkraft group, GreenWorx, and Akuo Energy, and IFIs such as the EBRD, NEFCO, Swedfund, and BSTDB, there is much hope that they will remain active in Ukrainian renewable projects in the future. ■



## KOSOVO: ENERGY MATTERS IN KOSOVO

By Ahmet Hasolli, Managing Partner, and Vjollca Hiseni, Associate, Kalo & Associates Kosovo Office

### Energy Infrastructure



The energy infrastructure in Kosovo has not undergone major change over the past few decades. Due to high reserves of lignite, 97% of Kosovo's electricity generation comes from two aging coal power plants. Unfortunately, lignite-coal of the kind found in Kosovo is among the most polluting and least efficient sources of energy. Consequently, Kosovo's infrastructure is outdated and a major source of air pollution.

Emitting for more than 50 years, Kosovo's two coal plants – *Kosovo A* and *Kosovo B* – do not possess the capacity to adapt to, support, or handle current demand in the country. In order to meet this demand, the Government of Kosovo is rehabilitating the Kosovo B power plant, which is more than 30 years old, to bring it in compliance with the European Union Directives, and is building a new, more efficient, lignite-fired power plant to replace the 45-year-old and highly polluting Kosovo A power plant.

Kosovo's large lignite resources – a total of 12.5 billion tonnes – are reported to be the second largest in Europe and fifth largest in the world. Kosovo A and Kosovo B are supplied with lignite from the nearby *Sibovc Southwest* and *Sitnica* mines. Kosovo has no oil or gas extraction and no gas import infrastructure, although it is interested in building a pipeline to connect to the Trans-Adriatic Pipeline.

Until recently, a project that would include the building of a power plant with a capacity around 450 MW net – *Kosova e Re* – was under development. Unfortunately, the project was interrupted when both the World Bank and the EBRD announced that they would not provide necessary financing, leaving only the U.S. International Development Finance Corporation and various credit agencies as potential financiers.

Kosovo does not have plentiful water resources like other Balkan countries, but construction of small hydropower plants has still sped up in recent years – and begun generating controversy, as several of them are situated in protected areas.

### The Long-Term Strategy on Energy

In the long run, Kosovo has several targets in the energy sector, including a renewable energy target of a 25 percent share in the final gross consumption of energy by 2020, according to the Energy Community Treaty. In 2017, it achieved a renewable energy share of

22.9 percent, putting it on track to meet this target.

However, this was mostly achieved by household use of woods biomass, not by investing in renewable energy. Kosovo's first major wind farm is the 32 MW Kitka plant, which started operating in late 2018. In December 2019, the ERBD approved a loan for the 105 MW Bajgora plant.



The energy sector also occupies an important place in the Stabilization and Association Agreement, which entered into force on April 1, 2016. Under Article 114 of this Agreement, Kosovo must satisfy the obligations related to integration into the common regional market involving the Parties Energy Community Contractor. In order to meet these targets, the Government of Kosovo has drafted the National Energy Strategy for the period of 2017-2026.

The Strategy is based on five main objectives: (i) Ensuring a stable and quality supply of electricity and capacity required for a stable electricity system; (ii) Integrating into the Regional Energy Market; (iii) Increasing the existing capacity of thermal systems and building new capacity; (iv) Developing natural gas infrastructure; and (v) Fulfilling goals and obligations vis-a-vis energy efficiency, renewable sources of energy, and environmental protection.

In addition, Kosovo largely relies on the support and cooperation of its regional and international partners in pursuing its various goals. This cooperation takes the form of improving and diversifying supply and improving access to the energy market, in accordance with the EU *acquis* on the security of supply and the regional energy strategy of the Energy Community, and implementing the EU *acquis* on energy and efficiency resources, renewable energy, and overall environmental impact.

On a positive note, different sources such as solar and wind in Kosovo represent potential investment opportunities in the energy sector, and the common electricity market with Albania, in conjunction with that country's existing hydropower may open the way for a more flexible electricity and energy system. Accordingly, such cooperation would lead to new and larger investments, which would significantly impact the economy. ■

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A nighttime photograph of a city, likely Vienna, featuring a large, illuminated Gothic cathedral with a prominent dome and spires. The cathedral is situated on a riverbank, with a bridge visible in the foreground. The city lights are reflected in the water, and the sky is a soft purple and pink hue.

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