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CEE Legal Matters

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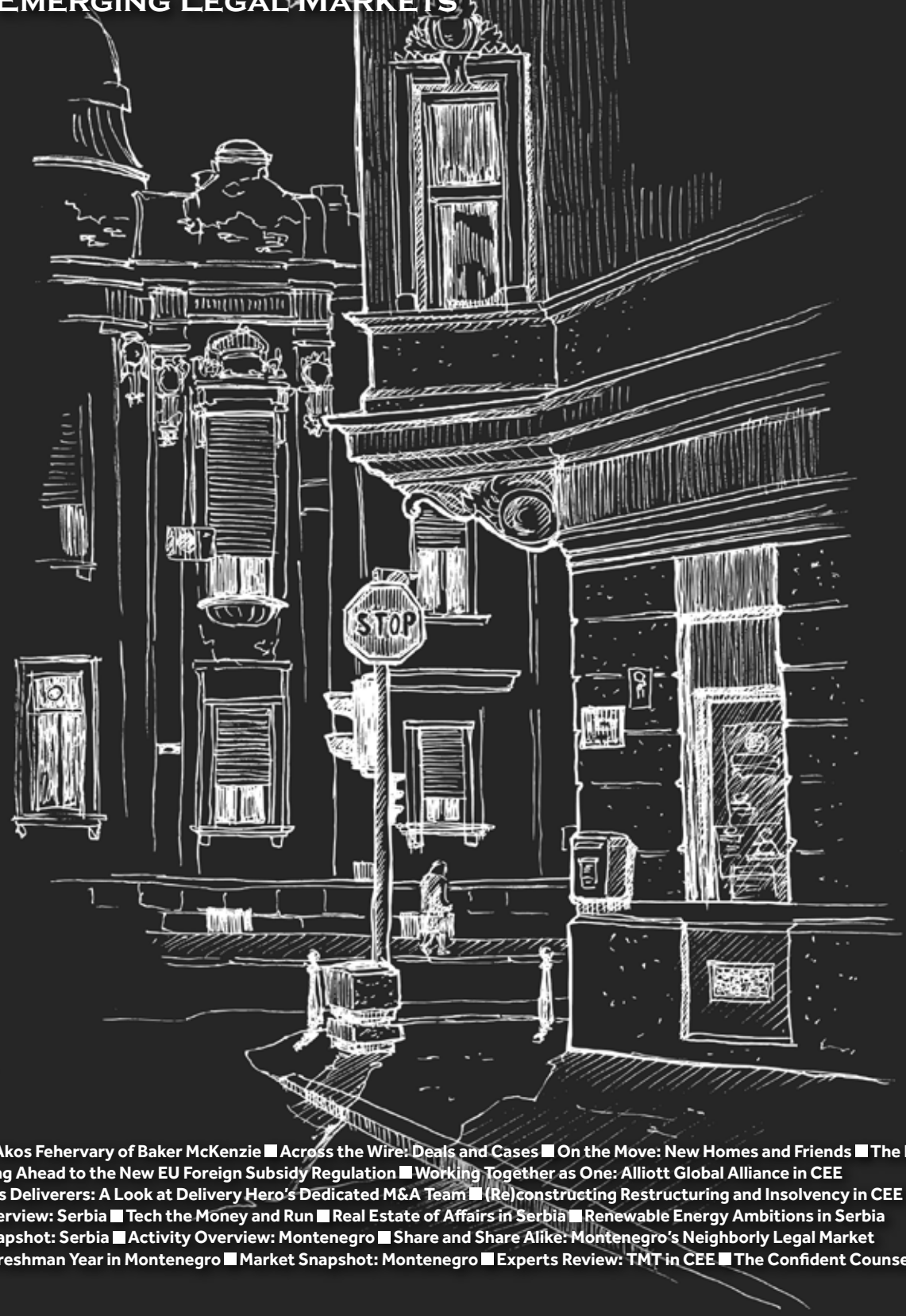

EDITORIAL: NERF PAPER!

By Radu Neag

You know the Rock, Paper, Scissors game. That game people play to make such life-altering decisions as who goes out to buy the milk, who picks the kids up from kindergarten, or who gets to write this editorial. It's all pretty straightforward and there's even a World Rock Paper Scissors Championship.

I recently realized what those three objects mean to me: rock stands for manual labor – like digging up the garden and hauling stuff (rocks) around; scissors stands for handicrafts – you know, cutting and pasting colored strips of paper, making macaroni portraits, playing with watercolors, aka spending time with my son; and paper – well that's this right here – a blank sheet of paper that you sit down with, every time you begin a new article.

Top RPS tip (from a middling player): most people who aren't that invested in playing rock, paper, scissors – and only play it occasionally – will open with rock on the first move about 40% of the time. Probably because it (the fist) feels powerful and in control. So, smart money is on opening with paper on such occasions. That gives you a 7% advantage over a flat statistical distribution. Which, in a game of chance, is huge (in a decent roulette game, for reference, the house advantage stands at 2.7%). Just beware that Radu Cotarcea is actually a semi-pro RPS athlete, and he knows all this – so he'll usually open with scissors. Mind games!

My problem is that my peripheral knowledge of RPS doesn't translate well into real life. Or, to put it another way, paper scares me. Literally. I would rather facepaint or go dig in the garden – which I did for a bit while writing this – than sit down with a blank piece of paper. Or, if I must sit at my computer, I'll answer emails, do reviews, upload files, or look at cat posters – rather than open a new file and start writing that damn article – which is, you know, kind of the core of my job.

Still, since I realized that's an issue, I'm at least monitoring the situation more closely. And, while putting this issue together, I did try to imagine which of our contributors writes from a similar fear-of-paper place. I can't say my paper-fear radar is 100% accurate, but I think I did uncover some indicators.

People who fear the blank paper – it's an actual emotion you must sit with and it makes you uncomfortable – will use different tricks to make themselves more comfortable, or put themselves at ease. You know, whenever they actually get around to sitting down to get stuff done. Usually just as their deadline is about to expire.

They'll quote authoritative sources (not bad). They will try to imagine and connect with their audience (quite good). Or start with a joke or a little personal story (this, this right here). They might sit down and build the structure of what they're trying to write (an excellent starting point). Or they'll just fill the page with anything that comes to mind – just to unblank it (not great). Still, all these responses do get the ball rolling, and (see brackets above) I think most of them are decent writing strategies in general.

I'm not saying my fear of paper was cured after keeping all this in mind for one magazine issue. But: I am, at least, sure there are a lot of us paper-fearing folks writing and reading the CEE Legal Matters magazine. And let me tell all of you: our articles aren't worse off because of it. Most of them are quite decent, with a few ones being top-notch and, occasionally, excellent. Because we try harder. So, keep doing what you're doing and use any of the techniques above (if you use other ones, I want to know about them) but – for the love of God! – do it sooner.

Stop playing scissors and rock up until the point your deadline is about to expire. Sit down with your blank piece of paper – right now – and kick its ass! ■

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

GUEST EDITORIAL: AIMING HIGHER

By Akos Fehervary, Managing Partner, Baker McKenzie Budapest

"*We aim above the mark to hit the mark.*" – Ralph Waldo Emmerson

Choosing a profession is always a pivotal point in everyone's life. Once we set our minds and find our path, we try to dedicate all our energy and effort to making the best of it. The 21st century, however, has already left a mark on all our careers with its constant demand for adapting to new needs, circumstances, and business and work climates.

Having been appointed the Managing Partner of the Budapest office of Baker McKenzie has made me reflect on my career, especially how the role of an outside counsel has changed through these times, not just on the global landscape but in the CEE region as well. When I started, filled with knowledge of the law, I had a limited understanding of the complexities the profession requires and has developed to require ever since. I had an idea of how I would apply the rules on different matters. What I did not know is how much more would be expected of me if I wanted to do well.

In the sphere of business law, lawyering has become much more layered than we once were prepared for. Being a diligent student and a hard-working legal counsel have proved to be far from sufficient in today's work climate. The ultimate feature of a lawyer has shifted from well-educated to savvy. Knowing the law thoroughly is obviously the most important requirement in our field. Yet, it is hardly enough in this ever-changing world and competitive market. Besides bearing legal expertise, one must widen their horizon and learn how to dive into specific industries and areas, mainly those of prospective clients, and learn to swim faster than others. Clients expect us to understand their business. Logically, it helps them tremendously if they do not need to explain the business environment to the lawyers they work with. What can make or break a client relationship is industry knowledge and providing business-minded, practical, and user-friendly advice.

Proving yourself as a lawyer is just the basic package. In order to stand out from the crowd, you must be willing to elevate your worth by being more circumspect than your peers. Being vigilant and never underestimating where good ideas may come from can be game-changing approaches. All the more so, once appointed an outside legal counsel, clients expect you to deliver a full-service solution with a holistic approach. Most of the time nowadays, it is not only a lawyer they need but someone with a versatile mindset, who fixes things.

Familiarizing ourselves with legal tech and innovations can also prove to be a defining point to stand out. While lawyering is generally viewed as a traditional profession, with the development of technology, this field is quickly evolving into a sector that requires tech skills if one wants to gain a competitive advantage in the market. In general, it is true that birds of a feather flock together, so clients look for advisors that understand their needs and their language.

As we are heading towards economically challenging times globally, and also in the CEE region, the additional skills and finesse an attorney can bring to their clients are crucial. Such times will continue bringing complexities, where swift and effective legal advice will be more valuable than ever. Even though I expect some clients may experience financial difficulties, if we bring a value proposition to our clients, all shall benefit.

Finally, never underestimate the value of human connections. We feel the burden of the expectation of high-quality work and the required time and investment of efforts. We should not lose sight of one very important element for a successful career, and that is building our own business network and strong human contacts. The business-minded and supportive attitude should kick in early on, the sooner the better, so that, when difficult times hit, there is a circle around us that we can rely on. ■

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ACROSS THE WIRE: DEALS AND CASES

Date Covered	Firms Involved	Deal/Litigation	Value	Country
22-Sep	Binder Groesswang	Binder Groesswang advised Linde Verlag on the establishment of its digital subsidiary Linde Digital with the participation of Venionaire Capital.	N/A	Austria
28-Sep	Act Legal (WMWP); Brandl Talos; Herbst Kinsky	Brandl Talos advised Kompas and Herbst Kinsky advised Ventech on co-leading the USD 11 million Series A investment round into Prewave. Act Legal WMWP reportedly advised Prewave on the round.	USD 11 million	Austria
3-Oct	Herbst Kinsky	Herbst Kinsky, working with Burghardt Schumann, advised Foex's shareholders on their exit to an Oracle subsidiary.	N/A	Austria
4-Oct	Schoenherr; Wolf Theiss	Schoenherr advised the managers on the EUR 750 million issuance of 2.5% mortgage pfandbriefe due 2030 by the Erste Group Bank. Wolf Theiss advised Erste.	EUR 750 million	Austria
5-Oct	Paul Hastings; RPCK | Rastegar Panchal; Schoenherr	RPCK Rastegar Panchal advised YodelTalk Limited and its founders on the sale of the company to Sendinblue. Schoenherr and, reportedly, Paul Hastings advised Sendinblue on the acquisition.	N/A	Austria
6-Oct	Binder Groesswang; Dorda; E+H	E+H advised Materna Information & Communications on its acquisition of Radar Cyber Security. Dorda and Binder Groesswang reportedly advised the sellers.	N/A	Austria
10-Oct	RPCK | Rastegar Panchal; Schoenherr	RPCK Rastegar Panchal advised Tierglueck on the sale of its Zoo & Co store in Klosterneuburg to Fressnapf Handels. Schoenherr advised Fressnapf on the acquisition.	N/A	Austria
11-Oct	E+H; Jaufer; Puschner Spernbauer Rosenauer	E+H advised Leonardo Hotels Central Europe on the acquisition and restructuring of a hotel portfolio from the Austrian Star Inn Group. Reportedly, Puschner Spernbauer Rosenauer advised the former shareholders while Jaufer advised the target company.	N/A	Austria
13-Oct	Barentskrans; Cerha Hempel; Graf Patsch Taucher; Hogan Lovells; Osborne Clarke	Cerha Hempel, working alongside Osborne Clarke and Netherlands-based BarentsKrans, advised the Borealis Hotel Group on its acquisition of the Bierwirth & Kluth group of companies' hotel portfolio. Hogan Lovells and Graf Patsch Taucher advised B&K.	N/A	Austria
14-Oct	Cerha Hempel	Cerha Hempel advised healthcare platform Heldyn on its launch and its first financing round which included AS2K and C-Quadrat founder Alexander Schuetz.	N/A	Austria
6-Oct	Bech Bruun; CLP; Filip & Company; Freshfields; Georgiades & Pelides; Rymarz Zdort; Tsvetkova Bebov & Partners	Freshfields Bruckhaus Deringer, Rymarz Zdort, and Filip & Company advised One Equity Partners on its acquisition of Muehlhan's European and US businesses. Reportedly, Eversheds Sutherland member firm Tsvetkova, Bebov & Partners advised the buyer in Bulgaria, while Bech-Bruun, Georgiades & Pelides, and CLP advised the buyer in Denmark, Cyprus, and Norway.	N/A	Austria; Bulgaria; Poland; Romania
4-Oct	Dentons; Dimitrijevic & Partners	Dentons and Dimitrijevic & Partners advised coordinator, bookrunner, and mandated lead arranger UniCredit on a EUR 90 million term loan facility for Mtel Banja Luka. Solo practitioner Loren Richards reportedly advised the borrower.	EUR 90 million	Bosnia and Herzegovina; Poland; Romania
16-Sep	Kinstellar; Tzvetkova and Partners	Kinstellar advised 52 Entertainment on the acquisition of Bulgarian game developer Casualino. Tzvetkova & Partners advised Casualino on the sale.	N/A	Bulgaria

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22-Sep	CMS	CMS advised Vier Gas Transport on its successful participation in a tender for selecting a consultant for monitoring and control of the implementation of a commercial dispatcher center for the Interconnection Greece-Bulgaria project held by ICGB AD.	N/A	Bulgaria
14-Oct	Cooley; Djingov, Gouginski, Kyutchukov & Velichkov	Djingov, Gouginski, Kyutchukov and Velichkov advised a Silverline Partners Fund LP-led consortium of private equity investors on their EUR 6.8 million Series A investment in Alcatraz Bulgaria. Cooley reportedly advised Alcatraz on the deal.	EUR 6.8 million	Bulgaria
7-Oct	BDK Advokati; Boyanov & Co; Divjak Topic Bahtijarevic & Krka; Hristov Partners; Kolcuoglu Demirkan Kocakli; Nestor Nestor Diculescu Kingston Petersen; Penkov Markov & Partners	Boyanov & Co advised BioIVT on its acquisition of Fidelis Research. Divjak Topic Bahtijarevic & Krka, BDK Advokati, Nestor Nestor Diculescu Kingston Petersen, and Kolcuoglu Demirkan Kocakli advised BioIVT on Croatian, Serbian, Romanian, and Turkish law-related matters, respectively. Hristov & Partners advised Integrity Capital Investments on the sale. Penkov Markov & Partners advised the other sellers.	N/A	Bulgaria; Croatia; Romania; Serbia; Turkey
4-Oct	Bradvica Maric Wahl Cesarec; Kinstellar (Zuric i Partneri)	Kinstellar's Croatian affiliate Zuric i Partneri advised Angelina Yachtcharter Holding on its acquisition of an 85% stake in Ultra Sailing. Bradvica Maric Wahl Cesarec advised the seller.	N/A	Croatia
7-Oct	Vukmir & Associates	Vukmir & Associates advised the majority creditors and bankruptcy administrator on the restructuring and exit from the bankruptcy of Dubrovnik-based Belvedere.	N/A	Croatia
16-Sep	Clifford Chance; CMS; Dominkovic & Osrecak	Clifford Chance and Dominkovic & Osrecak advised Taaleri Energia and Encro on the EUR 126 million senior debt financing package for the construction of the Zadar wind farm in Croatia. CMS advised the lending consortium.	EUR 126 million	Croatia; Poland
21-Sep	Kocian Solc Balastik; Wilsons	Kocian Solc Balastik advised the Passerinvest Group on its acquisition of Prague's Gamma office project from Immofinanz. Wilsons advised the seller.	N/A	Czech Republic
22-Sep	PwC Legal; Rowan Legal	PwC Legal advised AMiT Holding co-founders and co-owners Michal Prerovsky, Martin Vosahlo, and Karel Ludvik on their sale of a 70% stake in AMiT Holding to Central Europe Industry Partners. Rowan Legal advised CEIP on the acquisition.	N/A	Czech Republic
27-Sep	Havel & Partners	Havel & Partners advised Skoda Auto in resolving disputes over the use of the Skoda sign with engineering companies from the Skoda Group.	N/A	Czech Republic
29-Sep	Havel & Partners; PwC Legal	PwC Legal advised Orlen Unipetrol on the acquisition of Remaq. Havel & Partners advised Libor Vecera, Renata Vecerova, and Dieffe SRL on the sale.	N/A	Czech Republic
5-Oct	Baker Mckenzie; NautaDutilh	Baker McKenzie advised Energeticky a Prumyslovy Holding on its acquisition of all shares in the Dutch PZEM Energy Company and PZEM Pipe and 50% of shares in Sloe Centrale Holding from PZEM. NautaDutilh advised PZEM.	N/A	Czech Republic
10-Oct	Kocian Solc Balastik	Kocian Solc Balastik advised J&T Banka on the CZK 1 billion increase of Rohlik Group's bond issuance.	CZK 1 billion	Czech Republic
11-Oct	Allen & Overy; Compleneo	Allen & Overy advised Eurowag on a strategic partnership through the acquisition of a minority stake in the JITpay Group. Reportedly, Germany-based Compleneo advised the JITpay Group.	N/A	Czech Republic
12-Oct	Cytowski & Partners; Linkers Legal	Cytowski & Partners advised both Talkbase and J&T Ventures on Talkbases' USD 2 million pre-seed financing. Linkers Legal advised J&T Ventures as well.	USD 2 million	Czech Republic
13-Oct	Clifford Chance; Pierstone	Clifford Chance advised ArcTern Ventures on leading a EUR 16.3 million Series A funding round for Woltair. Pierstone reportedly advised Woltair on the deal.	EUR 16.3 million	Czech Republic

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16-Sep	Baker Mckenzie; DLA Piper	DLA Piper advised Wirtualna Polska on its acquisition of the Szallas Group from Portfolion Capital Partners and private individuals. Baker McKenzie advised Portfolion.	EUR 82 million	Czech Republic; Hungary; Poland; Romania
26-Sep	Bpv Braun Partners; HKV; Oppenheim; Penteris	Penteris, HKV, Oppenheim, and BPV Braun Partners advised Immofinanz on the acquisition of a retail property portfolio from the CPI Property Group for EUR 324.2 million.	EUR 324.2 million	Czech Republic; Hungary; Poland; Slovakia
3-Oct	Dentons; White & Case	Dentons advised Komercni Banka and Ceska Sporitelna on the EUR 715 million refinancing of the Eurowag Group. White & Case advised Eurowag.	EUR 715 million	Czech Republic; Poland; Slovakia
20-Sep	Clifford Chance	Clifford Chance advised Actis on the launch of its portfolio business Rezolv Energy and on Rezolv's acquisition of the Romanian Vis Viva onshore wind project from Low Carbon.	N/A	Czech Republic; Romania
16-Sep	JSK; Samak	JSK advised Abris Capital Partners and its portfolio company Alsendo on their acquisition of a majority stake in Zaslat.cz. Samak reportedly advised the sellers.	N/A	Czech Republic; Slovakia
26-Sep	PRK Partners	PRK Partners advised Ceska Sporitelna, Komercni Banka, and UniCredit Bank Czech Republic and Slovakia in the sale of bonds issued by EPH Financing.	N/A	Czech Republic; Slovakia
19-Sep	Arvisto & Partners; TGS Baltic	TGS Baltic advised Ordi majority shareholder Sulev Sisask on the sale of his company shares to Klick Eesti. Arvisto & Partners advised the buyer.	N/A	Estonia
19-Sep	Cobalt; TGS Baltic	Cobalt advised Karma Ventures on its investment in employee relocation management start-up Jobbatical. TGS Baltic advised Inventure on leading the EUR 11.6 million investment round.	EUR 11.6 million	Estonia
20-Sep	Ellex	Ellex advised Toi Toi & Dixi Handels und Verwaltungs on the acquisition of portable toilet rental company Kemmerling.	N/A	Estonia
3-Oct	PwC Legal	PwC Legal advised Arbonics on launching a technology-based platform for carbon systems and ecosystems that aims to simplify and facilitate the functioning of the voluntary carbon market.	N/A	Estonia
5-Oct	Cobalt	Cobalt advised 3Commas on its USD 37 million Series B funding round led by Target Global and including Alameda Research, Jump Capital, and Dmitry Tokarev.	USD 37 million	Estonia
11-Oct	Sorainen	Sorainen advised Estonian ready-mix concrete producer Betoonimeister on the sale of a majority stake to German building materials group Schwenk.	N/A	Estonia
11-Oct	TGS Baltic	TGS Baltic successfully represented KredEx before Estonia's Supreme Court in a dispute regarding COVID-19 pandemic-related extraordinary loans.	N/A	Estonia
12-Oct	Sorainen	Sorainen advised Hobevara on its acquisition of a 90% stake in Shnelli Arimaja from Arealis Holding.	N/A	Estonia
21-Sep	Sorainen	Sorainen advised Estonia's Fontes Palgakonsultatsioonid on its acquisition of the remuneration system development and remuneration survey business in Latvia and Lithuania from Fontes Vadibas Konsultacijas.	N/A	Estonia; Latvia; Lithuania
28-Sep	Ellex	Ellex advised Bigbank on its EUR 20 million issuance of subordinated bonds.	EUR 20 million	Estonia; Latvia; Lithuania

Date Covered	Firms Involved	Deal/Litigation	Value	Country
26-Sep	Kyriakides Georgopoulos	Kyriakides Georgopoulos advised the Quest Group on its acquisition of G.E. Dimitriou through a court-ratified rehabilitation agreement contemplating a EUR 5 million participation of Athex-listed Quest Holdings in a share capital increase of the target company.	N/A	Greece
4-Oct	Bernitsas; Kirkland & Ellis; Linklaters	Bernitsas Law, working with Linklaters, advised GIC on a strategic partnership with the Sani/Ikos Group. Kirkland & Ellis reportedly advised the Sani/Ikos Group.	N/A	Greece
11-Oct	Watson Farley & Williams; Zepos & Yannopoulos	Zepos & Yannopoulos advised Club Med SAS on the EUR 70 million sale and leaseback transaction for the Gregolimano Village resort on Evia with Hova Hospitality, acting on behalf of Primonial REIM France. Watson Farley & Williams advised Hova.	EUR 70 million	Greece
14-Oct	Kyriakides Georgopoulos	Kyriakides Georgopoulos advised LDA Capital on its EUR 20 million investment in Proodeftiki ATE.	EUR 20 million	Greece
22-Sep	Ban, S. Szabo & Partners	Ban, S. Szabo, Rausch & Partners advised Focus Ventures and Hiventures on their investment in Continest Technologies.	N/A	Hungary
30-Sep	Moore Legal Kovacs; Szabo Kelemen & Partners Andersen Attorneys	Andersen Legal advised Solar Markt on a long-term strategic agreement with investor Hiventures. Moore Legal Kovacs advised Hiventures.	HUF 4.5 billion	Hungary
16-Sep	Cobalt	Cobalt successfully represented Martins Jansons before the European Court of Human Rights in a case regarding his arbitrary eviction during a legal dispute over apartment tenancy.	N/A	Latvia
27-Sep	Cobalt	Cobalt successfully represented Latvian news magazine Ir before Latvia's Supreme Court in defamation proceedings.	N/A	Latvia
29-Sep	Ellex	Ellex provided pro bono legal services for the production of the 2022 documentary film Sisters in Longing, directed by Elita Klavina.	N/A	Latvia
5-Oct	Cobalt	Cobalt successfully represented the Baltic Center for Investigative Journalism Re:Baltica in a defamation dispute related to its 2019 article "Mega-donor to pro-Russian party benefits from Magnitsky and Azerbaijani laundromats."	N/A	Latvia
5-Oct	Sorainen	Sorainen advised Gren Latvija on its acquisition of Bioeninvest. Solo practitioner Justine Haka reportedly advised the sellers.	N/A	Latvia
10-Oct	Ellex; Sorainen	Sorainen advised Mantinga on its acquisition of Fresh Food Production from Orkla Latvija. Ellex advised the seller.	N/A	Latvia
26-Sep	Norton Rose Fulbright; Orrick Herrington & Sutcliffe; Sorainen	Sorainen, working with Norton Rose Fulbright, advised Oxlylabs on its acquisition of the Webshare Software Company. Orrick Herrington & Sutcliffe reportedly advised the seller.	N/A	Lithuania
16-Sep	Dentons; Gide Loyrette Nouel	Dentons advised the International Chemical Investors Group on its acquisition of the compounds business of the Benvic Group. Gide Loyrette Nouel advised the PVC Europe Group on the sale.	N/A	Poland
19-Sep	Greenberg Traurig; WKB Wiercinski Kwiecinski Baehr	WKB Wiercinski, Kwiecinski, Baehr advised the Neo Energy Group on the sale of 100% of its shares in Eviva Lebork to PAK-Polska Czysta Energia, of the Polsat Group. Greenberg Traurig advised PAK-Polska Czysta Energia.	N/A	Poland
19-Sep	Clifford Chance; Dentons	Clifford Chance advised Prologis on its EUR 1.585 billion acquisition of Crossbay's urban logistics portfolio from Crossbay and Mark. Dentons advised the sellers.	EUR 1.585 billion	Poland
19-Sep	DLA Piper; Greenberg Traurig	Greenberg Traurig advised the Trigea Real Estate Fund on its acquisition of a logistics park near Poland's Tricity. DLA Piper reportedly advised the seller.	N/A	Poland

Date Covered	Firms Involved	Deal/Litigation	Value	Country
19-Sep	Kunert, Koszuszko, Sanak; SSW Pragmatic Solutions; Taylor Wessing; Wardynski & Partners	Wardynski & Partners advised Ingka Centers on the sale of the Centrum Franowo shopping center in Poznan to Opal CF. SSW Pragmatic Solutions advised mBank on financing the deal. Taylor Wessing advised Opal CF on the financing. KKS Legal reportedly advised Opal CF on the acquisition transaction.	N/A	Poland
20-Sep	Domanski Zakrzewski Palinka; MFW Fialek	MFW Fialek advised Tutore Poland on its acquisition of a 51% stake in LangMedia. Domanski, Zakrzewski, Palinka advised the sellers, Podobneo.	N/A	Poland
21-Sep	MFW Fialek; NGL Legal	MFW Fialek advised Orkla on the acquisition of shares in the Da Grasso pizzeria chain. NGL Legal advised sellers Karolina Rozwandowicz and Magdalena Pirog.	N/A	Poland
22-Sep	Norton Rose Fulbright	Norton Rose Fulbright advised Panattoni Europe on the construction of a Tychy production facility for Hager.	N/A	Poland
22-Sep	Gessel; Kochanski & Partners	Kochanski & Partners advised Klima Energy on leading a PLN 70 million investment round into SunRoof. Gessel advised SunRoof.	PLN 70 million	Poland
22-Sep	Balicki Czekanski Gryglewski Lewczuk; Cassels Brock & Blackwell; Deloitte Legal; Kieszkowska Rutkowska Kolasinski	Balicki Czekanski Gryglewski Lewczuk and KRK Kieszkowska Rutkowska Kolasinski, working with Cassels Brock & Blackwell, advised Ramm Pharma on the acquisition of HemPoland from The Green Organic Dutchman Holdings. Deloitte Legal advised the seller.	N/A	Poland
23-Sep	SSK&W	SSK&W Stoklosa Syp & Wspolnicy advised CofounderZone and several business angels on their latest investment in Mentorist.	N/A	Poland
23-Sep	Dentons; Gorzelnik Nentwig Ziebinski	Gorzelnik Nentwig Ziebinski advised Equinor Group company Wento on its sale of a 28-megawatt solar photovoltaics portfolio to Modus Asset Management. Dentons advised the buyer.	N/A	Poland
26-Sep	Gessel; Kondracki Celej	Gessel advised BNP Paribas Bank Polska on its capital investment in Autenti. Kondracki Celej reportedly advised Autenti on the deal.	N/A	Poland
26-Sep	CMS; Dentons	CMS advised the Saint-Gobain Group on the conclusion of a 15-year virtual power purchase agreement for the acquisition of renewable energy from Tion Renewables' onshore wind farms in Poland. Dentons advised Tion Renewables.	N/A	Poland
28-Sep	DWF; Hogan Lovells	DWF advised NKT consortium's Tele-Fonika Kable and DEME on a reservation contract for the design, supply, and installation of the inter-array, offshore, and onshore export cables for the Baltic Power offshore wind farm. Reportedly, Hogan Lovells' German office advised Baltic Power.	N/A	Poland
28-Sep	PwC Legal; WKB Wiercinski Kwiecinski Baehr	WKB Wiercinski Kwiecinski Baehr advised the shareholders of Health Labs Care on its sale to Medvic, a company from the USP Group. PwC Legal advised the USP Group on the acquisition.	N/A	Poland
29-Sep	Rymarz Zdort	Rymarz Zdort advised Polskie Gornictwo Naftowe i Gazownictwo on a number of gas sales agreements with Equinor for natural gas from the Norwegian continental shelf to be delivered to Poland via the Baltic Pipe gas pipeline, through Denmark.	N/A	Poland
30-Sep	B2RLaw	B2RLaw became the official legal advisor and partner to the Polish Paddle Tennis Federation.	N/A	Poland
4-Oct	Nikiel Wojcik Noworyta	Nikiel Wojcik Noworyta advised the SaarGummi Group on the development of its first factory in Poland.	N/A	Poland
5-Oct	Kochanski & Partners	Kochanski & Partners advised Polish gas transmission pipeline operator Gaz-System on the construction and related agreements for the Baltic Pipe project with Danish operator Energinet.	N/A	Poland
5-Oct	Deloitte Legal; Rymarz Zdort	Rymarz Zdort advised the Inelo Group on the acquisition of a majority stake in FireTMS. Deloitte Legal advised the FireTMS shareholders.	N/A	Poland

Date Covered	Firms Involved	Deal/Litigation	Value	Country
6-Oct	Crido Legal	Crido Legal advised Saker on its joint venture with the BTS Group's Slovak and Polish companies to build an electric vehicle battery recycling plant in Poland.	N/A	Poland
6-Oct	Gorzelnik Nentwig Ziebinski	Gorzelnik Nentwig Ziebinski advised Mostostal Warszawa on its successful bid, as part of a consortium, in the tender organized by PGE Energia Odnawialna for the approximately PLN 1.12 billion modernization of the Porabka-Zar pumped storage power plant.	PLN 1.12 billion	Poland
7-Oct	Greenberg Traurig	Greenberg Traurig advised Ekstraklasa on the sale of media rights for the 2023/2024 through 2026/2027 seasons of the Polish premier football league to TV broadcaster Canal+ Polska.	N/A	Poland
7-Oct	Norton Rose Fulbright; Oles, Rysz, Sarkowicz	Norton Rose Fulbright advised Bank Polska Kasa Opieki on its financing for MP Inwestors. Oles, Rysz, Sarkowicz advised the borrower.	N/A	Poland
10-Oct	SSK&W	SSK&W Stoklosa Syp & Wspolnicy advised venture capital funds Satus VC and CofounderZone and several business angels on their co-investment in food waste prevention platform Foodsi.	N/A	Poland
10-Oct	Dentons; Greenberg Traurig	Greenberg Traurig advised Generali Real Estate on the acquisition of undeveloped plots located in Skawina, near Krakow, and the development management agreement with MDC2. Dentons advised MDC2 on the deal.	N/A	Poland
11-Oct	Soltysinski Kawecki & Szlezak	Soltysinski Kawecki & Szlezak advised Ignitis Renewables on its acquisition of the Silesia 2 wind farm with a capacity of up to 137 megawatts.	N/A	Poland
11-Oct	Baker Mckenzie; CMS	Baker McKenzie advised Pelion Group subsidiary Polska Grupa Farmaceutyczna on the establishment of its bond issuance program and a PLN 130 million issuance of secured bonds. CMS advised organizer, underwriter, and offering agent Haitong Bank on the issuance.	PLN 130 million	Poland
12-Oct	Baker Mckenzie; Clifford Chance	Clifford Chance advised Giza Polish Ventures on its sale of a majority stake in Audioteka to Grupa Wirtualna Polska. Baker McKenzie advised the buyer.	N/A	Poland
12-Oct	Gessel; Moskwa Jarmul Haladyj i Wspolnicy	Gessel advised Eco Classic on the acquisition of shares in I am Poznan from Lebanon-based Sakr Holding. Moskwa Jarmul Haladyj advised Sakr Holding on the sale.	N/A	Poland
13-Oct	Gessel	Gessel advised Zielona-Energia.com Partners Michal Klimczyk and Lukasz Fonfara on the sale of shares in Zielona-Energia.com Logistics to EDP Energia Polska.	N/A	Poland
13-Oct	DLA Piper; Norton Rose Fulbright	Norton Rose Fulbright advised the Accolade Group on its land acquisition and development of two logistics parks in Poland – one in Zielona Gora and one in Pila – from Panattoni Europe. DLA Piper reportedly advised Panattoni Europe.	N/A	Poland
13-Oct	White & Case	White & Case advised mBank on updating the up to PLN 1 billion bond issue program of Dino Polska and a bond issuance under this program of up to PLN 170 million.	PLN 170 million	Poland
13-Oct	Kochanski & Partners; KPMG Legal	Kochanski & Partners advised Savills on its acquisition of Knight Frank's commercial property and asset management team. KPMG reportedly advised the seller.	N/A	Poland
14-Oct	White & Case	White & Case advised South Korean companies Hanwha Defense and Korea Aerospace Industries on two Polish defense contracts with the Ministry of National Defense of Poland, for the supply of K9 self-propelled howitzers and FA-50 aircraft, respectively.	N/A	Poland
14-Oct	Clifford Chance; WKB Wiercinski Kwiecinski Baehr; Wolf Theiss	Wolf Theiss advised Axpo Polska on two wind power purchase agreements with the Energix Group. Clifford Chance and WKB Wiercinski, Kwiecinski, Baehr advised the Energix Group on the deal.	N/A	Poland

Date Covered	Firms Involved	Deal/Litigation	Value	Country
14-Oct	Ergy; Norton Rose Fulbright	Norton Rose Fulbright advised Bank Ochrony Srodowiska, Powszechna Kasa Oszczednosci Bank Polski, and Bank Polska Kasa Opieki on the PLN 120 million financing increase for the 68-megawatt Lancut wind farm located in Poland and operated by Lewandpol Lancut. Ergy advised Lewandpol Lancut on the deal.	PLN 120 million	Poland
6-Oct	CMS; Zivkovic Samardzic	Zivkovic Samardzic advised the Arriva Group on the divestment of its Arriva Litas business in Serbia to Mutares. CMS advised Mutares on its acquisition of the Danish, Polish, and Serbian business activities of the Arriva Group.	N/A	Poland; Serbia
19-Sep	Suciu Popa	Suciu Popa successfully represented Iris-Aly Explorer in a dispute related to the concession of public property goods.	N/A	Romania
26-Sep	RTPR	Radu Taracila Padurari Retevoescu advised the European Bank for Reconstruction and Development on its EUR 25 million loan granted to Banca Transilvania.	EUR 25 million	Romania
3-Oct	Zamfirescu Racoti Vasile & Partners	Zamfirescu Racoti Vasile & Partners successfully represented OMV Petrom in ICC arbitration proceedings regarding a dispute with a contractor.	N/A	Romania
4-Oct	Glodeanu & Associates	Glodeanu & Partners advised the INVL Renewable Energy Fund I on its acquisition of a 102.7-megawatt portfolio of solar projects in Romania.	N/A	Romania
5-Oct	CMS; RTPR	Radu Taracila Padurari Retevoescu advised Qualitance founders Radu Constantinescu and Ioan Iacob on the sale of the company to Alten. CMS reportedly advised Alten on the acquisition.	N/A	Romania
6-Oct	PwC Legal (D&B David and Baias); Wolf Theiss	Wolf Theiss advised Dacia Plant shareholders Calin Ioan Ianta and Radu Ionescu-Heroiu on the sale of a majority stake in the company to Ceres Pharma. PwC's Romanian affiliate D&B David and Baias advised Ceres Pharma on the deal.	N/A	Romania
10-Oct	Filip & Company	Filip & Company advised Alesonor Real Estate Development on its partnership with Pescariu Sports & Spa for the development of the sports center and leisure areas within Alesonor's Amber Forest project in Romania.	N/A	Romania
10-Oct	RTPR; Schoenherr	Radu Taracila Padurari Retevoescu advised Integral Venture Partners on its investment in Medima Health. Schoenherr reportedly advised Medima Health majority shareholder Morphosis Capital Fund I.	N/A	Romania
11-Oct	Stoica & Associates	Stoica & Asociatii successfully represented Aqua Carpatica before the Romanian High Court of Cassation and Justice in a trademark litigation dispute.	N/A	Romania
12-Oct	Filip & Company	Filip & Company advised Promateris shareholders Florin Pogonaru and Tudor Georgescu on the sale of a 24% stake in their company to Paval Holding.	N/A	Romania
12-Oct	PwC Legal (D&B David and Baias)	PwC Legal Romanian affiliate D&B David and Baias advised DataArt on its acquisition of Lola Tech.	N/A	Romania
13-Oct	Filip & Company	Filip & Company successfully represented Color Smart in securing, under a final court decision rendered in injunction proceedings, the deletion of an Internet post containing defamatory accusations by a competitor.	N/A	Romania
13-Oct	Cytowski & Partners; SLV Legal	Cytowski & Partners advised Earlybird Ventures in its EUR 4.5 million seed financing to Sessions. SLV Legal advised Sessions.	EUR 4.5 million	Romania
14-Oct	Filip & Company; Wolf Theiss	Wolf Theiss, working together with Goodwin Procter and Haynes Boone, advised Emona Capital on its USD 20 million minority investment in Amber Studio. Filip & Company advised Amber.	USD 20 million	Romania
14-Oct	Mitel & Partners; Popovici Nitu Stoica & Asociatii	Popovici Nitu Stoica & Asociatii advised Provita owners Ada and Ovidiu Palea on the sale of a 51% stake in the company to MedLife and the new shareholder agreement. Mitel & Partners advised MedLife on the acquisition.	N/A	Romania
23-Sep	Advant Beiten; Poellath; Radovanovic Stojanovic & Partners	Radovanovic, Stojanovic & Partners, working with Advant Beiten, advised the shareholders of Hedwell Group Germany on the sale of the Hedwell Group to SAP Fioneer. Reportedly, Germany's Poellath advised SAP Fioneer.	N/A	Serbia

Date Covered	Firms Involved	Deal/Litigation	Value	Country
23-Sep	Zivkovic Samardzic	Zivkovic Samardzic advised both companies on the Titan Cementara Kosjeric merger with its affiliate Stari Silo Company.	N/A	Serbia
11-Oct	NKO Partners; Subotic-Homen & Partners	NKO Partners advised the Dr. Max Group on its acquisition of two pharmacy chains in Serbia: Pancevo-based AU Kod Suncanog Sata and Veliko Gradiste-based AU Selic. Reportedly, Subotic-Homen & Partners and solo practitioner Slobodan Miljkovic advised the sellers.	N/A	Serbia
20-Sep	Taylor Wessing	Taylor Wessing advised VavaCars on its USD 37 million series C funding round.	USD 37 million	Turkey
21-Sep	NSN Law Firm; Paksoy	Paksoy advised Lesjofors on its acquisition of all shares in Telform. The NSN law firm advised the seller.	N/A	Turkey
22-Sep	Gide Loyrette Nouel (Ozdirekcan Dundar Senocak)	Gide's Turkish affiliate Ozdirekcan Dundar Senocak advised Serafin Group-backed Night Train Media on its acquisition of Korean media group CJ ENM's majority stake in Eccho Rights.	N/A	Turkey
23-Sep	Paksoy	Paksoy advised the European Bank for Reconstruction and Development on a EUR 50 million loan to Yapi Kredi Leasing.	EUR 50 million	Turkey
26-Sep	Schindhelm (GEMS Legal)	GEMS Legal Schindhelm advised TUV Austria Holding's subsidiary TUV Austria Turk on its acquisition of a 51% stake in the Mavi Akademi Group.	N/A	Turkey
27-Sep	Gungor Law; Keco Legal; Urer Law	Keco Legal advised Getmobil on its TRY 27 million seed funding round with a valuation of TRY 180 million. Urer Law advised the investors. Gungor Law reportedly advised Getmobil as well.	TRY 27 million	Turkey
28-Sep	Bener Law Office; Moral, Kinikoglu, Pamukkale, Kokenek	Moral, Kinikoglu, Pamukkale, Kokenek advised Softline Holding on its acquisition of 80% of shares in Makronet Bilgi Teknolojileri from Gucly Tugay. Bener advised the seller.	N/A	Turkey
7-Oct	Caliskan Okkan Toker	Caliskan Okkan Toker advised Esas Private Equity on its EUR 11 million investment in Oplog.	EUR 11 million	Turkey
10-Oct	Dentons (BASEAK); Osborne Clarke	Dentons' Turkish affiliate Balcioglu Selcuk Ardiyok Keki Attorney Partnership advised Armut and its shareholders on the merger with ProntoPro. Osborne Clarke's Milan office reportedly advised ProntoPro on the deal.	N/A	Turkey
14-Oct	Paksoy	Paksoy advised packaging and paper company Mondi Corrugated BV on the merger of its Borsa Istanbul-listed company Mondi Olmuksan into Mondi Tire Kutsan, a company belonging to the same group.	N/A	Turkey
28-Sep	Everlegal	Everlegal announced its cooperation with the Danish Refugee Council to implement an online legal support platform aimed at helping Ukrainians around the world.	N/A	Ukraine
6-Oct	Integrites	Integrites successfully represented Epiroc in a safeguard investigation in Ukraine regarding the company's imports of three-cone drill bits into the country.	N/A	Ukraine
6-Oct	Avellum	Avellum advised all parties involved in Roosh's acquisition of a minority stake in Neurons Lab.	N/A	Ukraine
10-Oct	Asters; Quinn Emanuel Urquhart & Sullivan	Asters, working with Quinn Emanuel Urquhart & Sullivan, successfully represented the interests of PrivatBank in two parallel arbitration proceedings before the London Court of International Arbitration regarding the enforcement of eurobonds issued in 2010 and 2013.	N/A	Ukraine

Legal Ticker:

- Full information available at: www.ceelegalmatters.com
- Period Covered: September 16, 2022 - October 15, 2022

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ON THE MOVE: NEW HOMES AND FRIENDS

Baltics: Andersen Global Enters Cooperation Agreement with Lextal Legal

By Andrija Djonovic (September 30, 2022)

Andersen Global has entered into a collaboration agreement for the Baltic region with Lextal Legal, adding three locations to its existing network: Lextal in Estonia, RER Lextal in Latvia, and iLaw Lextal in Lithuania.

According to Andersen Global, "Lextal Legal provides services in international relations, mergers and acquisitions, corporate and competition, dispute resolution, public procurement law, insurance law, real estate, criminal law, and data protection. The firm, comprised of 21 Partners and more than 75 professionals, provides comprehensive solutions to clients in the Baltic region and globally."

"Our team's values and dedication to quality and client service have positioned us as a leading strategic partner for our international and regional clients," Lextal Partner and Co-Founder Urmas Ustav said. "Our firm's collaboration with Andersen Global expands our global footprint and enhances our capabilities."

"The firm's impressive growth over the years and competitive platform is closely aligned with their dedication to their clients and providing best-in-class service," Andersen Global Chairman and Andersen CEO Mark Vorsatz added. "With the addition of Lextal Legal, as well as our other recent additions in the region, we have built a formidable platform that provides strong coverage and positions our organization for further growth as we continue to expand our global platform."

Established in 2013 by US member firm Andersen Tax LLC, Andersen Global is an international association of legally separate, independent member firms comprised of tax and legal professionals in 196 locations around the world. As previously reported by CEE Legal Matters, the association's CEE footprint has been growing in recent years, including in Bosnia and Herzegovina (with the Sajic law firm), Slovenia (with Senica & Partners), Croatia (with Kallay & Partners), Moldova (with Turcan Cazac), Serbia (with JSP), Romania (with Tuca Zbarcea & Asociatii), Turkey (with MGC Legal), Hungary (with Szabo Kelemen & Partners), and Ukraine (with Sayenko Kharenko). ■

Moldova: Alexander Turcan Elected President of Chisinau Bar

By Teona Gelashvili (October 7, 2022)

Turcan Cazac Managing Partner Alexander Turcan has been elected President of the Chisinau Bar.

According to Turcan Cazac, "the Chisinau Bar has 1,700 active members and is the largest of four Moldovan regional bars forming the Union of Advocates of the Republic of Moldova. The mandate is for four years."

Turcan specializes in corporate and M&A, banking and finance, and real estate. He established the Turcan Cazac law firm in 1999. Two years ago, in 2020, Turcan had also been elected a Vice President of the Chisinau Bar, for a two-year term (as reported by CEE Legal Matters on November 3, 2020). ■

Bosnia and Herzegovina: ODI Law Opens Office in Sarajevo

By Radu Cotarcea (October 11, 2022)

ODI Law has opened a new office in Bosnia and Herzegovina with the addition of Mia Civic as a Partner.

Civic joins from Telemach BH, where she had been the Head of Legal since January 2022. Before that, she was the Director of Legal Affairs at Holdina, between 2018 and 2022. Earlier still, Civic was a Senior Associate Lawyer with Law Office Miljkovic & Partners, between 2015 and 2018, and a Legal Advisor at Prvi Faktor, between 2007 and 2015. She also served as an Associate Legal Counsel with the Special Department for Corruption with the Prosecutor's Office of Bosnia and Herzegovina, between 2004 and 2007, and as a Legal Officer/OHR National Prosecutor with the Office of the High Representative, between 2002 and 2004.

She covers banking/finance, corporate/M&A, and dispute resolution among others.

"We are very excited to be putting a foot on the ground in Sarajevo," commented ODI Managing Partner Uros Ilic. "Building upon a past acquaintance, we are very much looking forward to working with Mia Civic and her team to support our clients' endeavors in Bosnia and Herzegovina, an exciting emerging market, adding an important piece to ODI's regional map. The launch is well-timed to meet the increasing demand for well-coordinated inter-jurisdictional mandates. With Mia's pedigree, the market entry significantly adds to unwavering high-quality support for ODI's clients." ■

Turkey: Sakar Law Firm Opens Doors in Istanbul

By Radu Cotarcea (October 11, 2022)

Former Bener Law Office Senior Partner Gozde Esen Sakar has established the Sakar Law Firm in Istanbul.

Sakar first joined the Bener Law Office in 2005 and made Partner with the firm in 2011. Before leaving, she was the Head of the firm's Corporate/M&A team. Prior to that, she was an In-House Counsel with Amity Oil International, between 2003 and 2005, an Attorney at Law with Ertuk and Diem & Partner, between 2001 and 2003, and a Legal Trainee with the Ozer Law Office, between 2000 and 2001. ■

Romania: Suciu Popa Launches Restructuring, Insolvency, and Turnaround Practice

By Andrija Djonovic (October 14, 2022)

Suciu Popa has launched the Restructuring, Insolvency, and Turnaround practice within the firm, with Managing Partner Miruna Suciu and Partner Daciana Popa at the helm.

Miruna Suciu has been the Managing Partner of Suciu Popa since 2016. Before that, she spent almost 17 years with Musat & Asociatii, having joined the firm in 1999. She specializes in corporate/M&A, energy and natural resources, banking & finance, and capital markets.

Daciana Popa has also been with the team since 2016. Prior to that, she spent nine years with Musat & Asociatii, most recently as a Senior Associate, between 2007 and 2016. She specializes in disputes, labor law, real estate, restructuring and insolvency, and corporate work. ■

PARTNER MOVES

Date	Name	Practice(s)	Moving From	Moving To	Country
13-Oct	Annamaria Csenterics	Corporate/M&A	Dentons	Kinstellar	Hungary
16-Sep	Dalia Augaite	Capital Markets	Sorainen	TGS Baltic	Lithuania
3-Oct	Jonas Sakalauskas	Litigation/Disputes	AAA Law	Averus	Lithuania
3-Oct	Vaidas Rakauskas	Litigation/Disputes	AAA Law	Averus	Lithuania
11-Oct	Adam Stopyra	Banking/Finance	DWF	KPMG Law	Poland
12-Oct	Marcin Robenek	Litigation/Disputes	Gessel	Osborne Clarke	Poland
28-Sep	Daiana Ichimescu	Litigation/Disputes; Energy/Natural Resources	Suciu Popa	Adesman & Asociatii	Romania
6-Oct	Berk Cin	Corporate/M&A; Capital Markets	Baker McKenzie (Esin Attorney Partnership)	KECO Legal	Turkey

PARTNER APPOINTMENTS

Date	Name	Practice(s)	Firm	Country
3-Oct	Ana-Maria Filip	Corporate/M&A	Dragne & Asociatii	Romania
3-Oct	Bogdan Toma	Real Estate	Dragne & Asociatii	Romania
10-Oct	Bogdan Bularda	TMT/IP	Grecu & Asociatii	Romania
13-Oct	Ioana Florea	Insolvency/Restructuring	Leaua Damcali Deaconu Paunescu	Romania
13-Oct	Cosmin Soare-Filatov	Litigation/Disputes	Leaua Damcali Deaconu Paunescu	Romania
13-Oct	Simina Rusanescu	Litigation/Disputes	Leaua Damcali Deaconu Paunescu	Romania

OTHER APPOINTMENTS

Date	Name	Firm	Appointed To	Country
12-Oct	Dieter Thalhammer	E+H	Managing Partner	Austria
12-Oct	Alric Ofenheimer	E+H	Managing Partner	Austria
10-Oct	Zvezdelina Filova	Deloitte Legal	Legal Practice Leader	Bulgaria
23-Sep	Romana Szutanyi	Rowan Legal	Head of Employment	Czech Republic
23-Sep	Mari Manniko	PwC Legal	Head of Data Protection and Media Disputes	Estonia
23-Sep	Csongor Tompa	Bird & Bird	Head of Banking & Finance and Capital Markets	Hungary
7-Oct	Alexander Turcan	Turcan Cazac	President of Chisinau Bar	Moldova
7-Oct	Pawel Kuglarz	Tatara & Partners	Head of International Desk	Poland
26-Sep	Oana Voda	Dentons	Head of Public Procurement	Romania
12-Oct	Olga Sipka	Kinstellar	Head of Competition and Compliance	Serbia

IN-HOUSE MOVES AND APPOINTMENTS

Date	Name	Moving From	Company/Firm	Country
11-Oct	Mia Civic	Telemach BH	ODI Law	Bosnia and Herzegovina
22-Sep	Rafal Sobolewski	Aviva Investors	Quadra Underwriting	Poland
16-Sep	Burak Dimici	Dimici Aksoy	Straife Risk Management	Turkey
14-Oct	Oleksandr Pankiv	Latham & Watkins	Bank of America	Ukraine

On The Move:

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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.

Austria All Fired Up: A Buzz Interview with Phillip Dubsky of Herbst Kinsky

By Teona Gelashvili (October 4, 2022)

The Austrian market seems very busy, largely in terms of investment rounds and consolidations in the past couple of months, with crypto and blockchain technology companies coming under pressure, according to Herbst Kinsky Partner Phillip Dubsky.

"Vienna has a strong biotech center and there are many investment rounds and acquisitions there, with financing and licensing deals," Dubsky begins. "In addition to those, there have been a few big transactions on the Austrian market," he notes. "Among the most prominent recent transactions was advising Raiffeisen and Uniqa in connection with potential changes to the Strabag shareholder consortium and takeover law issues, as a result of the sanctions regime targeting Oleg Deripaska," he adds. "Moreover, there were interesting start-up financing rounds, and quite a few of these companies, including Go-Student and Waterdrop, are now developing from start-ups to scale-ups."

In terms of private equity, Dubsky notes that the market is still busy, but "it is mainly driven by funds that are domiciled abroad, mostly from US and European investors. There were also a number of investments from the Middle East but, interestingly, they were more strategic investments rather than financing rounds or private equity-related transactions," he adds. According to Dubsky, the local private equity fund scene is still underdeveloped. "We have Speedinvest and some smaller funds, some of which are backed by taxpayer funds, but that's about it," he notes.

On the M&A side, Dubsky also notes that "more warranty and indemnity insurance companies are trying to be involved in M&A transactions, consequently, there are increased activities in that area." According to him, "the legal sector seems to be reluctant to apply it, as insurance coverage in some cases is somewhat limited and not as attractive as advertised. Whether it will be successful or not is still to be seen, but there is definitely increasing competition among insurance companies." In addition, he says that the uncertainties in connection with the Austrian implementation of the FDI regime have adversely impacted the market for purchasers outside of the European Union.

Dubsky adds that, in Austria, "crypto and blockchain technology are still important, with a number of active blockchain investments and companies. However, since February 24, 2022, when the 'crypto winter' set in, the valuations may face downward corrections." He highlights that "Austria's Financial Market Authority has been quite open in terms of experimenting and providing sandbox tools for cryptocurrency providers. We'll see whether the initial push will continue, as some of these companies are currently struggling to survive."

Dubsky highlights some forthcoming amendments to tax legislation. "Austria is willing to join the European efforts to tax energy companies on windfall profits, however, given that most Austrian energy companies are state-owned, there is a need to find less disruptive ways of dealing with it," he points out. "In terms of inflation, the government has introduced caps and subsidies for electricity, and there might be some for gas as well. Finally, the tax code will likely abolish cold progression in terms of salary increases, meaning that the legislation will limit the impact higher taxes have when moving up the tax brackets. The amendment also aims to combat the effects of inflation and is welcomed by everyone," he concludes. ■

Safety First in Ukraine: A Buzz Interview with Vladimir Sayenko of Sayenko Kharenko

By Teona Gelashvili (October 11, 2022)

The number one priority for Ukrainian firms is to ensure the safety of their employees while dealing with dire economic conditions and making collective efforts to help those in need, according to Sayenko Kharenko Co-Founding Partner Vladimir Sayenko.

"Obviously, life has changed dramatically in Ukraine since February 24, 2022, and the legal sector faces many challenges," Sayenko says. "Despite that, many law firms continue to operate in Kyiv in more or less an ordinary manner. Thus, since the war began, we had to put many measures in place to reorganize our operations and remain prepared for what's to come."

"Among those challenges, of course, our number one priority has been ensuring the security of our employees," he notes. "For example, our law firm had to spread our team apart for security reasons, since our main office is too near the government buildings, primary targets for missile attacks and terrorist groups, and does not have a bomb shelter," Sayenko points out. He adds that, "even after Kyiv was considered safer, we also encourage our people to work from home or in other secure locations so that large groups of employees would not be caught in one place."

"Moreover, a number of our employees are scattered all over Europe," Sayenko notes. "Most of them are on secondments at major international law firms, who have offered their support and invited our lawyers since the beginning of the war. It turned out to be quite easy to collaborate, as expertise in the fields such as competition, M&A, or arbitration is very relevant for our colleagues abroad," he notes. "As our workload increased during the last months, some Ukrainian lawyers are already coming back home."

Sayenko highlights that many Ukrainian law firms struggle to stay on the market. "The economy is not what it used to be, and most law firms barely make ends meet, especially if they rely solely on the local clients that face financial difficulties these days. It's hard to have any profits and preserve teams to continue operations. It is relatively easier for bigger firms with rather diversified practices and an international client base."

> ***Even after Kyiv was considered safer, we also encourage our people to work from home or in other secure locations so that large groups of employees would not be caught in one place.***

As for transactional matters, Sayenko notes that the market is quite unstable. "There is enough work in corporate and M&A – some businesses want to leave the market, some want to restructure, while others don't want to be subsidiary companies of Russian holdings. There are a lot of internal restructuring issues as well. Still, obviously, these are not classic M&A deals," he points out. Additionally, he says that "the banking and finance practice is also busy, as international banks and IFIs continue to provide financings to Ukrainian borrowers, leading to many sovereign deals and restructurings of existing debts."

According to Sayenko, businesses are also adapting to the new reality. "For instance, allocating human resources is a challenge," he says. "If half of the employees have to go to the army simultaneously, the company needs to manage it and find a replacement. To avoid such business interruption risks, companies try to find contracts to supply the military or satisfy other state needs, which helps reserve the necessary employees from mobilization."

"Currently, the economy struggles, and the legal market is just a reflection of overall economic conditions," Sayenko notes. "But, eventually, there will be a reconstruction phase – and there will be a need for a lot of capital to rebuild the country and for lawyers to support the process. The government is already thinking about ways to attract foreign investors to reconstruct the country. So, hopefully, we will soon see the light at the end of the tunnel." ■

Lack of Focus in the Czech Republic: A Buzz Interview with Barbora Dubanska of Dubanska & Co.

By Teona Gelashvili (October 21, 2022)

Inflation, the energy supply, and bankruptcy issues are having an enormous impact on Czech businesses and key sectors, with the government's attention divided, according to Dubanska & Co Partner Barbora Dubanska.

In terms of workload and mandates, Dubanska highlights that there are a lot of ongoing restructuring and insolvency proceedings in the Czech Republic. "Recently, one of the biggest Czech fashion chains, Pietro Filipi, went through insolvency proceedings," she says. "It's a shame that it happened, as the company used to hire innovative fashion designers and was one of the few Czech fashion production companies."

> ***An increase in energy prices will also have an impact on healthcare and hospital management. Hospitals now have to think twice about where to spend their money, to make sure that they can still supply healthcare to patients.***

"Similarly, Czech glass manufacturing companies are facing huge risks due to the high energy prices," Dubanska notes. "Many glass manufacturers, producing both regular and glass art products, have announced that they would terminate their activity over the winter, not being sure if that will last for a few months, or whether they will come back at all." Further, "we also have specialized schools for glass manufacturing, for both mass production and art products," she says, noting that they are facing similar problems. "Considering the energy uncertainty, these schools are changing their timetables to sustain activity," Dubanska notes. "It is sad for the Czech Republic, as the country is famous for glass production and has famous manufacturers and artists. The current crisis is not affecting only businesses, but art as well."

Additionally, Dubanska says that the crisis has an impact on healthcare – "medicines manufacturing is considered a priority sector now, in terms of energy distribution," she notes. "An increase in energy prices will also have an impact on healthcare and hospital management. Hospitals now have to think twice about where to spend their money, to make sure that they can still supply healthcare to patients."

Dubanska also highlights the potential impact of the draft Regulation for a European Health Data Space, introduced by the EU Commission as part of its transition to a digital economy. "One of the key features, in terms of data flow, could be having healthcare records in an electronic format, accessible for patients on the spot and free of charge," she says. "This would simplify getting healthcare abroad for patients, and also be easier for healthcare providers. At the same time, anonymized and aggregated data could be available for policymakers, scientists, and businesses to undertake research projects, adopt policies, or come up with innovative solutions." Dubanska notes that this is a significant topic on the EU presidency agenda, yet "there is pushback from the conservative side – there are some hospitals in favor of paper forms, as well as people and companies who would keep that anonymized and aggregated healthcare data from being freely available."

"And there are supply chain issues as well," Dubanska adds. "For example, Skoda's manufacturing plants are suffering from a lack of supplies, such as chips. The production has slowed down but, luckily, there were no layoffs yet," she notes, highlighting that the Czech Republic has "one of the lowest unemployment rates in Europe, however, there are prognoses that we'll see a surge at some point." In general, Dubanska says that there is a huge push from industry associations, such as the Chamber of Commerce and Confederation of Industry, for the government to be more involved in managing the impact of the crises. "The Czech Presidency of the EU Council is taking government focus away from domestic issues, and that's far from an ideal combination of factors," she notes. ■

Real Estate Slowing Down in Poland: A Buzz Interview with Bartosz Miszkurka of Solivan

By Teona Gelashvili (October 24, 2022)

The new Polish company law shows promise for attracting foreign investors, while the Polish residential real estate market is struggling, according to Solivan Partner Bartosz Miszkurka.

"Significant amendments to the Polish company code – some of the biggest introduced in the last years – came into force on October 13, 2022," Miszkurka begins. "They are supposed to make the Polish legal landscape more attractive to foreign investors, offering more flexibility and control mechanisms for their business needs."

"The recent amendments introduce a new order on the company's holding law," he notes. "Until now, we didn't have any special and complex regulation dealing with the relationship between parent companies and subsidiaries. The new law offers a structure for the holding and mutual relationship between those companies." Interestingly, Miszkurka says, "the new law is limited to the private sector and is not applicable to public companies."

"The most important features of the new law include a dominant company's right to issue binding instructions to dependent companies," Miszkurka points out. "The board members of the dependent companies, on the other hand, are exempted from liability when they follow these instructions and act in the best interest of the holding companies. The dependent companies are also required to submit yearly reports for auditing and accounting purposes." Additionally, Miszkurka says that "the new law also establishes that participation of an auditor is compulsory during the meetings of the supervisory board – aimed at boosting the credibility of the company's work. There are also a lot of new sanctions dealing with criminal liability."

On a separate note, Miszkurka highlights that there are very interesting developments in the Polish real estate market. "Residential developments registered a significant slowdown, as real estate buyers struggle to get financing from the banks. The cost of loans has increased due to high-interest rates," he notes. "This means that they are not able to finance the acquisition of apartments, and therefore sales have stopped. Undergoing projects will likely complete, however, there is a scant chance of any new ones being started."

According to Miszkurka, the same applies to real estate designed for institutional rentals, for example to students: "the rent proceeds from the lease agreements are not enough to cover the costs toward the bank. Next year, we expect there will be good opportunities to pick up cheap projects from other developers that won't be able to complete them." Similarly, he says, "if you look at the Polish stock exchange market, many developers have issued bonds. We expect that many of them will not be able to repay those bonds come February or March. They will likely have to file for bankruptcy, refinance, or re-issue bonds. We expect some interesting developments in those areas." Still, Miszkurka believes that there is a light at the end of the tunnel, despite the crisis: "those companies that have their own capital are expanding and investing in projects such as retail parks."

At the same time, the Polish renewables market is booming: "next year we expect Polish state-owned companies to heavily invest in renewable energy, including wind and solar parks," he says. "A lot of new regulations are also expected to liberalize the market. It is inevitable, as we don't have much time and we cannot be dependent on coal forever." ■

> ***"Residential developments registered a significant slowdown, as real estate buyers struggle to get financing from the banks. The cost of loans has increased due to high-interest rates.***

Betting on IT, Renewables, and Construction in Bulgaria: A Buzz Interview with Venelin Dimitrov of KDP

By Andrija Djonovic (October 24, 2022)

Cautious optimism threads across Bulgarian markets – despite political instability and rising concerns fueled by the concurrent global crises – according to Komarevski Dimitrov & Partners Partner Venelin Dimitrov.

"Bulgaria has had four elections in less than two years, so you could say that our political climate is not a very stable one," Dimitrov begins. The newly elected parliament had its first three sessions following the elections of October 2, and it is already facing challenges. "The citizens voted in such a way that no party gained a majority – a fairly wide coalition of likely more than three parties will be needed in order to govern in a stable fashion."

Dimitrov goes on to explain that the political parties that made it past the finish line are very different in their philosophies and political approaches. This means that they will need "to find a way to work together and coalesce around important issues, in order to help people make it through these difficult times," he explains. Still, Dimitrov shares that he is "cautiously optimistic about the times to come," hoping that the new powers that be will help the country move forward in a stable way.

"The immediate task is to combat the incoming recession, fueled by rising inflation and interest rates, and further accelerated by the increase in energy prices, sanctions, and countersanctions both resulting from the war in Ukraine," Dimitrov says, adding that the situation is particularly dire when taking into account that "Bulgaria just started to recover from the pandemic years." He reports that the overall legislative efforts have been stalling in the country, as a direct consequence of political insecurity and instability. "The road ahead will have to include a comprehensive legislative agenda – transposing the EU whistleblowing directive, implementing ESG-related changes, and improving the overall state of compliance, to name but a few areas of interest," he says.

However, where there are challenges, Dimitrov also feels there are opportunities. "We have seen a strong uptick of work related to the relocation of businesses and workers from Russia, Ukraine, and Belarus to Bulgaria, primarily in the area of IT," he says. "In times like these, this is a major positive signal because it implies that the already booming domestic IT market will likely develop further," he explains.

Finally, Dimitrov reports that investor interest in Bulgaria is "resilient in the face of ongoing struggles. There has been a bit of a dip following the post-COVID-19 surge, but M&A levels are still good in Bulgaria. Consolidation on some markets continues as expected." Dimitrov opines that investors are currently likely to employ a "wait and watch" approach, but that "they still wish to continue doing business, which is a positive sign. There are swaths of market optimism – especially in the renewable energy and construction sectors – and I am confident that this will spell good things for the economy," he says in conclusion. ■

> ***"We have seen a strong uptick of work related to the relocation of businesses and workers from Russia, Ukraine, and Belarus to Bulgaria, primarily in the area of IT.***

It All Boils Down to Energy in Hungary: A Buzz Interview with Rita Parkanyi of KCG Partners

By Teona Gelashvili (October 24, 2022)

The energy crisis has led to businesses shutting down for the winter and subsequent employment-related issues, with the Hungarian government now providing energy subsidies, according to KCG Partners Founding Partner Rita Parkanyi.

"Similarly to many other European countries, the energy crisis has been a key challenge for Hungary recently," Parkanyi begins, saying that an immediate impact was felt in numerous industries. "Consequently, people and businesses are very cautious about energy consumption and, whenever possible, they are trying to come up with new technological solutions to save energy," she notes.

According to Parkanyi, different industries are affected differently. "For example, the clients from the tourism industry are highly affected by the soaring energy prices – every day we read news on hotels being closed, either temporarily or permanently. The legal sector is busy helping these businesses to renegotiate contractual agreements." For example, she says, "when it comes to commercial lease agreements, many of them are negotiated for three-to-five years, and now they're facing completely different circumstances. Such an increase in energy prices could not be foreseeable one year ago, and we advise these companies on how to re-negotiate contractual terms, or even on what their chances are if they go to court."

Similarly, Parkanyi says that there is a lot of work in the field of employment law. "Businesses that are closing over the winter are trying to find solutions for their employees," she points out. "It is a very unusual situation, as they cannot employ people for the next two-to-three months, but, also, they don't want to permanently terminate their contracts and lose them." She says that the legal sector is busy trying to find new solutions to deal with this uncertainty and make sure that work relations continue once businesses reopen.

Parkanyi adds that there are many other changes in the energy field. "There has been a new controversial regulation imposing a ban on reselling excess energy from solar power installations back to Hungarian systems," she notes. "Up until now, one could sell excess energy and, in winter, they would get energy back from the system. The government explained its decision through technical reasons – as a whole, the Hungarian energy system needs to be modernized and it couldn't handle such an increased energy transfer." According to her, it was quite shocking for the market, "as thousands of households wanted to install solar systems. Now many of them may cancel their orders since the investment might not make sense anymore."

There has been a new controversial regulation imposing a ban on reselling excess energy from solar power installations back to Hungarian systems. Up until now, one could sell excess energy and, in winter, they would get energy back from the system. The government explained its decision through technical reasons – as a whole, the Hungarian energy system needs to be modernized and it couldn't handle such an increased energy transfer.

Looking on the bright side, Parkanyi says that "a new energy subsidy program will come into force on November 2, 2022, to combat the increased energy prices. It will provide subsidies to large manufacturing enterprises implementing energy efficiency-related investments, such as solar panel installation or consumption-reducing investments." Additionally, Parkanyi highlights that there are considerable investments in the energy field as well. "A South Korean company will set up an electric car battery factory in Nyiregyhaza, Hungary," she notes. "The investment amounts to EUR 700 million and is a very important development for the company and the country as well." ■

LOOKING AHEAD TO THE NEW EU FOREIGN SUBSIDY REGULATION

By Teona Gelashvili

Later this year, the European Parliament is expected to pass the Regulation on Foreign Subsidies distorting the Internal Market (FSR). CEE Legal Matters spoke with Schoenherr's Volker Weiss, Johannes Stalzer, and Jan Kupcik to learn more about the new Regulation and its impact.

CEELM: Please walk us through the FSR's genesis and goals.

Weiss: If you look at the big picture, the European Union has an EU state aid regime, allowing for tight control over subsidies granted by member states. Nothing comparable exists for subsidies granted by non-EU countries. There are some legal instruments, of course, but they are deemed to be narrow in scope or not effective. Over time, it was perceived as a gap in the regulatory toolbox, as companies in the EU considered themselves to be at a disadvantage against companies subsidized by third countries to finance their economic activities. These companies could offer lower bids in tenders and win, leading to distortions of competition in the internal market.

That is what this regulation tries to address – to patch a gap in the regulatory landscape and thereby achieve a level playing field within the internal market. The instruments root in the EU's strategic goal to achieve "open strategic autonomy," i.e., to be as open a market as possible but remain as autonomous as possible. To realize this, the internal market needs to be shielded from the negative influence of subsidized businesses.

The FSR is a competition tool. Its goal is to protect competition in the internal market. As such, it is agnostic to the nationality or ownership of businesses. In this vein, it also covers EU businesses that receive subsidies from a third country. And state-owned companies are equally within the scope of the regulation and can come under scrutiny.

CEELM: What were the specific problems leading to the creation of the FSR, and what issues does it seek to address?

Weiss: There was a perception that the level playing field in the internal market is threatened by foreign subsidies. European industry felt disadvantaged against state-supported businesses from third countries. The idea gained a lot of political momentum – if you look at the legislative genesis of the tool, it was an incredibly quick process coming out of Brussels. From the EU Commission publishing the proposal in May 2021 until political agreement was reached – by the EU Commission, the European Parliament, and the Council – it took only about 13 months. The instrument will likely be adopted by the European Parliament officially this year and come into force in mid-2023.

Kupcik: The EU already has an FDI regime, which targets foreign investments. However, this regime is rooted in security and public order issues. The new tool is primarily focused on protecting competition in the internal markets. For some transactions, the regimes are likely to overlap, but their aims are different. We believe that the new mechanism will be used frequently and will probably target subsidies to companies from state-led economies, such as China, more often.

CEELM: What are the new tools introduced by the regulation?

Kupcik: The new regulation introduces three tools: an M&A tool, a public procurement tool, and a general tool. The M&A tool targets large transactions where the parties are subsidized from third countries. The thresholds are conceptually quite close to the EU merger regulation. First, when the turnover of the target exceeds EUR 500 million and, second, when financial contributions from third countries to all parties combined exceed EUR 50 million in the last three years, the parties must notify the EU Commission. For the second threshold, the regulation targets financial contributions in a broad sense, including loans, the supply of goods, and granting of licenses, for example. The companies will have to track and report these contributions. The EU Commission will

assess, in its investigation, if a contribution is a subsidy, which requires the contribution to be beneficial and selective. Once this is established, it will balance its positive and negative effects, and whether it distorts internal markets. The transaction cannot be closed without the EU Commission's approval.

Stalzer: The FSR also introduces a public procurement tool. It was much needed and welcome, as experience has shown a significant need to address distortive foreign subsidies in public procurement. The reason is twofold: firstly, from an economic perspective, companies receiving foreign subsidies can submit underpriced bids for tenders. Secondly, there is also a political dimension, since many infrastructure projects are financed by EU funds to a certain degree – and due to foreign subsidies, we might end up paying foreign companies with European taxpayer money.

In terms of its scope, the public procurement tool is similar to the M&A one. It includes a notification obligation for tenders with a value over EUR 250 million – a high threshold compared to others in public procurement. The minimum threshold for foreign financial contributions is EUR 4 million in the last three years. If these thresholds are met, bidders and major subcontractors are required to notify the contracting authority of all foreign financial contributions received in the three years preceding that notification.

The EU Commission will, after receiving information from said contracting authority, assess whether the respective undertaking benefits from a foreign subsidy that distorts competition and, after a detailed review, either allow or prohibit the contract being awarded to such an entity. The tender cannot be awarded to the bidder without the EU Commission's approval.

Kupcik: And finally, the general tool is an *ex officio* one. Through it, the EU Commission may potentially look into any market situation, including transactions or bids in tenders that don't meet the abovementioned thresholds, as long as there are market distortion concerns. The proceedings before the EU Commission will include a preliminary review to collect information about foreign financial contributions, a check whether these qualify as a foreign subsidy, the application of a balancing test, and – if needed – the imposition of remedies.

Remedies might even include a request for the repayment of the subsidy. Such proceedings may start, for example, based on complaints filed by a disadvantaged company competing in the internal market.

CEELM: How will the new regulation impact CEE?

Weiss: This is an EU regulation and, thus, it will be solely enforced by the EU Commission. In CEE we have seen several infrastructure projects with the involvement of companies that appear to be backed by third countries.

In general, the FSR will add red tape for all companies doing business in Europe. Companies will have to track financial contributions from third countries, including the provision or purchase of goods or services, capital injections, grants, loans, etc. This will add a lot of routines and protocols for businesses, for compliance purposes.

Processes will also be prolonged and undergo EU Commission reviews. On the upside, the Union was missing a tool to address market distortions. The FSR will allow companies to challenge unfair competition coming from subsidized businesses.

Stalzer: It will create an additional administrative burden, especially for infrastructure tenders, considering that they have very specific timelines. The regulation might add 100 days or more to the process. Another administrative burden stems from the FSR applying not only to bidders but also to major subcontractors, i.e., subcontractors being awarded at least 20% of the contract value. Finally, it creates higher risks for prolonging processes, as unsuccessful bidders might try to challenge the tender process citing FSR infringements.

CEELM: What are your expectations for the enforcement of the FSR?

Kupcik: Even though the thresholds are quite high for the M&A and public procurement tools, they might still result in tens of cases being initiated every year. We expect to have even more coming from the general tool.

Weiss: To give a sense of magnitude, it is envisaged that 145 full-time EU official equivalents will be allocated to the enforcement of the regulation, with a EUR 90 million budget until 2027, a sizable amount of resources. Above that, the Directorate-General for Competition will be in charge of enforcing the FSR. This is the same directorate that is in charge of competition law enforcement, including cartel investigations, merger control, and state aid, known to be both diligent and aggressive. We expect to see quite a lot of engagement coming from their side. ■

WORKING TOGETHER AS ONE: ALLIOTT GLOBAL ALLIANCE IN CEE

By Radu Neag

Regional networks are a big deal in CEE of late, and one of the fastest growing alliances is Alliott Global Alliance. We sat down with AGA CEO Giles Brake to learn about the alliance's history, strategy, and plans in CEE. We also reached out to AGA law firms across the region to find out more about what drew them in, what benefits they've been reaping, and their role as members of a global network.

You Had Me at Hello

Five of the law firm Partners we spoke with share that Alliott Global Alliance's executive team made a great first impression, with Bulgaria's Sabev & Partners Partner Boryana Boteva noting that, "over the years, we have been contacted by many other professional networks. What drew our attention to AGA in the first place was the way they presented themselves and the ease of communication." Turkey's Burcu Doner Law Firm Founder and Managing Partner Burcu Doner doubles down, saying the "members of the executive team I met were the most welcoming and reliable people I ever met, compared with similar networks. From the first day, even before joining them, they made me feel so much included." Hungary's Feher Legal & Tax Managing Partner Daniel Feher, Poland's Woloszanski & Partners Managing Partner Michal Woloszanski, and Serbia's Milosevic Law Firm Partner Vladimir Milosevic all say they were sold on joining AGA after that initial discussion.

Global and Growing

Working with "multinational parties in different jurisdictions all around the world," Doner says she was "searching for an alliance with worldwide coverage as well as an outstanding experience in managing the relationship between its members." Slovakia's MST Partners Partner Martin Timcsak highlights that "membership in the alliance allows us to operate on a global scale and benefit from our past experiences in international transactions." And Milosevic says "the idea to join AGA came naturally, considering our growth in the market and the rise of international business in Serbia and in Bosnia and Herzegovina."

Woloszanski notes that, "from the first days of our law firm, we saw the great potential that international projects bring, and thus the importance of smooth cooperation with law firms around the world." And, while his firm had been developing that area on its own, he says "joining the Alliott Global Alliance was the leap to another level." Boteva adds that "how fast the organization is growing" was another key selling point.

The Specifics

AGA is a multidisciplinary alliance not just for accountants and advisers but also for lawyers, Feher stresses. And it's that mix of law, tax, and accounting firms together that, according to Slovenia's Law Firm Brezavscek Zgavec Partner Simon Zgavec, "international clients can approach as a one-stop-shop for all their legal and tax questions," which made "AGA the obvious choice" for his firm. Boteva agrees, adding that, "given the limited size of the legal market in our country," being granted an exclusive position within an AGA jurisdiction was very important. Milosevic says his firm was looking "to provide local professional services to international clients who seek full support for their business internationally," which is what AGA, "gathering leading international law firms and professional advisors," can provide.

Looking Beyond Referrals

Boteva lists some of the opportunities AGA offers its members: "not only referrals but regular events, training programs and tools, and insights on different topics." Feher says "the resources of our local AGA members for cross-border cooperation are significant – with a German Circle Meeting for members who advise German-speaking clients, for example – and deep collaboration between CEE and SEE.

Summing up all the arguments for joining AGA, Woloszanski says the clenchers were "its modern vision for doing business, the open and ethical expansion strategy, and the dynamic growth with a family atmosphere in the relationships within the alliance."

CEO Corner

CEELM: Briefly walk us through AGA's history.

Brake: The history of Alliott Global Alliance goes back to 1979. Our key driver was that the world was becoming more internationalized: the five founding accounting firms were facing increasing competition from what, back then, was known as the Big Eight. The transition to include law firms began in 2004. There is a natural synergy between legal and accounting services, so we decided to focus on bringing together advisors across those professions and formalize and create a USP. We sought to bring in firms of similar size and scope to our accounting members – those who worked with similarly sized clients. That enabled us to offer clients a network of advisors that work hand in hand, across borders. Almost 20 years later, we're made up of 55% accounting and 45% law firms, so we're very balanced.

CEELM: What about your CEE presence?

Brake: We've always had some kind of presence in CEE, but our development began in earnest only about five years ago, due to growing demand from clients to expand into and operate in the region, as well as the wider availability of medium-sized law firms.

CEELM: What's Alliott's USP?

Brake: Our unique selling proposition is our multidisciplinary focus. Furthermore, we are not a pure "referrals network" – the alliance is collaborative and client-facing. We give independent law or accounting firms the tools to offer their clients a global solution. Members can coordinate their client's global representation (for legal, accounting, tax, or audit matters and more). And member firms are co-developing shared solutions that can be offered to clients doing business in CEE and globally. For clients – we offer access to a truly global and truly multidisciplinary network – and there aren't many of those around. We have boots on the ground in 95 countries, with a balanced membership between law and accounting.

CEELM: What is the law firm profile you're looking for?

Brake: For our law firm membership, we aim for middle-market firms offering a comprehensive range of business law services. That, depending on the jurisdiction, can vary anywhere from ten to 200 fee earners. But it's not primarily about size. It's more about mindset: having the willingness and appetite to share and work together, to utilize the tools and resources of the alliance. We're also looking for firms with multijurisdictional client bases, those that need to service their clients through other members. I would say that 90 to 95% of member firms' clients are private companies, not publicly listed companies. We also work closely with the owners of these private companies and high-net-worth individuals, helping them with real estate, disputes, wealth management, and tax matters – closely hand in hand – something medium-sized firms are very good at.

CEELM: What can you tell us about membership requirements?

Brake: We are a non-exclusive alliance: you are free, as a member, to work with any other law firm or accounting firm. We would never restrict our members' freedom in doing what is best for their clients. But we expect our firms to not be affiliated with another international network. In turn, each member firm receives its own exclusive geographic territory, with no other AGA law firm there – a territory they can market themselves in as the sole AGA member firm.

Giles Brake, Chief Executive Officer, Alliott Global Alliance

CEELM: What is your current CEE footprint?

Brake: In CEE, we currently cover Austria, Bulgaria, Greece, Hungary, North Macedonia, Poland, Romania, Serbia, Slovakia, Slovenia, and Turkey. Our Austrian law member was the first in CEE to join the alliance. We have seen much expansion in recent years: in 2020, Feher Legal & Tax and Sora & Associates joined us, along with the Trpenoski Law Firm and Burcu Doner. In 2021, we expanded with Woloszanski & Partners and Foutsis & Partners. And the Milosevic Law Firm, Sabev & Partners, and MST Partners joined us in 2022. Our recent expansion in CEE has been very client driven. We have been seeing an increasing number of requests to service clients in these jurisdictions. Geographic growth enables members in the region to expand the business of their existing clients to new jurisdictions and puts AGA onto the radar of regional and international clients.

CEELM: What's next?

Brake: Now that we have a substantial CEE network, the game plan of the Worldwide Board and regional committee is to ensure member firms work together as one. And we must ensure we continue to grow through the addition of quality new firms across the region, to perfect our coverage. Our CEE member firms will focus on working together and developing specific common solutions for clients in the region, and for those looking to expand out of the region. So international coverage is important, but the key is onboarding member firms that want to collaborate and develop common shared legal solutions for the region's international companies.

Boryana Boteva,
Partner,
Sabev & Partners

Burcu Doner,
Managing Partner,
Burcu Doner Law Firm

Daniel Feher,
Managing Partner,
Feher Legal & Tax

Martin Timcsak,
Partner,
MST Partners

Michal Woloszanski,
Managing Partner,
Woloszanski & Partners

Simon Zgavec,
Partner,
Brezavscek Zgavec

Vladimir Milosevic,
Partner,
Milosevic Law Firm

A Warm Welcome and a Solid Start

AGA's CEE footprint includes the Milosevic Law Firm, which joined the alliance in February 2022, and Feher Legal & Tax, which joined almost four years ago. Looking back, Feher says the experience has been very fruitful. "It was very intensive, as we took part in all important events, making use of collaborative opportunities in special global practice groups – such as Global Mobility or Real Estate – meeting lots of new colleagues, business partners, and not least friends." Boteva agrees: "although a member for only six months, we can already say that the reality exceeds our expectations. We are regularly kept informed, not only of upcoming events but also of specific business opportunities offered by other members."

Doner says it's been "too good to be true. The alliance and my colleagues in the alliance have always made me feel that I am a part of a big family." With Timcsak's firm being a member for one year, he highlights "there are many friendly members and professional employees in AGA" and looks forward to their future cooperation. "Although we joined Alliott in the middle of the pandemic," Woloszanski says "from day one we were looked after and warmly welcomed, not only by Alliott staff but also by other members of the alliance."

Connected with a Top Team

"I am always confident that I can cooperate with the best professionals around the world when I need them," Doner emphasizes. "After a few weeks, we already felt part of the community and knew how we could quickly connect if our clients needed support overseas," Woloszanski remembers.

"We are a boutique Slovenian law firm," Zgavec points out, "and have, through AGA, enormous reach throughout Europe and the world. So far, our experience is that we can trust the other members and work together as one," which, according to him, "is at the heart of AGA's branding." He also highlights the alliance's small management team, saying "their great effectiveness is another benefit of being a member."

Knowledge Is Power

Five of the Partners highlighted regular meetings, events, and learning opportunities as key benefits of their AGA membership. "I have enjoyed every moment of the events where we have gathered and learned so much from each other," Doner says. Milosevic points to AGA's flagship EMEA Regional Conference, "which enabled us to meet over one hundred colleagues, from more than forty countries, in person, and exchange valuable experiences," as well as attending "expert

sessions on relevant law and accounting topics." He also appreciates "the opportunities we are offered every day," including webinars and online meetings on different topics, "especially valuable for our young professionals."

And Feher notes that AGA has enabled his firm to gain additional publishing visibility: "among others, being the Global Mobility Author partners of Wolters Kluwer's Hungarian subsidiary, publishing the second edition of our Global Mobility Legal and Taxation Summary, and being frequent contributors for CEE Legal Matters."

On to Business

Within these first six months, "we received several referrals and were contacted by members from other countries with specific requests for assistance," Boteva says, "and we referred two of our clients to AGA members in France and Germany, which has already resulted in a completed transaction." For Doner, "AGA's coverage has helped me a lot to gain new clients, who plan to expand their business to different parts of the world, trusting that they can get global legal and accounting solutions from us, when such expansion occurs," with Feher adding: "we have also had new international mandates from our existing clients." And Woloszanski remembers that "just a few months after we joined Alliott, our key client needed support with a complex M&A transaction across four jurisdictions. With the assistance of Alliott's executive office, we were able to quickly and efficiently set up an international working group that executed the entire transaction in an exemplary manner."

Was? Wo? Wann?

"Indeed," Woloszanski continues, "Alliott members recommend each other, not only to clients but also to friends or business contacts." So far, Boteva notes, "we have received referral work from Turkey, Cyprus, and Germany and are working permanently with one of those referred clients." For Doner, referrals came in "mostly from European markets," with Feher saying the same – "Western, Central, and Eastern Europe" – and adding the Middle East and North America. "We are also working with Hungarian companies," he says, "who would like to enter new foreign markets with our professional support." Timcsak says it's still early days, but his firm is "cooperating with colleagues from Benelux."

Woloszanski says they've received requests from "the US, Italy, Romania, Germany, and Portugal" and emphasizes that, "with a calm heart, we also send our clients to colleagues at Alliott, most recently to the UK, France, Germany, and Romania." Noting that they recently received referral work from Serbia and the US, Zgavec says, "for us, it is very important that we also have reliable partners abroad, and this is something AGA offers."

"Given the current crisis in Ukraine, which affected all neighborhood countries," Milosevic says "most inquiries come from those in the EMEA market who want international assistance, especially for the relocation of labor and capital."

The Nice Surprise

"The most unexpected benefit," according to Doner, "is finding myself unconsciously promoting my colleagues in other countries when talking to multinational clients. This has helped my firm to become a solution partner for such companies, rather than an ordinary legal counsel."

For Woloszanski, it was the addition of a clear competitive advantage to the firm's employer profile: "the offer of training and networking meetings for younger members." And Zgavec was pleasantly surprised by "the somewhat *relaxed* internal relationships among small-to-medium-sized AGA members, which produce the best results for our clients."

And for Milosevic it was the impact on "the branding and visibility of our firm, given that we are now recognized as part of a strong international network of professionals." Feher agrees, praising his "highly motivated AGA colleagues and the professional management of the Executive Office, which has seen AGA move into the Top 5 leading multidisciplinary global alliances, in just a few years." This, he notes, "makes our services more competitive."

A Sense of Pride

"Thanks to our AGA membership we can render not just full service legal and tax advice, but accounting and payroll solutions as well," Feher continues. "Our membership has made us a real multidisciplinary international advisory firm, offering a competitive one-stop-shop service for businesses and private clients."

"I am so happy and proud to be a part of AGA, which is one of the fastest growing alliances," Doner says, "and believe that we will create success stories acting together as one." For Milosevic, "despite the international crisis that we and many of our clients are facing, 2022 will be remembered as the year we joined AGA. This will be a challenging year, so it is crucial to have a strong network of partners that help each other and that, together, can organize help for people in need right now." ■

THE DELIVERER'S DELIVERERS: A LOOK AT DELIVERY HERO'S DEDICATED M&A TEAM

By Andrija Djonovic

With an average of 30 transactions in the last five years, Delivery Hero has developed its own, internal, dedicated M&A team. We sat down with Director and Head of M&A Legal Deniz Ozkan Ergun to learn more about how her team came to be and how they manage their pipeline of projects.

CEELM: Let's start by introducing the Delivery Hero dedicated M&A legal team.

Ergun: The journey of Delivery Hero changed over the years. When I initially joined, it was to work in the corporate/M&A department. About a year later, things changed: with Delivery Hero being a hyper-growth company, it engages in a significant volume of M&A work, with a very high turnaround. So, the team was restructured to develop a larger dedicated M&A team and remove some of the hybrid overlaps it had with corporate. We still have a very close relationship with the central corporate legal team and sit under the same roof of the Corporate, M&A Legal, and Legal Tech division with them.

We currently have two team leads in the M&A legal department. My part of the team focuses primarily on Latin America and Middle East transactions, whereas my colleague focuses more on Asia-Pacific and Europe. With the volume of M&A work, it made sense to internalize much of it, which, of course, ultimately also meant reducing legal costs.

In total, ten people report directly to my co-lead colleague and me. It is all very similar to a law firm structure, with two Directors at the top serving as overseers, followed by Senior Legal Counsels as the second-highest positions and frequent transaction leaders. After that comes mid-level staff, junior colleagues, and, finally, legal assistants. Depending on the size of the deal, we assign teams to transactions as we best see fit. Together with my co-lead, we focus on supporting and growing our team members and help them navigate Delivery Hero processes. Depending on the deal and complexity, either of the M&A legal heads also gets involved heavily in the drafting, negotiating, and execution phases.

CEELM: Can you give us a sense of this volume?

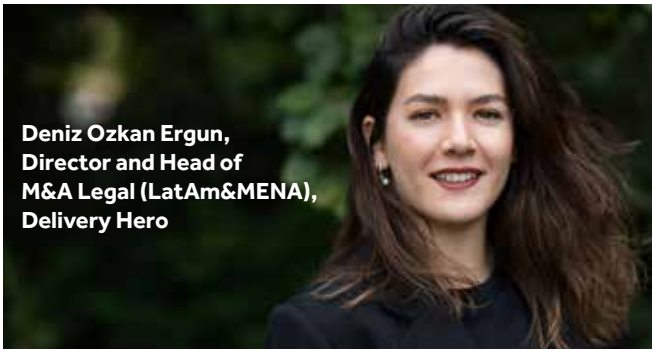
Ergun: Looking at our M&A legal dashboard – we have closed around 150 transactions since 2017, 40 of which were in 2021 alone, and some 15 this year already. These include 100% acquisitions, as well as minority investments, convertible loans, sales, and joint ventures. Our work focuses on acquisitions of entire companies and shares, investments such as asset acquisitions or convertible loans, divestments of assets and shares, joint venture work, and dedicated venture capital investments - through Delivery Hero Ventures, focusing on early-stage start-ups. Larger-scale investments often happen via Delivery Hero SE, our holding entity.

CEELM: At what stage do you get involved in the deals themselves?

Ergun: Unlike external advisors, we are a dedicated team – which means that we become part of the deal pretty early on – usually since the first commercial discussions take place. Here, we mainly support on ad-hoc matters and the initial overview of the deal, to help draw the framework of information sharing (e.g., drafting NDAs) as well as structuring the deal. As time goes by, we get more involved, especially as we start working on term sheets. Ultimately, our M&A philosophy is holistic, so we tend to comment on commercial matters as well. We question the rationale of the deals, weigh in on the entire picture, and try to add value as much as possible – on all levels of operation.

CEELM: Can you give us an average timeline for a transaction?

Ergun: It depends – sometimes we have to act very quickly, because the market we operate in is very competitive, and it is not always possible to engage in protracted discussions about strategy and planning. We must try and produce a realistic timeline, provide our strategy team with inputs, and figure out what is realistic and what isn't – often, very quickly. Still, I can say that it takes us, on average, three to four months to complete a transaction, depending on the commercial negotiation part. It is rare that any extensions are made on account of legal workstreams – we mainly focus our efforts on red flags and key topics, as well as post-merger topics (we have a dedicated post-merger integration team as well). The M&A legal team is in the lead from drafting and finalizing the term sheet, through due diligence and long-form contract negotiating (which usually run in parallel), up until completion of


Deniz Ozkan Ergun, Director and Head of M&A Legal (LatAm&MENA), Delivery Hero

the transaction. We support our post-merger integration team and functional teams involved in the deal, such as the tax and finance teams, for a smooth transition.

CEELM: You mentioned having a dedicated dashboard earlier. Which tools do you use to help you in your work?

Ergun: Our focus is on automating processes and documents as much as possible, to increase efficiency and reduce costs. We engage in transactions all around the globe, meaning we must ensure that the knowledge we gain working in one region is accurately and promptly applied to working in another. M&A has quite a high number of standardized approaches that are jurisdictionally specific and, indeed, common – meaning that we must ensure that information is shared quickly.

We use different tools and resources as the M&A legal team and as part of the larger Delivery Hero central legal team, such as document, contract, and spend management platforms and overviews. In the M&A legal team, we have a dashboard we built ourselves where we can reach all tools, overviews, lists, templates – basically anything that we use. Our M&A legal dashboard helps us safekeep and disseminate access to our knowledge banks which contain useful templates like NDA agreements or SPA clauses. When it comes to template contracts, we use them more as guidance than rigid templates – it is still pretty difficult to create a uniform template that would work in every M&A deal. All our previous work helps us here, as we build this knowledge base onward. Whenever we find ourselves on the sell-side, which is less frequent, we engage external data room service providers. I expect this part to get internalized in the future.

Finally, as an in-house team, we spend a lot of time working on administrative matters and are points of contact for M&A-related information. This means making sure we discuss all relevant issues with all relevant stakeholders, ensuring we stay up to date on organizational structures, as well as on business updates and external service provider approaches. For all of these cross-functional collaborations, we have descriptive documents which we access via our dashboard, and which come in useful.

CEELM: How do you choose external counsel when needed?

Ergun: If we have a standard M&A transaction before us that includes due diligence work – especially if it is in a foreign jurisdiction – we engage externals. There are, of course, cases where we do most of the work ourselves, and we try to, as much as we can, do everything on our own. Our legal staff is well-versed in English law, and we know what we're looking for in each transaction. Indeed, we relish each opportunity to enlarge our knowledge base – it is both an opportunity for growth and for reducing costs. For certain jurisdictions, we have law firms with which we have long-standing relationships. Still, we make sure to get free quotes from at least three law firms, enabling us to make our final call in a more detailed way. We spend a lot of time making sure we get the service we paid for. Ultimately, this call depends on the type of the transaction and if we wish to go with someone we know, or if we want to try someone new out.

In situations when we have never worked in a given market in the past, we, quite literally, ask around. Delivery Hero has quite a few dedicated teams, so we try and talk to them and see if they have had any experience – our antitrust team, corporate team, tax team, even our strategy and IT teams.

CEELM: How do you split the workload between in-house and external counsels?

Ergun: Often, we try to do as much as possible in-house. We almost always do the term sheets ourselves and, if we have any jurisdiction-specific questions, we reach out to externals, but we undertake the drafting and the finalization work. Of course, for due diligence work, we engage external counsels because they have more jurisdictional knowledge. For the long-form documents, we also tend to engage externals for the drafting part and, depending on our capacity and how fast we need to move, we take the driver's seat and get their support. We prefer to be in the lead in negotiations as well. Sometimes, we like to have a team member from the external law firm present at negotiations to pitch in and help out. Other times, to get over the finish line in time, we engage external teams more. Finally, we need support with closing work almost all the time, because closing takes part at the target level and jurisdiction. Recently, while acquiring a controlling stake in Glovo, we had a dedicated law firm that helped us out in Spain, with only one member of our team being sent over to Barcelona to be present for the closing and to coordinate efforts. ■

(RE)CONSTRUCTING RESTRUCTURING AND INSOLVENCY IN CEE

By Andrija Djonovic

There is a growing concern, across CEE, about a potential wave of insolvency and restructuring proceedings. Given the economic aftermath of COVID-19, coupled with the ramifications of rising inflation and interest rates, energy crisis concerns, and the war in Ukraine – the road ahead seems bumpy at best.

A Rising Tide

"We expect an increase in demand for consulting in the area of insolvency/restructuring," Graf Patsch Taucher Partner Clemens Freisinger begins. "We see this expected development in the fact that COVID-19-related government support and subsidies have expired, deferrals of levies and taxes by the public health insurance funds and financial authorities were terminated, and the suspension of the obligation to file for insolvency in the event of over indebtedness has ended," he says of Austria.

Resonating Freisinger's words are also DLA Piper Slovakia Country Managing Partner Michaela Stessl, Lextal Partner Magnus Braun, JPM Jankovic Popovic Mitic Senior Partner Nenad Popovic, Penteris Partner Daniel Klementewicz, PRK Partners Managing Partner Vaclav Bily, Tuca Zbarcea & Asociatii Partner Catalina Mihailescu, and Nazali Tax & Legal Managing Partner Ersin Nazali. "An increase in insolvency/restructuring work in 2023 is likely, given the expected increase in the number of bankruptcies/restructurings," Stessl says about Slovakia. "For example, while the number of declared bankruptcies was 160 in 2020, it increased to 287 in 2021. In 2022, so far, 235 bankruptcies have been declared."

COVID-19 and the war in Ukraine are the main drivers for such expectations in Turkey, according to Nazali. "The tension between Russia and Ukraine caused supply chain disruptions, transportation bottlenecks, shortages, and high input costs, especially in energy and commodities, which negatively affects all of Europe and even the world," Nazali says. Citing the decrease of the value of the Turkish lira "by almost half in 2022," he says that inflation rates in Turkey have gotten significantly higher than in other parts of the world. "Due to uncontrollable inflation rates, Turkey has adopted a new economic model in 2022 and aims to direct people to the stock market and other investment instruments by keeping interest rates low, and also aims to achieve growth in exports," Nazali explains. Still, even with this in place, the number of insolvent businesses in Turkey, which was 14,000 in 2019, is expected to reach almost 20,000 by the end of 2022. And he shares that, according to the *Allianz Trade 2022 Bankruptcy Expectation Report*, "approximately 18,500 businesses are predicted to go insolvent in Turkey in 2023."

Chiming in, Mihailescu adds that Romania has seen the num-

ber of insolvencies soar by "12% in the first half of 2022, compared to the same period last year, as more and more companies are struggling to survive in the current post-pandemic context." Given everything, she anticipates "even higher levels of corporate insolvencies in Romania, especially once the various economic stimulus measures expire and as a result of the negative impact of the war in Ukraine."

The same rings true in Serbia, where Popovic reports a "continued trend of increasing interest rates by central banks in an obviously overheated economy," which, coupled with high energy costs and inflation, means it will "become increasingly difficult to service loans."

But Not Everywhere

On the other hand, things do not appear to be as grim (yet) in other jurisdictions. "So far, the Bulgarian economy has encountered various COVID-19-related effects and, as of February 2022, also the effects of the war in Ukraine, but a surge in insolvencies is not yet one of them," Schoenherr Attorney at Law Tsvetan Krumov reports. "Although the Bulgarian state was slow in implementing measures to help companies affected by the pandemic and, more recently, by the increase of energy prices –measures which turned out to be insufficient – there has been no visible increase in bankruptcy proceedings since 2020."

The words of Cipcic-Bragadin Mesic & Associates Partner Marina Mesic, Cobalt Partner Gatis Flinters, RPHS Managing Partner Fisnik Salihu, and Kavcic Bracun & Partners Managing Partner Simon Bracun echo that sentiment. "Contrary to the financial crisis of 2007, during the last decade lending practices in Latvia have been very conservative," Flinters says. "As a result, banks and commercial lenders generally feel rather confident about the quality of their loan portfolios and expect only a moderate increase in insolvency/restructuring work in 2023." Flinters believes that the wave of insolvency and restructuring, if it were to hit, "will likely affect only some specific industries, but not the Latvian economy as a whole."

Salihu, looking ahead, adds that "considering that insolvency/restructuring did not increase during the pandemic and after, we do not expect any increase in insolvency/restructuring work in 2023." However, he points to another direction as one of the key reasons – the fact that the legal framework is a bit hazy: "companies, in general, were unable to understand the procedures at hand, and insolvency is still seen as a procedure with a negative reputational impact."

Catalina Mihailescu, Partner, Tuca, Zbarcea & Asociatii

Clemens Freisinger, Partner, Graf Patsch Taucher

Daniel Klementewicz, Partner, Penteris

Ersin Nazali, Managing Partner, Nazali Tax & Legal

Fisnik Salihu, Managing Partner, RPHS

Gatis Flinters, Partner, Cobalt

Magnus Braun, Partner, Lextal

Marina Mesic, Partner, Cipcic-Bragadin Mesic & Associates

Michaela Stessl, Country Managing Partner, DLA Piper Slovakia

Nenad Popovic, Senior Partner, JPM Jankovic, Popovic, Mitic

Simon Bracun, Managing Partner, Kavcic, Bracun & Partners

Tsvetan Krumov, Attorney at Law, Schoenherr

Vaclav Bily, Managing Partner, PRK Partners

Finally, Bracun says that Slovenia has experienced a *decrease* in the number of insolvency proceedings, yet this might change "soon, due to the ongoing challenges on the energy market and inflation in Europe. The Slovenian government has been working on different legislative measures to try to mitigate these risks, but it remains to be seen how successful it will be, especially in the business sector."

Legislative Landscapes – The Change So Far

Following the overall status and prospects of insolvency and restructuring work across CEE, it stands to reason that the legal landscape, as such, will change, if it hasn't already.

"The implementation of *Directive (EU) 2019/1023* through the *Restructuring and Insolvency Directive Implementation Act* will surely change the legal landscape of Austrian insolvency and restructuring law," Freisinger says. "The core of the RIRUG is formed by the Restructuring Code – this is a new and complex set of rules that must be understood and subsequently applied in practice." Still, Freisinger says it's too early to assess the impact of those changes on market realities.

According to Mesic, the same directive has been influencing the legal landscape of Croatia. "The aim of *Directive (EU) 2019/1023* is to remove obstacles that prevent viable companies and entrepreneurs in financial difficulties from accessing effective national frameworks for preventive restructuring and continuing operations, and also to enable honest insolvent or over-indebted entrepreneurs to use full debt relief, after a reasonable period, thus giving them a second chance," she explains. The directive also incentivizes debtors to react quickly and expands trustees' powers and responsibilities, Mesic adds.

In Slovenia, Bracun reports that the directive is yet to be implemented. Since it went before parliament for discussions, a "new government has been in place, which recognized the importance of its implementation, but has made little to no effort to propose a new draft of the Insolvency Act," he explains. Furthermore, he reports that the government is battling the incoming energy crisis and a rising tide of inflation, which also directly relate to potential insolvency and restructuring proceedings.

In addition to Austria, Croatia, and Slovenia, other EU member states have been working on implementing the directive into their national legal landscapes, including Bulgaria, the Czech Republic, Poland, and Romania. Krumov reports that Bulgaria has had "a voluntary bank loan moratorium, prepared by the Association of Bulgarian Banks," for 2020 and 2021,

which ultimately resulted in a slowdown in bankruptcy cases. The moratorium was not extended into 2022.

"In 2021, Poland introduced the National Register of Debtors, which is a new practical online tool providing up-to-date nationwide information on debtors and ongoing restructuring, bankruptcy, or secondary bankruptcy proceedings where the debtor has been banned from conducting a business activity, or proceedings for the recognition of a decision opening foreign insolvency proceedings concerning the debtor," reports Klementewicz. According to him, the register allows for greater transparency of restructuring and bankruptcy matters.

In Turkey, new legislation has been introduced during the initial onslaught of the COVID-19 virus to help prevent a surge in insolvency proceedings. According to Nazali, "new regulations were needed to extend the legal periods in various branches of law, including bankruptcy/restructuring, to prevent loss of rights due to missing legal deadlines." These regulations were temporary and are no longer in effect. However, the legal landscape regulating enforcement and bankruptcy was again altered in 2021, "to prevent an unconscious increase in the debts of the debtors and also ensure the continuation of the debtor's economic activities, by subjecting the debtor's transactions to the court's permission," he explains.

... And the Change to Come

Looking ahead, Flinters says "the most important near-term target for Latvia is to properly implement the *Restructuring Directive*. This is long overdue, and its introduction has been delayed by many disagreements on the proper balance of stakeholder interests. From the point of view of financial creditors," he explains, "it is vital to prevent the abuse of the restructuring procedure and artificial delays of insolvency proceedings if the debtor is beyond recovery." Much like Flinters, Krumov believes implementing the directive to be of the utmost importance for Bulgaria.

In Slovakia, Stessl stresses that the legislative framework is "very formalistic and time-consuming." Looking ahead, she expresses a desire for a framework regulating restructuring in such a way as to "provide more flexibility for the debtors to avoid bankruptcy."

In Mesic's view, the Croatian landscape would benefit from "the possibility of forcing the debtor to take restructuring measures in time, so that they are not left without the possibility to pay off their obligations. What most often happens is that the debtor becomes over-indebted and has no assets to pay off their obligations." The situation in Serbia is similar, according to Popovic.

"Due to many inconsistent and unclear rules, the *Insolvency Act* was regarded as one of the most complex legislative acts in Slovenia," Bracun reports. "This is especially noticeable for the provisions governing compulsory settlements. Several amendments have already improved the act significantly, however, there are still some procedures that require further tweaks to reflect recent market developments into the legal framework, and to make insolvency procedures more effective and transparent," he explains. "The new government has acknowledged the need for updated insolvency laws, but it is still unclear when any new changes will be implemented," making the environment somewhat unpredictable.

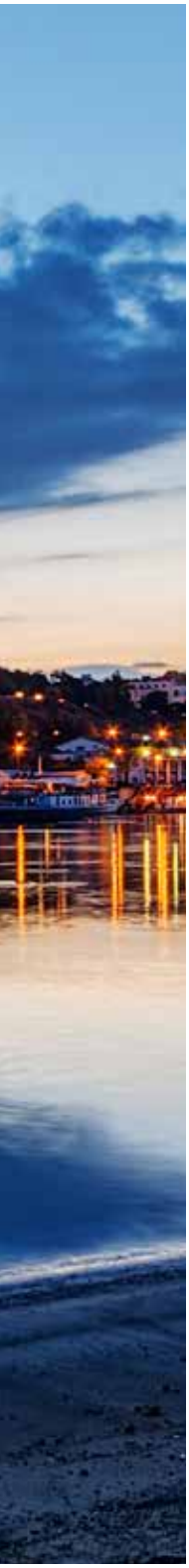
In Romania, Mihailescu stresses the need for speed. "Contrary to the demands of the principle of celerity, insolvency proceedings in Romania are rather lengthy," she says. "This is highly detrimental to the interests of all participants." She believes that any legislative updates must focus on increasing efficiency and limiting the duration of insolvency proceedings.

No Further Changes

On the other hand, some think that no legislative updates are needed. Braun, for one, says that, "taking into account the complete overhaul of both the *Bankruptcy Act* and *Reorganization Act* in Estonia, no one would benefit from any further changes. Rather, all efforts are best spent on upholding the main purposes of these laws: just and swift proceedings with the maximum benefit of the creditors and a rightful outcome for the debtor." Pressed to highlight an area in Estonia's legal framework that could still use an update, Braun says that amending the laws "to enable seizing the assets of a third-party in respect of bankruptcy proceedings," would be beneficial.

Finally, Nazali says that, in the case of Turkey, it is "crucial to make regulations that will maintain the balance of equity in the relations between the creditor and debtor." He believes that tilting the scales towards either end could create serious issues. Looking at the bills submitted to parliament, he says no further changes are "currently planned regarding bankruptcy and restructuring" and, speaking of future legislation, he ventures that "instead of offering short-term solutions specific to current economic conditions … many factors, such as economic and social ties with other countries, from past to present, should be considered." ■

MARKET SPOTLIGHT: SERBIA



ACTIVITY OVERVIEW: SERBIA

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

karanovic/partners	63
BDK Advokati	57
ŽIVKOVIĆ|SAMARDŽIĆ	55
JPM JANKOVIĆ POPOVIĆ MITIĆ	53
NKO LAW OFFICE	28

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

34
Vladimir Dasic

26
Igor Zivkovski

18
Djordje Nikolic

16
Nikola Poznanovic

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Jelena Gazivoda

Activity Overview:

- Full information available at: www.ceelmdirect.com/activity-rankings
- Period Covered: December 17, 2013 - October 15, 2022

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TECH THE MONEY AND RUN

By Andrija Djonovic

The technology start-up sector in Serbia has, for a while now, been quite rewarding and attractive for investors from all walks of business. Looking at the past few years, the Balkan country has seen investments ranging from early-stage and entry-level all the way to complete buyouts, to the tune of several hundred million euros. With all this funding flowing into the country, Bojanovic & Partners Managing Partner Vladimir Bojanovic and Zivkovic Samardzic Partner Igor Zivkovski talk about where does it go afterward, and what kind of effects is it producing?

No Rest for the Weary

Capital resulting from tech start-up investments is, "in the majority of cases, used to develop the projects to their full potential, so it is here to stay," Bojanovic begins. He shares that, according to certain market research data, it seems that 88% of those that received an investment are funneling the funds toward project development. And it doesn't look like those funds are drying up anytime soon – Bojanovic shares that the "IT sector in the Republic of Serbia continues to grow, regardless of the current economic situation in the world."

Indeed, agreeing with Bojanovic, Zivkovski reports that, "according to available data, 2021 was the most successful year ever for the Serbian start-up ecosystem – local start-ups attracted over USD 135 million in investments, an increase of 600% year over year. In addition, the Serbian tech sector exceeded USD 1.7 billion in export revenue in 2021."

Some successful examples of these investments include "Tenderly securing USD 58.6 million in three investment rounds, Orgnostic raising USD 5 million in its seed round, All.Art raising USD 4.5 million in venture capital, and Anari AI receiving USD 2 million to produce AI chips in the cloud," Zivkovski reports, further adding that the video game industry, blockchain development, and fintech are the most attractive sectors.

Perhaps surprisingly, however, not many of these transactions represented full exits. In fact, Bojanovic shares full exits occurred in but 5 to 10% of cases. "A large number of start-up companies see potential in developing new products and finding original solutions to existing problems," he explains. "And some of the entrepreneurs who sell their start-up companies after successful development of products or services, decide to open new start-ups with the money from their company," keeping the funds in the sector in any case.

Zivkovski resonates with this, adding that, "currently, in our practice, we have not had any examples of founders reaching a full exit – mostly, they still have the status of shareholders in the company." He shares that even in the most prominent example of a start-up being sold in Serbia – the USD 378 million sale of mobile gaming developer Nordeus to Take-Two Interactive in 2021 – "one of the founders is still a director in the company."

Money Changing Hands, Changing Landscape

With such robust and consistent investment numbers, the overall landscape has been reshaped as well – with incubators and similar structures coming to the fore to facilitate further growth in the sector. "Incubators have appeared in Serbia, as well as other types of assistance to new start-up companies, since this is a very lucrative opportunity if the business idea is good," Bojanovic points out. "At the beginning, when the start-up company is the most vulnerable, incubators play the most important role in the company's future development."

Providing specific examples, Bojanovic points to the "Business and Technology Incubator of Technical Faculties Belgrade. The BITF has maintained close ties with young innovators and students for more than a decade and, through numerous activities and training, it encouraged the development of new start-up teams in the field of innovation and technology," he explains. Furthermore, Bojanovic shares that "the Republic of Serbia, together with the European Union, is providing financing to new start-up companies every year," while their joint IPA Project currently in place allocates funds "in the amount of EUR 80,000 to EUR 300,000 per project."

On the other hand, Zivkovski points to grassroots as the primary source of funding. "Start-ups are mostly financed from their own funds and grants, followed by family and friends. A smaller share of start-ups indicated that their sources of funding were incubators/accelerators and business angels," he shares. "Other sources, such as entrepreneurial capital, public subsidies, EU programs, bank loans, or crowdfunding, accounted for less than 10%, while no start-up used IPOs, ICOs, or foundations as a source of financing," he reports. Zivkovski believes that such a high percentage of bootstrapped start-ups can have adverse effects: it could "lead to the slower growth and internationalization of start-ups in their early stages, given that many of the goals depend on the amount of available capital," he explains.

"Start-ups are mostly financed from their own funds and grants, followed by family and friends. A smaller share of start-ups indicated that their sources of funding were incubators/accelerators and business angels," he shares. "Other sources, such as entrepreneurial capital, public subsidies, EU programs, bank loans, or crowdfunding, accounted for less than 10%, while no start-up used IPOs, ICOs, or foundations as a source of financing.

– Igor Zivkovski, Partner, Zivkovic Samardzic

Still, Zivkovski shares that Serbia lacks none when it comes to potential funding sources. As key ecosystem investors and growth generators, he highlights the TS Ventures corporate venture fund established by Telekom Serbia, the Katapult acceleration program supporting early-stage start-ups, South Central Ventures, Fifth Quarter Ventures, USAID-funded Serbia Innovates and Venture an Idea, and Tenderly Garaza.

Even Better Things To Come

Given such strong numbers in the past, it would seem that Serbia's tech sector is looking at good things to come. "Serbia is known as a country that has highly skilled IT professionals, with excellent education, and represents a fast-growing IT market," Bojanovic says. "It is entirely expected that, in the coming years, the private equity funds market in Serbia will develop into a strong competitive market that will offer multiple opportunities for investments in the TMT and Technology start-up sector," he reports.

"Incubators have appeared in Serbia, as well as other types of assistance to new start-up companies, since this is a very lucrative opportunity if the business idea is good. At the beginning, when the start-up company is the most vulnerable, incubators play the most important role in the company's future development.

– Vladimir Bojanovic, Managing Partner, Bojanovic & Partners

Indeed, Zivkovski agrees, "the interest of investors in Serbian start-ups is increasing." He says that, in addition to "large funds such as the TS Ventures Fund, South Central Ventures, and Credo Ventures," that are backed by state and foreign investors' capital, there is more grassroots movement. "More and more individuals are organizing, with an average stake between USD 30,000 and 50,000, and they are founding smaller investment funds intended for investing in potentially good start-up ideas," he stresses. "And there are also angel investors, as well as investors from the corporate world who are motivated to get involved in the ecosystem, invest in start-ups, learn about them, and support them to succeed," Zivkovski says. ■

REAL ESTATE OF AFFAIRS IN SERBIA

By Andrija Djonovic

Global economic movements have led the real estate and construction sectors across CEE to face several issues: supply chain problems, rising construction material prices, and labor shortages, to name but a few, have made it difficult for real estate and construction projects to be completed with the same efficiency as before. Bojovic Draskovic Popovic & Partners Partner Marija Bojovic, SOG Law Firm Partner Milos Gledovic, and Andrejic & Partners Partner Aleksandar Andrejic look at the extent to which these issues are reflected in the Serbian real estate market.

Non-Issues?

"Shortages in the supply of labor force and supply chain interruptions related to construction materials have been constant in the past several years and are still ongoing," Gledovic begins. "This resulted in hikes in prices and the import of labor force, a new phenomenon for Serbia, which has traditionally exported labor to western countries." Yet, he stresses that these issues made no "significant impact on the level of work, and the construction companies are still managing to deliver."

Resonating Gledovic, Andrejic adds that "the real estate market recorded a jump in the prices of almost all immovable properties. The reason for this growth and development of the real estate market is the imbalance between supply and demand, as well as the extremely favorable housing loans which were available until recently," he explains. However, Andrejic does add that there has been a drop of about 9 to 10% in the number of issued construction permits. "This is attributed to investor caution, having in mind the global situation," he notes.

Agreeing with this sentiment, Bojovic says that "geopolitical events have ramifications for all market trends in general and especially for the construction and energy sectors." Consequently, she says "the construction sector in the Republic of Serbia, after years of stable growth, has started to record a slight decline in the last quarter."

Still, even with a slight dent, the real estate market in Serbia seems to be performing admirably – at least for now. "The report of the Republic Geodetic Institute states that, in the first six months of 2022, the real estate market reached as much as EUR 3.6 billion," Andrejic reports. This is a "quarter more than last year. The biggest part of that growth is due to a rise in real estate prices. Considering the increase in the price of construction materials and the interest rates for housing loans, it is expected that the market will slow down and, due to higher interest rates on housing loans, the prices would drop in the following period," he explains.

Signs of this (possible) decline are already showing, according to Bojovic, who shares that there was a decline of 7.6% in the gross added value in the construction sector. "This was an alarm for all the stakeholders to be proactive and agree on a package of necessary measures to be adopted by the government, which would serve as a stimulus to avoid this sector's further growth to be threatened," she explains.

However, even with such a drop, Bojovic reports that "there weren't substantial operational interruptions, given that there is still a growing demand on the market for commercial, residential, and warehousing facilities, as well as facilities and infrastructure required to produce electricity from renewable energy sources." Bojovic believes this to be sufficient motive for companies to maintain "increased activity in the construction and energy sectors and, at the same time, maintain the relative ease of their procuring additional financing either through loans or equity."

Chiming in on the sustainability of growth in the sector, Gledovic adds that, with "real estate prices having gone up tremendously in the past couple of years," developers were able to "absorb the increase in construction costs" and maintain activity levels.

Comparing Notes

Contrasting Serbia to the rest of CEE, there seem to be several factors in favor of the Balkan country. "Serbia is not part of the EU, and most foreign investors in Serbia come from non-EU countries, such as Israel, the UAE, and China," Gledovic says. "The price hike is also boosted by the high influx of immigrants from Russia, as Serbia remained open for them," he explains.

As another peculiarity of Serbia, Gledovic points to the "government's significant influence on property rights, which is the inheritance of the socialist era and the consequence of a not-ideal transitional legal framework." He stresses that "many sites for development are burdened by legal issues which are challenging to resolve, which drives the prices of land up."

Andrejic suggests the Serbian real estate sector might also be outperforming regional ones on account of major projects. "Capital projects such as the Belgrade Waterfront are something that makes the current market in Serbia special – such capital projects are not available in the region," he says. "Also, logistics centers and other facilities for commerce are developing heavily to satisfy market demand. Finally, the construction of infrastructural projects such as roads or railways contributes to the overall impression that, everywhere in Serbia, something is being constructed," he explains.

Moreover, Bojovic notes that, in addition to "substantial market demand for both commercial and residential spaces," there is substantial "support from the policymakers to facilitate and increase investments," which makes all the difference.

Building On

Ultimately, with such high market activity and investor interest, it would seem that the Serbian real estate and construction sectors will keep marching onward at a steady pace. However, our experts are a bit wary of making bold predictions for growth.

"The future depends on the global situation, the prices of materials, and overall inflation," Andrejic stresses. "The Serbian market will follow global influences, and we can expect its rise or drop in alignment with those. It is reasonable to expect that prices of real estate would drop since they have been rising for years," he explains. "At some point, considering the higher interest rates and the overall situation, it could be expected for prices to go lower."

Agreeing with Andrejic, Gledovic continues by adding that he expects "the rise of interest rates and construction costs to slow down, if not entirely stop, new developments in all segments [that include] logistics." He trusts that the "level of prices and yield will, to a great extent, depend on the political direction the new Serbian government will take concerning the Ukraine conflict and the consequences that could have, which are very difficult to predict."

Finally, ending on a somewhat positive note, "given that the real estate sector is the most important one for the economic growth of Serbia," Bojovic believes that further legislative reforms in this sector are incoming and that they "will enable a new cycle of investments in the industry." ■

Aleksandar Andrejic,
Partner,
Andrejic & Partners

Marija Bojovic,
Partner,
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Popovic & Partners

Milos Gledovic,
Partner,
SOG Law Firm

RENEWABLE ENERGY AMBITIONS IN SERBIA

By Teona Gelashvili

Although there are several incentives for renewable energy projects supported by the state, there also seem to be several factors that could impede Serbia's potential for renewables and deter further investments in the sector. Kinstellar Belgrade Managing Partner Branislav Maric, JPM Jankovic Popovic Mitic Senior Partner Jelena Gazivoda, and Gecic Law Partner Ognjen Colic weigh which will carry a stronger impact.

Serbia's Cunning Plan

"We have recently been seeing interest in the development of new renewable capacities, both from investors that have been in the Serbian market for a longer time and from a number of new investors," Maric says.

According to Gazivoda, the main existing investors in the renewables sector in Serbia "are famous international companies Masdar (Abu Dhabi Future Energy Company), Taaleri Energia (a Finnish development company for energy infrastructure), KfW Group subsidiary DEG, and Enlight Renewable Energy." About the newer players, Maric says "there are several investors from Western Europe, the US, Turkey, and China, as well as some domestic players." According to him, "the main focus is still on wind projects but there is an increasing number of photovoltaic power projects, both separate and prosumer projects."

Colic highlights that Serbia's new developments in the renewable energy sector are part of its larger ambitions in terms of energy. "Serbia's share of renewable energy sources in final energy consumption is now around 20%," he says. "To rapidly expand in this area, the Government of Serbia announced an ambitious plan to boost investments and achieve a 40% share of renewables by 2040."

Energy Potential and State Incentives

Gazivoda emphasizes several factors that draw investor attention to the renewables sector in Serbia. First of all, she notes, "there is the local availability of energy and energy sources in Serbia, in terms of the existence of all types of renewable energy sources – sun, wind, hydropower, biomass, biogas – as well as coal." She also points to the country's determination to implement the Green Agenda, "as well as long-term support from international financial institutions, especially the EBRD, World Bank, and European Investment Bank." According to her, "the EBRD has supported the two largest investments in the country's renewable energy sector so far – wind farms Cibuk 1 and Kovacica – which, combined, produce electrical energy for around 180,000 households."

Colic also says that investors primarily look at Serbia's potential for producing renewable energy. For example, he says, "the country has a considerable solar energy potential which, so far, has been underdeveloped," and there are also plans to "modernize and increase the capacity of the Djerdap hydropower station on the Danube, shared with Romania."

For Maric, "the main attraction point appears to be the solid track record during the initial phase of investments into renewables in Serbia." Overall, he says, "the main incentive appears to be the common belief that, going forward, renewables are supposed to be the major contributing factor in the energy offering in the majority of countries," and that "the current high pricing for energy means that investors do not need major incentives to make their investment decisions."

The experts also highlight the currently in-place incentives aiming to stimulate the renewable energy sector. "The state took several regulatory steps, including passing four critical energy and mining laws last year, intended to facilitate investments by introducing a subsidy system," Colic says. Gazivoda says that the four energy laws "introduced guarantees of origin, net metering for prosumers, community-scale projects, and public tendering for strategic partnerships on investments in building renewable power plants." Looking at the complete 2021 package, Maric says it was "a very solid upgrade to the applicable legal framework for renewables … under which we should have auctions in this sector in the coming period."

Pent-up Energy

Despite the fair amount of success, the experts also point to the main factors that could deter more investment in Serbia's renewables. Maric notes that the regulatory framework needs to be finalized, especially "in light of the still-missing

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decree on balancing responsibility," and that "challenges with securing appropriate grid connections in some parts of the country are the key formal and practical impediments for the sector's even faster and more substantial development."

Colic agrees, saying that while the new laws have resolved some of the issues renewables faced in Serbia, "in practice, the regulatory framework is still relatively rigid, especially when obtaining authorizations to, for example, change the purpose of agricultural land." Similarly, Gazivoda reports the slow speed of project development has predominantly resulted from the "delayed enactment of relevant secondary legislation, which should have enabled the implementation of the incentive novelties introduced by the recent legal changes."

According to Colic, complicated administrative procedures are also an issue. "Various institutions and levels of administration are in charge of issuing the required licenses, permits, and approvals, contributing to the procedures' complexity. These are, *inter alia*, the main reasons why these processes are often long and demanding."

Other than that, Colic points to some practical issues that may arise. For example, "the real estate cadaster frequently does not provide information on ownership titles over certain land lots, or data is not updated," therefore any "investors or developers need to explore the ownership relations and collect information independently." Additionally, "there are also municipalities where detailed regulation plans do not exist, which considerably prolongs the process of obtaining permits." Finally, he says, many laws and bylaws have inconsistencies in their legal terminology.

Gazivoda adds more to the list of impeding factors: "there is still a trend of subsidized energy tariffs for fossil-fuel-based energy, which represents a huge deterrent to the long-term success of renewable energy projects, as they are directly affecting the level of competitiveness of such projects," she notes. She reports the lack of a strong domestic technology supply chain also plays a role "having in mind that renewable energy production is associated with relatively smart technologies," therefore, "investing in the domestic technology supply chain would be one of the crucial instigators of future renewable sector development." According to her, there is also a need to "increase awareness of the necessity of moving towards clean energy," to successfully deal with issues such as "significant public opposition around small hydropower plants, which are currently under moratorium." This, according to Gazivoda, will motivate the general public "to support these public policies and increase the investments."

Overall, Maric says "some of the prerequisites for change are to have an operational government and ambitious pro-investor ministry in charge of energy, as well as a clear vision and policy commitment that renewables are not a possibility but a necessity." ■

MARKET SNAPSHOT: SERBIA

QUO VADUNT SERBIAN M&A TRANSACTIONS?

By Sasa Stojanovic, Partner and Head of Corporate/M&A, Radovanovic Stojanovic & Partners

M&A activity in Serbia finally showed some positive trends in 2022, despite high inflation and supply chain challenges. During the first three quarters of 2022, the Serbian M&A market has performed well, given the current economic environment, and was primarily defined by deals in the energy and real estate sectors, the IT industry, and further consolidation of the banking sector.

Generally, once the first effects of the war in Ukraine were felt on the European markets, M&A activity levels in Serbia started to trend down but, as expected, with the approach of the year-end, buyers are looking to finalize their contemplated deals despite the weakened economic growth.

With respect to new M&A deals, the biggest obstacle seems to be the gap between the seller's and buyer's perspectives on the target's value. While the sellers expect to receive a consideration based on the target's value as of the end of 2021, the buyers seem to request a revaluation that would take into account the current circumstances. In my opinion, this may result in these transactions spilling over to 2023 when the status of the relevant markets is likely to be clearer. In such a case, a lower risk aversion of the buyers and higher deal activity could be expected.

How these predictions play out depends on the development of the geopolitical situation and its effects on the relevant markets, including the cost of capital. Also, as the Serbian M&A market largely depends on the transaction appetite of foreign investors, the economic climate in the countries of Western Europe (and the rest of the world) will most certainly have an indirect impact on the volume of Serbian M&A deals. Since the ECB raised interest rates for the first time since 2011 in July 2022 (rising the base rate by 0.5 percentage points), soaring interest rates and higher pressure of financing costs will result in cash-rich buyers playing an important role in the upcoming period.

In the meantime, certain things have also changed for M&A practitioners. In the last couple of years, we have seen that certain unforeseeable events, which are beyond the control of the parties involved in an M&A transaction (such as the COVID-19 pandemic, the war in Ukraine, and their second-order effects on the markets), can lead to disputes or even exits from envisaged transactions.

For example, one of the largest M&A deals in the banking sector in the SEE region (the envisaged sale of Sberbank Banks in Serbia, Hungary, Bosnia & Herzegovina, Croatia, and Slovenia, signed in November 2021) was not completed due to the exclusion of Sberbank from the SWIFT messaging network, hindering its ability to conduct business.

As buyers seek to protect themselves from unforeseeable events as much as possible, the use of completion accounts, MAC clauses, and earn-out mechanisms has become a market standard in Serbian M&A deals. This trend continues through 2022 as well. Against this background, the locked box mechanism has become less popular in M&A deals which require a deferred closing, irrespective of the volume of the deal and the background of the involved parties. ■

THE DAWN OF UNPREDICTABILITY IN SERBIAN COMPETITION LAW?

By Bogdan Gecic, Founding Partner, and Ivana Stojanovic Raisic, Counsel, Gecic Law

The Serbian Competition Authority (SCA) has been relatively busy lately, and the outcome is an abundance of soft law on the one hand and inconsistent practice in actual casefiles on the other.

We all know that competition authorities are there to handle and respond to (more or less severe) antitrust infringements, to clear (or not) mergers and acquisitions, and, along the way, to educate undertakings and the public in general on competition rules. So, what is all the fuss about?

Imperfect Legislation

The vast majority (even 98%, if not more) of the SCA's workload is about merger clearances due to unduly set and extremely low merger thresholds, resulting in the review of too many transactions (mostly short-form clearances), leaving just a pinch of the SCA's capacities to dive into the most severe market infringements. Their fee structure also supports this *business model*, as the SCA charges for a phase one clearance can reach up to EUR 25,000, whereas for a phase two may amount to as much as EUR 50,000.

The legislative inadequacy also extends to the long-announced alignment of the *Competition Act* with the then-new *2016 General Administrative Procedure Act* and, thus, with the *European Convention on Human Rights*, which, unfortunately, has not yet seen the light of day.

How About (In)Predictability?

Legal certainty is what everyone strives for – clearly set rules and behaviors that undertakings and regulators should follow. And this is how we arrive at predictability. The past practice of authorities usually indicates how they will behave in the future. Predictability then creates legal expectations and builds the basis for certainty in the market. Consequently, undertakings should be able to rely on the SCA's past decisional practice. But can they really?

The SCA established a practice of using dawn raids for collecting not only the documentation relevant to the case at hand but all documents and correspondence (even private), a method well-known as a "fishing expedition." In such circumstances, unlike competition statutes across Europe, the *Serbian Competition Act* leaves companies exposed and defenseless before the SCA as there is no immediate judicial review of such actions of the watchdog.

There was even an instance when the SCA acted upon documents adopted months after the initiation of the procedure, including (1) a *hidden* SCA sectoral inquiry published eight months later and (2) the SCA's decision on the adoption of said sectoral inquiry, actually adopted several months after the date of initiation of the procedure.

Another illustrative example is an *ex officio* detection of hard-core infringements by the SCA, which are at the same time subject to criminal prosecution. Contrary to its mandate, the SCA remained silent regarding its further actions but only stated that such behavior should be referred to other institutions. In addition, the SCA has shown a very lenient approach toward such violations, with minuscule fines, if any.

Consistent in Inconsistency?

One may argue that this title could rightly explain the SCA's latest actions. Again, a few soft law examples show that their language goes against the statutory requirements.

However, there are a few notable positive trends where the SCA wishes to raise public awareness and set precise inputs on applicable competition rules. After ten years of silence in issuing soft law instruments, only in the past ten months, the SCA has issued several guidelines (another instance of unusual practice), such as competition compliance programs and bid-rigging in the public procurement procedures.

New Expectations

What to expect? How to behave? These seem to be the toughest questions. The best bet is to follow the SCA's soft law examples with the hope that they will have to stick to their own rules.

However, this does not mean much. Any lawyer would advise sticking to the laws, as this is the very essence of a legal system. Considering the suspicion that the SCA may not implement them, one must rely upon other examples. A good practice of the Administrative Court in Belgrade is to show that respect for the rule of law is here to stay, at least in the judicial world, as it has demonstrated preparedness to annul numerous decisions of the SCA in the past ten years, for breach of procedure. ■

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INVESTMENTS IN CONTENT AND INFRASTRUCTURE DRIVE THE TELCO TRANSFORMATION

By Bogdan Gecic, Founding Partner, and Miodrag Jevtic, Counsel, Gecic Law

The telecommunication industry in Serbia and the region is going through transformative changes at the core of its business. The market has seen significant consolidation and competition for consumers has become tough. Considerable investment has ensued in the sector, introducing significant changes in both services and delivery. These trends have sparked a remarkable focus shift from traditional land and mobile telephony services to information technologies and media distribution. Consumer needs and aspirations, fueled by the convergence of technologies, have set the bar high, and telecommunication companies have been able to adapt quickly.

There remained, however, a missing link between the advanced underlying technology and the audience. Telecommunication companies have invested heavily in filling this gap, understanding that the industry's opportunities for further development and expansion lie in the marriage of excellent infrastructure and premium content. With this in mind, telcos have sparked a true renaissance in the production of domestic media content, such as series, shows, and movies in various popular genres, often involving the collaboration between Serbian and regional participants, both in the production aspects and especially as cast members.

By focusing on production, the telcos aim to expand their potential market, reaching out to a much broader audience by reconnecting the ex-Yugoslav region through high-quality content and appealing to a vast regional diaspora across the globe, in total a 40-million-strong potential market.

The trend in content production complements the expansion and increasing popularity of over-the-top media services. Premium streaming services comparable to Netflix, Amazon, and Disney+, which make local-language content readily available across the globe, even on mobile devices, are becoming an essential part of the offer of telecommunication companies. The rise in digital solutions on the back of the vibrant streaming business will enable the further expansion of telcos into other high-potential opportunities, including fintech services, such as international remittances and trading in digital assets.

Telcos have identified a substantial opportunity to focus on streaming services leveraging a shared history and language similarities, across the Balkans, while simultaneously creating a basis for healthy competition within this niche. This process contrasts with the trends in the EU market, where telcos seem to be struggling with the increased bandwidth usage from large content providers, asking regulators to impose additional fees for the use of the internet infrastructure, which is likely to harm, rather than promote, investment and innovation in the sector.

The developments in the Serbian and regional telecommunications sector also fit into a much broader picture. Investments in infrastructure and content fuel growth in numerous other industries, ranging from the creative and entertainment sector to media distribution, which are seeing unprecedented expansion supported by a vital funding source for new projects.

The broader economic impulse is further reinforced by stimulating long-term initiatives from the telecommunications industry, such as backing the first corporate venture capital fund in the region to invest in high-potential tech startups. This move helps small businesses and local talent grow and is likely to contribute to further expansion in the already booming regional ICT sector. As a hotbed of innovation, these enterprises will also likely drive future developments in the telecommunications and media sphere.

The trends we are seeing in the telecommunications industry contribute to a dynamic environment in the regional TMT landscape and, ultimately, provide consumers with more outstanding quality and choice of services and content.

The regulatory framework in Serbia, however, seems to be lagging in several areas, currently not focusing on media content and entertainment aspects. Discussions on potential changes to the local media laws have advised a greater focus on various issues related to media production, which the current Serbian framework has somewhat overlooked. Fine-tuning the regulation is recommendable to, on the one hand, support positive trends and further development in the sector, while protecting all participants and maintaining a balance between the key players, on the other, and this is by no means an easy feat in a highly competitive market. ■

LEADING DIGITALIZATION AND INNOVATION AND APPLYING THE GDPR – MISSION (IM)POSSIBLE?

By Ivan Milosevic, Partner, JPM Jankovic Popovic Mitic

According to the *United Nations eGovernment Development Survey 2022*, Serbia's eGovernment Development Index was evaluated as "very high," moving forward 18 places. Following the *Strategy for the Development of Artificial Intelligence*, Serbia set the use of AI in the healthcare sector as a priority and started supporting projects for cooperation between public bodies and commerce to share and use data. Digitalization prevents corruption but, on the other hand, cannot meet the expectations of citizens if data protection principles are not implemented in real time.

To achieve the planned objectives, in 2020, the government announced the opening of a Data Centre in Kragujevac – to promote the quality of e-services to citizens, development of AI, and data storage. And, in 2022, the Centre for the Fourth Industrial Revolution opened its doors. The main expectation is for the center to serve as a platform for exchanging ideas between scientists and researchers, government, industry, and civil society, to define the conditions for cooperation in biotechnology and the use of AI in healthcare. The practical benefits for citizens would be the efficient exchange of health data between healthcare practitioners, enabling faster diagnostics, increasing the potential for research, a smarter choice of treatment through a personalized approach, the use of AI in the fast and smart diagnosis of rare diseases, using new technologies in the pharmaceutical industry, the application of cell and gene therapy, and the development of fast-growing high-tech companies in the healthcare sector. The center should facilitate the exchange of data between data holders, research, and the commercial sector by applying the best anonymization techniques.

To this end, the *BIO-4 Campus* project started to be built – to occupy almost 20 hectares of land, focusing on four key topics: biomedicine, biotechnology, bioinformatics, and biodiversity. This ecosystem for innovation is to consist of eight scientific institutes, two faculties from Belgrade University, an accredited animal facility, an R&D center for pharmaceutical, biotech, and life science companies, a science technology park, and a convention and multimedia museum.

To achieve these ambitious goals, the Serbian Government would have to put much effort into facilitating the flow of ideas between scientists, digitalization and technology leaders, and AI and data protection experts. Efficient planning and implementation of these goals is only possible through a clear legal framework resulting in the formation of institutions composed of reputable experts who can understand the needs of all stakeholders, resulting in sustainable economic growth, while, on the other hand, respecting ethics and human rights. And to facilitate that flow of ideas, on November 10, 2022, our firm will host its *Third International Data Protection Conference*.

It is very important for key players implementing these projects to understand that regulations having in their titles the word "protection" are not to be drafted to hamper technological development but to establish a balance between economic growth and the free movement and legitimate processing of personal data, while, at the same time, respecting the essence of human dignity – including the privacy of citizens.

Technological developments should be based on accountability – a principle that delivers a corporate digital responsibility fit for the 21st century and modern data-driven economies. According to a 2019 Center for Information Policy Leadership report, accountability requires organizations to implement comprehensive privacy programs, governing all aspects of collecting and using personal information, and to be able to verify and demonstrate the existence and effectiveness of such programs internally (to their Boards and senior-level management) and externally, on request (to privacy enforcement authorities, individuals, and business partners).

To this end, the main stakeholders should consider whether they: (a) use legitimate grounds for sharing personal data. This is particularly important in the health sector where special categories of personal data are processed – and will gain more significance as the difference between personal data processing consent and "medical" consent is made; (b) use secure IT and cloud platforms and assess whether processing of personal data might result in high risks for rights and freedoms – to determine this, they must carry out a Data Protection Impact Assessment, to identify privacy risks and define adequate measures to mitigate risks to an acceptable level; (c) apply the best anonymization practices for data sharing for research purposes and assess the role of data intermediaries; and (d) use algorithms that could be verified – to what extent AI algorithms meet requirements of accountability, transparency of development and usage processes (traceability), and transparency of AI decisions. ■

CONSOLIDATION IN SERBIA'S BANKING SECTOR

By Milos Velimirovic, Managing Partner, SOG Law Firm

At the end of 2020, there were 26 banks operating independently from other banks in Serbia. At the end of 2021, there were 23 such banks. A few merger processes are still ongoing and will lead to that number shrinking to just 19 before the end of 2022.

This significant banking sector consolidation started in December 2017, with Hungary's OTP acquiring Serbian Vojvodanska Banka, followed by OTP's acquisition of the French Societe Generale in September 2019, and the merger of the Serbian branch of OTP Bank and Vojvodanska Banka in May 2021.

The consolidation continued with the Slovenian NLB acquiring an 88.28% stake in Komercijalna Bank in December 2020, whilst the Greek Eurobank absorbed Serbian Direktna Banka at the end of 2021. Also, on July 1, 2021, state-owned Banka Postanska Stedionica concluded its fusion with MTS Banka. Then Eurobank and Direktna Bank merged into one single entity in December 2021.

Russia's Sberbank sold its local branch to the Serbian AIK bank in March 2022. And, in April 2022, the merger of Komercijalna Bank and the Slovenian NLB bank took place. Finally, one more French banking group – Credit Agricole – abandoned the Serbian market in April 2022, when Raiffeisen acquired the Serbian branch of the Credit Agricole banking group.

The aforementioned acquisitions did not affect Banca Intesa's position as the market leader with EUR 6.3 billion in assets. However, UniCredit fell to third place in terms of asset value, after OTP's merger with Vojvodjanska Banka and Societe Generale, and kept losing its market share in 2022 due to the acquisition of Komercijalna Bank by NLB.

The list of important banks in Serbia in terms of their market share at the end of 2021 consisted of nine banks, with the remaining 14 banks having a market share below 5% each.

However, according to statistical market data valid as of December 31, 2021, by analyzing the cost-income ratio (CIR) and the profit-average equity (ROAE) in the banking sector, it could be concluded that Serbia's banking sector still has a large potential for further consolidation.

As of December 31, 2021, Banca Intesa, OTP, and Unicredit, as sector-leading banks, have an average CIR of 61%, with ROAE in the range of 7.5%, 9.4%, and 10.4% for Unicredit, OTP, and Intesa, respectively. According to the median CIR and ROAE market ratios – which are 68% and 7.6% – banks below these figures would be considered underperformers.

On December 31, 2021, 16 out of the 23 banks have their ROAE below 7.6%, while 18 out of those 23 banks have a CIR above 68%. Such high CIR ratios indicate a great potential for optimization of costs through further M&A activities leading towards the lowering of their CIR and an increase in the banks' ROAE.

In light of the above, we expect the consolidation trend we are seeing in the Serbian banking sector to continue. ■

MARKET SPOTLIGHT: MONTENEGRO

ACTIVITY OVERVIEW: MONTENEGRO

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

schönherr	7
BDK Advokati	6
karanovic/partners	5
HS HARRISONS	4
Vujacic law offices	3

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

3 Rastko Petakovic

3 Vladimir Dasic

2 Matija Vojnovic

2 Sasa Vujacic

2 Slaven Moravcevic

Activity Overview:

- Full information available at: www.ceelmdirect.com/activity-rankings
- Period Covered: December 17, 2013 - October 15, 2022

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SHARE AND SHARE ALIKE: MONTENEGRO'S NEIGHBORLY LEGAL MARKET

By Teona Gelashvili

Serbian law firms seem to have carved out a considerable share of the Montenegrin legal market. CEE Legal Matters looks at the interplay of these two formerly linked legal markets and explores in what respects they are complementary, where they clash, and how this reflects on the work of lawyers.

Seizing the Moment

"During the past period, Montenegro was a quite vivid market, facing developments in a lot of areas, with a lot of opportunities," Zivkovic Samardzic Partner Sava Pavlovic says. "That obviously caused more need for legal support as well, and Serbian law firms are seeing an opportunity in that." According to him, "at the very beginning, the local market for legal services in Montenegro was quite undeveloped. There was a gap, and that gap was covered mainly by covering the Montenegrin jurisdiction from Serbia."

NKO Law Office Founding Partner Djuro Otasevic highlights that NKO has been physically present in Podgorica, ever since its formation. "I used to be registered at the Montenegrin bar and had significant experience in Serbia too, so it was only logical to set up a presence in Montenegro, since the very inception of NKO. Nowadays, we cooperate with a local attorney," he says. Similarly, BDK Advokati Managing Partner Tijana Kojovic highlights that permanent cooperation with local lawyers was a natural step for the firm. "After several initial years of working on the most prominent Montenegrin privatizations from Serbia, it was natural for us to bring our Montenegrin practice to another level by establishing permanent cooperation with local lawyers already in 2009," she says. JPM Partner in Montenegro Lana Vukmirovic Misic explains the rationale behind the partnership with a Serbian firm: "the growing needs of JPM clients who required legal services in the region were a key factor for JPM's decision to increase its presence in Montenegro," she notes. "For us in Montenegro, having the opportunity to provide clients in the country with niche expertise from a larger neighboring market was a natural move."

On the Montenegrin side, Radonjic Associates Managing Partner Vladimir Radonjic and Jovovic, Mugosa & Vukovic Law Office Managing Partner Vanja Mugosa highlight that Serbian-based law firms used to have a considerable market share in the Montenegrin legal market. "In terms of representation before the courts, the number of lawyers and law offices from Serbia is high, and in terms of legal consulting before Montenegrin authorities and institutions, the presence of Serbian firms has been constant over the years, and even increasing lately," Mugosa reports.

Birds of a Feather

"Serbia and Montenegro are akin in many respects," Kojovic points out. "First of all, Serbia and Montenegro formed part of the same country until 2006, so it was usual for Serbian lawyers to provide legal support in Montenegro and vice versa," Otasevic adds. According to him, "even though the legal systems of the two countries had their differences even before the breakup of their union, they are still based on the same legal principles."

Another factor that led to the likeness in the legal system between the two countries is the EU candidacy status. "The similarities of legislations derive from the harmonization with EU law," Vukmirovic Misic notes, with Kojovic adding that "both are EU candidate countries in the process of harmonizing laws and regulations with EU acquis."

Other than that, Pavlovic highlights the current regulatory framework: "in comparison to other regional jurisdictions, Serbian lawyers are allowed to advise in Montenegro, based on the bilateral agreement between Serbia and Montenegro." According to him, there is also no language barrier. "Finally, businesses in these two jurisdictions are quite interspersed and connected, and being able to support clients that cover both markets is a business necessity," Pavlovic notes.

What Makes a Good Neighbor

Lawyers highlight the essential need for and benefits of cooperation. "No matter what we are thinking about ourselves, all markets in the Balkan region are quite small individually, in every sense," Pavlovic says. "Such small individual markets, from the perspective of some clients, are and could be regarded jointly in an economic sense but, in the legal sense, each of them has its individual and different legal systems, and that obviously does not favor investors and big international or regional clients." According to him, the primary motive behind any local gatherings of law firms "is the idea of pro-

viding clients with the most efficient solution to such complex situations," considering that "big international or regional clients need to have one law firm covering as much territory as possible."

"International law offices frequently want to partner with offices that are able to act as a single point of contact for advice concerning both Serbia and Montenegro," Otasevic shares, in a similar vein. "We always had a lot of clients operating in Serbia, who had affiliates or subsidiaries in Montenegro, so we wanted to make sure that we could support them in an equally good manner in both countries." Kojovic agrees with both and adds that the partnership is, normally, mutually beneficial: "the experience flow between two countries is not a one-way street. Some industries are more developed in Montenegro so, for example, we in BDK Advokati have built our hospitality and gaming practices across jurisdictions heavily relying on our experiences gained in Montenegro."

As for the Montenegrin perspective, Vukmirovic Misic says that being present in both jurisdictions has its benefits: "it enables us to segmentize the expertise while using combined experience, knowledge, and resources," she notes. According to her, "from the Montenegrin perspective, the market is too small for the firms to develop and follow all the legal technology solutions." Even though law firms seem to have a strong interest in a partnership and mutual support, this might change in the future. "It could be seen that, in recent years, this situation has been changing a lot," Pavlovic notes.

Should I Stay or Should I Go?

"Serbian-based law firms used to have considerable market share in the relatively new and undeveloped Montenegrin corporate legal market but this, over the years, has started to fall," Radonjic says. "That downward trend has continued, in my view, in the last two years with the strengthening of the locally rooted corporate law firms that have, slowly but surely, started taking over major mandates."

Radonjic says that Montenegrin law firms should continue to develop their work. "I am definitely against any restrictive measures, as I strongly believe in the free market and fair competition," he says. On the contrary, he notes, "Montenegrin law firms should set the goals of developing truly regional practices instead of restricting the competition of regional law firms."

Mugosa, on the other hand, is in favor of clarifying and upholding those few restrictions that do exist. While Serbian lawyers may be able to practice in Montenegro, he says it's their incorporation in the country that could raise issues, with foreign companies providing legal services or local companies providing representation not unheard of, and misrepresentation being rife. "The Bar Association could be more committed to certain restrictions," he says, and to settling "certain illogical situations and irregularities." For example, he reports "a certain number of renowned law offices from Serbia indicate that they are present in Montenegro and, frequently, place boards on their premises indicating their Serbian name." This, according to him, "is impermissible, since under our regulations such offices or lawyers might not be registered in Montenegro." ■

Djuro Otasevic, Founding Partner, NKO Law Office

Lana Vukmirovic Misic, Managing Partner, Vukmirovic Misic Law Firm in cooperation with JPM

Sava Pavlovic, Partner, Zivkovic Samardzic

Tijana Kojovic, Managing Partner, BDK Advokati

Vanja Mugosa, Managing Partner, Jovovic, Mugosa & Vukovic Law Office

Vladimir Radonjic, Managing Partner, Radonjic Associates

EUROPE NOW'S FRESHMAN YEAR IN MONTENEGRO

By Teona Gelashvili

Since January 1, 2022, the Europe Now program has been in place in Montenegro, setting strategic goals for the country's economic policy. Ten months into its tenure BDK Advokati Partner Luka Popovic and Harrisons Head of Montenegro Milan Keker look at what has been accomplished so far.


Milan Keker

Net Salaries Increased

The primary success of this program seems to be rather straightforward – net salaries have increased in Montenegro. "Obviously, the major achievement is an increase in salaries," Harrisons' Milan Keker begins when discussing the program. "With the galloping inflation, this increase significantly contributed to preserving social peace," he says of the program's impact. And the program seems to have been well targeted, according to BDK Advokati's Luka Popovic, with "the immediate increase of the minimum salary and salaries in general," having "an impact on the living standard of Montenegrin citizens, especially those with lower incomes."

Equally as important, salaries have not increased at the expense of employers. "The key goal of the program was achieved, and the salaries have been increased without burdening, or at least without significantly burdening the employers," Popovic notes. The only questions, according to him, "are at what cost this was achieved, and whether public finances would be able to sustain it in the long run."

But the Healthcare System Is Struggling

While the program has been a resounding success in terms of providing higher salaries to employees, Popovic and Keker emphasize the reform has been burdensome for the health insurance system. "The biggest drawback is that the increase of net salaries was achieved via the re-arrangement of the contributions side of gross salaries," Keker points out. "The state has waived health contributions to the benefit of net salaries," but "this has caused the national health system's finances to collapse," he explains.

Abolishing the mandatory health insurance contributions, Popovic agrees, seemed questionable from the very beginning: "the main concern with the program was whether the Montenegrin health insurance system would be sustainable without those mandatory health insurance contributions." According to him, the government had projections that additional revenues would substitute the abolished contributions, but those projections "did not turn out to be correct, and there is now a significant budget deficit," he explains, "that will have to be covered by new borrowing."


Luka Popovic

Making the Reform Self-Sustaining

Keker and Popovic both believe that the *Europe Now* program needs to be reviewed and updated. For Keker, there is room for improvement particularly "in relation to the reform of the health insurance system and controlling public spending." According to him, "more efficient checks and balances need to be in place for both of these areas." Still, he believes that the reform is a good first step, as its "main benefit is that the population began to understand that significant reforms need to happen in many areas of life," and that these systemic changes "are not only necessary but of the utmost importance for the general population."

For Popovic, finding additional sources for increasing public revenues is also essential. "I do not think that the most important question is how the good effects could be enhanced, but rather how to make the reform sustainable," he says. "The plans for legislative changes in some areas – games of chance, for example – that could have resulted in increased public revenues were not realized, so I think the government should put more effort into completing those pending legislative reforms."

Finally, Popovic says that "the government's focus, in general, should be on creating a more competitive business climate in Montenegro and attracting foreign investments and new businesses, which will, in return, generate more public revenue." This, however, "would require more political stability in the country," he concludes. ■

MARKET SNAPSHOT: MONTENEGRO

SOME TIPS FOR SETTING UP SHOP IN MONTENEGRO

By Sasa Vujacic, Partner, Vujacic Law Office

When establishing a company in Montenegro, the new legal requirement which refers to the registration of Ultimate Beneficial Owners (UBO) should be considered. The Revenue and Customs Administration of Montenegro established the UBO Register within the Central Registry of Business Entities, in accordance with the provisions of the *Law on Prevention of Money Laundering and Terrorist Financing* in 2021.

The UBO Register has been established in line with the requirements of European law, to increase transparency and prevent the abuse of financial systems, e.g., for money-laundering or terrorism-financing purposes. The obligation to register the UBO applies to companies, legal entities, associations, institutions, political parties, religious communities, artistic organizations, chambers, trade unions, employers' associations, foundations or other business entities, legal entities that receive, manage, or allocate funds for certain purposes, foreign trust funds, foreign institutions or similar entities of foreign law, which receive, manage, or distribute assets for certain purposes. Entrepreneurs, one-member limited liability companies, and direct and indirect budget users are released from the obligation to register the beneficial owner.

Data on all companies can be found on the online website of the Central Register of Legal Entities, and now potential partners of a particular company can clearly get to know the business of the company through insight into its financial reports submitted to the tax authorities for the last three years. Furthermore, the procedure for establishing a company has been simplified, and the *Law on Business Entities* makes it possible for one person to be the founder of a company.

There have been some changes pursuant to the amendments to the *Law on Business Entities* and it is prescribed that the formation of the general assembly of a company, as well as the appointment of an executive director, is mandatory, while the choice to form other bodies in the company, such as a Board of Directors or a Supervisory board, is left up to the company. For single-member companies, the one member of the company has the powers of the assembly and is required to make decisions in written form and keep records of the decisions made in the book of decisions of the company.

Special conditions for establishing a company are prescribed in the case of joint-stock/shareholding companies. This is primarily because the minimum basic capital for a shareholding company is EUR 25,000, while for other forms of company establishment this amount is EUR 1. Also, when establishing bodies in a joint-stock company, a Board of Directors and an Assembly must be formed, and an Executive Director must be appointed. Joint-stock companies may also be established as bicameral joint-stock companies and, in that case, the establishment of a Supervisory Board, a Board of Directors, and an Assembly is mandatory.

The main sectors in which foreign nationals open companies in Montenegro are real estate, the energy sector, and the construction industry. Following the instructions of the European Union, Montenegro facilitated the process for foreigners to establish companies, and they can establish companies under the same conditions that apply to domestic citizens.

It is important to note that, in the last two years, Montenegro has made certain changes with the aim of better inspecting and controlling companies, as well as ensuring tax collection. Also in accordance with EU instructions and guidelines, the government has reformed its tax system in such a way that the tax authorities have direct insight into the financial books of every company on Montenegrin territory. In this regard, the main reform is related to tax payment control. When issuing invoices and calculating VAT, the tax authorities assign each invoice a special QR code, through the website of the tax administration – where every company, as a taxpayer, must log in when issuing an invoice. In this way, direct control over the services that have been provided and charged is carried out.

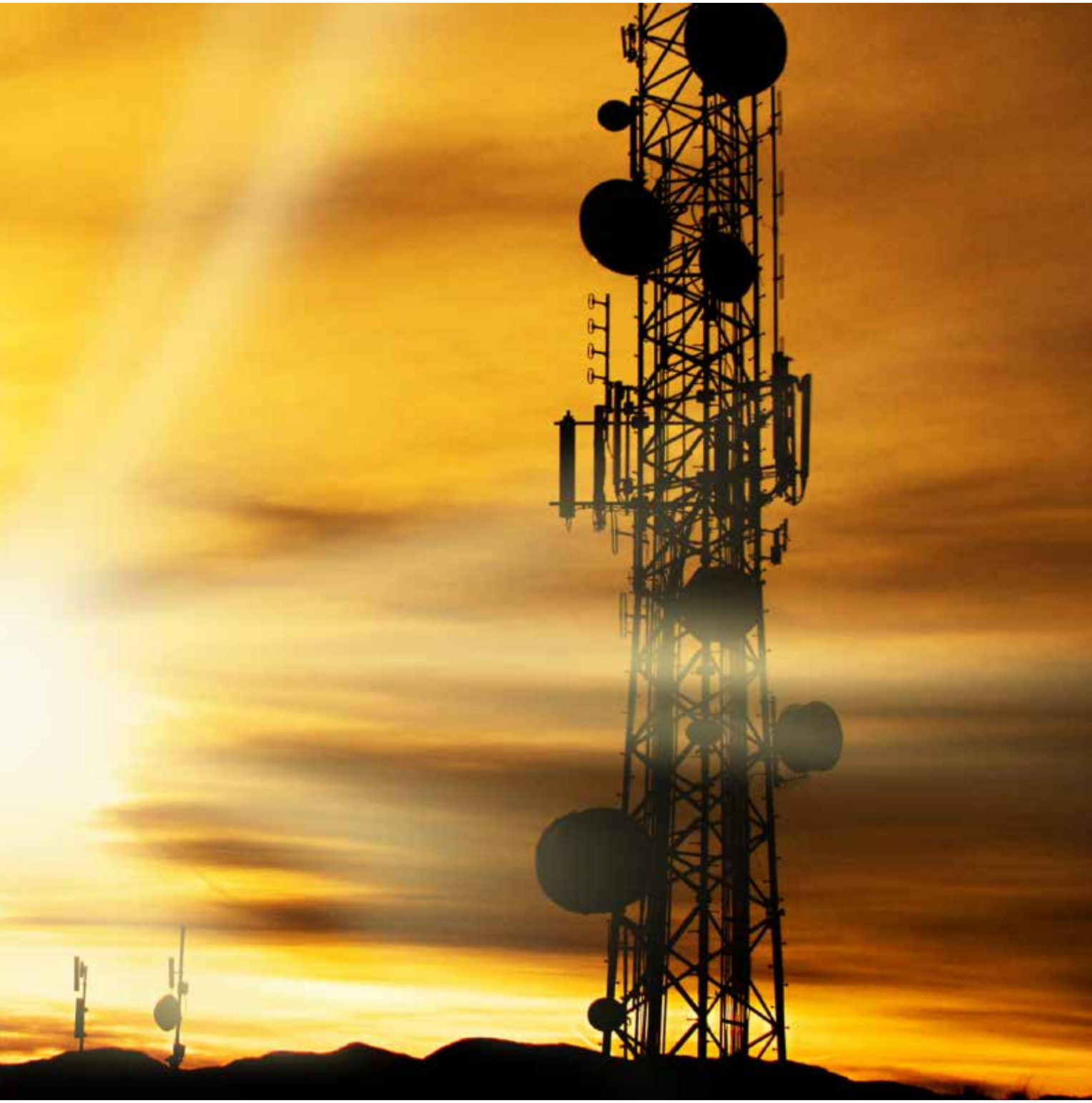
In this way, in addition to ensuring the payment of taxes, the so-called gray economy was suppressed to a large extent, and it became almost impossible to avoid paying obligations to the state, which all leads to the strengthening of the state's economy, as well as enabling companies to operate legally and safely, which was the ultimate goal of all these reforms. ■

EXPERTS REVIEW: TMT

This issue's Experts Review section focuses on TMT. The articles are presented ranked by the share of ICT goods exports in total goods exported for each country in 2020, according to World Bank data.

The Czech Republic goes first, with an almost 18% share of ICT goods in total goods exported, followed by Hungary with over 13%, and Latvia with an almost 11% share. The articles from Ukraine, North Macedonia, and Moldova will wrap up the issue, all with below 1% on the board.

* World Bank data not available. 2021 Trading Economics data used instead
** 2020 data not available. 2019 data used instead



CZECH REPUBLIC: NEW RULES ON AI AND PRODUCT LIABILITY

By Michal Matejka, Partner, and Eva Fialova, Attorney at Law, PRK Partners

At the end of September 2022, the European Commission (EC) published the long-expected proposals for legal regulation on civil liability for damage caused with the involvement of artificial intelligence (AI Liability) and liability for damage caused by a defective product (Product Liability). Whereas a proposal on AI Liability already existed (*Civil liability regime for AI*, published by the European Parliament in 2020), this is the first draft of an updated Product Liability.

For the TMT sector, the new European proposals are crucial. The aim of the EC is to set rules for assessing who, and under what conditions, is liable for damage caused by AI systems and AI-enabled products, software, digital services, smart devices, etc. Under current legislation, it is not clear whether software can be considered as a product and its producer is therefore liable for the damage caused by its defects. This is what the new legislation will doubtlessly establish. Another essential novelty is a reversal of the burden of proof. Currently, an injured person must prove the defect, the damage, and the causal link between the defect and the damage. The standard burden of proof is an obstacle to claiming damages, especially in the case of complex systems. The intangible nature, complexity, and sometimes even autonomy of smart devices, digital services, and software make it virtually impossible for the injured person to prove the defect, let alone the causality. Those systems are labeled as *black boxes* where we see only inputs and outputs but not a process in between. Even for experts, the *decision* of the AI is often unclear, due to the opacity of algorithms.

AI Liability Directive

The proposal was initially in the form of a regulation published by the European Parliament. The new draft issued by the EC has the form of a directive: the *Directive on adapting non-contractual civil liability rules to artificial intelligence* (AILD). The goal of the directive is to alleviate the burden of proof of the injured person who claims compensation from a person potentially liable for the AI system. A court may order a provider or user of the high-risk AI system, as defined by the *AI Act* (proposal for a *Regulation laying down harmonized rules on AI*), that is suspected of having caused damage to disclose evidence about the system. Failure to respond to the request will lead to the presumption of non-compliance with a duty of care. The AILD also introduces the rebuttable presumption of a causal link between the lack of compliance with a duty of care and the output produced by the AI system, or the failure of the AI system to produce an output that gave rise to the damage.

Product Liability Directive

It was already obvious a long time ago that the old *Product Liability Directive 85/374/EEC* leaves out new types of products linked to technological progress. The new *Directive on liability for defective products* (PDL) aims to adjust the liability rules to new technologies. The directive explicitly mentions software as a product, regardless of whether it is a standalone software or a component of another product. Software can be an operating system, firmware, computer application, or AI system. The PDL does not only broaden its scope in comparison with the current directive. Its other objective is to ease the burden of proof of the injured person. Unfortunately, the directive covers only the damage caused to a natural person (a consumer).

The directive defines circumstances that must be considered when assessing the defectiveness of the product, i.e., the presentation of the product, product safety requirements, the specific expectations of the end-user, or manufacture controls. As does the AILD, the PDL enables courts to request the disclosure of relevant evidence, and the defectiveness will be presumed if the manufacturer fails to comply, doesn't comply with safety requirements, or if the damage was caused by an obvious malfunction of the product. The directive also enumerates the conditions for the manufacturer's exemption from liability.

Czech Republic Impact

While the transposition of the PDL will change the content of *Sec. 2939 of the Czech Civil Code on liability for damage caused by a product*, the transposition provisions of the AILD will probably be incorporated into some general provisions of the Code. The new obligation to disclose evidence and modifications to the burden of proof will result in an amendment to the *Czech Civil Procedure Code*. For now, both directives are still in proposal form, so businesses, consumers, and lawyers alike will have to wait for their final version. ■

HUNGARY: THE LEGAL CONSIDERATIONS OF INFLUENCER MARKETING

By Zsofia Bitai, Managing Partner, CLM Bitai & Partners

All evidence shows that the legal rules regarding the marketing activity which is carried out by influencers will increasingly be the subject of legal analysis in the coming years. Influencer marketing has grown into a global industry showing significant growth year after year. In comparison, according to the *Influencer Marketing Hub*, the value of the market was estimated globally only at USD 1.7 billion in 2016 while, by 2022, this figure reached USD 16.4 billion.

Under Hungarian law, the most important influencer marketing-related regulations are included in the local *Unfair Commercial Practices Act* (UCPA). According to the UCPA, influencers need to comply with the requirements of professional diligence and their marketing activity cannot distort the economic behavior of consumers. This means that the content published by the influencer must provide a true, fair, and authentic picture of the promoted product or service, also the advertisement nature of the content should be clear as well.

According to the relevant surveys, the success of influencer marketing is primarily based on the fact that potential consumers place more trust in a person they follow, and thus are familiar with, than any alternative promotional sources. In light of this level of trust, it becomes even more important that the content published by the influencer accurately covers the reality and does not exaggerate or hide a key feature of the promoted product or service, nor the fact that the content is an advertisement.

Although there is no legal definition of an influencer yet, according to a practical guide on influencer marketing published by the Hungarian Competition Authority (GVH), the influencer is a person, thing, or virtual entity (e.g., animal, digital character, avatar) who is capable of exercising a dominant influence in the digital environment and shape consumer opinion and publishes online content on their website, social media account, or other online platforms, irrespective of whether that content is their own or a guest post. The GVH adds that in most cases, the influencer has a committed follower base.

It is important to note that the influencer must receive some form of compensation in exchange for the promotion, which may ultimately lead to a distortion of the objectivity of the published opinion. Such compensation may include but is not limited to financial payments, considering that it can take the form of e.g., a free product, a discount, a voucher, event tickets, a partnership agreement, i.e., anything that usually requires payment.

The promotional content for which the influencer receives compensation can be essentially anything, e.g., opinions, comments, notes, expressions of mood, spontaneous reactions, labels using the # (hashtag) sign, marking of web links (https://www...), product placements, sponsored posts, advertisements, promotions, commentaries, and explanations. The promotional content can be disseminated through optional mediums.

In order to comply with the relevant regulations when publishing such content, the influencer must indicate clearly, simply, unequivocally, and in an understandable manner the fact of the compensation and any existing business relationships. However, a uniform method for indicating these cannot be defined in general since, depending on the nature of the promotion (e.g., text, image, or video content) and the differences among social media platforms, the appropriate method may differ in many cases.

Based on the case law of the GVH, it is generally considered appropriate to indicate the existence of some form of compensation, or business relationship with the usage of advertising tags (e.g., "Commercial," "Advertisement," "Supported," or "Sponsored" content) as well as hashtags (e.g., #commercial). In the case of video content, these are still necessary, the indication in the narration alone is not sufficient.

With regards to possible infringements, the influencer is jointly and severally liable with the legal entity which ordered the promotion if the influencer is also directly interested in the sales related to the promotion, e.g., receives a commission. However, if that is not the case, the influencer may be exempted from liability if the influencer can prove that the infringement results only from the execution of the clear and precise instructions of the directly interested legal entity.

The legal considerations of influencer marketing are still being outlined, both on the side of legislation and legal practice. Taking into account the above-mentioned market growth rate, as a legal professional, it is also worth adapting to this phenomenon and monitoring the related developments. ■

LATVIA: RESTRICTIONS TO FREEDOM OF EXPRESSION IN LIGHT OF INFORMATIONAL WARFARE

By Indrikis Liepa, Partner and Head of IP, IT, and Regulatory, and Gabriela Santare, Associate, Cobalt

Following Russia's war in Ukraine, Latvia has adopted preventive legislation in the name of its national security and interests. In particular, in May and September 2022, the Latvian Parliament adopted amendments to the law aimed at strengthening its information space. Thus, it is no longer allowed to retransmit programs whose jurisdiction undermines or threatens the territorial integrity, sovereignty, or national independence of another country.

In light of these amendments, the National Electronic Media Council (the Authority) has banned all television channels registered in Russia from broadcasting in Latvia. This ban will remain in force until Russia ceases hostilities in Ukraine and ensures the territorial integrity and inviolability of Ukraine, including until Crimea is also *de facto* part of Ukraine. Interestingly, the Authority's decision applies to all television channels registered in Russia, including channels that transmit entertainment or movies, not only news channels.

The adoption of these restrictions was based on the assessment of the broadcast of Russian TV programs against Latvia's national security interests. Given that on-demand television programs or audiovisual services can be used as a means of informational warfare, the state has considered it particularly important to ensure that only such programs which are in the national interest of Latvia are distributed within the territory of Latvia. The use of freedom of expression as a possible tool in informational warfare and its financing, thereby endangering national security, is not an acceptable expression of freedom of expression, as it is incompatible with the general objectives of electronic media – to inform, educate, and entertain the public – and is contrary to the fundamental principles of democracy.

In deciding to ban the retransmission of Russian television channels in Latvia, the Authority established that the benefit to the public far outweighed the restriction of freedom of expression, as the public would no longer be able to access content and information that could threaten the security of both Latvia and Ukraine and the security of Europe as a whole. Moreover, the Authority took into account the fact that the revenues from the distribution of the programs may be used to finance the war. Therefore, the transmission of such programs must be banned until Russia ends its aggression in Ukraine.

Interestingly, in assessing the potential damage that may arise from the ban imposed by the decision, the Authority concluded that, although the distributors in question may suffer damage, the overall benefit to the media industry and society will be significantly higher than the ban on the merchants for a certain period of time to distribute the programs in question. Therefore, the restriction is justified also due to the fact that the Russian Federation will no longer receive revenues from the distribution of the programs in question on the territory of Latvia and, thus, these programs will no longer be used to finance the war.

However, journalists in Latvia have criticized the restriction. Although the need to reduce risks to the Latvian informational space is not disputed, it is still possible for viewers to access these channels through different European broadcasters or even internet pages and applications, including Russian ones, where these channels or their content is made available. Therefore, the aim of the restriction is not achieved in full. Moreover, it has been noted that it may also infringe upon Latvian journalists' right to free speech as, in theory, they are not able to follow information disseminated in Russian mass media, evaluate and recheck it, and provide truthful information in response to disinformation spread by Russia. In journalists' opinion, this does not strengthen the overall understanding of the ongoing war – in particular for people that continue to follow Russian media.

It is expected that the Authority's ban will also be subject to judicial review. In this respect, it seems relevant that the CJEU has recently reviewed a similar restriction in the case *T-125/22*, where limitations on RT France's freedom of expression were evaluated in the circumstances of war. Although the decisions taken by the Latvian authority at a national level may still be subject to judicial review, in light of the case law of the CJEU and the ECtHR, it is clear that where national interests and national security is at stake, the state may resort to exceptional measures and ban the broadcasting of the aggressor's national television programs. Although the efficacy of such a decision is still questionable. ■

POLAND: ARTIFICIAL INTELLIGENCE – CURRENT LANDSCAPE AND DEVELOPMENTS

By Lukasz Wieczorek, Partner and Head of TMT/IP, KWKR

According to publicly available research reports, Poland holds the seventh place in terms of the number of experts working on artificial intelligence (AI) projects in the European Union and even takes the lead in CEE. On the other hand, the level of adoption of AI-based solutions by Polish businesses is relatively disproportionate. The estimations made by the government visualize the potential impact of AI on the Polish economy. According to these calculations, the implementation of AI solutions in the Polish economy could contribute to increasing the GDP growth rate by 2.65% annually.

Having this in mind, as well as global trends and interest around AI, it comes as no surprise that the Polish government has decided to undertake certain legislative steps aimed at streamlining the development of AI in Poland.

Current Legal Framework

Currently, there are no binding provisions concerning such issues as AI, blockchain, or big data in Poland. In fact, apart from pioneering the draft of the *EU Artificial Intelligence Act* (AIA) and just publishing the proposal for an *AI Liability Directive*, EU member states have not elaborated their own regulations on AI. Most interesting issues relating to AI, such as liability or copyrights, remain open for discussion. As to Poland, general provisions of the *Civil Code* on tort and contractual liability would come into play (pointing to the producer or operator of an AI-based solution as the responsible party). In terms of intellectual property rights, Polish copyright law would oppose holding the AI (robot) as the creator and owner of economic and moral copyrights. With no specific regulation, these issues must be dealt with using the current legal framework.

Policy Paper on AI in Poland

The Polish government has approached AI by publishing a strategic, general document setting state-level objectives in the short, mid, and long term. The paper called *Policy for the Development of Artificial Intelligence in Poland* (AI Policy) was officially adopted as an appendix to the resolution of the Polish Council of Ministers dated December 28, 2020. The very best idea and significance of the AI Policy are summarized in the following excerpt: "*to support the society, companies, representatives of the academia and public administration in taking advantage of opportunities related to AI development, while ensuring the protection of human dignity and conditions for fair competition in this global race.*"

The document sets directions and actions to be taken to develop the AI sector in Poland, by achieving approximately 200 goals. Furthermore, the AI Policy identifies obstacles hindering AI development in Poland, e.g., the low level of cooperation between the scientific environment and businesses. The problems should be addressed by increasing the ties between business and academics, facilitating the knowledge and innovation flow, and productivity growth.

Interestingly, the authors of the AI Policy underline the need to amend the existing laws to ensure the proper functioning of the AI ecosystem in Poland. The following items have been presented in the document as potential subjects to legal regulation: (1) a Legal definition of AI (the AI Policy invokes the concept of intelligent agent and AI system definition elaborated by OECD); (2) the Legal personality of AI (it is suggested that AI shall not be granted legal personality); (3) the ownership and portability of personal data; (4) the liability of AI manufacturers based on due diligence basis; (5) a risk-based liability of AI operators.

Review of Actions

The AI Policy assumes that new agencies will be created to coordinate the implementation of the AI Policy. In addition, ministries and some other government authorities should report the actions undertaken in the field of AI development. However, no specific information nor reports have been published yet. On January 19, 2022, a dedicated team has been established to manage the execution of the AI Policy. The first meeting of the team took place in May 2022. Its works concentrate on coordinating the efforts of particular public authorities so as to reach the short-term goals provided in the AI Policy (set for 2023).

Trends and Perspectives

It appears that recent geopolitical events in CEE, as well as economic turbulences over the last couple of months, have somewhat overridden the execution of goals set in the AI Policy. Nevertheless, the interest in implementing AI solutions is steadily growing – see the cases of chatbots, virtual assistants, and speech or picture recognition systems. There are, naturally, examples of business failures recorded by AI solutions, e.g., difficulties in the commercial launch of autonomous vehicles without operators, or re-manualization of certain RPA processes. Altogether, this proves that regulating AI is necessary, both at the EU and national levels. ■

KOSOVO: THE TMT SECTOR SEEKS INVESTMENTS AS ONE OF THE FASTEST GROWING INDUSTRIES

By Mentor Hajdaraj, Partner, and Blerina Ramaj, Senior Associate, RPHS Law

The information and technology sector has grown exponentially in Kosovo in the past five years, mainly focusing on the provision of services to international markets. This growth has happened mainly because of two reasons: first, the labor force is cheaper compared to the European market and, second, around 70% of the population is under the age of 35 and has advanced digital skills. The mix of these two has ensured access to international markets and the provision of quality deliverables.

More than 90% of the registered IT companies incorporated in Kosovo are focused on exporting their services/products as stated above, mainly to Germany, the UK, and the US, compared to the rest of the companies that work only locally. It is estimated that the overall export of IT services consists of around 3% of the overall GDP of Kosovo, which is quite a share for a relatively new industry. The sector is quite competitive, which has ensured dynamic growth of the sector, and is one of the highest-paid industries in Kosovo.

In light of this, a large number of local companies have been targeted for mergers or acquisitions by international companies aiming to expedite their growth through investments. In our direct experience with these types of transactions over the past three years, the requests for legal support for mergers and acquisitions are increasing with each passing year.

One of the key legislative changes helping the growth of the TMT sector was for its services that are subject to export to international markets and their clients to have been excluded from VAT taxation. This has lowered the burden in terms of taxes and allowed the companies to be more competitive with the ones in the region – and they are not just offering cheaper services but also better-quality services.

In terms of the legal dynamics, Kosovo has adopted the *IT Strategy* – currently under revision, aiming to meet the latest developments and trends in the sector. Considering that the TMT sector is always under rapid changes and is quite valuable, the Government of Kosovo is seeking to create more flexibility and introduce measures to facilitate growth in the sector.

Further, currently as part of the *Digital Agenda* of the European Union, which is being implemented in the Western Balkans, the Ministry of Economy, together with other institutional stakeholders, has drafted the new *Kosovo Draft Digital Agenda 2030* and the *Action Plan*, which is expected for approval by the Government during 2022. Regarding the draft strategy of the *Digital Agenda 2030*, it is reported to have five strategic objectives which include advanced and secure digital transformation (5G technologies, IoT, artificial intelligence, etc.), the digital transformation of businesses (as a cross-sectorial strategy), the digitalization of public services, developing digital skills and an innovative ecosystem, and strengthening the cybersecurity system. With these five objectives set out, the government is aiming to create an environment that is even more friendly for business development in this sector.

Regarding telecommunications, Kosovo has two mobile network operators which have been part of the market since early 2000. For a period, there was a mobile virtual network operator, which ensured a more competitive market in terms of the two bigger mobile network operators. Kosovo, even though a small market for a third mobile network operator, considered that a third MNO in the market would ensure more innovation and better services than the ones which are currently being offered. The existence of only two mobile operators has meant that neither has been investing in innovation, especially now with the introduction of 5G technology, which still has not been tested.

The TMT sector is growing and meeting the trends and standards of international markets and, as a result, the legislative measures and governmental support are considerably high. However, there is a need to supplement the legislation that affects the TMT sector, especially in terms of foreign investments, and create more friendly, digitized governmental services that would contribute to a better ecosystem for investing in Kosovo. ■

GREECE: HELLENIC DPA HITS RECORD-HIGH BY IMPOSING A EUR 20 MILLION FINE ON CLEARVIEW

By Michalis Kosmopoulos, Partner, and Panagiotis Tampoureas, Senior Associate, Drakopoulos

The recent *decision no. 35/2022* issued by the Hellenic Data Protection Authority (HDPA) on July 13, 2022 (Decision), marked a record-high EUR 20 million fine against US company Clearview AI Inc. (Clearview). This Decision adds even higher pressure on Clearview, on top of other data protection authorities' (DPAs) relevant decisions (French, Italian, British), while a similar decision is expected soon by the Austrian regulator, all as a response to a series of complaints filed by an alliance of non-profit privacy-driven organizations.

The complaints essentially disputed Clearview's business operation of scraping selfies and photos from public social media accounts and including them in its facial recognition database of about 10 billion facial images, with Clearview aiming to reach 100 billion images in the next few years.

The reasoning behind the HDPA Decision is similar to other DPAs' decisions and quite straightforward, as it argues that Clearview actually uses its software to monitor the behavior of individuals in Greece, irrespective of the fact that it is actually based in the US and does not offer services in Greece or the EU.

In this respect, the regulator identified a series of core infringements related to, *inter alia*, the principles of lawfulness, fairness, and transparency under the GDPR, thus ruling that collecting images for a biometric search engine is illegal if the data subjects' prior explicit consent has not been provided.

Specifically, the HDPA ascertained failures of Clearview to (1) establish the legitimacy of personal data processing, including special categories of personal data, and given that Clearview was missing any of the required legal bases, (2) provide appropriate information to data subjects (users) as regards the processing of their data, (3) respond to data subjects' access request, and (4) appoint an EU representative as required by the GDPR, due to the fact that Clearview is not established in the EU.

In light of the above, the HDPA ordered Clearview to delete not only all images of individuals in Greece that were collected in the course of its normal business activity so far, but also the biometric information that is needed to search for and identify a specific face.

In other words, the Decision essentially puts an end to Clearview's intrusive business model across Greek territory. Adding to the equation the fact that other DPAs' similar decisions have already been issued or are still pending, it comes naturally that we may soon talk about the cessation of the whole company's business (as it now stands) across most EU member states.

In the meantime, if Clearview complies with all these orders to delete and stop processing individuals' data, it will be unable to keep its AI models updated with fresh biometric data, meaning therefore that the usefulness of its product will gradually degrade.

Following suit with the rest of the reasoning, the HDPA's ruling does not even differentiate from other DPAs' rulings in the point that such decisions have not – so far – ordered the destruction of Clearview's algorithm, although concluding that it was trained on unlawfully collected personal data.

In this respect, a lot of discussions are held on whether the GDPR empowers oversight bodies to be able to order the deletion of AI models trained on improperly obtained data – not just to order the deletion of the data itself, as it seems to have happened so far in this Clearview case.

Nevertheless, incoming EU AI legislation could be set to empower competent regulators to go further. In particular, the (draft) *Artificial Intelligence Act* provides for powers of market surveillance authorities to "take all appropriate corrective actions" to bring an AI system into compliance – including withdrawal from the market, depending on the nature of the risk it poses. ■

ROMANIA: FINANCING CINEMATOGRAPHY

By Flavia Stefura, Head of IP, MPR Partners

Romania benefits from being one of the EU countries with lower cinematographic production costs, and that is why it is on the radar of many international studios. The cumulative annual turnover of the film industry in Romania is approximately EUR 53 million, derived mainly from foreign productions in Romania.

Local professionals and professionals who work at co-productions can access Romanian funds for their projects. The main authority involved in regulating and supervising cinematography in Romania is the National Cinematography Council (CNC). Among others, the CNC collects the money for the cinematographic fund and selects the cinematographic projects that receive financial aid.

Sources of Income

The cinematographic fund is funded through different sources, including economic operators' contributions. Such contributions are from: (1) the sale and rent of recorded media, either physical or digital (3% of the sale/rent price or 15% for adult films); (2) revenues from selling advertising minutes of cable television companies (3% of the sale price); (3) the exploitation of cinematographic films in cinemas and other public places (4% of the exploitation proceeds); (4) cable retransmission (1% of the monthly revenues of economic operators); (5) gambling (4% of the amounts collected to the state budget from gambling operators); (6) internet downloads of audiovisual works (3% of download price); (7) streaming services (4% of unique transactions or subscriptions); (8) advertising revenues obtained by the Romanian Television Company (15%). Some economic operators can also directly fund cinematographic productions with the amounts owed to the cinematographic fund, up to certain thresholds.

Funding Opportunities for Cinematic Projects

Out of the cinematographic fund, the CNC can grant (1) loans without interest (direct credit) and (2) non-refundable financing for film production and development.

Direct Credit is granted for film production (i.e., operations carried out for making the standard copy of the film) for all types of film, and for project development (i.e., writing or rewriting the script, documentation, drawing up the budget and financing plan, etc.) of feature fiction, documentary, or animated films. Direct credit for project development would only be granted to competition-selected authorized persons that fulfill certain conditions. This credit cannot exceed the amount of 3% of the value of the average production credit of a fiction, documentary, or animation film made in the previous year.

Direct credit can also be granted to international productions where Romanian productions have a contribution of at least 10% for multilateral co-productions and 20% for bilateral co-productions. The minimum financial contribution of the borrower must be 6%. The direct credit for production cannot exceed 50% of the total value of the production budget.

Non-Refundable Financing can be granted for: (1) encouraging filmmakers who have already obtained public success; (2) encouraging internationally acclaimed filmmakers; (3) the distribution of Romanian films of all genres; (4) encouraging the operation of art cinemas; (5) organizing or participating in domestic and international film festivals and fairs; (6) supporting cultural programs, cinematographic education, publishing specialized publications.

Legal and natural persons registered in the Cinematography Registry, who fulfill certain conditions and who are selected via a competition can apply for non-refundable financing for the distribution and exploitation of films. Recently, CNC General Manager Anca Mitran announced the first competition of cinematic projects for 2022. There is approximately EUR 8 million in funding available. The CNC is worried that Romanian directors prefer making films for festivals and that there are no films made for the public, especially for adolescents and children.

Local Authorities can also support the film industry by (1) building cinemas; (2) allocating funds and granting local tax or other facilities; or (3) renting suitable land.

State Aid can be provided, with the approval of the Competition Council. Currently, several such state aid schemes are ongoing: (1) a state aid scheme to support the production of films intended in particular for theatrical release – the scheme is applicable until December 31, 2023, and is projected to service up to 800 beneficiaries, from a budget of EUR 90 million; (2) a state aid scheme for the organization of film festivals in Romania – the scheme is applicable until December 31, 2023, and is projected to service up to 600 beneficiaries, from a budget of EUR 4 million; (3) *de minimis* state aid – there are four such schemes, each applicable until December 31, 2023, with different numbers of beneficiaries and separate budgets.

Although there are some difficulties in actually disbursing the promised amounts from the state aid schemes, talks are underway with the relevant authorities to unlock the situation. ■

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BULGARIA: REFORM OF E-COMMERCE RULES

By Nikolay Zisov, Partner, and Deyan Terziev, Senior Associate, Boyanov & Co.

The growth of e-commerce and online advertising in Bulgaria in the last two decades has been impressive. The COVID-19 pandemic gave an additional boost to the digital economy. Amid such rapid development and almost 16 years after its entry into force, the *Bulgarian Electronic Commerce Act* (the ECA) feels quite outdated.

On one hand, for more than ten years, it has failed to properly implement the EU cookie legal framework. The *EU e-Privacy Directive 2002/58/EC* was updated in 2009 and now prior consent is required from entities to place non-essential cookies on user devices within the EU. However, the respective texts in the Bulgarian ECA have not yet been updated and still rely on the previous "opt-out" regime – instead of consenting, users in Bulgaria are given the right to refuse (object) to the placement of cookies. This clearly shows how crucial it is for important pieces of EU-wide legislation concerning consumers' rights to be introduced by means of a regulation having direct effect, instead of a directive that needs to further be transposed in Bulgarian law. The legislative process for the adoption of an EU-wide e-Privacy Regulation that would hopefully resolve this local issue is still ongoing.

Another section of the Bulgarian ECA – its rules on liability of providers of information society services for user-generated content – will receive a significant overhaul. The new rules will be introduced with the *Digital Services Act* (DSA) which aims to ensure a safe, predictable, and trusted online environment for digital users and companies.

Legislative Timeline

The DSA has already been officially adopted by the European Parliament and the Council of the EU. The regulation will enter into force 20 days after it is published in the Official Journal of the EU and will likely become fully applicable in the first quarter of 2024.

Who Do the New E-Commerce Rules Apply to?

The new rules of the DSA complementing the ECA apply to providers of a wide range of online intermediary services: (1) Mere conduit services related to internet infrastructure – ISPs, domain name registrars, wireless access points, virtual private networks; (2) Hosting – cloud computing, web hosting, services enabling sharing information and content online, including file storage and sharing; (3) Caching services ensuring the smooth and efficient transmission of information delivered on the internet. The existing provisions of the Bulgarian ECA aimed at such will be significantly enhanced by the DSA. In addition, the DSA imposes specific responsibilities on online platforms such as app stores, online marketplaces, and social media platforms.

What Is the DSA About?

Currently, Bulgarian legislation does not contain clear rules regarding the procedure to be followed in case of illegal content online. This creates practical problems with the enforcement of IP rights, for example. However, the DSA will change that by introducing due diligence obligations of service providers to act against illegal content and empowers online users to flag it. The new rules broadly cover any information relating to illegal content, products, services, and activities in various forms – some examples are illegal hate speech, terrorist content, unlawful discriminatory content, unlawful non-consensual sharing of private images, online stalking, the sale of non-compliant or counterfeit products, the non-authorized use of copyright-protected material. On top of that, the DSA will further enhance the Bulgarian e-commerce framework by introducing significant transparency obligations on hosting providers and online platforms in cases of moderation or demonetization of content, suspension, or termination of accounts. Online marketplaces will be required to ensure the traceability of their traders, to combat the online sale of illegal products and services.

A significant problem that has continuously impacted users in Bulgaria will also be addressed by the DSA – online platforms will be expressly forbidden from using "dark patterns" in their interfaces which deceive, manipulate, or otherwise impair the ability of users to make free and informed decisions. Further, the DSA will introduce rules that address fairness and transparency issues with such platforms' online advertising practices.

Sanctions and Compliance

The DSA requires EU member states to introduce fines for violation of its rules, the maximum amount of which must be 6% of the annual worldwide turnover of the provider of intermediary services concerned, for the preceding financial year. Businesses in Bulgaria should remember the lesson of the GDPR and try not to postpone their compliance efforts. An interdisciplinary task force should be formed to assess how to best address the new requirements and seamlessly integrate them into the existing compliance framework of the business. ■

CROATIA: SOFTWARE LICENSE PITFALLS YOU MIGHT HAVE MISSED

By Mojmir Ostermann, Managing Partner, and Marta Jelakovic, Senior Associate, Ostermann & Partners

Even though the use of the term *license agreement* in the context of software has been globally accepted for ages, some lawmakers actually have something else in mind. A license agreement under Croatian law doesn't actually apply to software per se, as common knowledge might imply. It applies to inventions, know-how, trademarks, and other so-called industrial property rights.

Exceptionally, software *can* be the subject of a license agreement if it is patentable – that is, if it results in actual technical effects (e.g., systems for vehicle braking assistance). All other software should best be regulated by unique agreements subject to copyright laws.

The precise legal term would be an *agreement on disposition of copyright by granting a right of exploitation*. Given the lengthy name, we would say that anyone still calling them license agreements after reading this article, has every right to do so (it's what is inside the agreement that matters, of course). For the sake of simplicity, we will refer to them as *copyright agreements*.

Confusing copyright agreements with license agreements, contracts for work, and other contracts is a common mistake. And a very unfortunate one as well, given that its consequences are mostly unexpected and burdensome – sometimes for the author, other times for the opposite party.

To illustrate the very real effects of this somewhat theoretical discussion, in a fairly recent decision made by the High Commercial Court of Croatia, a software company basically lost their copyright to an insurance software, because it was not clear which agreement the parties had entered into to regulate the development and use of that software. This led the court to conclude that their agreement was not, in fact, a copyright agreement and the software was not copyrighted (but rather a set of data lacking originality), so the software company could not prohibit its client from using its software after termination.

A lesson to be learned from this case is that it's essential to be aware of all the necessary elements of a copyright agreement, otherwise it might be interpreted and applied under the rules of a different agreement, regardless of its title. In some cases, this can entail quite different obligations, rights, and liabilities than those envisaged by the parties.

For instance, in a copyright agreement, if the parties have not agreed otherwise, it will be considered that it only involves the use of the copyright within Croatia. However, if someone (e.g., a court in a dispute) would view it as a license agreement, then the licensee's right would be territorially unlimited.

Another far-reaching rule applies only to copyright agreements. When certain provisions of the agreement are not entirely clear, they should always be interpreted in favor of the author. On the other hand, license agreements (and most others) are interpreted according to the common intentions of the parties, or if only one party drafted such provisions, they will be interpreted in favor of the other party.

Additionally, license agreements can be implicitly renewed by law, unlike copyright agreements. If the licensee continues to use the object of license after the expiration of the agreement and the licensor does not object, a new license agreement will be *automatically* executed under the same conditions, but this time for an indefinite period.

In exclusive copyright agreements, on the other hand, the author has the convenient right to terminate the agreement if the other party is not using the copyright at all or enough, which harms the author's interests. This allows the author to find another partner that will be able to generate more income from the copyright, resulting in higher amounts of royalties for the author. For this purpose, the author has the right to, at least once a year, receive data on the use of their copyright, revenues, etc. Licensors neither have the option to terminate for non-use nor the right to be informed.

It is also quite important to bear in mind that an exclusive licensee can assign the license to someone else without the licensor's consent, whereas rights under exclusive copyright agreements can only be assigned with the author's OK.

A natural conclusion is that copyright agreements are more favorable for software creators. Nevertheless, it is vital for both sides of a deal to be aware of which agreement they are actually entering into, to know their rights and protect their interests during the entire duration of the agreement, especially in case of a dispute. ■

SLOVENIA: LIABILITY OF PUBLIC COMMUNICATIONS SERVICE PROVIDERS CONCERNING ELECTRONIC COMMUNICATIONS

By Uros Cop, Managing Partner, Senica & Partners

Recently, several articles were published on the security and misuse of electronic communications. These tended to conclude that the responsibility for security against abuse lies with the public communications service providers (PCSP), which logically implies that they are also responsible for such misuse. PCSPs are an essential and indispensable part of the TMT sector, and it is, therefore, important to address their liability in such situations for legal certainty.

What is the liability of a PCSP when offering electronic communications services and how far does it extend? In the modern world of communications, abuses occur regularly, primarily due to the ingenuity of content providers on the one hand and the naivety of users on the other. It is, however, the responsibility of the state to ensure that such communications are secure, both as regards the technical and the content parts. The logical question is, therefore, which part of these services is the responsibility of the PCSP?

The primary distinction to be made is what constitutes an electronic communications service in the first place, which is the transmission of signals over electronic communications networks. Users often assume that the content itself and the editorial control over what is transmitted by those signals are part of the scope of an electronic communications service, which is a misconception. An electronic communication service should be interpreted relatively narrowly, purely technically. This means that the transmission of electronic messages falls within the scope of this service merely as a transmission of signals but that the content itself, its provision, and editorial control do not fall within the scope of this service.

As the regulator of electronic communications services, the state protects the individual in the event of abuse by third parties, which is not the fault of the users, by making PCSPs bear the costs incurred as a result of the abuse. It is important that the abuse is not the users' fault, where the users have taken all reasonable steps to protect themselves and have complied with the instructions communicated to them by the PCSP. This means that the misuse is attributable to the users where the users have unusually used the public communications service, and the misuse is the result of such unusual use. Such a regime sees the PCSP as a stronger and more legally and technically proficient party, with a better economic position than the users. Therefore, PCSP is in a better position to bear the costs of such misuse and to bring any retaliatory action against a third party.

However, as explained, this liability is not all-encompassing. It is limited to the technical part of the service actually provided by the service provider and not to the substantive part itself. Thus, the content cannot be equated with the concept of a communication service, nor can the cost of access to that communication content be equated with the cost of providing a communication service, even though individuals pay the PCSP for both services. In other words, this means that the costs paid by the individual cover the provision of the electronic communications service, but also cover the costs of access to the content, which is, in principle, provided by a third party. It should be borne in mind that the PCSP retains only part of the costs relating to the transmission of signals over the network, while the costs relating to access to content are passed on by the PCSP to the content provider.

Thus, it must be considered that the PCSP cannot be held liable for any abuses committed by content providers transmitted by electronic communication. The PCSP is responsible for the transmission of the signal, but the content transmitted using its service is expressly excluded from its responsibility. This means that a strict distinction must be drawn between the concept of communication service and the communication content.

The liability of a PCSP cannot be interpreted as extending the operator's liability beyond the security of the network or the telecommunications services in the technical sense. Such a conclusion is further confirmed by the obligation of the PCSP to protect the confidentiality of the content of communications so that it has no possibility of controlling the lawfulness of the conduct of those who provide the content while, on the other hand, it is required to ensure access to such services. The only possibility or obligation that the PCSP has is to comply with the courts' decisions and to prevent access to such content in case any abuse or fraud is detected. ■

SERBIA: THE IMPORTANCE OF UNDERSTANDING TECHNOLOGY

By Slobodan Kremenjak, Partner, Zivkovic Samardzic

A quarter century ago, when I started my career as a lawyer in the media and telecoms field, I learned the importance of understanding technology, its advancement, and in particular the importance of making it work in the best interests of your client.

I was, to some extent, involved in a project where we were trying to circumvent regulatory obstacles in delivering news programming of a small radio station operating in Belgrade to audiences in other parts of Serbia. After the authorities rejected their applications for a satellite uplink and even microwave link licenses, technology was a thing that allowed our client to live-stream the news over the internet, pick up that stream abroad, uplink it to a satellite from a neighboring country, and allow several local radio stations throughout Serbia to collect the signal with a simple satellite receiver dish and retransmit it. While disappointed with the low sound quality (due to the slow internet speeds back at the end of the twentieth century) we were, at the same time, extremely proud of enabling millions of people in the country to hear the news the authorities were trying to hide from them. This was one of the things that were not only instrumental in the democratic changes in Serbia that occurred a couple of years later but, at the same time, the proof of the endless opportunities technology provides to, *inter alia*, fight oppressive regimes.

Some twenty-plus years later, traditional media in Serbia and the regulators do not appear eager to be as forward-thinking and technologically advanced. They just keep on doing the same old, same old, every day. This summer, Serbia had its first public tenders for terrestrial broadcasting licenses after 16 years. Unsurprisingly, and even though there were new entrants interested, licenses were issued to incumbent broadcasters.

On the other hand, in times of multi-channel distribution platforms controlled by telecom operators, it appears that who distributes the content is more important than who produces it. When one looks at the statistics, what is going on becomes more obvious. Serbia is still far away from the cord-cutting phenomenon experienced in some other countries. The number of households subscribed to some sort of multi-channel distribution service, since the second quarter of 2018, has risen from 1.7 million to 2.12 million. What also differs is the number of multi-channel distribution service providers and their market shares. In other words, the market has consolidated and, instead of six major players controlling some 92% of the market in the second quarter of 2018, we now have just two of them, Telekom Srbija and Serbia Broadband, controlling almost 96% of the market.

In the same four years period, Telekom Srbija's market share has increased from just 25% to a staggering 50.8%. This was acquired mostly through a series of acquisitions of smaller competitors, licensing of prime content, and investment in local production. At the moment, it appears that the next battle among the competing telecom operators should be fought on the 5G roll-out front. While the 5G spectrum auction was postponed several times due to the COVID-19 pandemic and other reasons, it appears that both Telekom Srbija and Serbia Broadband, as well as mobile networks operators A1 and Yettel (formerly Telenor), are ready to roll.

The enthusiasm, once abundant in the Serbian media sector, now appears to be somewhere else – in the start-up ecosystem. As noted by *Startup Scanner 2022*, research made by the Digital Serbia Initiative – a non-profit, non-governmental organization with the strategic goal of developing a strong, globally-competitive digital economy in Serbia – several public sector programs have been created in order to support innovation activities, while we are witnessing an increased influx of investments and support from the private and non-governmental sectors, as well.

Start-ups are often considered to have a non-linear impact on technological and economic development. What may support this point of view in Serbia is National Bank of Serbia data indicating that, in 2021, Serbian exports of ICT products and services exceeded USD 1.7 billion, surpassing agriculture, traditionally the main export sector of the Serbian economy. And should anyone wonder why this is important for lawyers, it would be sufficient to read that among the major findings of the research into room for improvement of the ecosystem – from the point of view of start-up founders and employees – is the lack of information on intellectual property rights protection. ■

TURKEY: POST-PANDEMIC LEGAL DEVELOPMENTS IN TMT

By Onur Kucuk, Managing Partner, and Melodi Ozer, Associate, KP Law

COVID-19 is over – well, almost over. We are now left with the aftermath of a baby boom, some Bored Apes, and the Metaverse. All these new phenomena that surged during the pandemic eventually turned their attention to law firms, for wide-ranging legal considerations associated with all kinds of communication, from the internet, to e-commerce, to OTT, and telecommunications. Technology, media, and telecommunications, otherwise known as TMT, are now the fastest-moving areas.

Technological progress has pushed tech companies to partner up with legal teams on issues of intellectual property considerations, e-commerce and internet regulations, banking, data protection, privacy, cybersecurity, ESG requirements, the re-evaluation of remote work scenarios, supply-chain schemes on blockchain, and more. This sector requires a more forward-thinking and flexible approach in law and is hungry for guidance on navigating compliance-related challenges. Elon Musk was recently quoted saying that "one idea would be to put a bitcoin node in SpaceX Starlink terminals, so that way more people would be running bitcoin." This undoubtedly highly encourages the legal world to embrace fast-paced technological improvements.

All the while, the EU introduced the *Digital Markets Act*, proposed the act for harmonized rules on artificial intelligence, and is already finalizing a legal text for landmark Crypto regulations under MiCA – the *Regulation on Markets in Crypto-Assets*. In the meantime, Turkey, which is generally keen on its strategic timing in parallel with the EU, is also taking some steps in several legislative areas in relation to TMT. Some of them are worth mentioning here.

Shortly after the EU published its proposal regulation laying down harmonized rules on artificial intelligence, the Turkish data protection board published a guide including recommendations for developers, manufacturers, service providers, and decision-makers operating in the field of artificial intelligence. Along with this, the *Presidential Circular on the National Artificial Intelligence Strategy (2021-2025)* was published, offering an outlook for the upcoming AI plan to be implemented in Turkey. The strategy is Turkey's first and most comprehensive framework text in this field.

During the pandemic, a regulation on remote identification methods to be used by banks and the establishment of contractual relations in an electronic environment was published. With this, it is now possible to perform identity verification proceedings in banks through video calls online, without the need for a customer representative or the customer to be physically present in the same environment. A short while after, establishing remote banking contracts became possible as well. Making it possible to establish a contractual relationship electronically.

The 5G telecommunication technologies were already on the agenda in North America, China, and Europe before COVID-19. We saw that China took faster action during the pandemic and allowed 5G investments earlier on in the 5G race. Turkish companies, who had started 5G investments before COVID-19, are now expected to continue their investments in 6G. The rise in flexible working, e-education, e-commerce, and even e-entertainment models necessitated an increase in internet access speed and capacities. Although for now, there are no new regulatory developments on the horizon for 6G, there are some new regulations expected for internet communication service providers and OTT service providers. It is on the agenda of the Information Technologies and Communications Authority to include OTT services in the scope of the *Electronic Communications Law*. Therefore, it is important for OTT service providers to start some preliminary studies on compliance with the legislation. Not to forget, social media influencers got their fair share of this legal business as well. The *Guideline on Commercial Advertisement and Unfair Commercial Practices Conducted by Social Media Influencers* was published this year, aiming for separate liability of advertisers, advertisement agencies, and social media influencers in cases of guideline violations.

In the meantime, a crypto assets legislative draft, aiming to regulate crypto assets and markets, was unofficially leaked. Although, in the current state, crypto asset service providers are not required to register or obtain a license by a regulatory authority, licensing and registration requirements will likely be imposed on crypto asset exchanges soon enough.

As a final note, KPMG reported, in May 2022, that some of the top TMT skills in the sector are listed as data science and analytics, programming and development, data visualization, artificial intelligence, and machine learning. At this point, it would be safe to say that the modern TMT lawyer must not only keep up with technological advancements but become confident enough to navigate the creative demands of tech geniuses like Musk. ■

UKRAINE: DIIA CITY – A NEW LEGISLATIVE FRAMEWORK FOR IT COMPANIES DURING THE WAR

By Taras Utiralov, Partner and Director for Ukraine, Peterka & Partners

Despite the Russian full-scale invasion of Ukraine, IT remains one of the leading industries in the country. According to surveys, a bit more than 10% of IT specialists (mostly women, since a large part of men are not allowed to leave the country) have moved to other countries since the start of the invasion. Some of them were relocated to foreign offices of international IT companies or started working for foreign companies, while others keep working remotely for their Ukrainian employers.

Right before the invasion, a new legal framework for IT businesses, called Diia City, much discussed and awaited, was launched in Ukraine. The first residents were officially admitted on February 15, 2022. When Diia City was still discussed and the law was passed, there were fears that IT companies would not wish to join it at all, nor use its revolutionary legal concepts, such as gig-contracts, as it was something new for them, while they were fine with existing models.

Practice showed that, even in times of active war, businesses wish to join Diia City. Some choose to create separate legal entities to enter it. By February 22, 2022, just two days before the start of the Russian full-scale invasion, 74 companies had already become its residents. On February 28, several days from the start of the invasion, new residents were admitted. As of October 2, 2022, the register of Diia City contains 368 companies.

Diia City was designed to attract IT businesses, many of which had been engaging IT specialists as individual entrepreneurs, with a better taxation regime and more flexibility compared to traditional employment. However, such a model of cooperation created risks for businesses from a tax and employment law perspective. As a solution, Diia City offered its residents a choice between employment and a "gig-contract" model, while offering a level of taxation close to the one used by individual entrepreneurs – both for employees and gig-contractors working for residents of Diia City.

Employees of residents in Diia City can be engaged based on employment contracts, which are a special type of employment agreement under Ukrainian law, allowing more options (e.g., additional grounds for dismissal) when compared to regular employment agreements. Besides taxation, an employment contract in Diia City is regulated as any other employment contract in Ukraine.

Meanwhile, Diia City residents have started using gig-contracts when engaging IT specialists. As a new concept in Ukrainian law, it took companies and their counsels a while to develop the respective templates. Many IT specialists had been raising concerns about concluding such contracts, but it seems that those were mostly caused by a lack of information. Essentially, a gig-contract combines a civil law contract with certain preferences (mainly for a gig-specialist) of an employment contract. For instance, the amount and terms of payment of remuneration to gig-specialists can be freely defined in a gig-contract (the requirements regarding average remuneration for a resident of Diia City still apply), while terms of payment of the salary to employees are set forth by legislation and minimum salary applies. On the upside for gig-specialists, they benefit from social guarantees similar to those of employees (like annual paid leave, sick leave, maternity leave, etc.).

The most controversial aspect of contracts with residents of Diia City is the possibility to conclude non-compete agreements. Previously, such agreements were not envisaged by Ukrainian legislation, although they were concluded in practice, and the law did not set forth any requirements for them. The law on Diia City requires that such an agreement concluded by its resident shall define, inter alia, the term of the non-compete obligation (which shall not exceed 12 months after termination of the main contract), territory, exhaustive list of competitive actions/competitors, and remuneration for the conclusion of such an agreement.

That is to say, the conclusion of a gig-contract requires a certain degree of maturity from both parties to the contract. And, while it has always been normal for companies to engage external advisors when developing/revising contracts, most employees in Ukraine are not used to seeking legal advice before concluding a contract. Changing this pattern would allow many of them to avoid unpleasant surprises in future cooperation with the companies they are working for, especially since gig-contracts allow much flexibility in their terms.

The regime of Diia City seems to be attractive for businesses now. But only practice will show whether this trend will remain and whether Diia City becomes a real game changer for the industry. ■

NORTH MACEDONIA: DIRECT MARKETING

By Gjorgji Georgievski, Partner, and Kristina Tomashevska-Blazhevska, Senior Associate, ODI Law

Direct marketing consists of any marketing that relies on direct communication or distribution to individual consumers, rather than through a third party. Unlike traditional public relations campaigns pushed out through a third party, such as media publications or mass media, direct marketing campaigns operate independently to communicate with target audiences directly.

From a regulatory standpoint, individually directed advertising is subject to specific direct marketing rules, which generally require businesses to obtain consent from a customer before engaging in direct marketing. There are exceptions when companies can engage in direct marketing without obtaining consent from customers. To assess whether an exception would apply, businesses that wish to carry out direct marketing should thoroughly familiarize themselves with the relevant Macedonian regulations.

Under Macedonian law, businesses can engage in direct marketing by relying on the exception for processing personal data for their legitimate interests. Legitimate interest is the most flexible of the lawful grounds for processing personal data, since it is not focused on a particular purpose and therefore allows more scope to potentially rely on it in many different circumstances. Direct marketing may be a legitimate interest depending on the circumstances, but it does not constitute a legitimate interest by default. Businesses that wish to rely on legitimate interest for direct marketing purposes must complete a self-assessment to establish if this exception would apply to them. The self-assessment can be broken down into three parts: (1) the *Purpose* test – is the business pursuing a legitimate interest? (2) the *Necessity* test – is the processing necessary for that purpose? and (3) the *Balancing* test – do the individual's interests override the legitimate interest?

When it comes to the *Purpose* test, businesses should be very specific about their purpose and the elements of the processing of personal data, to weigh the benefits of the *Balancing* test. For example, online behavioral advertising, which processes personal data, amounts to profiling where personal data is used. Online behavioral advertising is the collection (via cookies or similar technologies) of information about an individual's online browsing habits – such as websites visited, search terms entered, and adverts clicked on – and is used to serve advertising tailored to that individual's interests. It may be conducted by a website owner solely based on activity on its site, or by a third-party tracking activity across multiple websites and serving adverts for products not necessarily sold on the website. Under Macedonian law, consent by the customer is always required when direct marketing includes profiling. Failure to obtain prior consent from customers can result in fines of up to 2% of the total worldwide annual turnover of a company in the preceding financial year.

Furthermore, businesses should establish if direct marketing would comply with the rules on direct marketing by electronic means. Specific rules apply to marketing by electronic communications, like automated telephone calls, fax, e-mail, voice, picture, and text messages. There are no restrictions for businesses to send solicited marketing messages (marketing communication specifically requested). However, unsolicited marketing messages (marketing communication that has not been specifically requested) are prohibited, unless the customer has previously consented to it. This restriction applies only to unsolicited marketing communication to individuals, and not to B2B marketing.

It is important to note that legitimate interest may not be an appropriate basis for businesses that intend to process personal data for the purposes of direct marketing by electronic means. Since direct marketing by electronic means without consent is unlawful under Macedonian electronic communications regulations, it is also unlawful under Macedonian data protection regulations without consent. Businesses cannot use legitimate interest to legitimize the unlawful processing under electronic communications regulations. If a business has obtained consent in compliance with electronic communications regulations, in practice, consent would also be the appropriate lawful basis under the data protection regulations. Applying a legitimate interest self-assessment would be entirely unnecessary in such a case.

For the *Balancing* test, the relevant factors to consider are whether individuals would expect their personal data to be used for direct marketing, the potential nuisance factor of unsolicited marketing messages, and the effect of the chosen method and frequency of communication on individuals. ■

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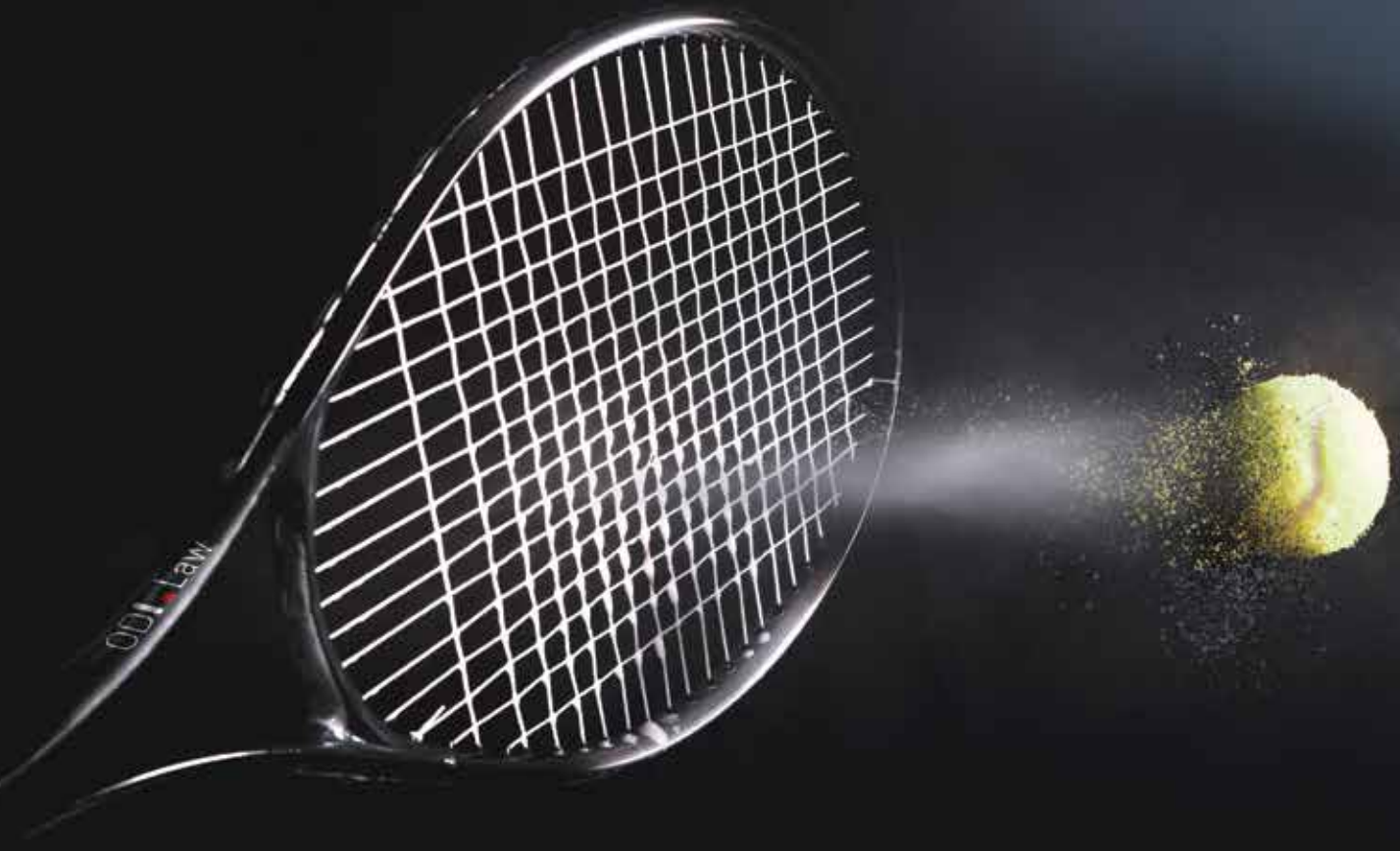

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MOLDOVA: NEW DIGITAL CONTENT REGULATIONS

By Andrei Caciurenco, Partner, and Carolina Parcalab, Legal Manager, ACI Partners

The Moldovan Government continues to promote in-depth reforms designed to meet the challenges of a digital economy. The last summer was marked by the adoption of new regulations aiming to stimulate private-sector innovation. The new legislation also instituted new responsibilities for digital platforms for creating, sharing, and streaming digital content to Moldovan users.

New Copyright Law

On July 22, 2022, the Parliament adopted *Law No. 230 on Copyright and Related Rights*, which replaced the former *Copyright Law* (2010). The new law transposes thirteen European Directives, including *Directive (EU) 2019/790 of the European Parliament and of the Council of 17 April 2019 on copyright and related rights in the Digital Single Market*. Among others, the new law is purposed to address the concerns about the extent of digital platforms' responsibility for shared illegal content that could include infringement of intellectual property rights.

The new law defines an *online content-sharing service provider* as a provider of information society services having the main purpose of storing and giving the public access to a large amount of copyright-protected works, uploaded by its users, that are organized and promoted for profit-making purposes. The new law explicitly excludes providers such as not-for-profit online encyclopedias, not-for-profit educational and scientific repositories, open-source software-developing and sharing platforms, providers of electronic communications services, online marketplaces, business-to-business cloud services, and cloud services that allow users to upload content for their own use.

By offering access to the public to works or other copyrighted materials uploaded by its users, the providers are considered to perform an act of communication to the public or of making the respective materials available to the public. Therefore, providers are required to obtain authorization from the rightsholders, notwithstanding that such materials are uploaded by users. In the absence of such authorization, the providers become liable for unauthorized acts of communication to the public.

The new providers (providers of online content-sharing services that have made their services available in the Republic of Moldova for less than three years) will not be held responsible in case the following conditions are cumulatively met: (1) they made efforts to obtain authorization from the rightsholder, and (2) they acted expeditiously upon receipt of a sufficiently substantiated notification to terminate access to or remove protected works and other subject matter from their websites.

New providers with an average number of unique visitors per month that exceeded five million in the preceding calendar year are also exonerated from liability if they also demonstrate that they have made their best efforts to prevent other downloads of the works and other protected material for which the holders have not provided the relevant and necessary information. The new *Law on Copyright and Related Rights* became effective on October 9, 2022.

Broadcasting Services Code Amended

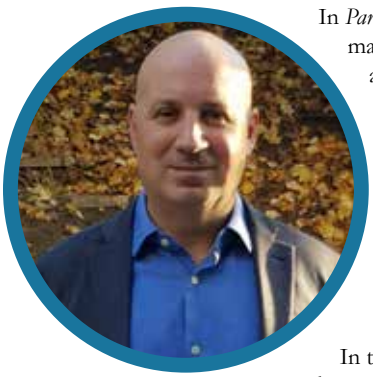
In June 2022, the *Moldovan Broadcasting Services Code* was amended as a response to Russian propaganda on the war in Ukraine. The aim of the legislative amendment was to re-introduce the definition of disinformation that had been dropped in 2020 and to ban the disinformation and propaganda on military aggression.

The Parliament likewise re-approved the obligation of Moldovan media broadcasters, also dropped in 2020, to observe the minimum quotas of audiovisual products from EU member states, the US, Canada, and other countries that have ratified the *European Convention on Transfrontier Television* of the Council of Europe. Thus, according to the amendments, Moldovan linear media service providers will have to observe at least a 50% quota of production from the states listed above, while a 30% quota is applied to non-linear media.

The distinction between linear and non-linear media was introduced by the *Moldovan Broadcasting Services Code* in 2018, approved in order to create the framework required for the implementation of *Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation, or administrative action in the Member States concerning the provision of audiovisual media services*. The minimum quota obligations re-introduced by the legislative amendment have been effective since July 2, 2022. ■

THE CONFIDENT COUNSEL: THE PATH OF LEAST PERSISTENCE (PART 2)

By Aaron Muhly



In *Part 1*, I talked about the dilemma facing most lawyers when asked to involve themselves with business development. If you want to be good at BD, it helps a lot to be an optimist. But, since most lawyers are uber-pessimists, we struggle with BD and find ourselves with practically zero persistence.

In this article, you can learn about the following solutions for tackling this pessimism problem:

- Hire baby rainmakers
- Encourage BD specialization
- Protect the pessimists and your pocketbook

Hire Baby Rainmakers

In Part One of this article, I talked about the research by Martin Seligman demonstrating that the more pessimistic law students are likely to do better in school and get better job offers. In other words, the big law firms seem to be vacuuming up uber-pessimists.

Why don't law firms simply set up two hiring processes – one for high-potential lawyers and a second for baby rainmakers? For the high-potential lawyers, you can keep following your traditional hiring policies (e.g., nice school, good grades, solid handshake). For the baby rainmakers, you would de-emphasize the grades (Seligman suggests that optimists are likely to have lower grades) and focus more on investigating their resilience towards rejection. Better yet, why not test these candidates with one of Seligman's surveys like the Attributional Style Questionnaire (used to assess levels of optimism and pessimism) or the Grit Survey (used to examine perseverance)?

Encourage BD Specialization

You can also increase the persistence of your lawyers by helping them manage the detrimental effects of their pessimism. For example, Seligman recommends several cognitive science techniques (e.g., the ABC model) to manage excessive pessimism. But you and I know that most lawyers are too pessimistic to actually do exercises that would make them less pessimistic.

As an alternative, you can also help lawyers increase their BD persistence by encouraging them to pick a specialization for their BD activities. In my experience, lawyers don't just struggle with BD because they are pessimists – they are also frustrated when forced to do activities that they are not good at. Unfortunately, law firms feed this frustration by encouraging lawyers to engage in a vast range of BD activities. As a result, the lawyers don't have the time to develop expertise in any of these activities. To address this problem, they should be encouraged to boost their confidence by becoming an expert in a particular BD domain of their choosing (e.g., social media posting, article writing, conference presenting).

Protect the Pessimists and Your Pocketbooks

Last but not least, we need to take this pessimistic shit seriously. There are countless articles detailing the detrimental effects of pessimism in our profession (e.g., depression, divorce, substance abuse, burnout).

Unfortunately, most law firms ask their lawyers to just suck it up, take the money, and quit whining. Management understandably doesn't want to mess with this model, because it's a proven moneymaker. As a result, we just pretend that pessimism and its consequences are an annoying but necessary part of the job.

If you've been paying attention to this article series, you probably realize that this management mindset is not only lazy, but it also hurts the bottom line. When we don't help lawyers deal with their pessimistic mindsets, we end up with the exact opposite of rainmakers, whatever that is. On the other hand, we can lead them down the path towards BD persistence and success if we provide them with support targeted at helping them overcome their pessimistic aversion to BD (e.g., coaching, mentoring, and training aimed at dealing with excessively negative beliefs about BD).

The math is simple: happier lawyers means more money in your pocket.

Learn More

If you liked the insights from Seligman, I recommend that you check out his book *Learned Helplessness* or his website for the Positive Psychology Center at the University of Pennsylvania. ■

Aaron Muhly is an American lawyer who has been training European professionals on clear writing and effective communication for over 15 years.

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