



CEE

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LEGAL MATTERS

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

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EDITORIAL: HEY, MISTER, STOP HELPING US. PLEASE!

By Radu Neag

In the space of a couple of pages in *Perdido Street Station*, China Mieville manages to illustrate and bring to life the fantasy of an entire legal system based on just one crime: choice theft. To steal something is to deprive others of their choice in using or disposing of that object as they see fit. To hurt someone is to take away their choice to not suffer or live in fear. To lie about where animals could be hunted for food, for example, would mean to take the choice of others to hunt or to eat. There are varying degrees, of course. Some acts of violence, for instance, take away not just immediate choices, but the possibility of making other choices, in the future.

It's a fascinating thought experiment. And while I'm not convinced a fully workable legal system could be constructed on the premise, I'm fairly confident the framework of a moral system is there. I sometimes use the metaphor as a quick test, a rule-of-thumb way of deciding whether something is as benign as advertised.

It came really handy at the beginning of March, when the Romanian education minister announced – citing the end of the state of emergency – that education was to resume under normal conditions. Online teaching, courses, and online exams were suspended, starting the following week. Which meant that universities had to scramble, at least, to arrange classrooms and schedules. Faculty were always supposed to be ready to teach both in person and online, the courses were already prepared, the rest was just logistics.

For college students, logistics meant something else entirely. Unsurprisingly, in Romania, most university students do not live within major university urban centers. In Cluj-Napoca, for example, students attending university add anywhere between 25% and 30% to the local population. So, on a recent Friday, about 550,000 students in Romania found out they were supposed to physically attend class on Monday. Sure, you can

miss a couple of classes while you get situated – but good luck finding quick accommodation on short notice, in this economy, with your quirky asks: you need it starting next week, you only need it till June or July, and you're on a student's budget.



So, while I'm sure the minister intoned some platitudes about the announcement being made in the best interest of students – he ultimately failed the theft-choice test. The decision deprived students of the option of learning online. Of the choice – after studying online for two years – between live or online exams. Of their choice in where to live, how to move there, and when. The eleventh-hour announcement deprived them of the choice and ability to plan, well, anything. It took away their choice to live with less stress. Any many of the options they had for managing that stress. Restricting somebody else's options is generally not a great idea. Severely limiting those options “for their own good” is – to avail myself of the metaphor fully – a crime.

On a lighter note, I'll share an inside joke: it started from a dear friend – the most caring person you've ever met, but a bit of a klutz. While walking out of a store she accidentally bowled over a man in crutches. Shocked at what she'd done, she proceeded to help him up, all the while apologizing profusely. But forgot to also hand him his crutches. While she bent to retrieve them, down came the man again. After this repeated a couple of times, in exasperation, and probably pain, he begged: “Hey, lady, stop helping me. Please!”

Which is what I guess college students would like to tell the head of Romanian education: “Hey, mi(ni)ster, stop helping us. Please!” ■



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Letters to the Editors:

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

GUEST EDITORIAL: M&A AND LEGAL CONSULTANCY TRENDS IN CEE

By Tarja Krehic, Managing Partner, Krehic & Partners in Cooperation with Deloitte Legal



The latest trend in M&A advisory, in Croatia and the region, is to offer to both sellers and buyers of CEE targets a special type of M&A insurance policy – a Warranty Insurance Policy (WIP).

A WIP is intended to ensure that both buyers and sellers can enjoy the ease of mind in their M&A deals of having an insurance policy covering

their liability for the deal. While WIP was viewed historically as a product of limited application in Croatia and the region, in recent years we have seen a significant expansion of the use and importance of these policies.

Today, WIP in the region is generally viewed as an attractive product when deployed in the right circumstances, often providing for a longer period of coverage and higher limits than would be available in a customary seller indemnification arrangement. On the one hand, for sellers, it is easier since they are no longer liable for years even after they close a deal and, for the buyers, it is easier since they no longer need to worry about compensating for potential damages – they know that the insurance policy will be enforceable and that they will get their money back in a worst-case scenario.

Although WIP for corporate transactions has existed for approximately two decades in the UK and the US, it has only recently become a common practice in Croatian and regional deals. In fact, in Croatia in particular, this kind of policy is not yet offered by local insurers, but by those in the UK and other European insurance providers.

And this trend comes at a good time, as we see that there is a very high level of activity in M&A in both the Croatian, re-

gional, and CEE markets. This is especially the case in the ICT, media, and manufacturing sectors. At a general level, it appears that a number of Croatian companies have now reached the point where they are becoming attractive for strategic partners, or private equity investors, as they are generating profit. It has taken them 10-30 years to reach this level of maturity, but now they are seeking strategic or financial investors in order to properly structure themselves, properly implement ESOP programs, and then go public. Notably, these IPOs will not be made in Croatia, but in London or New York.

M&A transactions have kept at a high rate despite the pandemic because many of the banks have quite a lot of funds available to invest, and interest rates remain low. One other reason for this increase in M&A activity is that, during this pandemic period, buyers found themselves in a good negotiating position – so, for those able to invest, and to buy targets, there are some excellent opportunities available.

Another trend worth highlighting is that of offering and providing a bundled legal and consulting service, such as an LMC (Legal Management Consulting), usually developed by lawyers in collaboration with experts in practice areas such as mainstream management consultancy, risk advisory, and tax management consulting – which in essence represents a collection of models, frameworks, and systems designed to help in-house lawyers run their departments more efficiently, and meet their business needs. The demand for these premium and sophisticated services shows a high level of professionalism regarding compliance in our client's corporate legal departments, across various industries.

I believe it also shows their interest in using the latest technologies to improve their legal policies and legal departments' functionality. And this trend is certainly coming to the region as well. For example, several local, Croatian-based clients active globally in the ICT, telecommunications, and automotive sectors are interested in these types of bundled services, which shows a maturing market when it comes to approaching legal services. ■

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ACROSS THE WIRE: DEALS AND CASES

Date Covered	Firms Involved	Deal/Litigation	Value	Country
16-Feb	Brandl Talos; Herbst Kinsky	Herbst Kinsky advised Ribbon Biolabs on its EUR 18 million Series A financing round. Brandl Talos advised lead investor Hadean Ventures.	EUR 18 million	Austria
21-Feb	E+H; Taylor Wessing; Willkie Farr & Gallagher	E+H, working with Willkie Farr & Gallagher, advised the Stark Group on its acquisition of Dach & Wand Handels GmbH from the Swisspearl Group. Taylor Wessing advised the seller.	N/A	Austria
22-Feb	Herbst Kinsky; Linklaters; Schoenherr; SCWP Schindhelm; Wolf Theiss	Schoenherr advised Herba Chemosan Apotheker and its management board on the management buy-out of the company. Herbst Kinsky, working with Linklaters, advised previous majority shareholder McKesson Corporation on the sale of its Austrian business to Quadrifolia Management through the MBO. SCWP Schindhelm advised private equity company Invest AG on participating in the acquisition. Wolf Theiss advised the financing banks led by Raiffeisen Banking Group Upper Austria.	N/A	Austria
23-Feb	Greenfort; PHH Rechtsanwälte; Schoenherr	PHH advised Drees & Sommer on the acquisition of Vienna-based Die Werkbank IT. Germany-based Greenfort and Schoenherr reportedly advised the sellers on the deal.	N/A	Austria
28-Feb	Cerha Hempel	Cerha Hempel advised Stadler Rheintal on its successful participation in OBB's tendering process for up to 186 new double-decker trains.	N/A	Austria
7-Mar	Herbst Kinsky	Herbst Kinsky advised Neoh Invest on its acquisition of a majority stake in Neoh USA.	N/A	Austria
8-Mar	Fellner Wratzfeld & Partner	Fellner Wratzfeld & Partner advised Soravia on its acquisition of a stake in Hospiz am Arlberg.	N/A	Austria
9-Mar	Taylor Wessing	Taylor Wessing advised Trustology on its exit to Bitpanda.	N/A	Austria
11-Mar	BPV Huegel; Schoenherr; Wolf Theiss	BPV Huegel advised Immofinanz on competing takeover bids by the CPI Property Group and S Immo, while Schoenherr advised Immofinanz' supervisory board. Wolf Theiss reportedly advised CPI on the acquisition.	N/A	Austria
25-Feb	Boyanov & Co; Filip & Company; Freshfields; Hogan Lovells; Mishcon De Reya; Oppenheim; PHH Rechtsanwälte; PRK Partners; Savoric & Partners	Freshfields Bruckhaus Deringer, Boyanov & Co, and Filip & Company advised Borealis on a binding offer from EuroChem for its nitrogen business. Hogan Lovells, PHH Rechtsanwälte, and Mishcon de Reya advised the EuroChem Group. Savoric & Partners, Oppenheim, and PRK Partners reportedly also advised Borealis.	N/A	Austria; Bulgaria; Hungary; Poland; Romania
17-Feb	Binder Groesswang	Binder Groesswang advised Gittis Naturprodukte on the acquisition of the Sunray company and its production plant in Mirna from Atlantic Droga Kolinska in Slovenia.	N/A	Austria; Slovenia
21-Feb	Schoenherr	Schoenherr advised Queisser Pharma Bulgaria on the acquisition of its new office space in Sofia from real estate developer Tremont.	N/A	Bulgaria
24-Feb	CMS	CMS advised OTP Bank and its DSK Bank Bulgarian subsidiary on their EUR 17.3 million joint refinancing of Energy and Development Company's 14.2-megawatt operational photovoltaic power plant in Bulgaria.	EUR 17.3 million	Bulgaria
2-Mar	DWF; Kinstellar; PPG Lawyers	Kinstellar, working with DWF in London, advised Kin and Carta on its acquisition of the Melon Group. PPG Lawyers advised the Melon Group.	N/A	Bulgaria
3-Mar	CMS	CMS advised Raiffeisen Bank International company Elevator Ventures on leading the third round of investment in CloudCart.	N/A	Bulgaria
7-Mar	Djingov, Gouginski, Kyutchukov & Velichkov; PwC Legal	Djingov, Gouginski, Kyutchukov & Velichkov advised Matrax on its acquisition of Bulgarian company Matraci.bg. PwC Legal reportedly advised the seller.	N/A	Bulgaria

Date Covered	Firms Involved	Deal/Litigation	Value	Country
21-Feb	Buterin & Posavec; Savoric & Partners	Savoric & Partners advised Studenac on its acquisition of Pemo from founder Lovorko Milosevic. Buterin & Posavec reportedly advised the seller.	N/A	Croatia
21-Feb	Deloitte Legal (Krehic & Partners); Vukmir & Associates	Vukmir & Associates advised OYO Rooms on its acquisition of Direct Booker. Deloitte Legal Network member Krehic & Partners advised the sellers on the deal.	N/A	Croatia
8-Mar	Jadek & Pensa; Karmen Rebesco; Ulcar & Partnerji	The Karmen Rebesco law firm advised mandated lead arrangers Nova Ljubljanska Banka and Privredna Banka Zagreb on the provision of a EUR 200 million syndicated loan to Petrol Ljubljana. Jadek & Pensa and Ulcar & Partners advised Petrol Ljubljana on the deal.	EUR 200 million	Croatia; Slovenia
22-Feb	Divjak Topic Bahtijarevic & Krka	Divjak Topic Bahtijarevic & Krka advised Turkey's Havas Ground Handling on its acquisition of MZLZ Ground Handling Services in Croatia.	N/A	Croatia; Turkey
16-Feb	Debevoise; Gibson, Dunn & Crutcher; Goodwin Procter; Kinstellar; Kirkland & Ellis	Kinstellar advised Vista Equity Partners on Czech law-related aspects of the USD 16.5 billion acquisition of Citrix Systems. Kirkland & Ellis advised Vista Equity Partners and its portfolio company Tibco Software. Gibson, Dunn & Crutcher and Debevoise & Plimpton advised the other investor, Evergreen Coast Capital. Goodwin Procter advised Citrix Systems.	USD 16.5 billion	Czech Republic
17-Feb	Noerr; Roedl & Partner	Noerr advised BuR Handels on the sale of Sakret in the Czech Republic to Sievert. Roedl & Partner reportedly advised the buyer.	N/A	Czech Republic
21-Feb	Giese & Partners	Giese & Partner successfully represented the interests of the Sovereign Military Order of Malta-Czech Grand Priory before the Constitutional Court on property restitution.	N/A	Czech Republic
22-Feb	Kinstellar; Wilson	Kinstellar advised Portiva on its CZK 1 billion acquisition of the SmichOff office building in Prague from Penta Real Estate. Wilson reportedly advised Penta.	CZK 1 billion	Czech Republic
24-Feb	Clifford Chance; Wilson	Clifford Chance advised the KKCG Real Estate Group on its sale of Borislavka Centrum to the CS Nemovitostni Fond. Wilson reportedly advised the buyer.	N/A	Czech Republic
25-Feb	Clifford Chance	Clifford Chance advised Commerz Real on its sale of Charles Square Center to a closed-end European real estate fund represented by KGAL Investment Management.	N/A	Czech Republic
28-Feb	Clifford Chance; Wilson	Clifford Chance advised the Mint Investments Group on the acquisition of Coral Office Park from Portland Trust. Wilson advised the seller.	N/A	Czech Republic
8-Mar	Allen & Overy	Allen & Overy advised Indorama Ventures Public Company Limited on its acquisition of a 85% stake in UCY Polymers CZ.	N/A	Czech Republic
10-Mar	PRK Partners	PRK Partners successfully represented Tosan Park in a building permit dispute before the Supreme Administrative Court of the Czech Republic.	N/A	Czech Republic
18-Feb	DRV Legal	DRV Legal advised Jet Investment company Jet 2 Kappa on its acquisition of the EDS Group from DPE Deutsche Private Equity. Clifford Chance advised DPE.	N/A	Czech Republic; Hungary; Poland; Romania
15-Mar	Eversheds Sutherland; White & Case	Eversheds Sutherland advised owner Jiri Lupac on the sale of the Emos group to Legrand. White & Case advised the buyer.	N/A	Czech Republic; Poland; Slovakia
10-Mar	Kinstellar; Rybar Soppe & Partneri	Kinstellar advised 365.invest on its acquisition of three shopping center projects from CPI Property Group. Rybar Soppe & Partners reportedly advised the seller.	N/A	Czech Republic; Slovakia
3-Mar	Dentons; Freshfields; Paksoy; PRK Partners; Wardynski & Partners	Dentons advised a club of banks led by Erste Group Bank on the refinancing of the Tristone Flowtech Group. PRK Partners, Paksoy, and Wardynski & Partners, working with Freshfields Bruckhaus Deringer, advised Tristone Flowtech on the EUR 80 million refinancing.	EUR 80 million	Czech Republic; Slovakia; Poland; Turkey
17-Feb	Sorainen	Sorainen advised FoodDocs on raising USD 2.4 million in a Bonnier Ventures-led financing round, which included Forward Venture Capital and Spring Capital along with existing investor United Angels VC.	USD 2.4 million	Estonia
1-Mar	PwC Legal	PwC Legal successfully represented the interests of the West Tallinn Central Hospital in a public procurement-related financial correction dispute.	EUR 270,000	Estonia
2-Mar	Ellex (Raidla)	Ellex advised CybExer Technologies on its EUR 5 million funding round.	EUR 5 million	Estonia
3-Mar	Ellex (Raidla)	Ellex advised the East Capital Baltic Property Fund II on the sale of three commercial real estate assets to Neoinvesteeringud subsidiaries.	N/A	Estonia

Date Covered	Firms Involved	Deal/Litigation	Value	Country
4-Mar	Ellex (Raidla)	Ellex advised EyeVi on its USD 2 million seed funding round led by FF Venture Capital.	USD 2 million	Estonia
8-Mar	Magnusson; Tark	Magnusson advised Saint-Gobain Eesti on the divestment of its flat glass processing business Baltiklaas to Barrus. Tark advised Barrus on the deal.	N/A	Estonia
16-Feb	LinkLaw; Sorainen	Sorainen advised Tomra on its implementation of a packaging deposit system in Latvia, following a tender procedure. Reportedly, LinkLaw advised Tomra on Estonian law matters.	N/A	Estonia; Latvia
16-Feb	Cobalt; TGS Baltic	TGS Baltic advised BaltCap on the sale of a 95% stake in BPT Real Estate to Newsec. Cobalt reportedly advised Newsec.	N/A	Estonia; Lithuania
21-Feb	Davis Polk & Wardwell; Freshfields; Karatzas & Partners; Koutalidis	The Koutalidis law firm, working with Davis Polk & Wardwell, advised Viva Wallet's shareholders on the sale of a 49% stake in the company to JP Morgan. Karatzas & Partners and Freshfields Bruckhaus Deringer advised the buyer.	N/A	Greece
25-Feb	Lambadarios Law Firm	The Lambadarios law firm advised Brook Lane Capital on establishing a new joint venture with Lamda Development for the development of a mixed-use tower in the Hellinikon business district in Athens.	N/A	Greece
3-Mar	Alexiou-Kosmopoulos	AKL advised Alpha Bank as the lender, mandated lead arranger, facility agent, and hedging counterparty and Alpha Bank Cyprus as the accounts bank and security agent on an up to EUR 82 million term loan facility for the Cyprus Tourism Development Company.	N/A	Greece
14-Mar	Koutalidis; Potamitis Vekris	The Koutalidis law firm advised GMR Airports on its up to EUR 60.5 million common secured bond loan issuance, subscribed for by the National Bank of Greece. Potamitis Vekris reportedly advised the National Bank of Greece.	EUR 60.5 million	Greece
23-Feb	Kinstellar; RSM Legal Szucs & Partners	Kinstellar advised MVM CEEnergy on a joint venture with Aspect for the exploration and exploitation of hydrocarbons and the participation in a large gas/condensate discovery in Hungary. RSM Legal Szucs & Partners advised Aspect.	N/A	Hungary
24-Feb	Noerr	Noerr advised BBA Capitalpartners on the establishment of a Hungarian joint venture company with Mertcontrol.	N/A	Hungary
14-Mar	Baker Mckenzie; VJT & Partners	VJT & Partners advised WTS Klient on its sale of a majority stake in Klient Holding to ARX Equity Partners. Baker McKenzie advised the buyer.	N/A	Hungary
17-Feb	Walless	Walless advised Depo DIY on the sale of the building housing its Depo outlet in Riga to the Summus Capital group through a share transaction.	N/A	Latvia
1-Mar	Sorainen	Sorainen advised Helve on the drafting of the service agreement for an accelerator program in Latvia.	N/A	Latvia
7-Mar	Sorainen	Sorainen advised RB Rail on setting the qualification requirements for tenderers in the procurement of large track sleepers and also defended RB Rail in a public procurement dispute before the Procurement Monitoring Bureau of Latvia.	N/A	Latvia
11-Mar	TGS Baltic	TGS Baltic advised the INVL Baltic Sea Growth Fund on its acquisition of cosmetics producer B2Y.	N/A	Latvia; Lithuania
23-Feb	TGS Baltic	TGS Baltic advised Green Genius on the acquisition of an 85-megawatt wind farm in Lithuania.	N/A	Lithuania
8-Mar	CMS; Karanovic & Partners	Karanovic & Partners advised BIG Shopping Centers on the EUR 95 million acquisition of Delta City Mall from Hystead Limited. CMS advised the seller.	EUR 95 million	Montenegro
16-Feb	Deloitte Legal; Greenberg Traurig	Deloitte Legal advised Panattoni and other sellers on their EUR 160 million sale of the Swiebodzin warehousing facility to an undisclosed Korean investor. Greenberg Traurig advised the buyer.	EUR 160 million	Poland
17-Feb	Baker Mckenzie	Baker McKenzie successfully represented Minova Ekochem before the Warsaw Court of Appeal in an anti-competitive practices dispute with the President of the Office of Competition and Consumer Protection (OCCP).	N/A	Poland
18-Feb	Dentons; KPMG Legal	Dentons advised Epam Systems on its acquisition of Enginety. KPMG Legal reportedly advised Enginety's founders on their sale of the company.	N/A	Poland
18-Feb	CDZ; Grabalski, Kempinski i Wspolnicy; Wolf Theiss	CDZ Chajec & Partners and Wolf Theiss advised Centerscape Investments Poland on the acquisition of two retail parks from Hunter REIM. Grabalski, Kempinski i Wspolnicy reportedly advised the seller.	N/A	Poland

Date Covered	Firms Involved	Deal/Litigation	Value	Country
21-Feb	B2RLaw	B2RLaw advised Skanska Residential Development Poland on the acquisition of a mixed-use project in Krakow.	N/A	Poland
22-Feb	Dentons; Hogan Lovells; MDDP Olkiewicz and Partners	Hogan Lovells and Dentons advised Patrizia on its sale of a three-building office portfolio in Warsaw to Vienna Insurance Group company VIG Fund. MDDP Olkiewicz and Partners advised VIG Fund.	N/A	Poland
22-Feb	B2RLaw; Dentons; Kondracki Celej	B2RLaw advised Meta Ventures on its portfolio company Car Scanner's USD 2 million investment round. The round was led by FFVC Tech & Gaming, with the participation of the FundingBox Deep Tech Fund, Pomerangels, and Techstars, with Kondracki Celej advising the new and existing investors. Dentons' Canadian office reportedly advised Car Scanner.	USD 2 million	Poland
22-Feb	Eversheds Sutherland	Eversheds Sutherland successfully represented Altrad-Mostostal before the President of the Office of Competition and Consumer Protection regarding payment gridlocks.	N/A	Poland
23-Feb	Moskwa Jarmul Haladyj i Wspolnicy	Moskwa Jarmul Haladyj advised GI International on the tender offer bid for all shares of the GI Poland Group.	N/A	Poland
23-Feb	CMS; Rymarz Zdort	Rymarz Zdort advised Electrum on establishing a joint venture with Nofar Europe to identify and develop opportunities for renewable energy in Poland.	N/A	Poland
24-Feb	Gide Loyrette Nouel	Gide Loyrette Nouel advised KGHM Polska Miedz on negotiating a contract with US-based supplier NuScale Power for the implementation of SMR-class small modular reactor technology.	N/A	Poland
28-Feb	Baker McKenzie	Baker McKenzie advised GVM Care & Research on its acquisition of the majority stake in the New Medical Techniques Specialist Hospital of the Holy Family.	N/A	Poland
28-Feb	Baker McKenzie	Baker McKenzie advised Tencent on its minority investment in Exit Plan Games.	N/A	Poland
1-Mar	Eversheds Sutherland; Konieczny Wierzbicki	KWKR Konieczny Wierzbicki advised Knacks's owners on their sale of a majority stake in the company to RightBridge Ventures. Eversheds Sutherland advised the buyer.	N/A	Poland
1-Mar	Dentons; Dubinski Jelenski Masiazr and Partners	Dentons advised eSky's founders and the Syntaxis Capital fund on their PLN 158 million sale of a 55% stake in eSky to an MCI Capital fund. Dubinski Jelenski Masiazr and Partners advised the buyer.	PLN 158 million	Poland
2-Mar	Greenberg Traurig	Greenberg Traurig advised Partners Group on its acquisition of a logistics portfolio in Warsaw together with Peakside Capital Advisors from the Cromwell Property Group.	N/A	Poland
3-Mar	White & Case	White & Case advised Polenergia on its over PLN 1 billion public offering of AA series shares.	PLN 1 billion	Poland
4-Mar	Rymarz Zdort	Rymarz Zdort advised the Amos Luzon Development and Energy Group on the squeeze-out of the minority shares in Ronson Development.	N/A	Poland
8-Mar	Gide Loyrette Nouel	Gide advised KGHM Polska Miedz on the sale of a 45% equity stake in the Sierra Gorda joint venture by Japanese corporation Sumitomo to the Australian mining group South32.	N/A	Poland
8-Mar	Cytowski & Partners; Latham & Watkins; Wardynski & Partners	Cytowski & Partners advised the founders of Swing Development on its sale to Hippo. Reportedly, Latham & Watkins and Wardynski & Partners advised Hippo.	N/A	Poland
11-Mar	Greenberg Traurig	Greenberg Traurig advised the Dom Development Group on its PLN 209.5 million acquisition of Buma Group's residential portfolio from Giovanni Fundusz Inwestycyjny Zamkniety.	PLN 209.5 million	Poland
15-Mar	Greenberg Traurig; Hengeler Mueller; Soltysinski Kawecki & Szezak	Greenberg Traurig advised ZE PAK on forming a partnership with Orsted and on related antitrust proceedings before the Office of Competition and Consumer Protection of Poland. Hengeler Mueller and Soltysinski Kawecki & Szezak advised Orsted.	N/A	Poland
15-Mar	Konieczny Wierzbicki	KWKR Konieczny Wierzbicki advised WP2 Investments on its PLN 4 million co-investment with Smok Ventures into Polish fintech company Self Learning Solutions.	PLN 4 million	Poland
21-Feb	Eversheds Sutherland; Nestor Nestor Diculescu Kingston Petersen	Eversheds Sutherland advised Nepi Rockcastle on the acquisition of 17 hectares of land in Galati, Romania, for a mixed-use real estate project. Nestor Nestor Diculescu Kingston Petersen reportedly advised the unidentified sellers on the deal.	N/A	Romania
23-Feb	Musat & Asociatii	Musat & Asociatii, working with Baker McKenzie, advised Sika on Romanian aspects of its EUR 5.2 billion acquisition of Master Builders Construction Chemicals from Lone Star Funds.	EUR 5.2 billion	Romania

Date Covered	Firms Involved	Deal/Litigation	Value	Country
7-Mar	Nestor Nestor Diculescu Kingston Petersen; RTPR	Radu Taracila Padurari Retevoescu advised the LKE Group on the acquisition of majority stakes in Someg and Transcarpatca. Nestor Nestor Diculescu Kingston Petersen advised Transcarpatca on the sale and the preceding asset restructuring procedure.	N/A	Romania
10-Mar	Popescu & Asociatii	Popescu & Asociatii successfully represented The Romanian Academy in court in an expropriation dispute with the Mogosoia Local Council.	N/A	Romania
11-Mar	Eversheds Sutherland; Gunderson Dettmer; Murphy & Brawley; Stratulat Albulescu	Stratulat Albulescu advised the founders of Metagame Studios on their exit to Fortis Games. Reportedly, Murphy & Brawley also advised the sellers, with Gunderson Dettmer and Eversheds Sutherland advising the buyers.	N/A	Romania
15-Mar	Hamilton Locke; Ijdelea & Associates; Tuca Zbarcea & Asociatii	Ijdelea & Associates advised the Splend Group on a project financing transaction of over EUR 25 million with US-based Partners for Growth VI. Tuca Zbarcea & Asociatii and, reportedly, Australia-based Hamilton Locke advised Partners for Growth.	EUR 25 million	Romania
7-Mar	Bojovic Draskovic Popovic & Partners; Jankovic Popovic Mitic	JPM Jankovic Popovic Mitic advised CD Holding Internationale on its acquisition of the remaining stake in Serbia's Emergo Sport from FitPass Limited in Ireland. Bojovic Draskovic Popovic & Partners advised the seller.	N/A	Serbia
8-Mar	Prica & Partners	Prica & Partners advised DM Drogerie Markt Srbija on the "Uvek Povoljno" marketing campaign in Serbia.	N/A	Serbia
21-Feb	Havel & Partners	Havel & Partners advised Slovakia's Deposit Return System Administrator on the setup, implementation, and January 2022 launch of the disposable beverage packaging deposit return system.	N/A	Slovakia
21-Feb	Herbst Kinsky; Ignition Law; Jerovsek Malis; Karanovic & Partners (Ketler & Partners); Lexia; Novak Law	Ketler & Partners, a member of Karanovic, advised KraftPal Group on its EUR 122.9 million equity investment from Pasaca Capital. Reportedly, UK-based Ignition Law, Austria-based Herbst Kinsky, and Finland-based Lexia advised KraftPal Group as well, with Novak Law Firm and Jerovsek Malis advising minority owners.	EUR 122.9 million	Slovenia
9-Mar	Allen & Overy; Dentons; Karmen Rebesco	Karmen Rebesco advised mandated lead arranger Nova Ljubljanska Banka on a EUR 230 million syndicated loan to members of the SIJ Group. Reportedly, Allen & Overy advised NLB as well and Dentons advised SIJ on the deal.	EUR 230 million	Slovenia
9-Mar	Akol Law Firm	Akol Law advised DAP Real Estate Development and Garanti BBVA Securities on DAP Yapi's initial public offering on the Borsa Istanbul Market.	N/A	Turkey
10-Mar	Turunc	Turunc advised Bogazici Ventures on its investment in hyper-casual game developer NDG Studio.	N/A	Turkey
14-Mar	Arnold & Porter; Clifford Chance; Clifford Chance (Ciftci Attorney Partnership); Paksoy	Paksoy, working with Arnold & Porter, advised the Republic of Turkey on its Rule 144A / Regulation S USD 3 billion issuance of lease certificates (Sukuk). The Ciftci Attorney Partnership and Clifford Chance advised joint lead managers Citibank, the Dubai Islamic Bank, HSBC, and Kuwait Finance House.	USD 3 billion	Turkey
17-Feb	Redcliffe Partners	Redcliffe Partners successfully represented the Nordic Investment Bank before the Supreme Court of Ukraine in a USD 59 million suretyship claim case.	USD 59 million	Ukraine
23-Feb	Sayenko Kharenko	Sayenko Kharenko advised the European Fund for Southeast Europe on providing a EUR 20 million equivalent loan to Credit Agricole Bank in Ukraine.	EUR 20 million	Ukraine
23-Feb	Sayenko Kharenko	Sayenko Kharenko advised the International Finance Corporation on an approximately USD 11 million loan to Bank Alliance in Ukraine for the financing of SMEs, with a focus on agriculture.	USD 10.7 million	Ukraine
24-Feb	Clifford Chance; Redcliffe Partners	Redcliffe Partners, working with Clifford Chance in London, advised the EBRD on providing Raiffeisen Bank Ukraine with an unfunded guarantee of up to EUR 75 million in local currency linked to the bank's domestic sovereign bond portfolio.	EUR 75 million	Ukraine
25-Feb	Avellum; Integrites	Avellum and Integrites advised General Commerce on obtaining merger control clearance from the Ukrainian Antimonopoly Committee for the acquisition and privatization of the First Kyiv Machine-Building Plant (Bilshovyk Plant).	N/A	Ukraine

TURUNÇ*

*A true full-service law firm providing transactional and preventive advice as well as dispute resolution services to clients through integrated offices in each of the three largest cities in Turkey.

ON THE MOVE: NEW HOMES AND FRIENDS

Poland: Ro Radwan-Roehrschef Petruczenko Announces Four New Partners and Shorter Name

By Teona Gelashvili (February 23, 2022)

Sylvia Zielezinska, Dominika Leszczynska, Jakub Adamski, and Mateusz Kotowicz have been promoted to Partner at Ro Radwan-Roehrschef Petruczenko. The firm also shortened its name from the previously used Ro Radwan-Roehrschef Petruczenko Tokarzewska.

Specializing in commercial, construction, civil, administrative, and public-procurement law, Zielezinska joined the firm in 2021 as an Attorney-at-Law. Prior to that, she spent over 14 years in-house at Mostostal Warszawa, having first joined in 2006 as a Legal Specialist, being promoted to Senior Legal Specialist in 2012, and Head of the Legal Department in 2013.

Leszczynska specializes in M&A and joined Ro Radwan-Roehrschef Petruczenko in 2021 as a Legal Counsel. Before that, she was an Associate with MFW Fialek from 2018 to 2019, and a Senior Associate from 2019 to 2020. Earlier, she was a Legal Trainee at Olesinski & Wspolnicy, from 2015 to 2018, and a Trainee at SDZLegal Schindhelm in 2012, 2013, and 2014.

Specializing in litigation and arbitration, Adamski joined the firm in 2017 as an Associate and was promoted to Legal Counsel in 2021. Before joining the firm, he was an Intern at Wolf Theiss in 2016, at Maruta Wachta, from 2015 to 2016, and at Human Rights Defender in 2013.

Kotowicz has expertise in civil and commercial disputes. He joined Ro Radwan-Roehrschef Petruczenko in 2019 as a Lawyer. Before that, he worked at SMM Legal as an Assistant, between 2014 and 2015, and as an Associate,

between 2015 and 2019. Kotowicz was also a Trainee at Mataczynski Dybinski Krzemien, from 2013 to 2015, and a Legal Assistant at Stawski Syty Adwokacka Spolka Partnerska, from 2012 to 2013.

“We are thrilled to welcome our excellent colleagues to Ro Radwan-Roehrschef Petruczenko’s partnership,” Managing Partner Marcin Radwan-Roehrschef commented. “They all possess outstanding knowledge, experience, and skills in comprehensive legal advice. It is their effort that allows us to bring numerous difficult and demanding cases to a successful conclusion. Their top-quality work and highest levels of client service have greatly contributed to Ro Radwan-Roehrschef Petruczenko’s growth. Over the past two years in particular, when so many clients had to face unprecedented challenges, they demonstrated flexibility and involvement in searching for both innovative and effective solutions.” ■

Hungary: HBK Partners Joins Moore and Becomes Moore Legal Kovacs

By Andrija Djonovic (February 25, 2022)

Hungarian corporate law firm HBK Partners has entered into a strategic partnership with Moore Hungary, the local member of audit and advisory network Moore Global. As a result, the law firm changed its name to Moore Legal Kovacs.

According to the newly formed entity, its “scope of activities will be further expanded, strengthening its position in the Hungarian advisory and international legal market.” Moore Legal Kovacs Managing Partner Marton Kovacs will continue to head the firm’s M&A and capital markets teams.

“We are delighted to welcome Marton and his team to Moore Hungary and the Moore Global family,” Moore Hungary Managing Partner Akos Boross commented. “With the accession of HBK Partners – in addition to corporate finance, tax, auditing, hotel, and tourism, as well as accounting and payroll services – we will now be able to provide our clients with complex legal advice, thus further strengthening our position in the Hungarian and global advisory market.”

“Joining Moore Hungary will enable us to provide our clients with a one-stop-shop type of service, and to work more efficiently with our clients in cross-border transactions with the Moore Legal network of Moore Global,” Kovacs added. ■

Romania: Musat & Asociatii Announces Paul Buta as Managing Partner and Makes Three New Partners

By Teona Gelashvili (February 25, 2022)

Paul Buta has been appointed to Managing Partner, while Alexandru Terta, Iuliana Iacob, and Andrei Ormenean made Partner at Musat & Asociatii.

Buta specializes in intellectual property law, competition law, and civil and commercial litigation. He has been with Musat & Asociatii since 2012 when he first joined the firm as a Senior Associate. He was promoted to Managing Associate in 2013, to Partner in 2016, and to Deputy Managing Partner in 2018. Prior to joining the firm, he worked as an individual practitioner, from 2005 onwards.

Specializing in criminal law, Terta has been with the firm since 2017, having first joined as a Managing Associate. He has a bachelor's degree from the University of Bucharest and a master's degree from the Transilvania University of Brasov.

Iacob focuses on dispute resolution and arbitration and has been with the firm for over ten years. She first joined Musat & Asociatii as an Associate in 2011, and was later promoted to Senior Associate in

2012, and to a Managing Associate in 2016.

Ormenean specializes in corporate and commercial law. He joined the firm in 2012 as a Senior Associate and was promoted to a Managing Associate in 2017. Prior to that, Ormenean was an Associate at Popovici Nitu Stoica & Asociatii, between 2008 and 2011.

“I am delighted the general meeting of our Equity Partners approved these promotions in the end-of-year meeting of the firm,” Musat & Asociatii Senior Partner Gheorghe Musat commented. “These promotions reflect their performance and their contribution to the success of our firm's projects, as well as the impeccable quality of the legal services they provide to clients, in line with the standards of excellence of Musat & Asociatii. We thank them for their effort and commitment to the firm and wish them success in these new positions.” ■

Poland: Osborne Clarke Opens CEE Office

By Radu Cotarcea (March 2, 2022)

Osborne Clarke has announced its entry into the CEE market by opening a new office in Poland and scooping up multi-professional services firm MD-DP's legal arm along with other lawyers.

The new Polish office is led by Co-Managing Partners Olgierd Swierzewski and Tomasz Olkiewicz and includes Partners Renata Dluska, Katarzyna Baranska, and Agata Demuth.

Specializing in corporate and tax matters, Tomasz Olkiewicz was previously the Managing Partner of MDDP Law. He had been with MDDP since 2004. Prior to that, he was a Senior Tax Manager with EY.

Specializing in M&A and technology transactions, Swierzewski was previously the CEO and Technology Transactions Partner at Kochanski & Partners. Since July 2021, he has also been serving as the Vice-President of the Management Board of Lotos Paliwa. Prior to Kochanski, he was the General Legal Counsel of Accor/Orbis, between May 2011 and March 2020, and the Associate General Counsel of



Dell Polska, between 2008 and 2011. Earlier still, he was the Managing Partner of Lukowicz Swierzewski i Wspolnicy (the former DLA Piper Lukowicz) and a Manager with EY.

Dluska, who will serve as the Head of Workforce Solutions, had been with MDDP since 2004. Prior to that, she was a Partner with EY.

Baranska, who will serve as the Head of Decarbonization, joins from Kochanski & Partners, where she was a Partner between February 2021 and December 2021. Before that, she was a Counsel with PwC Legal, between 2015 and 2021, and an Attorney-at-Law with White & Case, between 2008 and 2014.

Head of Real Estate Demuth joins from MDDP, where she was a Partner and Head of Real Estate since November 2020. Before that, she was a Partner with Schoenherr, between 2013 and 2020, and Domanski Zakrzewski Palinka, between 2002 and 2012. Earlier still, she was an Attorney-at-Law, Manager with EY Law, between 2000 and 2002, and a Lawyer with K.Ziemski i Partnerzy, between 1997 and 1999, and with Babiacyk, Skrocki & Partners, between 1995 and 1996.

“Poland is an important and strategic move for us,” commented Osborne Clarke International CEO Omar Al-Nuaimi, “given it’s the fifth-largest EU economy and very well positioned for targeting international businesses in CEE. It’s also a market that’s increasingly under pressure given the rapidly evolving situation in Ukraine and the broader geopolitical factors. Many of our clients have welcomed the fact that we will have a team in Poland to assist them as they navigate the changing business landscape.” ■

Slovakia: White & Case Leaves

By Radu Cotarcea (March 8, 2022)

White & Case has announced its Bratislava office will separate from the firm on March 31, 2022, with the local team to continue as Aldertree Legal.

Aldertree Legal will be led by soon-to-be-former White & Case Partner Juraj Fuska, who confirmed the entire team – including soon-to-be-former White & Case

Local Partners Zoran Draskovic, Vladimir Ivanco, and Michal Palisin – is staying with Aldertree.

A White & Case spokesperson announced the firm will have an exclusive alliance with Aldertree, adding: “We would like to thank Juraj and the team in Bratislava for their contribution to White & Case, wish them every success, and look forward to a close and ongoing working relationship under the exclusive alliance.”

Fuska commented: “The Bratislava office has achieved healthy growth in recent years and the exclusive alliance with White & Case will ensure continuity to the services we provide and support the development and further growth of Aldertree in Slovakia while ensuring the ongoing delivery of high-quality legal services our clients expect.” ■

Romania: Buju Stanciu & Asociatii Opens Doors

By Andrija Djonovic (March 11, 2022)

Buju Stanciu & Asociatii, founded by Partners Victor Buju and Marius Stanciu, has opened for business in Romania.

The firm’s principal focus is on emerging technologies, including “digital assets, cryptocurrency, decentralized finance, non-fungible tokens, and technologies that drive blockchain and related distributive computing networks.” Buju Stanciu & Asociatii also works on “corporate, commercial & business law, mergers and acquisitions, venture capital, real estate transactions, private equity, banking and finance, as well as related litigation arbitration.”

Earlier in his career, Stanciu spent almost five years with Tuca, Zbarcea & Asociatii where he was a Senior Associate. Before that, he spent six months as an Associate with DBO and, earlier still, over a year as an Associate with DLA Piper. He holds LLB and LLM degrees from the University of Bucharest.

Buju too was part of Tuca, Zbarcea & Asociatii, where he was an Associate for over four years. He holds an LLB degree from Alexandru Ioan Cuza University and an LLM degree from the University of Bucharest. ■



PARTNER MOVES

Date	Name	Practice(s)	Moving From	Moving To	Country
4-Mar	David Thomas	Insolvency/ Restructuring; Private Equity	Albion Rock	Kochanski & Partners	Czech Republic
4-Mar	Konrad Werner	Banking/Finance	Noerr	Kochanski & Partners	Czech Republic
2-Mar	Olgierd Swierzewski	Corporate/M&A; TMT/ IP	MDDP Law	Osborne Clarke	Poland
2-Mar	Tomasz Olkiewicz	Corporate/M&A; Tax	MDDP Law	Osborne Clarke	Poland
2-Mar	Renata Dluska	Labor	MDDP Law	Osborne Clarke	Poland
2-Mar	Katarzyna Baranska	ESG	Kochanski & Partners	Osborne Clarke	Poland
2-Mar	Agata Demuth	Real Estate	MDDP Law	Osborne Clarke	Poland
3-Mar	Anca Mihailescu	Energy/Natural Resources	Ijdelea Mihailescu	Noerr	Romania
11-Mar	Marius Stanciu	Litigation/Disputes	Tuca, Zbarcea & Asociatii	Buju Stanciu & Asociatii	Romania
11-Mar	Victor Buju	Corporate/M&A	Tuca, Zbarcea & Asociatii	Buju Stanciu & Asociatii	Romania
8-Mar	Juraj Fuska	Corporate/M&A	White & Case	Aldertree Legal	Slovakia
8-Mar	Zoran Draskovic	Energy/Natural Resources	White & Case	Aldertree Legal	Slovakia
8-Mar	Vladimir Ivanco	Litigation/Disputes	White & Case	Aldertree Legal	Slovakia
8-Mar	Michal Palisin	Corporate/M&A; Labor	White & Case	Aldertree Legal	Slovakia
16-Feb	Kostyantyn Chyzyk	Energy/Natural Resources	Ministry of Energy and Environment Protection	Hillmont Partners	Ukraine

PARTNER APPOINTMENTS

Date	Name	Practice(s)	Firm	Country
23-Feb	Antti Perli	Capital Markets	Ellex	Estonia
24-Feb	Daniel Gera	Labor	Schoenherr	Hungary
21-Feb	Karol Brzoskowski	Real Estate	Greenberg Traurig	Poland
21-Feb	Paulina Kimla-Kaczorowska	Banking/Finance	Greenberg Traurig	Poland
21-Feb	Barbara Pancer	Real Estate	Greenberg Traurig	Poland
21-Feb	Kamil Majewski	Real Estate/Corporate/M&A	Greenberg Traurig	Poland
21-Feb	Rafal Siwek	Real Estate	Greenberg Traurig	Poland
23-Feb	Sylwia Zielezinska	Corporate/M&A; Infrastructure/PPP/ Public Procurement	Ro Radwan-Roehrschef Petruczenko	Poland
24-Feb	Dominika Leszczynska	Corporate/M&A	Ro Radwan-Roehrschef Petruczenko	Poland
25-Feb	Jakub Adamski	Litigation/Disputes	Ro Radwan-Roehrschef Petruczenko	Poland
26-Feb	Mateusz Kotowicz	Litigation/Disputes	Ro Radwan-Roehrschef Petruczenko	Poland
25-Feb	Alexandru Terta	Litigation/Disputes	Musat & Asociatii	Romania
25-Feb	Iuliana Iacob	Litigation/Disputes	Musat & Asociatii	Romania
25-Feb	Andrei Ormenean	Corporate/M&A	Musat & Asociatii	Romania
9-Mar	Crenguta Florea	Real Estate/Corporate/M&A	Zamfirescu Racoti Vasile & Partners	Romania
9-Mar	Ovidiu Serban	Litigation/Disputes	Zamfirescu Racoti Vasile & Partners	Romania

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.

Croatia

Switching to the Euro: A Buzz Interview with Martina Prpic of Kovacevic Prpic Simeunovic

By Andrija Djonovic (February 11, 2022)



The biggest story in Croatia, according to Kovacevic Prpic Simeunovic Partner Martina Prpic, is the preparatory work for the upcoming switch to the euro as the official currency, complemented by EU-driven updates impacting consumer protection, agriculture, and

the upcoming tourist season.

“2023 will see Croatia become part of the eurozone and, leading up to it, there is a lot of buzz around the surrounding preparatory work and the transition period,” Prpic begins. “The most exposed businesses are those that deal with consumers directly – retail businesses, web-shops, service providers, and the like,” she says. There will be a requirement of “prices transparency” under which, starting with September 2022, prices will have to be shown in both HRK and EUR until the final switch.

“The first two weeks of 2023 will be a period in which citizens will be allowed to make payments in HRK while getting change in EUR – but the prices transparency regime will remain in place until 2024,” Prpic reports. “The idea is to have consumers prepared for the final switch in time while, at the same time, preventing unjust price hikes.” All this work requires a lot of structural solutions, Prpic says, all of which are requiring EU approval – which is set to be given this year before the summer. “In practice, this means that businesses will have a year packed with adjustments.”

Furthermore, Prpic reports changes to the consumer protection framework, in an effort to ensure further harmonization with EU law. “Certain aspects of retail are being amended – some rules regulating prices and sales – all of which are a part of the recently passed EU directive package seeking to protect consumers more,” she says. “The same package also updated contract law provisions, mostly having to do with goods and services defects and the like.”

Additionally, there has been an overhaul of the rules having to do with unfair market practices in agriculture. “This too is an adjustment seeking to harmonize Croatian and EU law,” Prpic reports. “The law is quite complex on this matter, introduces high fines and penalties, and will force businesses to adjust a lot.”

Lastly, Prpic tackles the outlook for the upcoming tourist season: “The transport, hospitality, and tourism sectors have been hit hard by the pandemic, even with 2021 being a very strong tourist season. With the EU establishing safety criteria based on the vaccination rate in each member state, Croatian safety status could be hit – given the fact that the country has lower vaccination rates than some of the other member states. We’ll just have to wait and see how it all plays out.” ■

Moldova

Sweeping Legislative Reform: A Buzz Interview with Ivan Turcan of Brodsky Uskov Looper Reed & Partners

By Andrija Djonovic (February 14, 2022)



Following a major political change in the country six months ago, Moldova is in the process of sweeping legislative reforms seeking to elevate the country's business landscape, according to Brodsky Uskov Looper Reed & Partners Partner Ivan Turcan.

“Following the parliamentary elections that took place six months ago, the country has seen some change,” Turcan begins. “With the new leadership firmly in place – the parliamentary majority is held by just one party – there have been many legislative changes of note.”

Firstly, Turcan reports updates to the corporate legislation of Moldova. “The first major overhaul is the cancellation of a necessity to register share purchase agreements via a notary in order to receive a notary-certified SPA.” Before, Turcan explains, in order to buy or sell an LLC, one would have to go through a complicated and costly notarization procedure. Now, with this need no longer being in place, the entire process is “faster, but not necessarily quicker,” Turcan says. “Of course, not having to pay any excess taxes and fees does render SPAs less costly, but not involving the notary is a hurdle,” he explains. “The notaries have access to a number of official databases to check and verify data veracity which, without involving them, we, as lawyers, simply cannot access with such ease as notaries. The acquisition of this data could be a headache-inducing ordeal, if done on one's own,” Turcan reports. “For this reason, in those cases where speed is of the essence, we still recommend that our clients do their business ‘the old way’ and involve notaries.”

Secondly, Turcan says that there were changes made to the civil code framework, seeking to prepare the country for an inevitable inflow of digital services. “The groundwork has

been laid for a future push for digitalization,” Turcan reports. “This, however, does not mean that it will happen in the immediate future, but it's good to know that the foundations are in place.”

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Up until now, there was a requirement that some 50% of all the goods on the market must come from local sources – i.e., to be a domestic product. The next draft of the law regulating this area is heavily debated and is a huge clash point between local producers fighting to protect their market share and large market players who wish to expand further.

Thirdly, Turcan reports that the legal framework regulating waste management has been amended. “The updates have been placed to ensure that it is no longer too costly to import and process materials in Moldova. Before, domestic manufacturers were facing a double-taxation situation in which it was quite difficult to import and process plastic materials, for example,” he says.

Fourthly, commerce in Moldova stands to be shaken up. “Up until now, there was a requirement that some 50% of all the goods on the market must come from local sources – i.e., to be a domestic product. The next draft of the law regulating this area is heavily debated and is a huge clash point between local producers fighting to protect their market share and large market players who wish to expand further,” Turcan explains.

Finally, Turcan reports on changes to the AML and KYC frameworks. “The changes introduced more stringent fines and penalties and, overall, lower thresholds that require a check to take place. Given that most of the rules and regulations surrounding AML and KYC are quite complicated and, at times, obtuse, it is not very clear if these changes will slow down business,” he says in conclusion. ■

Latvia

Elections, Loans, and Reparations: A Buzz Interview with Karlis Reihmanis of Reihmanis & Partners

By Andrija Djonovic (February 22, 2022)



The promise of a return to normal, considerable public debt, a controversial WWII compensation ruling, AML-linked blockages, and a potential real estate bubble are the main discussion topics among lawyers in Latvia, according to Reihmanis & Partners Partner Karlis Reihmanis.

“This autumn, the general parliamentary elections in the country will take place, and this starts to be the main talk when it comes to politics in Latvia,” Reihmanis begins. He says that the government has its hands full with combating the pandemic, still, but reports that March might see some of the governmental restrictions being lifted with the potential for this to “return things to normal life once again.”

“The government invested a lot of money in supporting the most heavily-impacted industries by handing out low-interest loans,” Reihmanis says. “Because these were loans, an increase in state debt has occurred and there is a lot of debate now about if this will impact the economy in a significant way, in the long term, even with the state budget still being healthy as tax revenue exceeded expectations,” he reports.

“A political decision which is worthy of note is the one made by the parliament in February, to award EUR 40 million in compensations to the Jewish community due to what happened during WWII,” Reihmanis says. “It has proven to be quite a controversial decision with all the political players being divided on it, as well as the overall society. There are those who view this as unnecessary because of the fact that the atrocities happened without any connection to the Latvian state – it was all the doing of the Nazi Regime,” he reports.

Legislation-wise, there is little of note to report on in terms of changes, Reihmanis says. “For quite a few years now, the main topic legislation-wise has been AML and all the procedures associated with it.” He reports that AML has been implemented in the Latvian legal framework with a heavy hand and that the system has been struggling ever since as to how to best accommodate for the change. “Many funds have been frozen by the Financial Intelligence Unit and the courts – there have been recent legal improvements made to craft a smoother environment, but it still remains a contentious topic,” Reihmanis says.

As a last thought, Reihmanis points to some fearing a potential real estate bubble, but that it’s all “speculation at this point. Real estate has been performing admirably, with a lot of office buildings being constructed recently.” ■

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Many funds have been frozen by the Financial Intelligence Unit and the courts – there have been recent legal improvements made to craft a smoother environment, but it still remains a contentious topic.

Poland

ESG, AML, and The Polish Deal Trending: A Buzz Interview with Aleksandra Polak of B2RLaw

By Teona Gelashvili (February 23, 2022)



ESG, compliance, laws incentivizing companies to run their offices in Poland, and the tax-related “Polish Deal” are among the most debated legislative issues in the country, says B2RLaw Partner Aleksandra Polak.

“ESG is a large and growing topic in Poland, especially concerning listed companies and financial institutions,” Polak begins. “They will be obliged to provide non-financial reporting, which is a complex process requiring extensive guidelines. Interestingly, Poland has implemented ESG regulations to accounting laws only. On the one hand, we have a list of entities obliged to provide non-financial reporting, but in order to fulfill these obligations, these companies will start asking ESG questions of their own clients and service providers.” According to her, “ESG will have a snowball effect, and will actually impact many more companies than just those directly obliged to provide non-financial reporting.” As such, companies that are able to quickly adapt to these new regulations will have a significant competitive advantage, Polak notes.

“Another important legislative update is related to whistleblowing,” she explains. “In many countries, such laws were adopted quite some time ago, but in Poland, a draft law on the protection of persons who report breaches of law was only published in October 2021.” According to Polak, one “could argue that the Polish draft legislator was ‘creative’ as it imposes liability for non-compliance with whistleblowing requirements, including criminal one, triggering the vested interest of many companies in whistleblowing laws. The draft legislation is still highly debated, but in general, Poland is seeing heightened activity in compliance issues these days.”

“VC and startups are also hot topics in Poland,” Polak continues. According to her, “many foreign investors are interested in Polish startups. In addition, there is a new type of company in Poland, referred to as a ‘simple joint-stock company.’ It’s most suited for VC investors and startups. The traditional structure made it difficult for companies to be VC compliant, while the new system offers a more common-law style format for company management and liquidation.” Polak says that this is likely to lead to an increased interest of foreign companies to invest in Poland.

Polak additionally highlights new incentives for companies to operate from Poland. “We will have a new holding law, aimed at attracting investors in Poland, as well as encouraging Polish companies to have a holding entity in Poland. The companies will be treated as one entity, enjoying certain tax benefits. It also simplifies subsidiary company management,” she points out.

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One could argue that the Polish draft legislator was ‘creative’ as it imposes liability for non-compliance with whistleblowing requirements, including criminal one, triggering the vested interest of many companies in whistleblowing laws.

Finally, Polak points to a “new tax reform known as the ‘Polish Deal,’ that has caused major controversy and political and economic tensions lately.” According to her, “the law intended to have a more progressive tax system and to impose higher taxes on high-income people. However, the problem is that the law has not been implemented in a structured, organized manner.” However, “new amendments are adopted very frequently, leading to a lot of instability, keeping lawyers and tax advisors very busy in trying to keep up with the changes. It also seems that the reform has imposed its highest burden on the middle class (as opposed to the wealthy), therefore, leading many to believe that the reform might not have achieved its intended results.” ■

Serbia

The Chinese Connection and Harmonizing with the EU: A Buzz Interview with Vuk Draskovic of Bojovic Draskovic Popovic & Partners

By Teona Gelashvili (March 11, 2022)



In light of the upcoming parliamentary and presidential elections and a relatively inactive legislative phase, Serbia's potential free trade agreement with China is one of the major economic topics in the country, according to Bojovic Draskovic Popovic & Partners Partner Vuk Draskovic.

"We are now in the pre-election period, as both parliamentary and presidential elections are scheduled for April 3, 2022," Draskovic begins. "For this reason, in terms of the political and legal environment, the atmosphere in Serbia is quite specific. Currently, the legislator is not very active, and this will most likely be the case until the end of the elections and the forming of a new government. After April, significant amendments might be introduced but they are unlikely to be implemented in the first half of the year due to this circumstance," he explains.

Draskovic says that, save for the latest political and economic turbulences related to the Ukrainian crisis, the most prominent issue in Serbia is the free trade agreement with China. "A big announcement was made recently on this topic," he notes, pointing out that "Serbia has a relatively strong economic and political relationship with China. The trade agreement, if finalized by the end of this year, will be the first in Eastern Europe." In addition, he says, "there is already a growing trend of Chinese investments in the country."

Despite the inactive period, Draskovic points out that there were some relatively modest legislative updates. "As an example, Serbian corporate law has recently been slightly amended in terms of issues related to fictitious addresses of the registered seats of companies and additional protection of small shareholders in joint-stock companies," he reports. "Overall, Serbia is in the process of harmonization of its legislation with EU law. The major changes introduced by legislative bodies in the last decade were related to this harmonization." According to Draskovic, the vast majority of Serbian laws are already in line with EU legislation. "For instance, the GDPR is not applicable to Serbia, yet we have already adopted legislation which is basically a translation of its provisions," he says.

Serbia has a relatively strong economic and political relationship with China. The trade agreement, if finalized by the end of this year, will be the first in Eastern Europe.

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Draskovic notes the legal market has been quite active, while the economy saw stable growth in the previous year. "This is especially true with regards to the real estate and M&A markets," he says. "In terms of the M&A market, as in previous years, IT-related M&A transactions remain the most frequent. The IT sector is very active in general and is increasingly becoming a significant part of the Serbian economy."

"We are still waiting for official figures about the growth of Serbian GDP, but it is very likely that, compared to the previous year, we have above 7% growth – one of the highest numbers in Europe," Draskovic points out. "State investments and infrastructure projects, on the one hand, are among the factors that have contributed to Serbia's increased GDP, while the increasing public debt is on the opposite side of this trend," he concludes. ■

Romania

A Surprisingly Coherent Coalition Trying to Tackle an Energy Package: A Buzz Interview with Bogdan Stoica of Popovici Nitu Stoica & Asociatii

By Andrija Djonovic (March 17, 2022)



With a new government firmly in place, Romania is finding new economic stability, although there are issues surrounding the ever-increasing prices of energy, according to Popovici Nitu Stoica & Asociatii Deputy Managing Partner Bogdan Stoica.

“The main political topic in Romania right now is the ongoing war in Ukraine,” Stoica begins. “The focus of the whole society in the country is on helping the refugees – this outweighs all other topics.”

Aside from that, Stoica says that the hottest topic of late has been the soaring energy prices. “Even with Romania being largely energy-independent, speaking in terms of gas and electricity, we have been relying on imports as well. However, that has been more because of the competitive nature of the market, rather than real resource needs – we shouldn’t be impacted in any dramatic way by what’s going on,” Stoica says.

Following what Stoica describes as a “very turbulent autumn in 2021,” Romania has a new coalition government in place, composed of socialists and liberals. “It appeared to be very unstable at first but, fortunately, the coalition government found a way to work coherently and navigate all major problems,” he says.

The stability of the Romanian government is reflected in the stability of the market. “We do not feel, for the time being, any heavy influence of the ongoing war in Ukraine – the businesses in Romania are operating at a normal pace and there are no signs of this changing soon,” Stoica reports. “The government has, indeed, done a better job than most thought it would and this reflects on the markets, too.”

And this was well-timed – Stoica reports that 2021 has been a

record year for M&A transactions in Romania. “We have not seen such a level of transactions in the past 20 years, I believe – a tremendous year, business-wise,” Stoica says. “This was the case, in particular, in the real estate sector but not only.”

Finally, speaking of the legislative updates, Stoica mentions the highly expected energy package. “The past six months have been difficult for a number of industry sectors, due to rising energy prices,” he says. “All gas and electricity-heavy operations – for example, steel manufacturing – faced increases of up to 100% in price.” Stoica reports that the government came up with an aid and compensation package but there are still problems. “The current compensation scheme the government is promoting still leaves something to be desired, in terms of implementation – this will not be an easy task.”

We do not feel, for the time being, any heavy influence of the ongoing war in Ukraine – the businesses in Romania are operating at a normal pace and there are no signs of this changing soon. The government has, indeed, done a better job than most thought it would and this reflects on the markets, too.

The compensation scheme is being debated on all sides of the market, Stoica notes. “The current compensation scheme will expire at the end of March 2022, meaning that the new one – after it gets properly vetted – is likely to take hold as of April of 2022, to last until the end of next March,” he says. “In spite of the scheme, which is likely to introduce price caps for gas and electricity, the current energy price trends are expected to lead to additional inflation for the market.”

Ultimately, Stoica underlines that, regardless of how it all plays out, the energy sector will be where the most interesting developments occur in 2022. “A lot of investor interest exists for green energy projects. I expect 2022 to have a lot of energy investments and that the government will continue with the development of a number of large infrastructure projects which had been left aside for the past 15 years,” Stoica concludes. ■

Lithuania

Little Fires Everywhere: A Buzz Interview with Ligita Ramanauskaite of Magnusson

By Teona Gelashvili (March 23, 2022)



The Lithuanian government seems to be jumping from one fire to another between war-related crises, the high inflation rate and fuel prices, and a lack of commodities, according to Magnusson Managing Partner Ligita Ramanauskaite.

“Nowadays, the vast majority of most discussed topics in Lithuania would be Ukraine-related political developments,” Ramanauskaite says. “On the one hand, we are very unhappy with the ongoing war and atrocities in Ukraine. Since the beginning of the war, Lithuania has been sending aid, similar to other Baltic states, which are against the war.” On the other hand, she says, “we, as lawyers, also see that Russian business is contaminated with the war, and many law firms are unwilling to provide legal help to Russian citizens.”

“Before the war, the Lithuanian government was working on tax reform aimed to restructure taxes in general, in particular, the personal income and property taxes,” she explains. “The purpose was to have a more balanced system, as the existing legislation includes a lot of exemptions. The proposed amendments offer a narrower solution, which would ensure more equality.” However, Ramanauskaite points out that “the adoption of new tax regulations has been postponed indefinitely. It feels like the government is trying to address both past and future crises.”

Ramanauskaite highlights that another interesting development is related to the status of refugees. “Businesses have encountered a shortage of workforce, especially in the post-pandemic period,” she says, adding: “The government has offered work authorization for refugees, which would also be beneficial for companies lacking employees. According to recent regulations, all work permit-related restrictions for Ukrainian refugees have been waived, and now they are able to register and obtain a relevant status.”

According to Ramanauskaite, “locally, the inflation rates are already having an impact on the business world, and it is very likely to continue growing in the coming months. At the same time, Oil & gas prices have rocketed recently, as we had a large number of suppliers from Russia, Ukraine, and Belarus.”

“Clients are also increasingly asking how to deal with construction projects, as contracts are hard to implement considering initially agreed prices,” Ramanauskaite says. “Another factor impeding business activities is that certain commodities, including metal, are rather unavailable recently.” According to her, “it is also unclear from a legal perspective whether contracts are breached due to force majeure, or does if the current context constitutes a hardship, and companies unable to meet contractual obligations should thus be subject to a lenient treatment.” She concludes that M&A lawyers are figuring out how to deal with their clients’ huge uncertainty and prepare for what is to come in the future. ■

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Czech Republic

All Eyes on Ukraine: A Buzz Interview with Jan Juroska of Kinstellar

By Teona Gelashvili (March 23, 2022)

The current primary focus of the Czech government is to help Ukrainian refugees and deal with the various issues surrounding sanctions against Russia, according to Kinstellar Partner Jan Juroska.

“The current Czech government only recently assumed office,” explains Juroska. “Their primary focus at the moment is to address the Ukrainian refugee situation as well as implementing sanctions against Russia.” In terms of refugees, he says that the government is in the process of adopting and changing the relevant regulatory framework, in order to provide refugees with the necessary protections, access to medical care, education, social insurance benefits, and the right to enter the employment market. He adds that, while “no major reforms are expected this year, there is some new legislation to be approved such as new legislation governing whistleblowing as well as legislation to regulate crowdfunding. In addition, certain EU directives need to be transposed into Czech law but, obviously, right now all eyes are on Ukraine.”

Juroska points out that the Czech Bar Association is actively issuing guidelines to help Czech lawyers volunteer to support Ukrainian refugees with paperwork and administrative matters. To that end, he adds, various state-run and non-state-run websites have recently been translated into Ukrainian so as to offer easy access to those in need. “The overall atmosphere in the country is highly sympathetic and supportive towards the tens of thousands of refugees fleeing from the east,” says Juroska. The country, he adds, has “truly opened up [its] hearts, homes, and wallets in every respect.”

In terms of what the current conflict means for the business environment, Juroska says that these are undoubtedly unprecedented and very challenging times. “During the past few weeks, a number of cross-border M&A deals have been put on hold. Local deals, on the other hand, are still going forward. But it remains to be seen how the conflict will affect the market and, in particular, how banks will price in the current uncertainties and associated risks and whether they will even continue to finance certain projects.”

Juroska predicts that the overall economy will slow down as a result of supply chain issues, increased commodity prices, and high inflation (all three are already an issue post-COVID-19). “Some of our commercial clients have already suspended or reduced production as imports from Ukraine have been disrupted, or as a result of significant increases to commodity prices.” ■



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Bulgaria

A Whole New World: A Buzz Interview with Ilko Stoyanov of Schoenherr

By Teona Gelashvili (March 24, 2022)



War-related concerns have put the new government's plans and a number of business transactions on hold, according to Schoenherr Local Partner Ilko Stoyanov.

"In terms of the political situation, right now, I don't envy the government that came into power around two months ago," Stoyanov says. "Before that, in Bulgaria, a regular cabinet was not functioning, as the parties were unable to form a majority. At the moment, the coalition consists of political parties with very diverse political views, including technocratic, democratic, populist, and the former communist party. It is relieving that, eventually, we have a functioning government, but on the other hand, the politicians do not have any experience on how to deal with the world." According to Stoyanov, the government's own agendas such as attracting FDI and improving business opportunities, are completely off the table, replaced by the new war-related concerns.

"Interestingly, the government has an openly pro-Western and pro-NATO policy," Stoyanov adds. "Recently, a Minister of Defense was fired due to the fact that he referred to Ukrainian events as a 'special operation,' rather than a war."

"Another major political issue is reforming the judicial system and prosecutor's office," he points out. "They have been accused of being dependent on the ruling party, imposing selective justice, and rendering favorable decisions for government-affiliated individuals. Bulgaria has also been criticized by the EU Commission for the absence of high-level corruption cases."

With regards to the business world, Stoyanov says that "the past three months, as well as the entire year of 2021, marked a good period in terms of M&A transactions. In 2020, many transactions were put on hold, and it created momentum for the following year." According to him, the energy and TMT sectors have seen a particularly large number of transactions.

"However, in the past period, several deals were suspended, mainly due to the war," Stoyanov adds. "It is hard to predict how businesses will develop, considering uncertainty and the rising inflation. There is a purely emotional moment regarding the ongoing war and society as a whole, and businesses, in particular, have concerns as to whether it will affect any future transactions." ■

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ATTORNEYS AT LAW

Slovakia

More Layers of Complexity: A Buzz Interview with Patricia Gossanyiova of Dentons

By Teona Gelashvili (March 25, 2022)



As Ukraine's neighboring country, the war has added extra complexity to Slovakia's existing economic challenges, according to Dentons Partner Patricia Gossanyiova.

"Many of the most debated topics in Slovakia nowadays are linked to the ongoing war in Ukraine," Gossanyiova begins. "We are neighboring countries; our companies and industries are strongly affected. Therefore, the war has impacted Slovakia's political and economic life to a large extent."

"The overall atmosphere in the country is heavily influenced by the uncertainty and unpredictability of the current events," she explains. "The government now has a critical function, first aiming to ensure the safety of people, and addressing the economic impact afterward." According to Gossanyiova, the government prioritizes protecting not only the Slovakian people but also the refugees coming from Ukraine.

"Recently, legislation was adopted granting Ukrainian refugees the right to work," Gossanyiova points out. "They can now apply for a residence permit, attend schools, and receive medical treatment. It took some time to reach the final decision, but nowadays the relevant legislative framework is already in place." She adds that it is not only the state and various non-governmental organizations addressing the current challenges but the business sector as well. "The various enterprises also seem to be very welcoming to refugees, offering work opportunities. My understanding is that cultural similarities and the need for a workforce for many Slovakian companies make the employment procedure very smooth."

Gossanyiova reports that different legislative reforms are underway, addressing Slovakia's biggest challenges. "There are various amendments for the most important pieces of legislation in the pipeline. For example, there is a major reform anticipated on the reconstruction of the judicial system. In addition, some crucial amendments to insolvency legislation and the commercial code have been proposed in the parliament." However, she adds, "due to ongoing circumstances, they rarely become a focus of newspapers and relevant bodies these days."

These are hard times, but the circumstances were not that easy before either. Before this, Slovakia was slowly recovering from the stagnation caused by the COVID-19 pandemic, but high inflation and increased energy prices impacted the overall economy.

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According to Gossanyiova, the war has aggregated Slovakia's existing challenges. "These are hard times, but the circumstances were not that easy before either," she says. "Before this, Slovakia was slowly recovering from the stagnation caused by the COVID-19 pandemic, but high inflation and increased energy prices impacted the overall economy. In Slovakia, we have many industries, including the automotive sector, which are heavily dependent on electricity and commodities prices. In addition, delays in the import of various

items required by these sectors have put production on hold."

"On the other hand, the past few months have been very interesting and challenging times for lawyers, as our legislation is constantly evolving. We are hopeful that further upcoming legal updates will once again become the hottest topics, once the war is over," Gossanyiova concludes. ■

Hungary

Increased Demand for Relocation: A Buzz Interview with Kristof Ferenczi of Kinstellar

By Andrija Djonovic (March 28, 2022)

The Hungarian economy is performing well, despite all the turmoil Europe finds itself in currently, according to Kinstellar Budapest Managing Partner Kristof Ferenczi.

“The war in Ukraine is affecting everything, and our business is no different,” Ferenczi begins. “We made huge efforts to help all our colleagues in our Kyiv office get out of harm’s way and provide humanitarian support to those in need – that’s been our number one priority and preoccupation lately.”

Also, Ferenczi sees an increased demand for relocations of both businesses and individuals. “We’ve gotten more and more inquiries from companies that have been operating in Ukraine about relocating and over a quarter of a million people have migrated to Hungary already,” he reports. “This is the second-highest number in all of Europe, second only to Poland. In an effort to ease the movement of those fleeing the war, the Hungarian government was among the first ones to lift all obstacles and requirements for entry from Ukraine.”

“Another consequence of the war is the sanctions fallout,” Ferenczi continues. “The sanctions put in place by the US, the UK, and the EU have far-reaching ramifications for all economies in Europe, not just our own. To the extent to which the sanctions will remain in place, this will have an impact on a number of European markets,” he predicts.

Moving away from the war, Ferenczi reports of healthy dynamism on the Hungarian market. “There is a lot of movement in the energy sector and this increased investor interest is accompanied by legislative changes as well,” he says. “There were changes made to the regulatory rules concerning renewables, in particular the tender rules for large renewable energy projects, especially for photovoltaic power plants.” Investor interest is high, which is an indication of a good trend: “investors are all the more mindful of the need to balance the energy impact of their undertakings with other sustainability goals,” Ferenczi adds.

In addition to the energy sector, Ferenczi reports strong activities in the banking sector, “with banks exiting the market, followed by other banks acquiring the left-over assets and general consolidation” on the market. “Also, there is strong activity in the medical services sector – investors are looking for more targets to invest in here as well,” he says.

However, there is also an expectation of a potential wave of restructurings hitting the market before long. “As a consequence of all that has been going on in recent times, we can say that a number of companies will soon be facing a turning point,” Ferenczi concludes. ■



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IN SEARCH OF A NEW ENERGY NORMAL (PART 2) – WHAT’S THE PLAN?

By Radu Neag

Energy prices have been a salient issue in CEE for the past year. Part 1 of this article covered just how high the energy prices had climbed in Bulgaria, the Czech Republic, Moldova, Montenegro, Poland, and Turkey, the impact of those prices on people, businesses, and governments, as well as the reasons why some countries fared better than others. Then Russia’s war against Ukraine changed everything, making a new energy pricing normal seem more distant than ever. In Part 2 we look at what energy experts believe could alleviate the situation and whether the war has impacted those plans.



Short-Term Measures

“Even before the war, Moldova was under severe pressure trying to mitigate a fourfold increase of the gas price by its eastern supplier. Yet the raft of problems facing Moldova is currently being addressed, according to ACI Partners Competition Manager Emil Gutu. The government has declared a state of emergency in the country specifically to tackle the energy issue, he says. “That gave the government the possibility to unlock the strategic heating oil reserves; bypass the regular natural gas acquisition provisions when the traditional gas supplier reduced supply, so Moldova was able to import natural gas acquired on the EU spot market for the first time; streamline the allocation of money to both energy market operators and consumers; and retroactively increase regulated

gas prices, to prevent the universal service gas company from going bankrupt.” Gutu reports that “financial support – amounting to more than 1% of Moldova’s GDP – was issued to alleviate the natural gas and gas-based central heating price shocks for the population, with liquidity support also provided to the country’s universal service gas supplier.”

For PRK Partners Partner Jakub Lichnovsky the first step towards stabilizing energy prices would be for businesses to “execute agreements directly with energy producers in order to maintain supply levels.” Short term, he believes an energy price war between countries is possible, so prudent steps should be taken. “Poland has waived or significantly lowered VAT on gas, food, and petrol, to soften the inflation blow, and other countries will follow,” he notes. And avoiding the

speculative price increase of emission allowances would also go a long way. “This is not only a matter of legal work, I’m afraid, politicians would have to pitch in,” he adds.

Penteris Senior Partner Andrzej Tokaj confirms that, as election season is nearing in Poland, the “government is taking appropriate measures to prepare for these elections by decreasing taxes. They have, for instance, decreased VAT, while excise tax has been abolished. These measures are temporary – intended for the first five months of the year.” Meanwhile, he says the focus in Poland has shifted dramatically as a result of the Russian invasion of Ukraine. “Prices of oil and gas have soared counteracting any positive effects of the tax relief.”

In Bulgaria, on the other hand, Schoenherr Partner Stefana Tsekova says that “after the moratorium on regulated prices expires, it’s clear the regulator would opt for increasing prices. While the government would like to keep prices low, they probably won’t be able to, even in the short term.” And increased electricity prices will lead to higher inflation, she says, with “most prices having already increased. It’s not just electricity. It’s also the case of raw materials and components, including those specifically used in the construction of solar panels and wind turbines.” As a result, Tsekova reports, “if those prices continue to rise, some experts say it could make economic sense (if little else) to continue the operation of the coal-fired power stations, even when considering the related emission fines.”

Speaking of regulated prices, Nazali Partner Metin Pektas points out that energy prices could be considered a part of social policy in Turkey, “so no government would take it upon itself to remove the subsidies. They are also part of our broader economic development policy, so they will definitely stay in place.” In fact, he says that “the government is fast at work on a new social subsidy program on energy. To be a successful public policy it should aim for helping the most vulnerable parts of society and encompass more narrowly targeted subsidies for those people who can’t afford to do anything about their energy consumption.” To that end, Pektas reports that “last month the government changed the tariffs methodology to reduce electricity prices for low-consumption consumers.”

Finally, a net electricity exporter with regulated electricity prices locked in since 2019, Montenegro seems to be in a good place regarding its energy mix as well, according to Vujacic Law Office Partner Sasa Vujacic. “Overall, about 40% of the electricity generated in Montenegro comes from

thermal power plants, with most of the rest being hydropower. And there are operational renewable projects as well, like the Krnovo wind station, a 72-megawatt project that was 70% financed by the EBRD,” he reports.

Connecting the Infrastructure Dots

Despite circumstances and short-term needs and reactions being different in each country, everyone agrees on one thing: the importance of improving, diversifying, and interconnecting energy infrastructure.

Moldova, for one, is speeding up its interconnection with the European energy market, Gutu reports: “the country is already connected to the Romanian (and European) gas network via the Trans-Balkan pipeline and the brand-new Iasi-Chisinau pipeline, while the contract for the development of a new high-voltage power line allowing for a better connection between Moldova’s and Romania’s power grids has finally been signed.”



The war in Ukraine caught us by surprise and, as we say in Bulgaria, “put additional oil into the fire” of the increasing energy prices.

Tokaj says the focus in Poland is now on energy security rather than on energy prices. “The country seems to be quite well-prepared to shift from Russian imports to alternative sources.” He reports that “the Baltic pipeline is expected to be up and running later this year, which will secure the deliveries of gas from Norway, and the Swinoujscie port is working at full capacity in receiving LPG from the Gulf.”

Lichnovsky agrees on both counts, going even further: “the EU needs to diversify its sources of gas by increasing supply from Algeria and Norway and expand capacities and infrastructure for LNG supply mainly from the US, Qatar, and Australia.” He emphasizes that “it must be understood that it is the discretion of gas suppliers whether to deliver gas on the spot market. So, we need to lock-in long-term contracts and focus on diversification of sources to maintain the stability of supply, storage reserves, and prices – as up to 30% of businesses are currently endangered by the rapid increase in energy prices.”

Pektas says the same is true for Turkey, which “also has to provide for better gas-supply terms with Iran, Turkmenistan,

or Azerbaijan.” He reports that “a gas discovery and exploration project in the Black Sea, if commercialized soon enough, could have a positive impact on Turkish energy prices.”

“The new Bulgarian government also wants to speed up the process for the natural gas interconnector with Greece – the ICGB,” according to Tsekova, “which would bring over natural gas from Azerbaijan and/or LNG from the terminals in Greece. That would give Bulgaria access to alternative suppliers and could potentially lower natural gas prices.”

While Montenegro is not currently importing gas, Vujacic says “connecting to Albania for Azeri gas – with the Azerbaijan pipeline linking to Italy as well – could happen,” to facilitate the eventual phaseout of coal for thermal power plants.

Long-Term Plans

“The war in Ukraine caught us by surprise and, as we say in Bulgaria, ‘put additional oil into the fire’ of the increasing energy prices,” Tsekova says. She reports that the country is considering the construction of two new power units at the existing Kozloduy nuclear power plant, with the project still needing EU Commission approval, and would do well to further explore its hydro and geothermal production potential.

Vujacic says that “work on new solar power plants in Montenegro is expected to start soon, with the government having already picked suitable sites.” The state electric company is also encouraging small-scale household energy production, “under the provision that any extra electricity can be sold back into the grid.” He reports additional hydropower plants of varying sizes are also planned but says the country’s biggest hurdle remains its usage of thermal power plants. “The issue that must be solved, and quickly, if we’re to avoid paying the related EU penalties, is that of the Pljevlja coal-fired power station. It should be closed in 2026 and we’ll need to have another plan in place by then.” Montenegro is not completely disconnected from the EU energy market, Vujacic says. “Some of the reasons behind the price increases – climate protection, for instance – still apply.”

Moldova’s long-term measures, according to Gutu, include “a move to create significant gas reserves; a mandate (and the required resources) for the state-owned energy trading company to explore and develop other gas and electricity sources for imports; an amendment for the diversification of electricity sources, sidestepping (within certain thresholds) the lowest-price requirements; and several country-wide energy efficiency projects – from rural household lighting improvements to urban housing heating systems upgrades.”

Tokaj points out that “the most recent hike in energy prices is a result of global concern about the consequences of the war in Ukraine and, even more significantly, the sanctions imposed or expected on imports from Russia.” He reports that “Polish society appears to be more understanding towards the increase in energy prices resulting from these global implications than from home-made mistakes in developing an efficient energy sector.” He explains that the “programs aimed at addressing growing energy prices are not robust enough,” with the possible construction of Poland’s first-ever nuclear power plant still in preparation. “Another project is related to upgrading existing power lines to high-capacity lines, which is set to cost approximately EUR 7 billion.” In addition, Tokaj says “Poland is about to launch Baltic offshore energy plants. However, all these projects will take at least four or five years to implement.” Citing Poland’s lack of a system for the storage of energy produced from renewable resources, he says it is “difficult to see what actions could be taken immediately,” as concrete steps impacting energy prices.

While also not expecting any significant pricing changes in the short term, Pektas reports that “Turkish renewable installed capacities are increasing, and they will keep doing so, as there are developments underway and plans for more to be built.”

In view of further price increases linked to industry and agriculture, Lichnovsky says the “Czech Republic needs to be reasonable, think long-term, and act quickly, with respect to all energy sources and determination of the energy mix. Stability on the energy market is crucial due to the multiplication effect of energy prices in industry, agriculture, and other sectors.”

“We anticipate the current prices of electricity will trigger a number of photovoltaic projects in the Czech Republic which should, even without any subsidies, lead to sufficient energy production for households and smaller businesses,” Lichnovsky says. However, it’s not only about production: “the efficient distribution of electricity – through the implementation of smart grid and other technology features – is a challenge we are currently facing,” he explains, noting that the country has “a strong position in R&D of technologies for effective distribution.”

(Green) Lessons Learned

“The prices Bulgarian businesses and households pay for energy will increase,” Tsekova concludes, “and the social impact of any further energy price increases could be awfully hard. The government’s idea was to cover – through the morato-

LEGAL MATTERS

rium and other measures still in place – the coldest months of the year. In addition, we are yet to face the results of the newly introduced sanctions towards Russia and Russian state-owned companies in the energy sector – no one dares predict where this will lead us in the coming months.”

“With most people being employed in services and those sectors well-positioned for new jobs and further growth, our industry not being as green as it could have been does not seem like much of a problem in Montenegro,” Vujacic says. “Still, I’m a firm believer that we must be part of the European Green Deal – money is still cheap for such projects, foreign investors are willing to support the government on it, and the alternative is unpalatable – we don’t have other kinds of solutions.”

“The Czech Republic has sufficient resources to maintain its independence in electricity production through a proper consideration of the energy mix – construction of stable nuclear sources of electricity, supplemented by gas, coal (both from diversified sources and with decreasing importance), and renewables, especially photovoltaics, given the Czech environmental potential – in course of the implementation of the EU Green Deal and the Fit for 55 targets,” Lichnovsky concludes. “A sufficient and stable energy supply is now the necessary basis for the development of other sectors and the functioning of society as a whole.”

“Forward energy prices were starting to decrease and were expected to drop much lower than they are today. The war in Ukraine has already dampened this trend but I do not expect a complete reversal in the long run,” Pektas says. “So, it’s not impossible to imagine things going back to normal, and then countries like Turkey, and especially their more at-risk citizens, might start doing better,” he concludes.

“Tellingly, Polish society is now reaping the consequences of not having invested adequately enough and early enough in energy transformation,” Tokaj says. “It needs to be done right away, although it will now have to be done under the pressure of growing energy prices. However, Poland appears to be better prepared than many other nations in making a smooth transition from importing Russian fossil fuels to alternatives and safer sources.”

“All these initiatives had been on the back burner for a long while,” Gutu says. “They have now received a push, as they are not just about the environment anymore. So, there is an increased political will and public demand for speeding up the energy efficiency projects, for implementing the interconnectors, and for streamlining renewable electricity generation.” The rest is down to the weather and geopolitics, he says in conclusion, but “rather than try to predict energy price trends, countries should probably do their best to be more prepared. To make both their economies and their legal systems more resilient.” ■



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THE TECH SECTOR IN TURKEY: A CEE LEGAL MATTERS ROUND TABLE

By Teona Gelashvili

On February 25, four leading lawyers in Turkey sat down for a virtual round table moderated by CEE Legal Matters Managing Editor Radu Cotarcea to discuss the Turkish technology sector, its recent developments, and the technology sector-related regulatory landscape.



CEELM: Trendyol recently made the headlines as Turkey's first decacorn. Was this success story a fluke, or do you believe that it was a sign of things to come?

Moral: To see the big picture, I want to share some numbers evidencing that such investment behavior was not a fluke. In 2021-2022, the total investment injected into startups was more than USD 1.6 billion. We can see that this volume, exceeding the total number of 2019 and 2020 combined, shows the progress of Turkish startups, the investment appetite of angel investors, venture capital, PE, and family offices. We can see that Trendyol, Getir, and Hepsiburada have become unicorns and decacorns. There are certain emerging sectors, such as gaming, artificial intelligence, data analytics, delivery, and fintech. Therefore, we can say that evolution is real and

will continue. This is not related to the country's current conditions, such as the devaluation of the Turkish lira, but to the product and bright brains.

Demirel: I agree with Resat, however, I would like to mention that while tech M&A has increased in numbers, the per-deal value has been lowered. When you look at the overall value (of all M&A activity, not only tech), you see that the major three or four deals mentioned by Resat create nearly 60% of all the deal volume. There are great opportunities in Turkey, but when you look at the global landscape, with the COVID-19 pandemic and growth in technology and gaming industries, I think the activity here is still low and there are many untapped opportunities. It might sound a bit grim for the time being, but that also means that there is a lot of potential

in Turkey. There is a strong consumer and technology base, and I believe there is more to come. But again, in e-commerce and gaming, we've already started to *blossom*.

CEELM: Is your point, then, that while value increased in 2021 compared to 2019-2020 combined, funding only goes to a very small number of entities?

Demirel: Exactly.

Solak: As a woman, I am very proud of Trendyol's deal as it is very promising. Trendyol raised USD 2.8 billion this year and reached the decacorn status with a valuation of USD 10 billion. It is now one of the most valued companies in Turkey. It evolved from a marketplace to its current status by incorporating some super-app features. It definitely is not a fluke, as it started from a fashion-focused website and has become the largest e-commerce platform now in Turkey, with some additional services. It is now operating delivery networks such as Trendyol Express, an R&D Center (a service driving digital transformation for Trendyol tech), as well as an instant grocery and food delivery service – which witnessed monopoly in the past, but now with [other] players, it's getting a competitive market. The company also operates the largest second-hand platform under the Dolap umbrella. Now, with the cooperation with the Union of Chambers and Commodity Exchanges of Turkey, Trendyol is launching the *Grow Your Business with Trendyol* small and medium-sized enterprises (SME) support program, which creates a win-win situation for both parties involved. In addition, they also have a key element – a program supporting female entrepreneurs' empowerment as part of the ESG campaign – which I am personally very proud of. In short, I am sure that it is not a fluke but a big success story.

CEELM: What made it a success story? Were there any particular conditions that it benefited from, or was it bound to happen at some point anyway?

Mermer: In general, the deals that were made with Trendyol were magnificent in the tech sector ecosystem in Turkey – although it coincided with difficult financial times in August 2021. With that attraction, compared to when we started in 2018, we definitely observe an increase in interest in the Turkish tech ecosystem. Trendyol is and will be very successful in the Turkish e-commerce ecosystem, and the reasons for it are many, including a geopolitical one. We have been seeing a surge in the opening of investing in the Turkish manufacturing sector ranging from automotive to healthcare, giving the

country a strategic power in supplying goods and services to Europe, the Middle East, and Africa. That's why the e-commerce, delivery, and logistics sectors will further attract many new foreign investors. Trendyol sets the best example in that regard but other sectors, such as the extremely successful gaming industry, follow it. I anticipate that the manufacturing sector and the related sectors will benefit the most from investor influx in 2022.

CEELM: What is it about local technology companies that makes them particularly attractive for foreign investors right now?

Demirel: The difference between Trendyol and other competitors is that the founders of Trendyol, the angel investors, and the other investors there had more flexibility – meaning that they were more aggressive, made decisions fast, and were visionary. If you go back in 2017 and ask my colleagues whether Trendyol would be the number one amongst the other competitors, the answer would probably be “I don't think so.” So, I think that the management made the difference.

Moral: The thing about Trendyol was a blended organizational operation, as Trendyol has provided e-commerce instruments as well as its own private-label production ability. From the young population attending startup events, we can see that founders' age and education levels are different. If you look at the gaming companies, or other technology-related startups, and their founders, some of them may not even have graduated from university – which shows innovation and success do not need a diploma. However, of course, the product, agility, and growth make a difference. Often, a former stakeholder from a conventional business entity may most probably become an investor via VC funds, family offices, or private equity funds. Therefore, we now have a variety of investors who have the awareness of investing and sharing success. Of course, there are tax advantages for Turkey, making the Turkish market more attractive.

Solak: I agree that such success was unforeseen. I remember probably the first establishment of the Turkish startup ecosystem. Even though we were coming together at fancy meetings, when it came to funding everyone was a bit silent. Now, when we are looking at the investment landscape, our clients – VC funds, private equity [funds] from around the world – say that Turkish startup adaptability skills are amazing. We have to be honest that Turkey is not a very easy jurisdiction in terms of territory, geopolitics, and other challenges. It is difficult to survive in this country but, if you do, you can

be sure that your company can survive in other jurisdictions bearing fewer risks – which creates more and more success stories, in the phase of internalization. Success stories like Peak Games, Trendyol, Getir, and Dream Games show that Turkey’s startup ecosystem has figured out what it takes to be a global player.

CEELM: Since you mention a strong investment landscape, who are the main investors in the country? Is it local capital or foreign capital, and where is it coming from?

Mermer: Compared to the early 2010s, there are lots of different players on the market. VCs are on the rise. In the past, we would come across a couple of them, but recently we have seen an increase in the number of both Turkish and international VC funds, which have established local offices or have representatives here in Turkey. Also, we see the exponential growth of Turkish businesspeople becoming angel investors. Other than that, I would like to put a special emphasis on corporate incubators which are playing a big part in supporting the whole ecosystem. The first to mention is fintech – it was one of the early subsectors in which we saw a lot of corporate backing. Various banks founded incubation centers, undertook idea competitions, and even organized hackathons. This way, startups have the perfect setup of the “try, fail, and get better” phase, and they do not have to take huge financial risks.

Solak: When we look at the landscape, 294 deals were completed with the support of foreign investors. Despite the deal volume, I agree with Ali that there is still a long way to go. Amongst European cities raising the most capital, Istanbul was placed 13th – and fourth in terms of the number of investments in the MENA region. Turkey is ranked among the top ten countries in terms of startup investments. The landscape is very promising with the entrance of CVCs, as 87 out of the 294 deals were supported by corporate VCs. Approximately one out of every three deals [included] corporations or CVCs.

Moral: I agree that a huge part of the financing was injected into one or two unicorns, however, we should consider the quantity of the investment, which shows the awareness of angel investment culture in Turkish businesspeople. Now, individuals are becoming co-investors in or with VCs and PEs, while corporate institutions, including leading conglomerates, either form investment vehicles or are directly investing or co-investing in other PEs or VCs. Personally, I am currently investing in five different startups, and, as a firm, we also



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Moral & Partners

invest under a hybrid model in some startups which are approved by the management board. This awareness in Turkish business society will pump a great impact in empowering new VCs.

CEELM: Is there a sense of a stronger local capital base that is floating around?

Demirel: It is a fact that startup activities are rising. We also see that Turkish conglomerates are constantly launching their own VCs to invest more. Even more so, individuals began investing in startups. Resat said he has invested in various startups. So did I, and probably other colleagues here did as well. Hence, there is a lot of recognition in the Turkish market overall. When you look at publicly available data, you will also see that roughly 80% of the transactions are done by domestic investors and, again, nearly 80% are strategic acquisitions. In terms of institutional/financial and foreign investors, in other words the remaining 20% of deals, I assume nearly all of the 20% are spread into the four major deals mentioned previously. So, financial and/or foreign investor appetite is still low. However, overall activity is promising. I think, in time, there will be more institutional and foreign investors but, for the time being, it is mostly local.

On the picture looking promising, I have one particular example: we had a client, a gaming company, and they had not a single game – yet their valuation with only a prospect of a game was around USD 300 million. Later, they hit USD 1 billion. I think that in Turkey there is an especially big market for hyper-casual and casual gaming.

Mermer: I strongly believe that more local capital will become available to startups over time. Considering the geopolitical position we are in, if things return to normal, companies in the gaming industry can have spectacular prospects. With the hype in the metaverse, gaming companies and in-house software companies will get a lot more capital in the future. Moreover, there is an increased interest in NFTs (non-fungible tokens) and blockchain systems in Turkey.

Solak: Because of the mega-deals that Getir and Dream Games reached, foreign investors made up 89% of the total investment made into startups in Turkey; in terms of the number of deals, 15% of them were signed with foreign investors; 60 different foreign investors made investments into Turkish startups in 2021 – when you look at numbers and volumes, it needs to grow. However, I would say that 60% of newcomer foreign investors were making investments in

Turkey for the first time. Some of them are very well-known players, such as Goldman Sachs, Balderton Capital, Elevator Ventures, Global Founders Capital, or Index Ventures and it is obvious that it is a growing trend, and newcomers are on the horizon. When we look at local funds, there is an increasing trend as well, despite the challenges. The dissemination of the venture capital investment fund (Girisim Sermayesi Yatirim Fonu) format and the continued increase in successful exits have increased the total number of investors. Reputable financial institutions and players such as the IFC, EBRD, and Endeavour also gave rise and contributed to the growth of the Turkish startup ecosystem.

” Trendyol raised USD 2.8 billion this year and reached the decacorn status with a valuation of USD 10 billion.

CEELM: What do you think still needs to be done to secure more funding?

Moral: The legislative framework, tax-wise, has some hurdles regarding current incentives. Tax legislation should be more flexible, and this should be clearer with regard to foreign direct investments. On investments, we always think of converging from a limited company to a joint-stock company – to avoid any tax risks. Tech companies are agile, as they get their first investments within the first few months rather than long years, therefore we should avoid those roadblocks to welcome more injections and foreign capital.

Demirel: I have similar remarks. For the gaming industry, I would like to highlight that Zynga was sold globally for around USD 13 billion and Peak Games – which is now part of the Zynga ecosystem – was acquired by Zynga two years ago, for around USD 2 billion. It would be a fair guess to say that Peak probably represents nearly 20% of Zynga’s value as of today. This gives a perspective on how big the Turkish gaming industry is and can become. In addition, on Ulku’s remarks about well-known investors such as Goldman Sachs – it is true that we see such big players, but still, probably only in the four big deals. We want to see them more.

Overall, M&A activity in the world increased rapidly after the pandemic, and one of the main reasons for that was the ease in capital and easy access to money from the banks. This, unfortunately, was not the case in Turkey for local investors, because money is expensive. Even though official interest

rates do not seem very high when you go to a bank and apply for a corporate loan you are faced with interest rates higher than 30%. That is the reality we live in and, in that sense, one of the regulatory problems is the foreign exchange restriction.

For buyouts or majority share acquisitions, there is a particular restriction in Turkish corporate law (*Article 380*) prohibiting companies from showing their assets as a form of security in the acquisition of their own shares – meaning that one cannot use the target's assets as security for acquisition financing. It could be a problem but, from the legislator's perspective, the aim is to protect the company.

But with more investments coming in and the Turkish lira recovering, these will become less of a problem.

Mermer: For foreign and local investors, it is important to know what will happen in terms of the legal framework. It is tough to give them an idea about the legal landscape in six months or a year's time. Therefore, the uncertainty and ambiguity of the legal framework are definitely some of the problems.

We observe an interest in new investment methods, such as share swaps with foreign entities. It is not only for startups to be creative, but the lawyers are also trying to navigate through these legal pitfalls and give clients advice on investments with unorthodox structures. Hopefully, the interest rates will be kept at this level and the currency exchange rates will remain more or less the same. In 2022, we will probably see a better financial environment for investments.

CEELM: Do you see the regulatory landscape more like a facilitator or roadblock for the technology sector?

Solak: It is challenging when it comes to the regulatory landscape in Turkey, as we adopted the European legal system, not the Anglo-American one. I think that co-regulation and regulatory sandboxes are becoming more and more important. A close collaboration between the private sector and the regulators enables the private sector to test new data uses, technologies, and applications while receiving regulatory guidance.

When it comes to corporate legislation, we are always facing some challenges. Despite reforms, bureaucratic challenges still remain. This is particularly true in terms of company establishment and corporate governance, with such difficulties around e-signing, e-meeting, legalized proxies for every general assembly meeting, etc. The commercial code still restricts

the freedom of contract, especially considering share transfer restrictions. Also, the lack of common stock and the restrictions on issuing shares without having any voting powers create difficulties in terms of growth finance and employee stock options models, which was also the main issue during the adoption of the crowdfunding legislation.

In Turkey, we need to find magical solutions for maintaining conformity of the shareholders' agreements with companies' articles, the enforceability of call/put options, or drag-along mechanisms – as we have to abide by the mandatory and restrictive provisions of the commercial code. So, we have a long way to go in terms of legislation, freedom of contract, and enforceability. The Banking Regulation and Supervision Agency is a good example of a legislative body, as it has been listening to the voices of others. The PSD (*Payment Services Directive*), for example, was adopted in a legislative sandbox model. Payment companies were first allowed to operate and, once they positioned themselves, this industry started to become regulated. This kind of collaboration between the legislative bodies and the private sector would be great.

CEELM: What was the impact of data privacy and data protection on the tech sector and M&A transactions in that context?

Mermer: Tech M&A projects are heavily influenced by data protection rules. The Turkish *Law on the Protection of Personal Data* was adopted in 2018, and tech companies now comply with data protection rules. Notably, the Turkish Data Protection Authority issued heavy fines to Yemeksepeti, one of the biggest food delivery companies, due to data breaches. This example shows how the technology sector is directly affected by data protection laws.

During the first two years following the enactment of the Turkish data protection law, many B2C startups failed because it was hard to comply with these rules, since compliance required some legal and financial support. That said, I believe this is a thing of the past.

Demirel: In terms of data protection rules, when you look at penalties issued by the data protection board so far, they are around USD 100,000-140,000. Also, the rules themselves are relatively easy to comply with. Turkish companies are becoming more aware of these rules and thus more careful but, at the end of the day, whatever they do is not going to have a devastating financial impact/penalty – because the penalties are not pro-rata, not imposed over profit or turnover.

With regards to other regulations, the e-commerce industry

is on the rise, and it catches the eye of the regulator. Meaning that the data protection board, the competition board, and tax regulators will look into it. So what the investors should be careful of is not data protection but the competition law. Because, firstly, you don't know exactly how to comply with it – you can do your best, but the board can still come anytime and claim that you breached the law in its interpretation – as competition law restrictions are much more subjective rules, compared to those of data protection. Second, the penalties may be devastating, as they are applied over turnover. So, the big regulatory risk area to watch out for is competition and I would say the Turkish competition board has increased its interest in certain industries recently.

Moral: I would also highlight the obstacles against leverage buyouts, which the commercial code does not enable, but our creative financial institutions always support such transactions. However, I want to mention the new generation of government authorities, such as the competition board, data protection board, Information and Communication Technologies Authority, Ministry of Trade – they all are liberal institutions, and they employ more liberal and well-educated people. Their understanding and attitude are very tough, opening another door for wider checklists of requirements to meet for investors and lawyers. Now we provide 20 pages due to diligence checklists – it is quite challenging for investors.

CEELM: Last question: if you had to pick one, what would be the main legislative item on your wish list to help the technology sector in your country?

Solak: As a privacy lawyer, I would like to touch upon privacy legislation. I will not criticize just Turkey, but the EU as well. I think we have a little bit of a “mom and dad versus the child” situation between the regulators and data subjects. When it comes to privacy, we should find a middle way between the EU approach and the US approach. Data means everything to support the technology sector and innovation. We are not only talking about traditional e-commerce activities, but also the blockchain sector, artificial intelligence, machine learning, IoT, and the metaverse.

Transfer of data abroad is another difficult issue. In addition, imprisonment sanctions in the Turkish criminal code and provisions having a very broad definition of crime, in terms of unlawful processing and transferring of data, need to be amended in a very fast way. The EU also needs to slow down a bit with the fast and conservative development of data laws and should embrace new technologies and understand the

importance of data when it comes to innovation. I am afraid that, due to legislative bombardment, companies would be busier with compliance work rather than carrying out their own business.

Mermer: Personally, I would start with the energy legislation, especially the European Green Deal and its implications in Turkey. Turkey has enacted new legislation, which entered into force in 2021, concerning energy storage facilities. We work closely with startups in the energy sector and they are trying to have a better understanding of the legal framework. The second one is related to artificial intelligence. Once the legal framework on artificial intelligence becomes clearer, those Turkish tech companies whose core business activity is AI can more safely develop new products and business models.

Moral: As an M&A lawyer, my wish is an increase in flexibility of commercial and tax legislation, which would enable more incentives and an attractive corporate environment. Regarding the commercial code, the lack of flexibility related to shareholder relations should be addressed. As for the tax legislation, some incentives regarding share transfers and corporate income taxes would be more investor friendly.

Demirel: I would say a combination of what has been mentioned. The biggest problem for the Turkish M&A landscape is an issue arising out of several pieces of legislation – corporate law, civil code, and tax rules. According to Turkish law, share certificates are qualified as movable assets and if you cannot find them and the owner (i.e., seller) does not file a “loss lawsuit” (a lawsuit that can only be filed by the owner) and document the share certificates being lost, you cannot buy them. Therefore, if someone – a seller in bad faith – loses them, there is no option for specific performance. You could now ask why are shares printed in the first place? The reason behind printing shares comes from the tax regulations: if a seller holds their shares for more than two years, they are exempt from the income tax. If one could align these corporate, civil, and tax codes/rules – and say, for example, that you can proceed with unprinted share certificates and still be exempted from income tax – it would be a huge help for M&A transactions. ■

*** The above text is an abridged version of the round table discussion. The full version is available online, in the Round Tables section of CEE Legal Matters. ***

ESG: REIMAGINING ENERGY IN CEE

By Radu Cotarcea

CEE Legal Matters spoke with CMS Partners Agnieszka Skorupinska, Kostadin Sirleshtov, and Varinia Radu about the impact of ESG on the energy sector in CEE.



Growing Pains

“The energy sector is very much at the heart of the *Green Deal* and all the regulations around ESG,” says CMS Partner, CEE Head of Environmental Law Practice, and CEE ESG Lead Agnieszka Skorupinska to kick off the conversation. “For years,” she adds, “conventional energy production has been a strain on the environment, so it is no surprise that regulators looked at it closely when developing the *EU Green Deal*. As a result, these regulations have been, are, and will impose limitations on the sector – but that is complemented by stimulating renewables, which is a positive tendency.”

From a regulatory perspective, she notes that the Fit for 55 package will have a massive impact as it touches on the carbon trading scheme, renewables, taxation, alternative mobility, and introduces a carbon border adjustment mechanism with the “purpose to reshape the energy sector and not only.” In addition, according to CMS Partner and Romania Head of Energy and Climate Change Varinia Radu, the introduction of the Taxonomy was a momentous change as it brought together the sustainability criteria in the energy sector.

Taking a closer look at the CEE specifics, CMS Managing Partner of the Sofia office and CEE Head of Energy and Climate Change Kostadin Sirleshtov notes that developments in the field have been happening at break-neck speed, with some having difficulties keeping up: “I had a meeting with the Bulgarian Ministry of Energy yesterday and he explained that countries like Bulgaria and others are facing real challenges in keeping up with the speed of EU regulatory changes.” Indeed, Skorupinska notes the “Polish approach is to contemplate trying to challenge the legal basis of some of these updates by arguing that the EU is going too far and that, to adopt these changes, unanimity should be required.” Resorting to such technicalities, she says, might have a political drive behind it, but, ultimately, “we’ve simply seen a terrific jump over the last 20 years and it has been really hard to get here – with the unfortunate reality in the background that a lot more still has to be done – and we’re approaching the limit in terms of the time, money, and technology we have access to.”

Playing Catch-up

Why is it that CEE countries feel this burn more? Radu explains that CEE has been more reliant on fossil fuels traditionally: “more coal and more gas or other non-renewables have been the focus and we’ve been lagging in this wave of investments in renewables.” There is a variety of reasons for this, she explains, with the regulatory framework being a big

one. “PPA’s were not an option for too many of our jurisdictions until recently, for example.” This, she adds, has been slowly addressed and the region is slowly catching up as EU states have been integrated more and more into the EU market, which provides predictability in these countries.

On this element of predictability, Sirleshtov notes that a distinction needs to be made between CEE markets since “M&A investment levels are dependent on their specific conditions.” Specifically, Sirleshtov says there is a “very limited number of countries that have close to zero retroactive measures” – with Croatia standing out in this regard. “Then we have countries with some negative measures registered but that are still seeing good returns,” he adds, pointing to Bulgaria, Poland, and Romania. Lastly, some imposed “heavy cuts,” like the Czech Republic, and “here we’ve seen quite some backlash from investors.”

But while Radu agrees that each CEE country has its own DNA, she reports an “increased appetite in renewables and new tech investments in Poland, Romania, Hungary, Bulgaria, and the Czech Republic.” She says this is both because of the environmental ESG element being at the forefront of investment drives these days and also “because we have the S aspect of ESG – the social aspect, which, in energy principles such as security of supply, affordability, and sustainability, starts leaving a mark.” This helps explain Sirleshtov’s assessment that “across CEE, the investment market is solid. We have far more buyers than the market could sustain – more investments are looking to be made than there are projects available.”

Skorupinska echoes the level of activity saying that, in Poland,



Agnieszka Skorupinska



Kostadin Sirleshtov



Varinia Radu

there is “a huge number of investments in renewables with photovoltaic and wind plants at the forefront”. Commenting on the success of Poland in particular in renewables over the last few years, Sirleshtov explained that the country is both simply much bigger than most and it was a very coal-dependent country: “They were dragging their feet until the last minute on coal and now we see a huge influx of investors, I believe because the market opened up at just the right time, when incentives could be zero, or very close to it. We saw a big market opening up at the right time and with a very strong supply chain – very capable developers, construction, and maintenance companies.”

But Skorupinska mentions that some of that progress “might slow down in light of the geopolitical situation. We are still a strongly coal-focused country, and the current context might bring forward some new opportunities in coal, such as new mining opportunities that were not present.” And, commenting on how the current context has impacted the regional overview, Sirleshtov sighs and explains that, before the war in Ukraine, the country was looked at as a similar rising star for renewables.

The War’s Impact on Energy and ESG

What the impact of the war will be on the energy sector is “the million-dollar question” at this point, according to Sirleshtov, but he points out that the sector was facing a “challenging time even before it, due to the COVID-19 pandemic and the demand/supply challenges and regulatory changes.” On top of these, “the Russian invasion has created several short-term issues: it gave rise to concerns over the safety of nuclear plants (with Ukraine having 15 reactors and six plants), it exacerbated concerns over the security of supply of natural gas, and has led to international escalation with new sanctions being introduced every day.” The latter in particular, he says, “while justified from a diplomatic perspective, adds a layer of complexity that is challenging from an energy perspective.” According to him, some countries, such as Bulgaria, have imposed a moratorium on changing energy prices. Others, like Romania, have reacted by imposing a windfall tax for producers, according to Radu, who explains that this government scheme was already introduced in November but is now due to be extended for another year and is also complemented by capped prices for final consumers and the industrial segment. This, she argues, “has created significant distress for all market participants – producers, traders, suppliers. They’ve been crediting the market for two months now and compensation was due to start soon and this mechanism will be ex-

tended until March 2023.” And all of this is happening “just when we were enjoying finally achieving a deregulated market. We’re now going back to a regulated market which, while only temporary, may create a lot of distress for investors.”

And the conflict is influencing policies at an EU level, according to Radu: “gas is coming back at the forefront and we see more emphasis on investments in gas in Romania, for example, where we might see a new bid run for exploration to facilitate Black Sea investment decisions.” Another potential investment direction is in gas interconnectors, so Radu expects we’ll likely see oil & gas companies stepping up and increasing production – “or even go back to the drawing board to revisit some decisions such as OMV Petrom wanting to sell off some mature oil fields.”

Skorupinska notes that, “while looking at the developments in Ukraine, one might be afraid that the *Green Deal* might end up not being as strongly implemented, because it introduces a lot of limitations – I believe we will actually go further – we have to think about increasing energy efficiency and security by focusing on renewables, and that’s exactly what the *Green Deal* is promoting.” Skorupinska does acknowledge that some elements from the Fit for 55 package are “less likely to be feasible, such as the CBAM, because it would introduce additional costs.”

Looking at it from a broader perspective, Skorupinska predicts that ESG is becoming more important than ever, in light of the recent developments. She explains that ESG requires companies to look at their supply chain and the sustainability of that chain, which “some companies were not taking seriously enough. A day before the invasion, we had a draft come out – the *Corporate Sustainability Due Diligence* draft – which adds further obligations on checking one’s supply chain and making sure that it doesn’t violate human rights or harm the environment. This, I expect, will become all the more critical in the current climate.” Radu adds that “the directive will amend and increase the financial reporting obligation – with companies knowing they will be closely scrutinized on how they perform operations and what assets they acquire, which will have a huge impact on M&A.”

Ultimately, “the war in Ukraine was a wake-up call for various areas, but also for the energy sector,” says Sirleshtov. “Governments are now focused on the need for real diversification and interconnectivity,” which, he concludes, means that “despite the high price, will be taken on since energy independence and security of supply will be at the very top of every government’s agenda in the region.” ■

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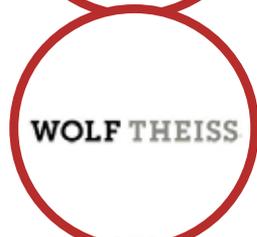


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Roman Rericha



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Christoph Moser



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Alexander Haas



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Thomas Kulnigg



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AUSTRIAN MARKET ADAPTING TO THE NEW REALITIES OF THE TAXONOMY

By Andrija Djonovic

With the world slowly reaching what many scientists label “a point of no return” for climate change, countries worldwide are doing their best to combat environmental damage. To that end, the European Union has developed climate and energy targets for the upcoming decade, stating that it is “vital that we direct investments towards sustainable projects and activities.”

To achieve this, the EU devised a “common language and a clear definition” of what exactly that means – what is sustainable, what is green, and how those should be approached at the EU level. This language is presented in the form of an action plan on financing sustainable growth – an EU Taxonomy. It has finally come into play at the start of 2022.



Initial Reaction in Austria

Cerha Hempel Real Estate Partner Mark Krenn, for one, believes that the Taxonomy will create a considerable change in the way sustainable investments are perceived. “Even though it would appear that a number of businesses in Austria are, to an extent, underestimating the potential impacts of the Taxonomy, I believe that it will have a huge impact,” he says.

“Investors will increasingly look for sustainable investments and will do their best to comply – this will set them apart from their competition,” Krenn says. He believes this to be the case, perhaps more than in other markets, especially in

real estate. “Real estate investments are long-term investments: when your primary business is investing in long-term products, you do everything you can to grasp all aspects of all legal frameworks that apply. For example, if you invest in an office complex that you wish to market in several years, you need to know whether, a few years down the line, that investment will register as green or not.”

CMS Capital Markets Partner Philipp Mark also believes that the Taxonomy is a positive change. “It’s a good thing to have such an initiative on an EU level, not just on a local one,” he says.



Bernd Rajal,
Partner,
Schoenherr



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Philipp Mark,
Partner,
CMS

FWP Partner Florian Kranebitter, an ESG expert, believes that the market is, in fact, *ahead* of the legislative initiative. “The six pillars of the Taxonomy do the groundwork, of course, but the industry and all interested stakeholders are far ahead in their thinking. We’ve seen this in practice, with an increase in ESG-related client inquiries lately,” he says. Kranebitter believes that this is a sign of a positive market rhythm.

“The Taxonomy has become a significant opportunity for Austrian businesses, and law firms have been increasingly engaged in providing ESG-related advice, especially for environmental aspects,” agrees Bernd Rajal, Schoenherr Partner and Head of the firm’s Regulatory and Energy team. According to Rajal, the real issue here is the “challenging renewable energy targets that the Austrian government has set for 2030. It will be most interesting to see how the markets adapt to these targets and overall trends, as more and more investments begin to flow in, especially in wind and photovoltaic energy,” he says. Rajal expects the energy transition to more sustainable sources to mark the following decade.

Are Gas and Nuclear Power Green Now?

However, there are significant concerns as well. “There are some inconsistencies in this initiative,” Mark says. “There is an issue with gas and nuclear power and the fact that these energy sources have been labeled *transitionally green*.” He says that the Austrian market is “not used to labeling nuclear energy as green” and that this could present an obstacle.

Indeed, Rajal and Kranebitter agree, with Rajal adding that “nuclear is a no-go for the entire Austrian economy – in fact, there is a statutory ban on nuclear plants in Austria. The stance of the Austrian government on this matter significantly differs from general guidelines and initiatives coming from Brussels – which could prove to be a problem.”

“With the Austrian economy being a nuclear-free one, the government has immediately issued statements and expert opinions on the matter,” Kranebitter says. “However, looking at the criteria for something being *green* or not, it is also important to take into account that there are vast industry-specific differences out there.”

Kranebitter believes that, ultimately, it will be on businesses themselves to adapt and alter their business models to stay compliant and, therefore, competitive at the same time. “It will be extremely difficult for the oil & gas industry, for example, to make the necessary changes. Unless the compa-

nies operating in this field engage in drastic overhauls, staying afloat could be all but impossible,” he adds. “Transferring certain businesses to other entities, in an effort to reshuffle business structures and *appear* more green is one way of going about it, but it is very much unclear if this would work for businesses – and these loopholes could, of course, be closed by the EU soon.”

On the other hand, there are specific questions related to gas supplies. “With the current crisis in Eastern Europe and the Ukrainian conflict ongoing, natural gas supply will be in question,” Rajal says. “However, it has already been in the works, in Austria, to have natural gas slowly phased out – these plans are, now, likely to accelerate.”

Kranebitter, too, feels that the continuing conflict between Ukraine and Russia is adversely impacting the situation in Austria. “We’ve seen a sharp rise in gas demand ever since the conflict started. Austria has, traditionally, built up a heavy dependency on Russian gas – this state of affairs is likely to change,” he says. “It is likely that this situation with supply will overshadow all other talks when it comes to gas.”

The Risk of Falling Through the Cracks

In addition to material challenges, there are also more formal ones – bureaucracy, administration, and paperwork. “Some market participants, in my view, are not well prepared to begin operating under the Taxonomy framework,” Mark says. “Speaking from a capital markets perspective, I can say that there are somewhat illogical approaches to delineating which businesses *must* report within the ESG framework and which are left out.” Mark explains that there is a prerequisite mandating that a business must be a large or “capital market-oriented” company to be required to perform ESG reporting.

“In practice – say you operate a small wind-power company trying to make its way in the market, but you are not listed and have not issued bonds – this means that you are not covered by the green initiatives and have no reporting obligation,” Mark says. “Without wind power being labeled as being outright *green*, certain businesses might fall through the cracks and have a tougher time when applying for bank loans. Not to mention an increased cost level for performing these reports and the chance to be labeled as *not green* in the bank’s investment portfolio,” he stresses. “Reporting in accordance with the Taxonomy framework is a burdensome exercise. What’s more, there are a lot of wind power companies in Austria that do not qualify for reporting from the get-go. With all the

uncertainties surrounding ESG right now, it is not clear if the banks will consider it sufficient, from a financing perspective, if these companies report on a voluntary basis,” Mark says.

Rajal agrees that more clarity and specific definitions would be helpful. “The Taxonomy regulation only provides guidelines for the technical criteria to have something be qualified as sustainable – but these are quite general principles. The criteria are not all sufficiently clear and defined and further guidelines would not only be welcomed but are, in fact, quite needed to create more investor confidence, ultimately,” he says. “This could prove a challenging point if these clarifications are not provided on an EU level. In that case, it would be critical that countries establish similar approaches – to prevent companies from cherry-picking when deciding where to set up shop,” Rajal explains.

”

Transferring certain businesses to other entities, in an effort to reshuffle business structures and appear more green is one way of going about it, but it is very much unclear if this would work for businesses – and these loopholes could, of course, be closed by the EU soon.

One thing is certain – transferring to an ESG-compliant product base will not be costless or easy. Krenn, for one, goes as far as to venture that the European Central Bank will adopt a two-tier interest rate system, to stimulate the switch. “I could imagine, easily, that the ECB establishes a system within which ESG-compliance is stimulated with a lower interest rate.”

The New Reality

“The market will be able to sustain the next taxonomy reality. That’s a fact,” Mark says. “The shift towards renewables has been present for a while now, across all stakeholder groups. Still, to achieve all climate goals, carbon dioxide emissions would have to drop further.” Mark believes that large market players have “a lot of capacity” to adhere to the taxonomy principles. “Even major companies with a traditionally rigid attitude towards change are transforming their energy consumption practices to go more green.”

Kranebitter and Krenn agree with Mark, with Kranebitter saying that the time has come for a lot of companies to start “playing by the rules. For example, OMV – the largest oil im-

porter and refiner and gas distributor in Austria – has begun altering its business model in the past year or so to prepare for the new, green(er) reality.” Kranebitter further explains that businesses that cannot modify their operational models to a sufficient extent are likely to engage in the “organic acquisition of strategic assets, to offset their current position.”

Krenn, too, feels that the market players will not be “squeezed out. There are already plenty of reporting obligations for many companies – just look at what the GDPR brought,” he says. And in contrast to data protection, Krenn believes that “sustainable investments are much more important for everyone. Of course, it may seem burdensome at first, but it will move past this point, and I expect the demand for sustainable investments to grow significantly.”

Rajal seconds the GDPR comparison made by Krenn. “It will be different to GDPR because the entire economy has a stronger commitment towards ESG goals, which should reflect on overall compliance. Not to mention how *being green* is excellent marketing,” he adds with a smile. Against that backdrop, according to Rajal, “there will be a push, even, to overhaul target companies post-acquisition and make them greener too, via establishing recycling systems, improving waste management, or reducing water usage.”

As an example of this practice, Rajal points to the energy sector, saying that “big industrial operators in Austria are already looking for corporate power purchase agreements with wind parks and solar parks being constructed on-site to provide for the energy requirements of, say, an industrial facility.” He believes this only goes to show the high level of devotion to ESG targets, despite the higher costs associated with this type of product.

Obstacles Will Be Overcome

What will the immediate future look like for the Austrian market? “For this year,” Krenn says, “I expect that we will see a lot of learning across all industries and real estate, in particular.” He feels that businesses will have a steep learning curve and that, much like with the GDPR, there will be a high number of sustainable transformation overhauls in a short period of time. “Especially so – given the current crisis in Ukraine and the shift away from Russian gas – I feel that renewables markets are going to explode.”

Mark finds it harder to make any predictions. “It’s hard to predict – even for the legal market, the most I can say is that the working environment for lawyers will change. In what way

– it’s tough to call,” he says. As for businesses, Mark explains that the high number of risk factors could slow down the adoption process. “There are disclosure requirements that will have to become a normal part of doing business – not just contractual disclosures, but financial as well – which will, at least initially, slow down some business operations.”

“***It will be different to GDPR because the entire economy has a stronger commitment towards ESG goals, which should reflect on overall compliance. Not to mention how being green is excellent marketing.***”

However, Mark does report that there are initiatives on the way which seek to specifically address this. “In connection with the European Green Bond Standard, a system of ESG rating agencies for businesses, likely based on a registration regime, is in the works. Still, these agencies are not very likely to appear soon, meaning that it will be difficult for lawyers to help their clients navigate the status quo,” he concludes.

Kranebitter believes that the reporting obstacles will be overcome, no matter how troublesome. “Some of the market participants are already facing green reporting requirements – like banks that must report on a Green Asset Ratio when it comes to their portfolios,” he says. “Of course, different stakeholders will be facing different obstacles, but there is a palpable desire from all to do more than the bare minimum.” If these practices go above and beyond, there is a possibility of a positive ripple effect in corporate behavior: “This is, in my opinion, a good thing because – until such a time when we have quite clear, specific, and defined rules on all ESG-related aspects – companies will rely the most on market practices.”

But it will not be the same for all. “The bigger companies will be able to soak the immediate cost increase way better,” Rajal says. “This could prove to be a key market differentiator for some, especially in those sectors where an investment goal transformation would lead to prohibitive cost levels.” He believes that this could lead to more companies applying for state aid and relief packages – something which has been visible on the markets already in the wake of the pandemic. “Regardless of all that, however, I do believe that things will get better after any initial disruptions – the Taxonomy is a step in the right direction, and complying with it could have major positive impacts on our climate and, ultimately, on all of our lives,” Rajal concludes. ■

MARKET SNAPSHOT: AUSTRIA

CYBERSECURITY INCIDENTS – DO'S AND DON'TS IN PRACTICE

By Axel Anderl, Managing Partner, and Nino Tlapak, Partner, Dorda



Over the last years and especially during the high peak of the COVID-19 pandemic, the risk of being subject to harmful and systematic cyberattacks has massively increased. Although the aim of cybercriminals – to extort money – is still unchanged, their methods and targets have been developed in line with the overall increase of digitalization. In contrast to industries with a focus on sensitive data and trade secrets, such as pharmaceuticals, banks, or insurance companies, industrial companies have not focused on preventive measures against potential cyberattacks in the past. Nowadays, however, production machines are linked to each other via a network and are therefore threatened to the same extent.

Worst-Case Scenario: Standstill Overnight

As regards methods, the risk exposure has changed due to the increase of ransomware attacks. In such a scenario, the attacker successfully penetrates the system and encrypts and/or deletes all data. In return for a ransom, which is usually paid in Bitcoin, the attacker offers to decrypt and release the data. During the refurbishment by IT professionals, it often turns out that the attackers were already in the system for a long period of time without being discovered. Triggers are often minor negligence, such as missing updates or patches that would cover already known vulnerabilities and thus allow access, or even an employee clicking on a compromised link.

Upon that, attackers continuously work their way through the system in search of information and admin access rights. The shutdown then regularly occurs at night or the beginning of the weekend to further increase the pressure on the target. This regularly involves shutting down all production and communication systems, encrypting and deleting all data in the company, and then demanding a ransom. Whether, up to what amount, and under which legal conditions this can and should be paid then needs to be decided on a case by case basis. Sometimes data can be restored via a backup or significant parts of production can be restarted autonomously. This mainly depends on which crisis and recovery method takes effect in the event of an incident.

How To Prepare for Such a Crisis Situation?

In the event of an incident, very tight deadlines apply due to the pressure of the attackers and legal obligations. In order to be able to react promptly, adequate preventive measures have to be in place. Therefore, it is necessary to clarify responsibilities and processes in advance in a defined crisis plan. In practice, preparation is also primarily about procedural, strategic, and legal details: who must be contacted and when to ensure coverage by cyber insurances as well as compliance with legally required notification duties (e.g., data breach notification according to GDPR)? What are the setup, awareness, and status quo of training of the responsible crisis team? What should and may be communicated to customers, colleagues, or even the press in the case of inquiries and when? What information is the target allowed to provide and what should be withheld? Answers to those questions shall make sure to set the course at the right time, both internally via legal, compliance, and IT departments, as well as via external experts – from IT forensic professionals to crisis PR assistance.



Successful defense and prevention measures start with simple things like the correct handling of private and professional passwords and end with the implementation of complex IT security and warning systems by the company.

What To Do in a Worst-Case Scenario?

In addition to evaluating the extent of the damage and refurbishing IT systems, complying with the applicable legal requirements and deadlines is of utmost importance in order to prevent claims for damages, penalties, and damages to reputation. First and foremost, the data protection authority must be informed within 72 hours – but depending on the industry, other authorities may also need to be involved in due time. In addition, communication with the insurance company and law enforcement authorities is also important. Ultimately, preventive measures must also cover an overall strategic decision whether a ransom can be paid at all (or whether this may be punishable by law) and what considerations and evidence are required.

For all areas, and especially the question of (personal) liability, the following applies: clean documentation and ongoing coordination with experts are the keys to success. ■

A hand in a suit sleeve is shown holding a polished metal handle, possibly a door handle or a tool, against a background of vertical wood grain. The entire image is overlaid with a semi-transparent purple color. The text 'Hristov Partners' is in the upper left, and 'SIMPLICITY IS EXCELLENCE' is at the bottom.

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**KNOW YOUR
LAWYER:
CHRISTOPH MOSER
OF SCHOENHERR**

Career:

- Schoenherr Attorneys at Law, Partner, 2021-present
- Weber & Co, Partner/Attorney at Law, 2014-2020
- Baker McKenzie, Attorney at Law, 2012-2014
- Schoenherr Attorneys at Law, Senior Associate/Attorney at Law, 2010-2012
- CMS, Senior Associate, 2008-2010
- Styria Borse Express GmbH, Senior Legal Counsel, 2007-2008
- CMS, Associate, 2005-2006

Favorites:

- **Out of office activity:** Cooking, Fine dining
- **Quote:** “The only way to do great work is to love what you do.” – Steve Job
- **Book:** *Night Work (Die Arbeit der Nacht)* by Thomas Glavinic
- **Movie:** *Wall Street*

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

Moser: One of the most challenging projects was certainly the IPO of Marinomed Biotech. The transaction had to be pulled at the end of the initial offering period in November 2018 due to adverse market conditions. It wouldn't have made sense to go forward at a time when all investors were trying to stay out of the markets. For some days it looked like true turmoil in the market, and nobody knew how things would evolve in December 2018 and early January 2019. In this situation, we found quite a smart, never-before-tested way of keeping the prospectus alive by publishing a supplement and announcing that the transaction was aimed to be recommenced in early 2019. Technically, the IPO was not stopped but only paused, and we were able to convince the Austrian regulator FMA of this innovative structure. This was challenging but eventually a great success for the legal teams of all firms involved.

And what was your main takeaway from it?

Moser: If a problem looks unsolvable at first glance, look again. Keep trying, go beyond the obvious, and find a creative solution.

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

Moser: Some long-standing clients might know quite a lot about me. I appreciate that a client relationship can often go beyond a business-as-usual paradigm, particularly if I am working with and for a client for a long time and with strong

Education:

- Johannes-Kepler-University Linz, Magister Juris, 2004

Top 5 Projects:

- Advising Jefferies on the EUR 100 million convertible bond issue by DO & CO Aktiengesellschaft (2021);
- Advising Wienerberger on an accelerated book-building EUR 81 million share placement of treasury shares (2021);
- Advising OMV AG on high-volume corporate bond issuances in multiple tranches amounting to a total of EUR 4.5 billion (2020);
- Advising Erste Group Bank AG (as sole global coordinator) and Goetzpartners Securities Ltd (as co-lead manager) on the IPO of Marinomed Biotech AG on the Vienna Stock Exchange (2019);
- Advising Citigroup Global Markets Limited and Goldman Sachs International as well as the other underwriters on the IPO of Addiko Bank AG on the Vienna Stock Exchange (2019).

commitments. It happens occasionally that you talk to clients a lot about personal matters. And I like getting to know my clients better.

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

Moser: My colleague of many years, also a Partner at Schoenherr – Peter Feyl – has been a great influence and role model for me in two regards: For one, he sets an example in terms of professional excellence, diligence, and precision in his legal advisory. Second, he has also taught me how to remain calm and level-headed, even in the middle of a perfect storm. I believe that both qualities are essential for being a successful and committed lawyer.

Name one mentee you are particularly proud of.

Moser: I am especially proud of Angelika Fischer, who started as a summer intern at our firm and has quickly grown to be irreplaceable as my right hand in day-to-day business. It was inspiring to see how much progress she made on her own initiative, only coming to me for advice with a problem after exploring a number of possible options herself. This has shown me that you can empower people by giving them room to create their own experiences.

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

Moser: Take some time off, travel, get to know the world, have fun, and enjoy life before starting a committed career as a lawyer. That time will never come back.

MARKET SPOTLIGHT: HUNGARY



ACTIVITY OVERVIEW: HUNGARY

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WALKING A FINE LINE: MERGER CONTROL IN HUNGARY

By Teona Gelashvili

In the past few years, Hungary has witnessed accelerated merger trends in the fields of TMT, healthcare, and energy, among others. We reached out to several competition lawyers and spoke about Hungarian merger control regulations and the role of the Hungarian Competition Authority (HCA).

In Praise of an Efficient HCA

In Hungary, we have a very efficient merger control regime,” DLA Piper Co-Head of Competition Zoltan Marosi reports. “The HCA has publicly available information on merger statistics, indicating that the majority of mergers are conducted very quickly.”

“The merger control regime in Hungary is similar to the one applicable at the EU level and in other EU member states, establishing a double threshold for transactions between parties whose turnover exceeds HUF 15 billion and HUF 1 billion,” Hogan Lovells Counsel Akos Kovach adds. “This allows the HCA’s scrutiny to be avoided in insignificant transactions that are below these thresholds. There is a relatively new ‘soft’ threshold, according to which some transactions, which are not caught by the above general turnover thresholds, may still be subject to merger control under certain conditions.”

Deloitte Legal Head of Competition Anna Miks says that “one of the key elements for the efficiency of the HCA is a pre-notification procedure, introduced by the government in 2017. This regime allows parties to discuss potential issues with the competition authority before formally applying. The HCA, on the other hand, notifies parties if some additional documents are needed for the merger.” According to her, “previously, it was necessary to file a formal notification and, if the authority had any questions, the inquiry would also be submitted through a formal procedure, which was a rather complicated process.”

Lakatos Koves and Partners Partner Ivan Solyom adds that – while the pre-notification procedure itself adds to the process

– it allows parties to provide the full information in advance to filing the application formally, and to receive additional requests and questions through an informal procedure. “It is a good tool to avoid lengthy investigations and, as a result, the formal procedure is relatively short,” Solyom says.

“In exceptional cases, a merger clearance takes place through the rather more complicated phase two of assessment,” Marosi adds. “This only applies to very complex cases, where an in-depth assessment of the competitive market is needed. However, the vast majority of cases are decided through a simple procedure.”

“From my experience on multi-jurisdictional transactions, where we had to notify many different competition authorities,” Kovach points out “that Hungary has always been in the first couple of countries to give clearance for cross-border transactions. The average period for issuing clearances is actually three to five days,” he says, noting that this applies to non-problematic mergers. “The HCA reported that, in 2021, 92% of the decisions were adopted through the so-called fast-track procedure,” Kovach explains.

The Jolly Joker of Hungarian Competition Law

While the efficiency and flexibility of the Hungarian merger control regime are frequently acknowledged by the lawyers we spoke with, the special regime related to mergers of national strategic importance is a rather more controversial subject.

“The government can decide by a decree that certain mergers of special importance are exempted from the scrutiny of the HCA,” Marosi points out. “Such cases, altogether 36 as of today, generally involve big mergers and catch wider media

HUNGARY

attention. This special regime, sometimes referred to as a ‘Jolly Joker of competition law,’ is frequently applied to mergers in the TMT and healthcare sectors, and usually, but not always, is related to acquisitions by the Hungarian state or state-owned companies.”

Szecskey Attorneys at Law Partner Aniko Keller explains the background and rationale of the regulation granting exemptions from merger control. “In 2013, an amendment to the *Hungarian Competition Act* was introduced. According to this law, ‘the Government may, in the public interest, in particular, to preserve jobs and to assure the security of supply, declare a concentration of undertakings to be of strategic importance at the national level,’ while ‘such concentrations shall not be subject to the obligation of notification to the HCA.’”

According to Keller, this is not unique to Hungary or the EU. “In all jurisdictions, competition law sometimes needs to give way to other overriding interests. Public interest regimes are widely discussed in legal literature,” she says. “International organizations such as the OECD also acknowledge that public policy objectives will require exemptions when public interest considerations take priority,” she adds. Keller reports there are two main models regarding mergers of national strategic interest. “Under the *single authority model*, the assessment made by the competition authority includes the public interest aspect, while under the *dual responsibility model* sectoral regulators or political decision-making bodies (such as ministries) have such competence. The Hungarian regime follows the dual responsibility model, where the government decides the merger control exemption *ex-ante*, without the involvement of the HCA.” Keller also points out that, prompted by a question, “Margrethe Vestager (on behalf of the European Commission) confirmed in the European Parliament that it is not contrary to EU law for national merger regimes to allow national authorities to take into account public interest considerations when reviewing mergers.”

A Rather Blurry Line

Keller says the challenge in fact lies in defining what constitutes public interest as, “in the end, there is no universal definition of the term, and various jurisdictions define it differently.” According to her, “there are general and specific considerations. Certain countries take into account economic considerations, the international competitiveness of domestic businesses, while others focus on the protection of the environment or the preservation of jobs. In Hungary, the government has the discretion to decide what public interest



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Counsel,
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Aniko Keller,
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Szecskey Attorneys at Law



Anna Miks,
Head of Competition,
Deloitte Legal



Ivan Solyom,
Partner,
Lakatos Koves and Partners



Janos Toth,
Partner,
Wolf Theiss



Zoltan Marosi,
Co-Head of Competition,
DLA Piper

means.” She points out that “the amendment does not have an explanatory note about the definition of the *public interest* or any indications on how the government should apply this concept.” However, Keller adds, “this is not a unique uncertainty related to Hungary, but rather a challenge on an international level.” For her, “the line is not always clear when it comes to industrial policy, as most governments want to support so-called national champions.” As an example, she points to the 2019 “stand-off between the European Commission on one side and the French and German governments on the other. The Commission blocked the merger of two railway signaling operators because it found the deal anti-competitive. The French and German governments were not happy with this as they considered it important to create a strong European champion to compete with Chinese rivals.”

“The wording of the text is not very detailed,” Kovach emphasizes, “as it only refers to safeguarding employment and the security of the supply chain.” He notes that “this is a vague explanation, rendering it, to an extent, the exclusive discretion of the government to decide what constitutes such interest. This is rather a political decision, as the HCA is not involved in such decisions.” According to him, EU member states may have similar legislation, however with a narrower scope protecting their legitimate public interests. “In the absence of a detailed framework, there is no guarantee that the government’s decisions will always fulfill the relevant public interest criteria,” Kovach says, noting that the regulation might be considered as “too soft and too broad.”

Wolf Theiss Partner Janos Toth compares how the public interest concept is used in other EU jurisdictions. “It is true that in countries such as France or Portugal the government has had the power to provide special merger control exemptions for transactions carrying public interest considerations, and in some others, such as Germany, Italy, or Spain, the government can clear an already blocked merger based on public interest considerations,” he says. However, he points out, “in such countries, the criteria for such exemptions have been prudently developed and judicially tested over the years. The relevant legislation usually establishes narrowly tailored circumstances and reasons that allow the government to make exemptions and interpret public interests.” In Hungary, on the other hand, he says “there are doubts as to whether the way the regulation is crafted and then exercised indeed allows for those public interest considerations to genuinely prevail.”

Another problem for competition lawyers is related to the fact that the government’s decrees tend to have insufficient reason-

ing, with Marosi and Toth saying a more detailed reasoning for its decisions would be welcome. “The government’s decrees frequently only provide a very short explanation for why a merger should not be subject to HCA scrutiny,” Marosi says. “The reasons why the government applies a special regime to a transaction often appear not to be truly substantiated,” Toth adds. “And the outside observer immediately starts to wonder what might lay behind such exemptions, especially when they are applied to some of the most prominent transactions.”

For Toth, one of the major drawbacks of the current legislation in Hungary is the inability to appeal such decisions: “In other jurisdictions, in addition to the most carefully crafted legislation, market participants can challenge the exemption decisions through an independent judicial review. This is a normal process to ensure that checks and balances are well applied.” He points out that “this is not the case in Hungary, apparently, where courts cannot interfere – as the government’s decree is not subject to any appeal.” He emphasizes that “challenging the constitutionality of such dedicated decrees, or appealing to European fora, is not a relevant alternative to normal judicial review.”

For Keller, exemption from the merger control procedure is a question of public policy and not so much a legal one. “I understand that the government’s decision in some countries may be subject to judicial review, but it is extremely difficult to ask a court to adjudicate on whether something is or isn’t *public interest*. The notion of public interest varies from country to country and depends on social, political, and cultural context.” In that regard, Keller highlights that the “The Constitutional Court of Hungary also reviewed the matter, establishing that public interest is what the government deems to be such, and it cannot be determined by the constitutional court.”

Efficient or Abusively Protectionist Tool?

As a result of the government being able to declare a merger to be strategically important under the *Hungarian Competition Act*, Solyom says “there are a number of mergers taking place without being subject to the scrutiny of the competition authority, typically in sectors such as TMT, the medical sector, energy, financial services, and the like.” He emphasizes that “the law does not allow any tools for the intervention of the HCA in such a case” and explains that is because “the government’s consistent strategy has been to strengthen their influence in these areas, and the law is likely to remain in force unless the government makes a political decision to change its strategy.”

Toth considers that the merger control exemption mechanisms in Hungary should perhaps be considered in a broader context, with Hungary’s recent FDI screening regulations serving as the flipside of the same coin. “In Hungary, FDI screening regulation has been applied since January 2019 and was initially intended to apply to investors outside the EU and EEA. Prior to that, the investment regulatory environment in Hungary was most open, and only required regulatory consent in those typically regulated industries, such as banking or energy.” Toth says that, “at that time, merger control was confined within professional boundaries, rather than affected by the suspicion of any political interference. Then FDI screening legislation was amended and completed with a broader FDI screening regime to capture all EU and non-EU investors, as the government claimed that the pandemic situation required stricter screening of FDIs.”



And the outside observer immediately starts to wonder what might lay behind such exemptions, especially when they are applied to some of the most prominent transactions.

For Toth, “these two regulations together granted the government an *efficient regulatory toolkit* to either allow or simply reject certain transactions.” He points out that, “looking at the history of such exemptions, in all instances, Hungarian investors got exempted from merger control requirements, while it has been unreasonably complicated for foreigners to conclude prominent acquisitions in Hungary, if not impossible.”

Miks does note that, since the exemption from merger control is related to very special cases, the vast majority of clients do acknowledge its existence, but they also know that this possibility is not available for most mergers.

Still, Toth believes that “merger control exemptions should be reserved for exceptional instances and applied in line with genuine public interest policies. Otherwise, it is seen by market investors as an abusively protectionist tool in the hands of the government to create national oligarch monopolies.” He points out that this will carry very severe effects on the impression foreign dealmakers have of Hungary, “far distant from where the country has been positioning itself.” ■

MARKET SNAPSHOT: HUNGARY

TRENDS AND CHALLENGES FOR HUNGARIAN SOLAR PROJECTS

By Viktor Jeger, Partner, Nagy & Trocsanyi



All over the world, we feel the effects of global warming and a sense of urgency to take action against it. It is, therefore, a relief that Hungarian solar projects are coming online in an ever-increasing number. In order to ensure that this trend continues, we ought to take account of the challenges of the sector, not just of its opportunities.

2021 was the first year when more electricity was generated in Hungary from solar power than from coal. Steadily declining year after year, coal now has a share of only 9% in the Hungarian energy mix, while solar energy reached 11%. Solar power capacity has more than doubled within just two years.

The expansion of solar projects has the possibility to remain on this track: supply chain issues and raw material prices do not plague these projects as much as other businesses. Solar panels and other electronic components are generally manufactured in Asian countries and, with good timing of the order, they can arrive when a solar park project gets to the construction phase. Although metals are needed in significant amounts for the framework of solar panels, this part represents just a small portion of the overall costs. It follows that price increases of steel and aluminum do not present such a challenge for solar projects as for wind projects, for example, where a single wind turbine may require hundreds of tons of steel.

While the rapid spread of solar parks serves the protection of our environment, it can clash with the same agenda when developments happen to the detriment of fertile land.

The Hungarian regulation navigates the issue elegantly: special approval by the land authority is not needed for small capacity solar power plants if they are to be placed on lower-quality arable land. The small capacity requirement means that the nominal capacity of such a solar power plant should be under 0.5 megawatts. The capacity limitation does not stand in the way of inves-

tors who intend to utilize the exemption from authority approval – solar parks can be realized in multiple projects. Besides easier licensing, it can be less burdensome to fund smaller power plants, as well as cheaper and simpler to connect them to a network.

There is, however, an upside-down logic in the regulation of solar projects. Arable land may only be acquired by individuals with a certain qualification, in a strict and lengthy process. If a company intends to invest in a solar park, it first has to realize the project on arable land owned by a third party. The investor will be able to acquire ownership of the land only after the solar park is ready and the land is officially requalified. Of course, risks can be decreased by well-structured contracts and indemnities.

It is not unprecedented in practice that landowners provide right of use on their land to a solar park investor. Right of use is indicated in the land registry and investors may refer to it before financial institutions in order to secure funding for their project. However, one must be cautious with this kind of security: right of use may be applied in the case of *buildings* and it is untested whether solar parks indeed fall under this term.

The legislature also aimed to mitigate the loss of fertile land by extending special treatment to investors who install agrophotovoltaic systems (APV). In solar parks utilizing such systems, solar panels are placed on a higher framework to make agriculture possible – the land under them is used for pasture or growing crops. This way, the solar panels provide shade to animals and plants susceptible to intense direct sunlight, slow down the evaporation of moisture from the soil, and can even protect against frost. In the case of APVs, the land continues to qualify as arable, and the owner may not lose eligibility for EU agricultural subsidies. It must be noted, however, that the regulation on APVs is not complete – the specifications of APVs enjoying special treatment are yet to be adopted.

If investors and regulators keep on considering and mitigating the pitfalls of solar projects, we can all look forward to a bright future. ■

THE HUNGARIAN COMPETITION AUTHORITY CASE AGAINST FACEBOOK AND BEYOND

By Gabor Fejes and Zoltan Marosi, Co-Heads of Competition and Antitrust, DLA Piper Hungary



In recent years, the Hungarian Competition Authority (GVH) has been extremely active in tackling highly interesting and novel issues in the digital world. The GVH commissioned a pioneer study on the importance of data in e-commerce and brought several decisions against major international players such as booking.com (for using so-called “dark patterns”) or Apple (for using misleading terms and conditions about its Wi-Fi assistant on iPhones) as well as significant CEE players such as eMag (for misleading promotions on its online marketplace) or Alza (for aggressive commercial practices on its online site). Most of the decisions – especially where large fines were involved – have been challenged before courts, with the most recent high-level judgment coming out in the Facebook case. What happened exactly?

Quid Pro Quo: Data for Targeted Advertisements?

The focus of the GVH investigation was the issue of whether Facebook’s claim that “It’s free and always will be” (and other similar claims) on the Facebook website could be in breach of Hungarian rules implementing the EU’s Unfair Commercial Practices Directive (UCPD). The UCPD prohibits misleading advertisements and expressly blacklists *free* claims if a product or service requires specific consideration for use from consumers.

The GVH reviewed Facebook’s business model in detail and established that when using Facebook’s services, instead of paying with cash, users actually *pay* with their data, their consumer activity, and all the related (privacy and other) risks that they take. The GVH found that a key feature of Facebook’s business model is that it converts the vast amount of data it collects from consumers into cash by receiving payment from advertisers who can target users deemed to be interested in them.

The GVH took the view that while Facebook advertised itself as a *free* service, this was not true in an economic sense: with the provision of their data and activity, consumers had to make a “payment/consideration” to Facebook for the use of Facebook’s services. As a result, the GVH found that Facebook misled consumers in violation of the UCPD and imposed a fine amounting to HUF 1.2 billion (approximately EUR 3.3 million).

All that Glitters Is Not Gold

The case inevitably ended up before the courts: in an intriguing twist, both the Metropolitan Court and then the Hungarian Su-

preme Court decided to side with Facebook.

First, the Supreme Court distinguished the case from data protection matters: it stated that the question as to whether consumers are aware of the use of their data (and the way such data is used) pertains to the field of data protection law.

Then, the Supreme Court identified the principal question of the case, namely whether Facebook’s services could be considered as *free* when consumers – with the use of their data – are provided with targeted, instead of simple (non-personalized), advertisements. In this respect, the Supreme Court took the view that for the claim *free* to be misleading there has to be a substantive disadvantage for consumers, which does not stem from the immanent nature of the services, and which is capable of directly influencing consumer decisions.

In light of this test, a notable finding of the Supreme Court was that targeted advertisements are, in fact, more useful for consumers than simple advertisements. Moreover, they are also more effective in terms of the use of consumers’ time (by spending less time on advertisements that are not relevant).

As a result, the Supreme Court found that there was no consideration required by Facebook from consumers within the meaning of the UCPD and, thus, Facebook’s *free* claim could not be regarded as misleading. Importantly, the GVH even requested a preliminary ruling from the European Court of Justice to clarify the interpretation of EU law – which was rejected – as the Supreme Court did not see any unclear legal points in this respect.

What’s Next?

Although the Facebook case did not go as the GVH originally intended, it appears to be a mere temporary setback in the long line of digital matters open before the authority. Namely, there are already investigations against the largest Hungarian real estate website ingatlan.com, against online marketplace Wish, and gambling site Sport&Tip – to name a few of the already public proceedings. The courts are also busy reviewing several recent major GVH decisions.

Consequently, digital companies should be very much aware that, from a consumer protection perspective, Hungary remains a pioneer jurisdiction in the CEE region, working as a sort of Petri dish for novel and interesting cases. ■



UPDATE ON ESG-RELATED REGULATIONS AT EU LEVEL AND IN HUNGARY

By Martin Wodraschke, Partner, CMS



In 2019, the EU introduced the *European Green Deal* with clear sustainability goals to become climate neutral by 2050. Across industries, investors increasingly accept the high value of more sustainable business practices. ESG sustainability is a central consideration in business decisions in almost all economic areas. ESG covers corporate governance, environment and climate change, social and human rights, and sustainable finance. The question for companies is how they can or even must implement this and use legal instruments. However, the lack of binding law provisions, greenwashing, and the *alleged* sustainability of investments have undermined the importance of this topic.

To tackle specific legal implications regarding ESG, in 2021 the EU adapted the *Taxonomy-Regulation (EU) 2020/852* which defines when economic activity is sustainable (Green-Taxonomy). This is intended to guide investors on which investments are used to finance ecologically sustainable economic activities and to prevent greenwashing. The Commission also approved a *Delegated Act on the Climate*, in February 2022, introducing additional economic activities from the energy sector into the EU Taxonomy, although this act is not yet binding.

The Green-Taxonomy is binding in all member states and guides investors on whether their activities are sustainable by using four principles: (1) a significant contribution to achieving one or more of the EU's environmental objectives stated in Article 9; (2) no significant harm to any other Article 9 objective; (3) compliance with minimum safeguards; and (4) compliance with technical screening criteria.

On February 23, 2022, the European Commission published its proposal for a directive on Corporate Sustainability Due Diligence (Directive). Today in Germany, for example, a careful risk analysis is already required to determine whether, in the whole supply chain, a violation of human rights and environmental standards has occurred in the past or can be expected in the future. If the Directive comes into force with the proposed content, the German legislator would have to considerably tighten up the *Supply Chain Act*.

In Hungary, the basis of the ESG legal framework is in *Act XLIV of 2020 on climate protection* (Act), which was enacted in line with European climate protection regulations. Hungary pledges to adhere to its commitments and wants to reach carbon neutrality by 2050 in line with EU goals. Moreover, climate protection answers must be based on the polluter-pays principle and proportionality. The Hungarian Government was authorized to enact sector-specific rules based on the Act, which is currently ongoing. For example, *Government Decree 821/2021 (XII. 28.)* regulates the use and quality of biofuels, liquid bio-energy sources, and biomass fuels, and contains requirements to reduce greenhouse gas emissions for these products. Further regulations are still to come.

But what does this mean for companies and their investments? In many companies, sustainability reports are already part of the annual financial statement. Investors in Hungary have also made significant efforts to participate in ESG-related projects. For example, in the real estate sector, Union Investment purchased an office building that was realized in line with ESG-principles. In the environment sector, Hungary was selected as the hub for a new joint venture in the circular economy. Partslife Group, Intercars, and AutoNet are market-leading automotive parts suppliers and are going to expand waste management services for industrial waste in Hungary, Romania, and Poland, helping the growing number of manufacturing sites in these countries to fulfill their demanding sustainability targets. In Hungary, the highest number of ESG projects with the highest investment value can be found in the renewable energy sector. The installation of photovoltaic plants on factory rooftops is popular, but several PV projects in Hungary are run by greenfield investments. The transfer from combustion engines to electric vehicles is important to achieving climate goals, but this can only be realized with the rapid enlargement of EV charging networks in Hungary. Both Hungarian and foreign investors are working on the installation and development of a charging network.

The clear definition of sustainable activities at the EU level and the corresponding legislation in Hungary helps to further both Hungarian and European efforts towards sustainability. As lawyers, we should all aim to provide our clients with the knowledge and advice they need to reach their business goals concerning the EU Green Deal. ■

KEYWORD ADVERTISING AS TRADEMARK INFRINGEMENT

By Ildiko Komor Hennel, Founding Partner, and Borbala Lili Kovats, Attorney, Komor Hennel Attorneys



Keyword advertising is one of the most important and most common tools in online advertising. Google Ads is the biggest platform for keyword advertising, where companies pay to have their advertisement appear above or below the natural (non-paid) results of a Google search for a certain term.

Choosing the right keywords is therefore crucial for businesses to reach as many potential customers as possible.

However, in Hungary and many other countries, companies take advantage of the system and tend to set not only their own brand name and trademarks as a keyword, but those of their competitors as well, in order to attract their competitors' consumers to their own website through a paid advertisement. As a result, when an internet user searches for the brand name or the name of a product of Company A to obtain information about the products or services of that company, the paid advertisement of Company B – which uses the trademark of Company A as a keyword – will appear in the search engine, diverting internet users from their original search and from the website of Company A.

Smart and Crafty Advertising or Just Unlawful?

The question is whether using a competitor's trademark as a Google Ads keyword for one's online campaign is just a smart and crafty way of advertising or is actually unlawful. The short answer is, in principle, it is unlawful and might constitute trademark infringement.

Trademark infringement is the use of a trademark (or a sign that is confusingly similar to the trademark) in the course of trade without the authorization of the trademark owner. Traditional trademark infringement is usually committed by putting a sign, logo, or name on products without the permission of the holder, or by advertising one's products or services under someone else's trademark. However, using a competitor's trademark as a Google Ads keyword is a less visible and obvious way of trademark use and, therefore, a more subtle form of trademark infringement.

European Union Practices

The Court of Justice of the European Union (CJEU) addressed the topic of keyword advertising as trademark infringement

in several preliminary rulings (e.g., in cases *C-278/08 BergSpechte*, *C-236/08 Google France*, *C-558/08 Portakabin*, and *C-323/09 Interflora*). According to the CJEU, using a keyword that is identical to, or confusingly similar with, the trademark of a competitor constitutes trademark infringement – if the

paid advertisement that appears in the search engine does not enable average internet users, or enables them only with difficulty, to ascertain whether the goods or services referred to in the ad originate from the trademark owner, or an undertaking economically connected to it, or rather originate from a third party.

Therefore, unauthorized use of a competitor's trademark as a Google Ads keyword can only be lawful if the paid advertisement makes it perfectly clear and obvious that the products or services included in the advertisement originate from the advertiser and not from the holder of the trademark (which was used as a search term and keyword) or from any third party. If these conditions are met, then the trademark use is lawful, as offering internet users an alternative to the trademark holder's services is a part of normal competition, and trademark law is not supposed to protect trademark holders from standard commercial practices.

The Approach of Hungarian Courts to Keyword Advertising

Despite it being unlawful in most cases, it is still commonplace for many market players in Hungary to set their competitors' trademarks as keywords to attract consumers to their website. However, Hungarian courts consistently apply the case-law and the conditions set by the CJEU and, in addition to requiring infringers to remove the infringing keywords from their Google Ads platform, they may order the public declaration of infringement and require the infringer to pay damages as well.

Therefore, while taking advantage of a competitor's well-known trademark to increase website traffic might seem like a smart way of advertising – which one could easily get away with – it is actually a very serious case of trademark infringement. If evidence exists, such as screenshots of a competitor's paid ad appearing as a result of a Google search for another party's registered trademark, these practices can have severe civil law consequences and can result in criminal sanctions as well. ■



THE NEW LAND REGISTRY CODE IN HUNGARY

By Marton Karika, Managing Partner, and Judit Vidoczy-Feher, Attorney at Law, Act Legal Ban & Karika



The current *Hungarian Land Registry Act* will entirely be replaced by a new *Land Registry Code* with effect from February 1, 2023. Hereunder we briefly introduce certain rules that might have practical effects on the legal and administrative aspects of real estate development projects being implemented in Hungary.

In the more than twenty years since the entry into force of the current Land Registry Act, significant social and economic changes have taken place, which places new demands on legal regulations and electronic administration. The Government of Hungary has therefore decided to implement the E-Real Estate Register project, the aim of which is to develop the real estate register into a fully electronic database, thereby reducing the administrative burdens of land registry procedures.

Spatial Records and Wider Scope of Public Authenticity

Within the framework of the *E-Real Estate Register project*, a number of new functions will open up in the land register. One of these is the spatial register, thanks to which it will be possible in the future not only to indicate a building on the plot but also to represent the structures located underground (e.g., underground garages, cellars) or below and above each other (e.g., tunnels, bridges, overpasses).

At the same time, the scope of the authenticity of the land registry will increase. Currently, the land registry is not considered to be authentic in respect to the data of real estate (i.e., area, way of cultivation). This will be changed by the new *Land Registry Code* and, accordingly, anyone who acquires any right in respect to real estate having trust in the data contained by the land registry will be entitled to be considered as a bona fide purchaser. Further, until the contrary is proven, all data registered in the land registry (even that relating to real estate data) shall be considered as existing as registered.

More Efficient and Faster Electronic Administration

Currently, land registry procedures are still paper-based, but with the new *Land Registry Code*, paper-based administration will be changed to administration based on electronic documents or paper documents converted to electronic documents by their

creator.

Simultaneously with such a conversion, the role of attorneys-at-law and legal counsels will increase, as each document on which the registration of a right is based will require their countersignature. In practice, this requirement will concern mostly the registration of pre-emption rights and land use rights, as currently these rights can be registered based on documents lacking a countersignature.

The rules applicable to ad hoc proxies will also be simplified. The right of representation will need to be proved by completing an electronic form, provided that the proxy does not contain a restriction, or it contains only standard restrictions. In these cases, the E-Real Estate Register will generate the text of the proxy, so that its content can be examined automatically by the system. If the proxy contains restrictions other than the standard ones, the proxy itself will need to be attached to the application.

Allocation of Cases, Ranking of Applications

Thanks to the digitization of the real estate register, it will be possible in the future for any land registry office to handle real estate registration applications within Hungary, regardless of the location of the property. Currently, land registry offices administer only applications regarding properties that are located within their territorial competence, which results in certain land registry offices being overloaded and not able to meet statutory administration deadlines. This situation may be avoided by allowing all land registry offices in the country to handle applications.

Ranking data is also changing due to the update. Currently, the ranking of applications received on the same day shall be determined by the date of the document on which the request is based. In contrast, pursuant to the *Land Registry Code*, only applications received in the same second shall be deemed to have been received at the same time, and only in that case will it become necessary to apply the above ancillary rule.

Legal practitioners await the detailed implementation rules of the code, as the regulations will presumably entirely turn the market upside down, particularly when considering the current intensity of the Hungarian real estate market. ■



HUNGARIAN CORPORATE MIGRATIONS WITHIN THE EU

By Ivan Sefer, Managing Partner, and Denes Csoba, Manager, Vamosi-Nagy Ernst & Young Law Office



There is a long-standing and yet unresolved debate within the European Union on how to best provide the freedom of movement and establishment for legal entities under the *Treaty on the Functioning of the European Union*

while, at the same time, protecting the interests of public policy or security at national levels, e.g., creditors or local regulators.

Apart from a couple of legal entities the operation of which is harmonized under European law, such as *societas Europaea*, uniformity between national corporate laws is lacking. Due to their complexity, such harmonized company forms are rarely used by stakeholders, despite being free to move within the EU. Beyond these, it is currently not possible to transfer a Hungarian company's registered office to another member state without first winding up the company in Hungary and then re-registering it in the other member state. This is because Hungarian corporate law applies the domicile (real seat) theory, meaning that companies acquire the nationality of the state where they maintain their seat. At the same time, Hungarian courts do not register or recognize foreign companies as Hungarian law-governed entities because they transferred their headquarters to Hungary without conducting a standard company establishment procedure ensuring compliance of the company's operations with Hungarian corporate law.

However, to provide some flexibility, Hungarian law allows for companies to designate their place of effective management – where the company's decisions are actually taken – to a place other than their registered office, even if that is in another EU member state. This does not result in losing the company's Hungarian nationality but does mean that the company's Hungarian tax residency is moved to that other EU member state. In some cases, migrating the place of effective management outside of Hungary may result in a dual residency or nationality provided that the new place of effective management will make the entity subject to the laws of the destination state as well.

In light of the foregoing, currently, the only tool for a Hungarian company to migrate its operations to another EU member state – without having to wind up and restart its activities – is participat-

ing in a cross-border merger procedure under the relevant EU directive. Such mergers, however, are available for limited liability companies only within the European Union and require another company to be registered in the member state of destination, acting as the surviving company taking over all assets and liabilities of the terminating Hungarian company by way of legal succession.



As of September 1, 2022, if a Hungarian LLC or PLC wishes to re-domiciliate to another EU member state, it will also be able to do so by converting its legal form into a limited liability company form governed by the laws of the destination member state while retaining its legal personality and without being dissolved. This will eliminate the need to establish a company in the country of destination prior to starting the cross-border migration, if not already having one available there within the company group, to participate in the complex procedure applicable to cross-border mergers. By this, cross-border conversion procedures are expected to be simpler and more cost-effective compared to a merger procedure – since only one company will have to complete the compulsory tasks of cross-border transformations detailed below.

The new law on cross-border conversions will come into force to implement the relevant provisions of *EU Directive 2017/1132*. This directive, among others, introduces cross-border demerger procedures as well and orders similar provisions to govern cross-border conversions and demergers to those already applicable to cross-border merger procedures, which are also subject to some amendments. In our experience, cross-border mergers in Hungary may take up to six-eight months and require significant external and internal resources to complete all procedural tasks, such as the preparation of corporate and financial documentation, publications to third parties, applications with the registering authorities, etc. Further delays in completing cross-border transformations may be expected as, under the new regime, the registering authorities will be explicitly required to examine whether the proposed transaction was set up for abusive or fraudulent purposes leading to or aimed at the evasion or circumvention of Union or national law, or for criminal purposes. This will end up in several other authorities getting involved in approving these cross-border transformations, which may add an extra one or two months to their timeline. ■

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THE IMPACT OF DATA PROTECTION COMPLIANCE ON M&A TRANSACTIONS

By Csaba Vari, Head of IP/Tech Practice Group, Baker McKenzie



In recent years, innovative Hungarian companies are increasingly attracting foreign professional and financial investors who seek their state-of-the-art products and services.

As investors increasingly focus due diligence on a target's regulatory compliance – relative to innovative companies, increasingly on data protection and IT security – practical data protection compliance gaps become evident. Their evolution since the implementation of the General Data Protection Regulation (GDPR) and potential impact on M&A transactions gives rise to practical considerations.

Technology companies were perhaps more focused on the need to achieve substantive – rather than merely formalistic – compliance with privacy laws. Yet due diligence often reveals fundamental weaknesses in the privacy documentation, even of tech sector companies. The reasons can be traced back to both a lack of data privacy-focused compliance resources and the incredibly rapid growth of companies.

The Hungarian enforcement of the GDPR also seems to have played a role in the relative levels of compliance achieved to date. The level of data protection fines imposed by the Hungarian supervisory authority in recent years is nowhere near the level of fines imposed by authorities in other EU countries. In Hungary, the highest fine imposed to date was HUF 100 million, while fines up to hundreds of millions of euros are not uncommon elsewhere in the EU. Although the Hungarian supervisory authority is keen to use fines as a compliance motivating tool, the level of fines to date seems not to have yet encouraged small and medium-sized companies to invest more in GDPR compliance. Because a significant proportion of the authority's proceedings are initiated based on complaints from data subjects, legal compliance is often limited to preparing privacy notices. Yet often, for instance, the business procedures for responding to data subjects' requests or data breaches are not well established, giving rise to exposure of yet more data subject claims.

In addition to planning, designing, and operating data protection compliant business processes, it is important that data control-

lers also comply with specific obligations under data protection legislation. A key element of that compliance – which is one of the starting points for legal due diligence – is the record of data processing activities. One of the important new features of the GDPR is that supervisory authorities no longer record data processing activities – rather, the data controllers and processors themselves are required to do so. In many cases, even in companies with a relatively mature data protection regime, this type of record-keeping is either missing or does not meet legislative requirements. In addition to being obviously noncompliant with the law, the absence of a register makes a company's data management practice non-transparent and, therefore, more difficult for a potential buyer to assess.

Stating an appropriate legal basis for data processing activities and complying with the administrative burden of the chosen legal basis also seems to give rise to a considerable substantive challenge for companies. Consent is often the chosen legal basis for data processing, yet it is inappropriate in many instances, such as in employment relationships, where it is not a permitted legal basis because of the hierarchical relationship between the parties. In the case of direct marketing, companies often refrain from asking their customers for consent, fearing that doing so would significantly reduce their marketing campaigns' effectiveness. Inadequate processes for record of consents and consent withdrawals also create significant compliance exposure – those processes are essential to comply with data controller accountability requirements. In the case of legitimate interest, a regular problem is the absence of the interest balancing test, which, based on current administrative practice, automatically renders the processing unlawful, regardless of the actual existence of a legitimate interest.

Establishing internal processes alongside appropriate policies and regulations will greatly enhance legal compliance and meet the accountability requirement mentioned above. Regular data protection training for employees and business partners is an integral part of achieving in practice a process that is legally compliant.

Data protection compliance can make a transaction significantly smoother, resulting in fewer closing conditions and reducing the risks associated with reps and warranties and indemnifications, which will be reflected in the pricing of the transaction. ■

GREEN ENERGY IN HUNGARY – NEW DEVELOPMENTS ON RENEWABLE ENERGY GUARANTEES OF ORIGIN

By Gabor Czike, Partner, and Laszlo Jokay, Senior Associate, CMS



The rules in Hungary for guarantees of origin (GO) changed at the beginning of this year to ensure the ascension of the Hungarian Energy and Public Utility Regulatory Authority (Hungarian Energy Authority) to the European Energy Certificate System, as a result of which Hungarian GOs will be accepted on international markets.

The GO market in the European Energy Certificate System has been growing steadily, with more than 800 million GOs (each representing one megawatt-hour of electricity) having been issued in 2021, in comparison to the approximately 400 million GOs issued in 2016. Although the prices of GOs widely differ based on many circumstances, the GO market in the European Energy Certificate System is estimated to be worth at least hundreds of millions of euros. The Hungarian renewable energy market may receive a significant boost by the direct access of domestic GOs to the European market, as such access may increase the profitability of renewable energy producers.

The European Energy Certificate System was established by the Association of Issuing Bodies, consisting of organizations authorized by the government to administer energy certificate systems. The purpose of this framework is to provide a standardized system of GOs issued in Europe and to create a regulated platform for trading GOs.

The Hungarian Energy Authority has been a member of the Association of Issuing Bodies since early 2021, however, it only joined the European Energy Certificate System on February 1, 2022. The international trade in Hungarian GOs is expected to commence on March 1, 2022.

GOs are marketable electronic certificates that evidence to final electricity consumers that a given unit of electricity has been produced from renewable energy sources. As the source of the actually used electricity received through the grid cannot be determined, the only way environmentally conscientious consumers can ensure that energy corresponding to their consumption has been supplied by the European network is by buying GOs from particular renewable energy producers.



At the request of a producer, the Hungarian Energy Authority may qualify a given power plant as being suitable for generating electricity from renewable sources or by high-efficiency cogeneration. After such a qualification, the qualified producer can apply for GOs to be issued, which will be done subject to the fulfillment of certain criteria.

It should be noted that no qualification is required if the power plant has a license issued by the Hungarian Energy Authority or benefits from the *KAT* feed-in tariff or the *METAR* premium support scheme. If the power plant benefits from the feed-in tariff subsidy scheme, then the GO will be registered in favor of the Hungarian transmission system operator and the GOs will be sold at auction.

The main benefit of the Hungarian Energy Authority joining the European Energy Certificate System is that domestic GOs can be marketed on the European market via the so-called “Hub” operated by the Association of Issuing Bodies, which enables the registries of the members of the European Energy Certificate System to communicate electronically to transfer GOs directly. As Hungarian GOs will be exported across Europe, the new system should increase competition for the purchase of Hungarian GOs.

Another advantage is that foreign GOs in the European Energy Certificate System can also be purchased by Hungarian entities via the Hub, without having to file an application to the Hungarian Energy Authority for the recognition of the foreign GOs. Naturally, foreign GOs arriving from outside the European Energy Certificate System will still be subject to the authority recognizing them.

The authority expects that more domestic renewable electricity producers will enter the market and that the new trading system may require further changes regarding the regulation of GOs.

As companies look for sustainable solutions regarding their energy consumption, which is further strengthened by the European Union’s intention to adopt stricter sustainability reporting requirements, the demand for renewable energy sources and GOs will continue to increase. ■

UNFAIR COMMERCIAL PRACTICES IN THE DIGITAL SPACE

By Zsofia Bitai, Managing Partner, CLM Bitai & Partners



Fair commercial practices and communication with consumers have always been a mandatory requirement for all businesses but now, with the updated regulations on unfair consumer practices, communication has an even higher importance – especially in light of rapid technological developments, the growing digital space, new digital solutions, and consumers becoming more and more vulnerable, both as a result of these developments and the already two-year-long pandemic.

That is why several EU directives on consumer protection have been amended via the *Omnibus Directive*, including the amendment of the *Unfair Commercial Practices Directive* (UCPD) as well. The amendments of the UCPD have been fully implemented by Hungary into the local *Unfair Commercial Practices Act*, with changes to enter into force on May 28, 2022.

The legislative updates are mainly related to the rapid development of the digital space and adapt to changes in commercial practices and legal interpretations by EU authorities over the last decade. The EU Commission issued an updated Commission Notice to the UCPD in 2021, covering the recent changes as well, to help follow proper commercial practices and avoid unfair ones.

New definitions have been introduced that were not included in previous regulations such as *ranking* or *online marketplace*. The definition of *product* has also been clarified.

In addition, the list of the so-called *important information* when looking at calls-to-action for making purchases has been completed as well. For example, it should be made clear who is qualified as the trader, the search results should be made transparent, and, for consumer reviews of products, information should be provided on whether and how the business ensures the published reviews come from consumers who have actually used or purchased the product.

The so-called *blacklists* annex on unfair commercial practices has been extended to include practices such as abuses of rankings, the provision of misleading information about consumer ratings, or the use of false consumer ratings.

The above are just some examples of the changes from May 28, 2022, which are of great importance for the proper functioning of the market and the fullest possible enforcement of consumer rights. Although several authorities can act in consumer misleading cases, the activities of the Hungarian Competition Authority (GVH) are of outstanding importance. In Hungary, in addition to the classic competition law cases (e.g., cartel, abuse of dominant position), the GVH also has competence in consumer protection cases – it acts in consumer protection cases of nation-wide significance. This guarantees strict controls, consistent decisions, and the development of a clear legal practice to be followed, which benefit all market participants.

In recent years, the GVH has ruled on several cases related to unfair commercial practices, which are also addressed in the updated Commission Notice to the UCPD issued by the Commission. The decisions of the GVH are in line with the UCPD Notice and practice in the EU. In recent years, the GVH has acted in the following types of cases: psychological pressure, moderated consumer reviews, evaluation of website, application structure and visual design, free services versus payment with personal data, or misleading promotional pricing, among others. For example, the GVH has imposed a fine of HUF 2.5 billion on the operator of booking.com for, among others, misleadingly advertising some accommodations as having a free cancellation policy and putting aggressive psychological pressure on consumers to book quickly. Additionally, the GVH imposed a fine of HUF 40 million on the operator of alza.hu, while also requiring the company set up a consumer redress program worth at least HUF 450 million – for aggressively urging consumers to buy quickly with messages with mostly untrue content.

The resolutions issued by the GVH, which provide guidelines for the avoidance of unfair commercial practices, are also very useful for market participants – such as its recent resolutions on green marketing, on influencer communication, and on user reviews.

Ultimately, there is a positive trend that we are seeing: we are receiving requests from more and more companies asking for prior assessments before launching any form of advertising campaign or other consumer activities, communication, or commercial practices, a sign that companies are all too aware of the significance of these developments. ■



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- ISACA, Certified Information Security Manager [CISM], 2016

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

Bereczki: I was involved in a CRM implementation project that was a pilot to an agile organizational transformation. My role in the project was to secure regulatory compliance and assist the project manager relative to quality assurance. Working within agile projects and securing regulatory compliance goals is challenging, as compliance requirements must be identified up-front and communicated in a prompt manner to allow programmers to design functions and architects to design systems accordingly, especially when the goal is to connect state-of-the-art IT services with a legacy core system. On top of that, we had to work with people from the client who didn't want any change and therefore, the project had major obstacles as being the first agile project in the organization.

And what was your main takeaway from it?

Bereczki: My key takeaways were that upper management may set goals and approach on conducting work or operations, but people's mindsets cannot be changed, and organizational learning is a very slow process. For me, this means that sometimes it is easier to change the setup around people, rather than their mindset, and actual change will come by being persistent not by pushing.

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

Bereczki: I am an open book to them. All they need to do is to ask me. Jokes aside, I learn and use keyboard shortcuts in software I use for work to be more time-efficient.

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

Bereczki: Lajos Antal, Cybersecurity Partner at Deloitte. He

- ISACA, Certified in Risk and Information Systems Control [CRISC], 2015
- Obuda University, John von Neumann Faculty of Informatics, Computer Science & Engineering BSc, 2011
- Eotvos Lorand University, Faculty of Law, Degree in Law, 2005

Favorites:

- **Out of office activity:** Spending time with my family, Working out, Playing computer games, Reading
- **Quote:** “[...] and my father, standing by the door, asked him, how many times, my father, you read that [book]? for the third time; once because I wanted it; once because I understood it, and now, I am saying good bye to it, and he re-read all the books that were important to him [...]” – *Harmonia Caelestis* by Peter Esterhazy
- **Favorite book:** *Foundation* by Isaac Asimov
- **Movie:** *Ghost in the Shell* (1995) directed by Mamoru Oshii

told me about the importance of the convergence of professionals with different backgrounds to effectively overarch my own shortcomings, how to recognize and analyze new trends and catalyze such trends in the local market. Some of his feedback, intentionally or not, taught me how to differentiate between what is important in my own professional life, in conducting business, and what is not important at all. Interactions with him taught me the importance of paying attention to details and meta-communications and of adjusting my business-related conduct accordingly.

Name one mentee you are particularly proud of.

Bereczki: Eszter Seres. She joined our firm with a very different professional background than what she's doing right now. I think we share very similar professional values, which makes our interactions easier. Eszter has a similar drive to mine, and I believe I was able to help her in making certain life decisions. I think mentoring someone is not just about showing them how to climb the career ladder at a certain firm or company, or demonstrating the nitty-gritty of the importance of fancy PowerPoint presentations, but to help them overcome their current situation, either by revealing their further potential, being honest, or simply just widening their perspective by showing things (even things yet to explore) from certain points of view.

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

Bereczki: I would rather give my younger self three pieces of advice as one may not achieve the intended outcome: (1) Be persistent in your goals and round in your ways; (2) Fail seven times, still get up for the eighth time; (3) Relax – all things will be sorted out in the end.



EXPERTS REVIEW: REAL ESTATE

This issue's Experts Review section focuses on **Real Estate**. The articles are presented ranked by the home ownership rate in each country, according to Eurostat data available for 2020. Romania goes first, with an implausible sounding 96.1%, while the article from Turkey, also in a league of its own when it comes to home ownership, wraps up the issue.

Country	Home Ownership Rate (%)	
■ Romania	96.1	Page 72
■ Slovakia	92.3	Page 75
■ Montenegro	90.2	Page 76
■ Serbia	86.0	Page 77
■ Poland	85.6	Page 78
■ Bulgaria	84.3	Page 79
■ Czech Republic	78.9	Page 80
■ Greece	73.9	Page 82
■ Turkey	57.9	Page 84



ROMANIA: THE PROTECTION OF HISTORIC MONUMENTS IN ROMANIA – PROPOSED AMENDMENTS AND IMPACT

By Alina Moldovan, Managing Partner, and Ana Zagor, Senior Associate, Firon Bar-Nir



New amendments to *Law No. 422/2001* on the protection of historic monuments (Law 422) were posted for discussions on the website of the Ministry of Culture, on January 12, 2022, in the shape of a Government Ordinance (Bill) intended to amend and supplement Law 422. Any suggestions or opinions should have been submitted no later than January 24.

The Bill was generated by the need to adapt Law 422 to the new social and economic realities. Below are some of the suggestions that could have a positive impact:

Delimitation of Competences in Terms of Preemption Rights

The sale of historic monuments for which the ownership title belongs to either natural persons or private legal entities is conditional upon the exercise of the preemption right by the Romanian state, via the Ministry of Culture. For Group A historic monuments the option whether to exert the preemption right must be expressed by the Ministry of Culture directly, while for Group B historic monuments the option must be expressed by the decentralized public services of the Ministry of Culture.

Before the sale of any property declared to be a historic monument, the owner must obtain an answer regarding the exercise of the preemption right and file a set of specific documents with the decentralized public services of the Ministry of Culture.

According to current regulations, because the definition of historic monuments covers both *individual objectives* (the monuments – constructions or parts of constructions) and *complexes and sites*, if any of these historic monuments is included in category A, it is the Ministry of Culture that must exert the preemption right. There are large downtown areas in some historical cities in Romania which are historic monument complexes or sites and, therefore, they qualify for inclusion in category A – with every sale of a property located in such areas required to go through the preemption right procedure under the signature of the Ministry of Culture – which is difficult and time-consuming.

The Bill suggests a new separation of competences, in terms of the exercise of this preemption right, between the Ministry of Culture

and the decentralized public services thereof, as follows: (1) the Ministry of Culture for the historic monuments classified as Group A monuments; (2) the decentralized public services for Group A historic monument complexes or sites, and for all Group B historic monuments; or (3), as appropriate, the administrative-territorial units themselves.

Basically, this amendment aims to shift the competence from the Ministry of Culture to its deconcentrated public services in case of historic monuments included in the category complex or site, irrespective of whether they are included in Group A or Group B – and to leave only those historic monuments that qualify as monument-Group A under the Ministry of Culture's direct purview. Were this to be the case, the procedure for properties located in a complex or site would be conducted solely before the decentralized public services and should, therefore, be sped up.

The Ministry of Culture To Decide What To Skip in Advance

One of the proposed additions under the Bill would allow the Ministry of Culture to determine, depending on its budgetary allocation for the year, those historic monuments for which the ministry or its subordinated decentralized public services will not exert the preemption right.

The amendment is intended to ease the task of the Ministry of Culture when it comes to issuing the notifications regarding the refusal to exert its preemption right and, implicitly, to facilitate quicker answers being obtained by the owners.

With no further details, two other amendments might have a positive impact on the real estate industry: (1) the clarification of rules governing the permitting of works in case of demolition of some components, construction elements, or units of the historic monument which are deemed hazardous or detract from its cultural value; and (2) the possibility for the Ministry of Culture to issue permits for works on properties located in the protection area of historic monuments or the protected built-in areas whenever, for objective reasons regarding their institutional capacity, the decentralized public services are unable to issue those permits. ■



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SLOVAKIA: ESG – RISK OR OPPORTUNITY FOR SLOVAKIAN REAL ESTATE?

By Sona Hankova, Partner, CMS Slovakia



The trend towards ESG issues has increased markedly on the Slovakian commercial real estate market. More and more Slovak companies are behaving responsibly and sustainably – under pressure from tenants, employees, contractors, customers, regulators, and investors who

involve ESG in their decision-making.

It is already clear that ESG is having an impact on the value of real estate portfolios. Originally, real estate placed more emphasis on the E (environmental) element in ESG than on the S (social) or G (governance) elements. However, the COVID-19 pandemic has shown the increasing importance of the social element of ESG in terms of risk management, resilience, transparent and inclusive governance, and social engagement.

Constructing ESG buildings is in fashion. Certificates such as LEED and BREEAM are the most widely used value drivers in Slovakia, where most commercial office real estate is in Bratislava. According to surveys published by CBRE, Bratislava has 798,041 square meters of office space with a valid green building certificate. This means that, in 2021, around 41% of all office space in Bratislava had a green building certificate, with 68% of those holding a BREEAM certificate and 32% a LEED certificate. By contrast, there are no public administration buildings with a green certificate.

The popularity of ESG buildings is further being enhanced by the generational shift of wealth to millennials, who are much more concerned about climate change and social issues than older generations. By 2030, millennials will be the largest segment of the workforce. They will create and own the majority of assets and pressure employers to reflect their values. Public image concerns are also a driver, as ESG commitments typically lead to an improved reputation and customer and employee loyalty.

The regulatory landscape in Slovakia is also changing regarding ESG. Reform of construction waste management is expected in the near future. The concept of green public procurement is another tool

for achieving the strategic objective of environmental sustainability. Social and environmental criteria will be evaluated in certain public procurement tenders for the first time, thanks to legal changes that became effective in 2022.

The ESG agenda is also driving responsible and sustainable business in the commercial real estate sector. Real estate players often develop their own sustainability policies to outperform competitors and increase the resilience of their assets. ESG implementation is their strategy for increasing financial returns, part of a broader approach to risk management, and a means of protecting investments.

As for property leases, ESG buildings are expected to gain momentum in terms of tenant demand and market rents. Tenants, especially large corporate tenants, indicate that they are particularly interested in green certification. Many tenants are changing their strategy towards ESG and renting in a green building in order to achieve their own sustainability goals.

Green leases are not yet regulated by a specific law in the Slovak Republic. Landlords, instead, develop their own set of guidelines regarding sustainable asset management, energy savings, green cleaning, indoor air cleaning, quality, sustainable purchasing, solid waste management, and water protection.

In practice, the term *green lease* is used to refer to any type of provision that aims to reduce the ecological footprint, save natural resources, or ensure the use and management of the property in a sustainable manner. In reality, the terms and conditions of a green lease are often not detailed in the lease agreement – only being summarized in the building's operating rules. Thus, enforceability of ESG commitments depends on the validity of contractual arrangements.

There is no one-size-fits-all approach for companies' ESG strategies. This is evidenced by the variety of ESG projects that Slovak companies present to the public. Many companies proactively go "above and beyond the minimum," using ESG as a tool for creating the long-term value of a real estate project. In addition to legal and financial due diligence, ESG due diligence has become an important part of real estate opportunity investment assessment. ■

MONTENEGRO: MONTENEGRO'S REAL ESTATE MARKET

By Jelena Vujisic, Partner, Vujacic Law Offices



Montenegro is a small mountainous country located in Southeastern Europe, on the Balkan Peninsula, with a coastline on the Adriatic Sea, and with a specific real estate market that offers something for everyone's pocket.

Montenegro belongs to the hottest and the sunniest tourism regions in Europe, and it is a very attractive tourism destination. After visiting and enjoying Montenegro, many tourists decide to buy some property, start their business here, or invest in real estate. Such decisions are easier to make when considering that, with buying property, foreigners are allowed to obtain residence permits.

There are no restrictions on foreigners buying property, except for land, which can only be purchased by foreigners through a company if it is agricultural land. Property tax rates are also attractive for foreigners, because the property transfer tax rate is 3%, and the annual property tax rate range is between 0,25% and 1% of the property's market value. Montenegro has also signed double-taxation treaties on income and property with more than 40 countries.

The real estate market in Montenegro is very diverse, in terms of the type of real estate offered on it, and very favorable, in terms of real estate prices. In Montenegro you can find everything from simple apartments and townhouses all the way to luxurious, fabulous penthouses and stone villas with amazing sea views.

The Economic Citizenship Program, which started in January 2019, gives the opportunity to obtain a second passport through the investment in real estate, which can be acquired by a donation to the government plus the purchase of real estate in the country.

Investments range from EUR 350,000 to EUR 500,000, so this program results in attracting wealthier investors interested in Montenegro citizenship. The Government of Montenegro has extended the citizenship program until December 31, 2022.

There has also been a marked increase in the investments in real estate by entrepreneurs and foreigners that invest in small businesses, as well as by highly qualified foreign workers that moved to Montenegro.

The trends in the real estate market and prices in recent years stayed positive, despite the COVID-19 crisis which has not avoided Montenegro. Last year, the Montenegrin real estate market recorded a significant increase in demand and sales compared to 2020, when the market was in sharp decline due to the COVID-19 pandemic.

Although Montenegro is a small country, there is a significant difference in the price of properties depending on the region where they are located. We can split the real estate market into three regions: coastal, central, and northern. In the north of the country, properties can be bought for as little as EUR 500 per square meter. In Podgorica, the capital of Montenegro, prices range from EUR 1,000 to 2,000 per square meter, while at the seaside prices range from EUR 1,000 to 4,000 per square meter.

Property prices have seen a slow increase compared to a few years ago, but real estate prices in Montenegro are still some of the lowest in the region and the European Union. The price increase was influenced by the increase in the price of construction materials and, in 2021, property prices increased by between 10% and 25%.

We do not expect a considerable increase in prices on the real estate market in the next period. But, as we drive to join the European Union, now is a great time to buy real estate in Montenegro, as its value will increase significantly after joining the EU. ■

SERBIA: AMPLE OPPORTUNITIES FOR INVESTMENT IN SERBIA'S REAL ESTATE MARKET

By Djordje Nikolic, Partner and Head of Real Estate, NKO Partners



Since 2009 the Republic of Serbia has undergone major legislative changes aiming to simplify the process for issuing construction permits and to establish private ownership over land as an exclusive property right, replacing the permanent use right and the long-term lease, which are relics of the communist regime. Depending on the circumstances pertinent to the holder of the title, the conversion of the permanent land use and long-term lease rights into private ownership may be performed either free of charge or for a fee.

Although there are still some legal bottlenecks to be dealt with, the reform has been very successful. It resulted in a substantial increase in real estate development projects in Serbia and the overall increase of foreign investments in the real estate industry.

Land in Serbia is generally divided into construction land and agricultural land. While construction land may be privately owned with no limitations – including private ownership by foreigners (subject to reciprocity) – agricultural land may exclusively be owned by Serbian nationals. To circumvent this obstacle, foreigners tend to establish local companies which then appear as the owners of agricultural land. Serbian legislation does not provide for another distinction by land type, therefore the same general rules apply to transfers over residential, industrial, office, retail, or other property.

Some of the major reforms included the electronic issuance of construction permits and the centralized database of the Cadastral Registry for all of Serbia, which offers the possibility to easily review the ownership status of any property in the country, via an online platform. On the other hand, construction permits are being issued in unified procedures, where the public administration exchanges documents internally, without citizens and investors having to collect them individually from different administrative units. These changes were aimed at creating conditions for an investment-friendly business environment. Consequently, real estate has become an attractive investment opportunity. This resulted in the Serbian real estate market's continued growth, in the last six to seven years, with increased devel-

opment activity in the industrial and logistics sector as well as in retail warehousing, shopping centers, residential, and public investments. The construction sector continues to expand, as is evidenced by a sharp uptick in the number of issued construction permits.

Currently, Belgrade has over 1 million square meters of office space and two major office projects under construction – the Skyline AFI Tower (approximately 40,000 square meters) and GTC X (approximately 17,000 square meters). In the retail sector, two new shopping malls were opened in 2021 and there are a few ongoing projects (NEST, IKEA, and Stop Shop), which is a positive indicator of further development in this market. Additionally, the industrial and logistics sector has remained very strong during the pandemic and there is increased demand for storage space, i.e., industrial and warehouse buildings. For example, CTP continues to invest in the Serbian market and is concurrently developing a few major projects in different parts of Serbia, some of them being recognized as projects of national interest. Also noteworthy is the ever-developing Belgrade Waterfront project, which is the largest residential and commercial real estate development in the Balkans, developed jointly by the Government of Serbia and Eagle Hills.

Transaction activity is also heightened. The total number of sales on Serbia's real estate market in 2021 was 138,180, or 28.4% higher than in 2020. Total investments in Serbia's real estate market in 2021 amounted to USD 6.7 billion, which is 47% more than in 2020. Most investments happened in Belgrade (around 51%), with the rest going to the Autonomous Province of Vojvodina (26%), Central and Western Serbia (16%), and Southern and Eastern Serbia (7%).

The major changes in legislation which have significantly facilitated the procedure of obtaining a construction permit (and other permits), as well as massive demand for space of all purposes (residential, office, industrial, and retail) in the last five years, have also resulted in the Republic of Serbia, led by Belgrade, being a hub of real estate investments and development in the Balkans. Having followed the market closely – and considering that the COVID-19 pandemic did not significantly affect demand, investment plans, or project development – we believe that the Serbian real estate market will remain attractive and exciting for domestic and foreign investors in the future. ■

POLAND: REAL ESTATE IN POLAND – UNCERTAINTY AHEAD

By Przemyslaw Kastyak, Partner and Head of Construction, Penteris



Had we been writing this piece mid-February, our description of the Polish real estate market would have been consistent with the trends encompassing the past two years: despite the pandemic, two sectors continue to boom – logistics and residential, including the still relatively new professional rented sector, with many big players moving into Poland over the past few months.

Record-Breaking Residential and Warehousing

Booming e-commerce has driven the record-breaking development of the warehouse sector. The total logistics and warehouse area in Poland is now approximately 24 million square meters, with more than 4.5 million square meters of new assets under construction at the end of 2021. Some investors, who previously specialized in other types of development, are now working on their first logistics investments.

The residential market continued to grow rapidly, with the greatest rise since the 1970s and 235,000 new apartments and houses completed in 2021. What is more, total granted mortgages broke all records and amounted to EUR 19 billion (a 40% increase on 2020). However, at the end of 2021, experts warned that the decreased number of new building permits issued, together with increased interest rates and the rising costs of labor, energy, and construction materials, would make it impossible for these impressive figures to be repeated in 2022.

Evolving Office and Retail

After the booming years leading up to 2019, the situation on the office market was relatively stable, despite the huge impact of COVID-19 and online work. The total supply of modern office space in Poland reached almost 12 million square meters, with relatively stable rents, and an expected supply gap in 2023-2024 due to the drop in the number of new office projects being commenced. On the other hand, the largest single office complex transaction in CEE history has just been announced. Ghelamco has sold the Warsaw HUB office complex to its major tenant Google for the price of EUR 583

million. Also, the retail sector, which was hit by the pandemic, continued to focus rather on smaller convenience centers than on large shopping malls and galleries.

War Unleashed

Those analyses flew out the window at the end of February 2022 when Russia invaded Ukraine thus igniting Europe's first full-scale war since 1945. Two weeks on, experts are reluctant to predict how the situation will affect the real estate market. Things are moving dynamically and the many-faceted aspects surrounding the conflict are making it difficult to pin anything down.

Several key factors will most certainly impact the market, especially the residential sector. The first visible effect of the war in Ukraine was the immediate drop in the number of apartments to rent, which is obviously related to the 1.2 million refugees that have come to Poland within the first two weeks since the Russian invasion. Some of these apartments have been rented to refugees, but a significant proportion has been made available to refugees for free, by Polish apartment owners, in an unprecedented mark of solidarity in wanting to help refugees from Ukraine. This has already impacted supply and will most probably lead to increased demand and rents.

Shifting Market

Significantly, the number of transactions on the booming individual residential market dropped in the first few days of Russia's aggression against Ukraine, as buyers sat and waited to see how the situation in Ukraine might develop. If the war continues this could further increase the role of the PRS sector on the residential market. The other immediate effect of the Russian invasion is the slowing down of construction work since a lot of Ukrainian men – who constituted a significant proportion of construction workers in Poland – decided to return to Ukraine to fight against the Russian aggressor.

There are also other factors, like the dramatic increase in the prices of energy and construction materials as a result of sanctions imposed on Russia, as well as general inflation, increased interest rates, and the depreciation of the zloty to the euro and dollar, which will most probably lead to a decrease in supply and affordability as well as an increase in the price of apartments. However, as is the nature of the market, a shifting climate will change the approach and attitude of investors. Some will see this as a tragedy, some will see it as a blip, others as an opportunity. Time will tell. ■

BULGARIA: THE ENERGY EFFICIENCY OF BUILDINGS IN BULGARIA

By Antonia Kehayova, Co-Head of Real Estate, CMS Sofia



In most countries, the energy consumption of buildings reaches very high levels, making their energy efficiency potential high. Buildings play an important role in energy efficiency and make a significant contribution to combating climate change and energy consumption.

Therefore, it is important to align the process, from the buildings' design to their final completion and exploitation, with the pertinent green standards.

As per the *Bulgarian Energy Efficiency Act* and the *Spatial Development Act*, any building investment project should meet certain requirements regarding energy efficiency. These requirements apply to each and every investment project for (1) construction of a building; (2) redevelopment of a building which alters the building's energy performance; as well as (3) redevelopment, deep renovation, or major renovation of a building which encompass more than 25% of the area of the external fence structures and components of the building and which alter the building's energy performance.

Investment projects must: (1) take into account the technical, environmental, and economic feasibility of high-efficiency alternative installations and systems; (2) provide a possibility for mounting self-regulation devices and for separate regulation of temperature in each individual room or – where justified, technically possible, and economically viable – in a specially designated heating space in a separate part of a building; and (3) envisage designing buildings with near to zero energy consumption.

After final completion of construction, each new building receives an *energy performance certificate*. The assignor is required to obtain an energy performance certificate for the new building prior to the commissioning. The new building's energy performance certificate is one of the statutory documents required for obtaining a use permit for the building.

The requirement for obtaining an energy performance certificate is not applicable to: (1) buildings of cultural merit, so far as compliance with certain minimum energy performance requirements would alter

the architectural and/or artistic character of the building; (2) buildings owned by the armed forces or the administration and serving national defense purposes; (3) places of worship of the legally registered religious denominations in Bulgaria; (4) temporary buildings with a planned time of use not exceeding two years; (5) non-residential buildings with low energy consumption used for agricultural activities; (6) manufacturing buildings and parts of buildings with a productive assigned use; (7) residential buildings which are used as such for either less than four months of the year or, alternatively, for a limited annual time and with an expected energy consumption of less than 25% of what would be the result of all-year use; and (8) buildings with a total floor area of less than 50 square meters.

The energy performance requirements are subject to mandatory regular verification every five years and, where necessary, shall be updated in order to reflect technological advances in the building sector.

The energy performance requirements also apply to investment projects for the redevelopment of a building and to already constructed buildings. The *energy performance of buildings in use* is subject to an energy efficiency audit. Its purpose is to determine the level of energy consumption, identify the specific opportunities for reducing consumption, and recommend energy efficiency improvement measures. After successful completion of the audit, the building receives an energy performance certificate.

The energy performance certificate for a building in use is valid for up to ten years, depending on the energy consumption category of the building per the energy consumption scale. After the expiry of the validity term, the owner of the building is required to reobtain an up-to-date energy performance certificate for the building.

When a new building for which an energy performance certificate has been issued, or a stand-alone unit therein, is announced for sale or rent, the "specific annual expenditure of primary energy" indicator, in kilowatt-hours per square meter, as stated in the energy performance certificate, shall be noted in all announcements. Upon the sale of a new building, the seller shall provide the buyer with the original energy performance certificate of the building. Upon the sale of a building unit in a new building, renting a new building, or a building unit therein, the seller or landlord shall provide the buyer or tenant with a copy of the energy performance certificate of the building. However, if the seller or landlord should fail to provide such a certificate that would not affect the validity of the deal or rental contract. ■

CZECH REPUBLIC: DID COVID-19 REDEFINE THE CZECH REAL ESTATE DEALS LANDSCAPE?

By Jiri Hornik, Partner, and Jakub Porod, Lawyer, Kocian Solc Balastik



The COVID-19 pandemic undoubtedly hit the real estate market. In response, the government adopted a series of measures that included an extraordinary moratorium, often used by commercial tenants, and a rent reduction scheme in which the government subsidized the rent in cases where the landlord was willing to provide a discount. Most importantly, the crisis made the government abolish the 4% real estate transfer tax.

The latter actually paved the way for a new wave of asset deals. Most Czech real estate deals up until then were SPV-based share deals, in an obvious attempt to tax-optimize. Yet, tax exemptions granted to shareholders after the respective holding period may still be the prevailing tax-optimizing tool and result in a preference for share deals.

Nevertheless, what are the legal benefits of an asset deal? The buyer may principally rely on the title information recorded in the Real Estate Register, and their good faith in those records is well protected against third parties' claims based on rights not duly recorded. This may significantly limit the need for extensive due diligence. On the other hand, the buyer must focus on other specific issues and make sure that these are carefully investigated.

While the scope of due diligence might be very limited or almost inexistent in respect to land plots with no permits attached, land under development, land with structures or tenants in the buildings will require more attention.

The buyer will, in particular, need to dig into what the relevant utility and grid connections are and whether there are any specific rights in order to get access to the property. Statutory pre-emptive rights may cause a lot of trouble, as they are typically not recorded in the Real Estate Register. At the same time, intellectual property rights do not automatically follow the property and their importance is often underestimated.

More attention is now being paid to often-overlooked lease agreement clauses, such as change-of-circumstances or *vis maior* clauses.

Similarly, inflation brought by the COVID-19 pandemic also caused indexation to be a part of almost every lease – even short-term leases.

The transaction mechanics also vary. While share deals are pretty straightforward and the title to shares is transferred instantly, the requirement for a real estate title transfer recording in the Real Estate Register delays the actual closing and final settlement. There is a 20-day standstill period between the filing and actual recording and the title transfer is effective retroactively as of the date of filing. This may create discomfort, particularly when there is a need to amend or novate the leases during the stand-still period.

Speaking of leases, by law all leases are transferred with the land and any sale of land cannot trigger lease terminations. In the case of leases that deal with rights and obligations beyond the scope of the lease itself, it may however be disputable whether such rights and obligations are also transferred by law, or whether a specific assignment is required.

Both the seller and buyer must also be cautious when the property being sold is the substantive property of the seller, which is almost a tradition in the case of real estate SPVs. First, specific corporate approvals might be required. Second, the buyer bears the risk that it may become jointly and severally liable for the seller's debts which are linked with the property. Finally, depending on what the property is used for, it may qualify as a business unit, where the actual title transfer conditions and the scope of assets being transferred are different, and much wider, than in the case of a pure property transfer.

In conclusion, the situation around COVID-19 helped to remove the disadvantageous tax treatment of asset deals and stimulated certain segments of the real estate market – particularly those related to vacant land transactions and apartment sales. At an institutional level, share deals still appear to be preferred due to their well-proven predictability, clarity, legal certainty, and associated financial benefits linked with an SPV takeover. Yet, if serious red flags are found that are linked purely to the SPV or if there is a lack of time to conduct extensive ownership title due diligence, shifting to an asset-based deal is now a much easier option. ■





Talent decides

GREECE: INVESTMENT-RELATED GREEK RESIDENCE PERMITS – A BRIEF OUTLINE

By Eirnikos Platis, Partner, Platis Anastassiadis & Associates, EY Law



A number of jurisdictions provide residency or even citizenship options against certain investments. Greece was one of the last countries to introduce a similar offering. An EU member state as well as a country of the Schengen area, Greece embodies the rule of law and the democratic principles of Western democracies, all in idyllic surroundings.

The initial success of the Greek investment residence program triggered additional reviews of the respective provisions, in order to cover a wider range of willing investors in times of financial growth as well as in times of geopolitical uncertainty.

Five-Year Residence Permit With Subsequent Renewals

Third-country nationals and immediate family members are granted a five-year residence permit provided that they engage in any of the following investments – with the option of equal five-year renewals, should the requirements still be fulfilled:

Real estate investments – full ownership of real estate in Greece with a value of EUR 250,000, either in person or through a fully owned legal entity established in Greece or another EU member state. The residence permit is also granted to persons who have concluded a long-term contract for a complex tourist accommodation or a time-share leasing agreement with a total contract rent of EUR 250,000. This type of residence permit is also granted to those who have acquired full ownership of real estate of EUR 250,000 in value as a result of parental benefit or heritage, securing the respective residence right to descendants of the original applicant in the long run.

Broader investment activity, with positive impact on growth & the economy – an investment that will have a positive impact on national development and the economy, following a respective suggestion by the Directorate of Foreign Funds of the Ministry of Economy, Infrastructure, Shipping, and Tourism. The minimum amount of the investment, in order to be granted the permit, amounts to EUR 250,000, according to a ministerial decision that further determines the number of eligible residence permits, depending on the amount of the investment.

Investments in securities or cash deposits – which variously include: (1) capital contributions, amounting to a EUR 400,000 minimum, to a company established in Greece for the acquisition of shares in a share capital increase, or bonds to be listed in regulated markets, or multilateral trading mechanisms operating in Greece; (2) capital contributions in a capital increase, with the same minimum, to a Real Estate Investment Corporation with the scope to invest exclusively in Greece; (3) capital contributions, with the same minimum, to a Business Holdings Capital Company or to a Mutual Fund of Business Participations for the acquisition of shares exclusively in Greek companies; (4) Greek government bonds, with a EUR 400,000 or above acquisition value and a remaining duration, at the time of purchase, of at least three years, through a credit institution established in Greece that is also their custodian; (5) term deposit with the same minimum to a Greek credit institution, of at least one year duration, with a permanent renewal order; (6) shares, corporate bonds and/or bonds of the Greek state that are listed in regulated markets or multilateral trading mechanisms operating in Greece, with an EUR 800,000 or above acquisition value; and (7) shares with an acquisition value of EUR 400,000 or more in a mutual fund established in Greece or another country aiming to invest exclusively in shares, corporate bonds, or Greek government bonds listed in regulated markets or multilateral trading mechanisms operating in Greece.

Ten-Year Residence Permit With Subsequent Renewals

A ten-year residence permit is granted to up to ten third-country nationals, and their family members, who are deemed essential for implementing strategic investments, following a decision by the Interministerial Committee on Strategic Investments. This type of residence permit is subject to quotas that vary with the specific type of investment. Priority is given to low-carbon or instrumental digital investments, which have the lower threshold of EUR 10 million.

In a highly competitive forum shopping area, the Greek offering is already successful. The low entry requirements, lack of hidden charges, and wide variety of investment options for the applicant to choose from, as well as the income margin, provide the competitive edge. Additionally, the top-tier benefits associated with residing in Greece or traveling within the EU and Schengen area establish Greece as a favorable investment visa destination.

Prior to applying for an investment visa, the sanctions and restrictions regime – as currently in force – should always be considered. ■

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TURKEY: A GREENER CONSTRUCTION SECTOR FOR TURKEY

By Done Yalcin, Managing Partner, and Arcan Kemahli, Counsel, Yalcin Babalioglu Kemahli in Cooperation with CMS



Real estate is responsible for around 40% of global greenhouse gas emissions. Given the industry's high impact, a comprehensive decarbonization strategy is essential. As environmentally conscious investors and tenants focus on zero-carbon buildings, green building ecosystems and life-cycle assessments become necessary.

Accordingly, green building certification processes are needed to ensure that habitats are environmentally sustainable. These certification processes assess many building components, from ventilation systems to insulation materials, for their impact on human and environmental health.

Turkish Construction Industry

With the employment and value it creates, the construction industry is the locomotive of the Turkish economy. As one of the central pillars for achieving the goals stated in the *Declaration of National Contributions*, it therefore plays a crucial role in the country's sustainability initiatives. It is also evident that ensuring sustainability by maintaining a decarbonization strategy and establishing energy efficiency projects has a huge impact on the industry and, therefore, sound guidelines for creating a sustainable construction industry in the future are needed.

Regulatory Developments

Creating a national legal infrastructure to facilitate circular economy models within the construction value chain is of the utmost importance. Turkey has taken concrete steps in this direction over the last two decades by developing policies and legislation on energy efficiency, which is one of the main pillars of a sustainable housing model. Although the *10th* and *11th National Development Plans* and the *National Energy Efficiency Plan* provide a good perspective on how Turkey intends to exploit its huge potential for a circular economy, the most important legislation is the *Energy Efficiency Law No. 5627* and the *Energy Performance of Buildings Regulation* (Regulation), both of which aim to reduce the total cost of Turkey's energy consumption.

A recent piece of legislation is the *Communique on the Implementation of Green Certificates for Buildings and Settlements* (Communique), published in the Official Gazette on June 9, 2021, which sets out the assessment guidelines for green buildings under the regulation of the same name. According to the *Green Certificate Assessment Guide*, published as a

supplement to the Communique, buildings are assessed in six modules, including the assessment of building materials and life cycle. As a result of the assessment, buildings are certified at one of four levels: Pass, Good, Very Good, and National Superiority. These certificates are valid for the lifetime of the buildings. Unlike other certification systems, the Turkish Green Certificate System includes assessment criteria for disaster management.



In addition, Turkey has been working on further steps to be taken towards a greener world in the future. In addition to the *Green Deal Action Plan*, which emphasizes the importance of the circular economy, the *Climate Change Action Plan 2011-2023* sets out three main long-term goals for buildings: increasing energy efficiency in buildings, increasing the use of renewable energy in buildings, and limiting greenhouse gas emissions from housing. The Regulation is indeed an effective instrument to achieve these objectives as it provides solid commitments regarding the concept of energy-efficient building. It is anticipated that the *Climate Change Action Plan 2023-2030*, expected in the fourth quarter of 2022 according to the *Green Deal Action Plan*, will include further measures for greener real estate.

Last but not least, according to the latest regulation published by the Ministry of Environment, Urbanization, and Climate Change on February 19, 2022, starting from next year, buildings with a total floor area of more than 5,000 square meters will have to be built as "near-zero energy buildings" (i.e., buildings that have a high energy performance and use renewable energy to a certain extent), with the obligation to use at least 5% renewable energy and achieve an energy efficiency rating of Class B or higher.

Conclusion

The construction industry has enormous potential for the circular economy due to its high material consumption, labor-intensive nature, and long-term impact on the overall economy. Accordingly, a sustainable Turkish construction sector will address the main issues arising from urban growth, climate change, and renewable energy with a comprehensive perspective. The regulatory instruments for Turkey's green transition are crucial for developing a building stock that adds sustainable features to the value chain. ■



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