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CEE Legal Matters

In-Depth Analysis of the News and Newsmakers That Shape Europe's Emerging Legal Markets

Guest Editorial by Istvan Szatmary of Oppenheim ■ Across the Wire: Deals and Cases ■ On the Move: New Homes and Friends ■ The Buzz
The Debrief: July 2023 ■ Compliance and the In-House Legal Function ■ The Corner Office: Partnership Tracks ■ Go (Safe) Big or Go Home: PE in CEE
■ Healthcare in Serbia: From Public to Private ■ Market Snapshot: Serbia
Know Your Lawyer: Mark Harrison of Harrisons ■ Modern Powerhouse: Greek Renewable Energy Market ■ Market Snapshot: Greece
Know Your Lawyer: Mika Lalaouni of Drakopoulos ■ Experts Review: Competition in CEE

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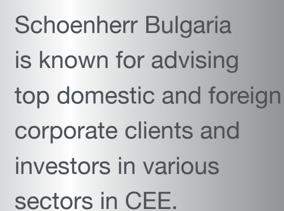

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EDITORIAL: WHAT JUST HAPPENED?

By Radu Cotarcea

If you asked most in February or March 2022 what the war in Ukraine would look like in June of 2023, I imagine most wouldn't have opened with rebellious mercenaries seizing the city of Rostov-on-Don and launching a column toward Moscow.

Sure, tensions between the Wagner Group and the Russian Ministry of Defence were growing for quite a while, but I can't imagine many expected that'd lead to Wagner troops strapping their armored vehicles to transporters and making a thunder run toward the Russian capital with the mercenaries shooting down multiple Russian aircrafts along the way. Over the course of 24 hours, we were treated to a former criminal turned caterer turned mercenary moving into Rostov-on-Don, making it the largest city occupied by Russian forces since the start of the invasion of Ukraine. And then, just like that, it was all over. The Wagner column turned back. Troops in Rostov-on-Don took selfies with onlookers in the city and then headed back to their barracks. What on earth had just happened?

Some focus on the idea that somehow this whole thing was staged. That this looked like such an abysmal, chaotic train-wreck of an event that it simply has to involve some high-end chess going on behind the scenes. Indeed, conspiracy theories tend to grow out of the idea that there must be a reason behind everything we see around us and that governments must be led by strategic geniuses. As such, anything that we see as stupidity, or incompetence, or random chance *must* be just another act in that chess match. I think, however, that anyone who has worked in any organization, public or private, will know that sometimes stupid is just stupid.

While we can probably never completely disprove the various conspiracy theories that surfaced, I am comfortable accepting that "I don't know" is always an acceptable state of being after such dramatic events. I tend to focus less on speculating on the why and what it all meant. Rather, I choose to focus on what I could observe during this mutiny, or coup, or whatever this was.

First was the shocking apathy of the Russian military and security services in response to the uprising. While decisive action was being claimed by the Kremlin, images and videos were surfacing of units simply watching Wagner troops rolling by. A column marching exposed on a highway toward your capital can certainly be slowed down – we saw that in Ukraine. Instead, we heard of Kadirov's troops being stuck in a traffic jam and thus not being able to fight.

More important for me was the indifference seen on the side of the Russian civilian population. As Putin was giving a speech explaining this was an act of treason, we were treated to images of large crowds in Rostov-on-Don casually watching the mercenaries as if gathered for a sporting event, taking selfies with the traitors. Compare this to the images at Ataturk airport a few years back where ordinary civilians laid themselves down in front of tanks to block their movement. Not to mention Russian political elites who were visibility in no rush to condemn Wagner's actions ¬– rather seemed preoccupied being anywhere other than in Moscow until the debacle rolled over.

I don't believe this spectacle – as enjoyable as it may have been – will have a real impact on the war in Ukraine. Indeed, most commentators have been stressing how even during the occupation of Rostov-on-Dom, an emphasis was placed on not disrupting relevant military operations (odd as that might sound). I do like to believe that it illustrates something I've long suspected – and knew to some extent: while Putin's popularity is certainly strong among the general population, the drive to pick up arms on his and his regime's behalf – even for a cue turned circus – seems lackluster. One can only hope this will translate into the war in Ukraine ceasing sooner rather than later. ■

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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: THE FIRST (?) VICTIM

By Istvan Szatmary, Managing Partner, Oppenheim

Not even half a year has passed since ChatGPT's AI-supported chatbot started its public career in the online space and we have already heard of the first (?) lawyer who got in trouble in court for using AI to do background research. For those who missed the story, the chatbot "created" some fake case law examples, and upon several follow-up questions, the AI even confirmed that the cases were real. The references to these cases were then submitted to a US court where it quickly became clear that the cases never existed. Apart from the procedural problems this caused for the lawyer involved, this was an eye-opener for many in the legal industry.

The story sheds light on important takeaways for those of us in the legal industry who already use AI and other legal tech tools as part of our daily routine, as well as for those who do not (but who – I think – surely will). If you think this can only happen in the US, and CEE is far from the US, then never forget that on the information highway, there are no longer any geographical barriers. Novel technology will become part of our everyday routine around the globe faster than we could have ever imagined. AI is here and everywhere, no matter if you are already aware of it or simply opted to deny its existence. So, what lessons can we learn from this story here in CEE? I think many, but let me focus on some key consequences that can have a substantial impact on our daily routine.

Maybe not the most obvious conclusion, but still, for me, one of the most important messages is that we should not be afraid of either AI as a whole or using AI in particular. This may sound weird in light of what happened in the courtroom in New York, but as a competition lawyer, I have already learned that two independent sources are needed for evidence to play a role in an investigation, so no one should ever trust information deriving from one source only. And if you ask AI to confirm whether it was right, the source of confirmation for the question will still be the AI itself. We should only rely on AI if we are aware of its limits and we are able to verify what it tells us. But that does not mean that we should not use AI-based legal tech.

My other observation is that AI is not omnipotent and I am convinced it will never be. In the legal industry – luckily – we will never exclude the human factor. The role of the human factor will, however, be completely different from the current roles of lawyers in counseling. I think we will go through a process similar to the way photography changed. With smartphones, everybody can take relatively acceptable photos for everyday use or for family albums – you no longer need to go to a photographer's studio to take a family photo. However, if you need pictures for your website, you will hire a professional photographer – and if they are really good, you will pay much more than ever before. Similar to photography, the human factor in the legal profession will definitely be the most prestigious element in high-profile, cutting-edge counseling but can surely be replaced by AI solutions in commodity work.

And what does all that tell us about the legal services industry in CEE? I think the answers here are not different from those in the rest of the world: you need to take an agile approach; you need to adapt quickly and to be able to do so you need to be flexible and resilient. No matter if you are a local subsidiary of a global firm or if you are a local boutique practice, the playing field is the same and you cannot spare preparing yourself for the drastic changes that legal tech will bring about. We can already see some very inspiring examples of this preparation process, in particular in the Baltic region, and it is for me personally very inspiring to take part in such initiatives as practice management software development with tailor-made tools optimized for up-to-date law firm operations.

And, last but not least, to avoid becoming the next victim of AI, use your human instincts, experience, and critical approach. After all, this is what makes us different from machines. ■

TABLE OF CONTENTS

PRELIMINARY MATTERS
- 3 Editorial: What Just Happened?
- 4 Guest Editorial: The First (?) Victim

ACROSS THE WIRE
- 6 Across The Wire: Deals and Cases
- 14 On the Move: New Homes and Friends

LEGAL MATTERS
- 18 The Buzz
  - 18 Positive Poland: A Buzz Interview with Agnieszka Janicka of Clifford Chance
  - 19 The Legislative Push in the Czech Republic: A Buzz Interview with Josef Donat of Rowan Legal
  - 20 Optimism in Moldova, Finally: A Buzz Interview with Iulian Pasatii of Gladei & Partners
  - 21 Infrastructure, Energy, and Investments Fortify North Macedonia: A Buzz Interview with Veton Qoku of Karanovic & Partners
  - 22 Lithuania Stands as One: A Buzz Interview with Justinas Jarusevicius of Motieka & Audzevicius
  - 24 Two Steps Forward, One Step Back in Bosnia & Herzegovina: A Buzz Interview with Nikolina Bajic of BDK Advokati
  - 25 Hungary's Transactional Slowdown: A Buzz Interview with Andras Posztl of DLA Piper Hungary
  - 26 Fast-Paced Developments and Lagging Legislation in Slovakia: A Buzz Interview with Annamaria Tothova of Eversheds Sutherland
  - 28 Montenegro's Lawyers Are Never Bored: A Buzz Interview with Nemanja Radovic of Komnenic & Partners
  - 29 Packed Docket for Bulgaria's Parliament: A Buzz Interview with Zvezdelina Filova of Deloitte Legal
  - 30 Anti-Aggression Measures Ramping Up in Ukraine: A Buzz Interview with Artem Sokurov of Sytnyk & Partners
  - 31 Tough Questions for Austria's M&A Market: A Buzz Interview with Bernd Taucher of Graf Patsch Taucher
- 32 The Debrief: July 2023
- 34 Compliance and the In-House Legal Function
- 36 The Corner Office: Partnership Tracks
- 40 Go (Safe) Big or Go Home: PE in CEE
- 42 Sharing Wisdom Is Caring: Eversheds Sutherland's Customized In-House Trainings

MARKET SPOTLIGHT: SERBIA
- 45 Activity Overview: Serbia
- 46 Healthcare in Serbia: From Public to Private
- 48 The Ops Partner: Gecic Law's Head of Operations Hristina Kosec Makes Partner
- 50 Market Snapshot: Serbia
  - 50 Rethinking the Role and Power of Class Actions in Serbia
  - 51 What Do the Changes to the Law on Planning and Construction Actually Bring?
  - 52 Trends on Serbian Banking and Finance Market – What to Expect?
  - 53 Dealing with Fixed Price Adjustments in Infrastructure Projects – A Serbian Legal Perspective
- 54 Know Your Lawyer: Mark Harrison of Harrisons

MARKET SPOTLIGHT: GREECE
- 57 Activity Overview: Greece
- 58 Modern Powerhouse: Greek Renewable Energy Market
- 60 Market Snapshot: Greece
  - 60 The Aegean – The Heavy Seas that Real Estate Investors Must Navigate
  - 61 Reformations for Transformations
- 62 Know Your Lawyer: Mika Lalaouni of Drakopoulos

EXPERTS REVIEW
- 64 Competition in CEE

ACROSS THE WIRE: DEALS AND CASES

Date Covered	Firms Involved	Deal/Litigation	Value	Country
16-May	Wolf Theiss	Wolf Theiss advised hospitality sector software provider Hospitality Software Solutions on its acquisition of SiTec.	N/A	Austria
17-May	Act Legal (WMWP); Brandl Talos	Brandl Talos advised Creandum on its USD 20 million investment in Prewave. Act Legal WMWP advised Prewave.	USD 20 million	Austria
17-May	Brandl Talos	Brandl Talos advised European climate technology-focused fund Climentum Capital on leading a EUR 4.5 million seed investment round for Fermify.	EUR 4.5 million	Austria
19-May	Bird & Bird; Graf Patsch Taucher; KPMG Legal	Graf Patsch Taucher, working with Bird & Bird, advised EFESO Management Consultants on the acquisition of shares in Tsetinis Consulting. KPMG Legal Germany reportedly advised the sellers.	N/A	Austria
22-May	Wolf Theiss	Wolf Theiss, working with Milbank, advised the initial purchasers and lenders on Salzburg-based Benteler Group's capital market debut issuance and loans amounting to over EUR 2 billion.	EUR 2 billion	Austria
23-May	Binder Groesswang; Hule Bachmayr-Heyda Nordberg	Hule Bachmayr-Heyda Nordberg advised Dr. Rinner & Partner on its sale to Assepro Austria. Binder Groesswang reportedly advised Assepro.	N/A	Austria
6-Jun	Binder Groesswang; Cerha Hempel; Cleary Gottlieb Steen & Hamilton	Binder Groesswang, working with Willkie Farr & Gallagher, advised PAI Partners on its acquisition of NovaTaste – formerly the Savory Solutions Group – from International Flavors & Fragrances. Cerha Hempel, working with Cleary Gottlieb, advised the seller.	N/A	Austria
7-Jun	Cerha Hempel	Cerha Hempel advised OMV on the sale of its Avanti-branded service stations in Germany to PKN Orlen Group's Orlen Deutschland. SKW Schwarz advised the PKN Orlen Group.	N/A	Austria
7-Jun	Rautner Attorneys at Law	Rautner Rechtsanwaelte advised Gugelsolar GesmbH and Erste Bank on their construction and financing of the Sonnenfeld Pellendorf agri-photovoltaic system as an addition to the existing Gugelberg wind farm.	N/A	Austria
8-Jun	E+H	E+H advised EcoWind on the sale of the Steinberger Alpe wind farm and the Soboth wind turbine to Kelag in an international bidding process.	N/A	Austria
8-Jun	Taylor Wessing	Taylor Wessing advised wind energy technology company SkySpecs on the acquisition of i4SEE.	N/A	Austria
12-Jun	Herbst Kinsky	Herbst Kinsky advised Lifetree Asset Management – Froots – on its second financing round which saw Gregor Schlierenzauer and Ronald Holzmann join existing investors Georg Kapsch, Andreas Treichl, Gina Goess, and Reinhold Baudisch, with the company raising over one million euros.	EUR 1 million	Austria
17-May	Freshfields; Hogan Lovells; Luther; Nestor Nestor Diculescu Kingston Petersen; Polenak Law Firm; Schoenherr; Selih & Partners	Schoenherr, working with Luther and Hogan Lovells, advised the Cargo-Partner Group Holding on its EUR 1.4 billion sale of Cargo-Partner GmbH and 60 other subsidiaries to Nippon Express Holdings. Freshfields Bruckhaus Deringer, Nestor Nestor Diculescu Kingston Petersen, the Polenak Law Firm, and Selih & Partnerji advised the buyer.	EUR 1.4 billion	Austria; Czech Republic; Hungary; Poland; Romania; Slovakia; Slovenia; Turkey

Date Covered	Firms Involved	Deal/Litigation	Value	Country
17-May	Brauneis; Cerha Hempel; Graf Isola; Illes Geza Marton	Cerha Hempel advised majority shareholder Talents Squared Limited on the sale of a 90% stake in Modul University Vienna to a subsidiary of the Hungarian Mathias Corvinus Collegium. Brauneis reportedly advised Modul minority shareholder Wirtschaftskammer Wien. Illes Geza Marton and Graf Isola reportedly advised the Mathias Corvinus Collegium.	N/A	Austria; Hungary
24-May	Mayr; Wolf Theiss	Wolf Theiss advised Erste Group Bank on WG Projektiranje's sale of the Velenjka shopping center in Velenje, Slovenia, to Velenjka doo. The Ptuj-based Mayr law firm reportedly advised the buyer.	N/A	Austria; Slovenia
23-May	Boyanov&Co	Boyanov & Co advised Swedish manufacturing company Note on its acquisition of Bulgarian electronics manufacturer ATM Electronics.	N/A	Bulgaria
24-May	CMS	CMS Sofia advised Astronergy Solar Bulgaria on receiving a EUR 54 million refinancing for its portfolio of ten operational photovoltaic plants from the recently merged KBC United Bulgarian Bank.	EUR 54 million	Bulgaria
26-May	CMS; Ivanov & Co	CMS advised Astronergy on the acquisition of the Boychinovtsi 60-megawatt photovoltaic project in Bulgaria. Ivanov & Co advised the sellers.	N/A	Bulgaria
9-Jun	CMS	CMS helped Global Biomet obtain a license for a photovoltaic plant in its portfolio – the 100-megawatt AC capacity Aratiden project – before the Bulgarian State Energy and Water Regulatory Commission.	N/A	Bulgaria
13-Jun	Kinstellar; Simpson Thacher & Bartlett; William Fry	Kinstellar, working with William Fry and Simpson Thacher & Bartlett, advised human capital management cloud company UKG on its acquisition of payroll provider Immedis.	N/A	Bulgaria
25-May	BDK Advokati; Boyanov & Co; Heuking Kuhn Luer Wojtek; Hogan Lovells; Hristov Partners; Legal Advisory Group; Spectrum Legal India	Hristov & Partners and the Legal Advisory Group, working with Hogan Lovells, advised Aiopsgroup on its sale to Valantic. BDK Advokati and Boyanov & Co, working with Heuking Kuhn Luer Wojtek and Spectrum Legal India, advised Valantic.	N/A	Bulgaria; Serbia
23-May	Karanovic & Partners (Ilej & Partners)	Ilej & Partners in cooperation with Karanovic & Partners advised the mandated lead arrangers on the restructuring of facilities granted for the Istrian Y motorway concession project.	N/A	Croatia
25-May	Wolf Theiss	Wolf Theiss advised Germany-based logistics specialist Rhenus Group on its acquisition of Croatian logistics provider Trans Integral.	N/A	Croatia
1-Jun	Kovacevic Prpic Simeunovic; Savoric & Partners	Savoric & Partners advised Hrvatski Telekom on its renewable-source virtual power purchase agreement ten-year partnership with Liburana. Kovacevic, Prpic, Simeunovic advised Liburana.	N/A	Croatia
5-Jun	Bradvica Maric Wahl Cesarec; Savoric & Partners	Savoric & Partners advised Biochem Polska on its acquisition of Croatian wholesale medical equipment distributor Kvantum-Tim. Bradvica Maric Wahl Cesarec advised an unidentified private individual on the sale.	N/A	Croatia
12-Jun	Divjak Topic Bahtijarevic & Krka	Divjak, Topic, Bahtijarevic & Krka advised Germany's Possehl Digital on its acquisition of a minority stake in Croatian Osijek-based IT company Mono.	N/A	Croatia
17-May	BDK Advokati; Mamic Peric Reberski Rimac	BDK Advokati advised Integrator majority shareholder Aleksandar Hangiman on the sale of the company to Meritus. Mamic Peric Reberski Rimac advised the Meritus Group on its acquisition of Integrator as the Manpower CEE franchise holder.	N/A	Croatia; Serbia
25-May	Squire Patton Boggs	Squire Patton Boggs successfully represented the Republic of Croatia before an International Center for Settlement of Investment Disputes tribunal against a EUR 200 million claim brought by Marko Mihaljevic.	EUR 200 million	Croatia; Slovakia
16-May	Eversheds Sutherland	Eversheds Sutherland advised Sealed Air Luxembourg on the sale of its stake in Czech Republic-based manufacturer and supplier of packaging materials and solutions Tart.	N/A	Czech Republic
16-May	Eversheds Sutherland	Eversheds Sutherland advised the De Dietrich Group on its acquisition of VPS Chlumec.	N/A	Czech Republic
17-May	Kocian Solc Balastik	Kocian Solc Balastik advised the Avant Financial Group on the EU growth prospectuses for two issuances to finance the group's expansion and development.	N/A	Czech Republic

Date Covered	Firms Involved	Deal/Litigation	Value	Country
18-May	BPV Braun Partners; PRK Partners	BPV Braun Partners advised Creditas company UCED on its investment in the expansion of the Prostejov steam power plant in the Czech Republic. PRK Partners reportedly advised the financing bank.	N/A	Czech Republic
22-May	Clifford Chance	Clifford Chance advised G City Europe – formerly Atrium European Real Estate – on its disposal of the Atrium Palac Pardubice shopping center.	EUR 123.8 million	Czech Republic
23-May	Dunovska & Partners	Dunovska & Partners advised Odyssey 44 on a joint project with the RSBC investment group for the acquisition of administrative real estate in Prague.	N/A	Czech Republic
23-May	Glatzova & Co; Havel & Partners	Glatzova & Co advised Vitkovicke Slevarny on restructuring 16 loans – provided by Ceska Sporitelna, CSOB, Komercni Banka, and UniCredit Bank – amounting to almost CZK 600 million in total. Havel & Partners advised the banks.	CZK 600 million	Czech Republic
23-May	Glatzova & Co	Glatzova & Co successfully represented the Kovosrot Group before the High Court in Prague in a legal dispute over the payment of unjust enrichment for the use of land under a railway siding.	N/A	Czech Republic
26-May	Finreg Partners; Kinstellar	Kinstellar advised the founders of Czech crowdfunding platform Roier on an investment from Jan Blasko and Jiri Wallenfels. Finreg Partners advised the investors.	N/A	Czech Republic
30-May	Reals; Wilsons	Reals advised Fio Financial Group's investment company on Fio Real Estate Fund's EUR 31.3 million acquisition of the Rohan Business Center office building in Prague from Reico CS Nemovitostni. Wilsons advised the seller.	EUR 31.3 million	Czech Republic
1-Jun	Glatzova & Co	Glatzova & Co advised J&T Bank on a CZK 700 million Trigema Real Estate Finance publicly offered senior secured bond issuance.	CZK 700 million	Czech Republic
6-Jun	Glatzova & Co; Novalia	Glatzova & Co advised Pale Fire Capital and Tomas Kacena on their full sale of Extra Online Media to Burda International CZ. Novalia advised Burda International.	N/A	Czech Republic
7-Jun	Weil, Gotshal & Manges; White & Case	White & Case advised the PPF Group on its acquisition of a 15% shareholding in InPost from Advent International for EUR 10 per share. Weil, Gotshal & Manges advised Advent.	N/A	Czech Republic
8-Jun	Wilsons; Wolf Theiss	Wolf Theiss advised the Sekyra Group on its forward sale of the Opatov II residential project to Dostupne Bydleni Ceske Sporitelny and the Vienna Insurance Group's Kooperativa Pojistovna. Wilsons advised both purchasers on the acquisition as well as Komercni Banka as the financing bank.	N/A	Czech Republic
8-Jun	Weinhold Legal	Weinhold Legal successfully represented the City of Kladno before the Czech Republic's Supreme Administrative Court in a dispute regarding the determination of the municipality's contribution to transport services on intercity bus routes.	N/A	Czech Republic
6-Jun	Dentons; Latham & Watkins; Linklaters; White & Case	Dentons advised the shareholders of the Meopta Group on the sale of the company to Carlyle. White & Case and, reportedly, Linklaters and Latham & Watkins advised Carlyle.	N/A	Czech Republic; Hungary
5-Jun	Dentons; White & Case	Dentons advised Komercni Banka and Ceska Sporitelna on a sustainability-linked ESG loan amendment for the 2022 W.A.G. Payment Solutions (Eurowag) multicurrency term and revolving facilities agreement. White & Case advised Eurowag.	N/A	Czech Republic; Poland
23-May	Dentons; Havel & Partners; Taylor Wessing	Taylor Wessing advised Trei Real Estate – a real estate venture of the German Tengelmann Group – on the EUR 250 million sale of its Czech and Slovak real estate portfolio to Plan B Investments. Dentons and, reportedly, Havel & Partners advised Plan B Investments.	EUR 250 million	Czech Republic; Slovakia
16-May	Ellex (Raidla)	Ellex advised Specialist VC and Superangel on their investment in technology company Value.Space, with Linnar Viik and Latvia's BADideas.fund also participating in the EUR 2.1 million round.	EUR 2.1 million	Estonia
17-May	Sorainen	Sorainen advised Northern Horizon Capital on issuing EUR 42 million in Baltic Horizon Fund corporate bonds to refinance outstanding bond debt.	EUR 42 million	Estonia
19-May	Cobalt	Cobalt successfully represented the Republic of Estonia during the judicial proceedings in the VEB Fund case, with the fund having been established 30 years ago to address the issue of banking funds blocked in the Russian Federation.	N/A	Estonia
24-May	Sorainen; Triniti	Triniti advised Utilitas on the joint venture to establish a district heating company with the City of Tallinn. Sorainen reportedly advised the City of Tallinn.	N/A	Estonia
1-Jun	TGS Baltic	TGS Baltic successfully represented the interests of Jetoil before Estonian courts in a dispute related to supplied fuel quality.	N/A	Estonia

Date Covered	Firms Involved	Deal/Litigation	Value	Country
1-Jun	Triniti	Triniti advised the Tallinn water company AS Tallinna Vesi on a EUR 91 million syndicated loan agreement with AS SEB Pank.	EUR 91 million	Estonia
1-Jun	Cobalt	Cobalt advised Change Ventures on launching its EUR 20 million Fund III.	N/A	Estonia
5-Jun	TGS Baltic	TGS Baltic advised Estonian national postal service provider Eesti Post (Omniva) on its acquisition of assets – including a network of smart mailboxes and the related IP rights – from Parcelsea.	N/A	Estonia
14-Jun	Lextal	Lextal advised digital asset platform Blocktrade on the launch of its new BTEX token which raised over EUR 5 million to date.	EUR 5 million	Estonia
15-Jun	Ellex (Raidla)	Ellex advised state-owned Estonian Air Navigation Services on a EUR 13 million loan from the Nordic Investment Bank to improve the efficiency of air navigation services.	EUR 13 million	Estonia
16-May	Cobalt; Sorainen	Sorainen advised BaltCap on its acquisition of a 70% stake in the Hansab Group. Cobalt advised Hansab's majority shareholders on the sale.	N/A	Estonia; Latvia; Lithuania
24-May	Papapolitis & Papapolitis; Souriadakis Tsibris	Souriadakis Tsibris advised the Lappas family on the EUR 18.74 million sale of their stake in KLM S.A. to Intracom Holdings subsidiary Intracom Properties. Papapolitis & Papapolitis advised the buyer.	EUR 18.74 million	Greece
14-Jun	Souriadakis Tsibris	Souriadakis Tsibris advised London-based Ardonagh on its acquisition of a majority stake in the Athens-based Special Risk Solutions Group of Companies.	N/A	Greece
24-May	Schoenherr	Schoenherr advised Nufarm Hungary on the lease for its new office headquarters in the Budapest One Office building from Futureal Prime Properties.	N/A	Hungary
25-May	Clifford Chance; Kinstellar; Lakatos, Koves & Partners; Latham & Watkins	Lakatos Koves & Partners, working with Clifford Chance, advised Hungary's Eximbank Zrt on its USD 1.25 billion offering of 6.125% notes due 2027. Kinstellar, working with Latham & Watkins, advised the joint lead managers.	USD 1.25 billion	Hungary
12-Jun	OPL Gunnercooke; Schoenherr	Schoenherr advised Kinnarps Hungary on leasing its new office and showroom headquarters in the Agora Hub Office from HB Reavis. OPL Gunnercooke advised HB Reavis.	N/A	Hungary
13-Jun	Wolf Theiss	Wolf Theiss advised a group of investors represented by PolSolar on the engineering, procurement, and construction of a 250-megawatt solar power plant in Mezocsat, Hungary.	HUF 90 billion	Hungary
23-May	Skrastins & Dzenis	Skrastins & Dzenis advised Darta on its acquisition of a real estate property in Riga from Gulf RE and Grandlion RE.	N/A	Latvia
30-May	Cobalt; QAP Legal	Cobalt advised the 888 Holding on its sale of two Latvian businesses – Mr. Green Latvia and William Hill Latvia – to Paf Consulting for a total consideration of up to EUR 28.25 million. QAP Legal reportedly advised Paf Consulting.	EUR 28.25 million	Latvia
2-Jun	Cobalt; Ellex (Klavins)	Cobalt advised BaltCap on its acquisition of Senior Baltic from Orpea. Ellex advised the seller.	N/A	Latvia
12-Jun	Cobalt; Walless	Cobalt advised the Linas Agro Group on its acquisition of Grybai LT from Auga. Walless advised Auga.	N/A	Latvia
22-May	Cobalt; Fort	Cobalt advised the Baltic Horizon Fund on its agreement with ECRE IV (Lux) for the full sale of BH Duetto – the owner of the Duetto I and II office buildings in Vilnius, Lithuania. Fort Legal advised the East Capital Real Estate Fund IV on the acquisition.	N/A	Lithuania
30-May	Ellex (Valiunas)	Ellex successfully represented the interests of Litesko in reaching an amicable settlement to a dispute over the Alytus city heating and electricity infrastructure.	N/A	Lithuania
1-Jun	Cobalt	Cobalt advised Baltu Lanku Vadoveliai on its partnership with the Klett group. Reportedly, Sorainen advised the Klett group.	N/A	Lithuania
5-Jun	Borenius; Cobalt	Cobalt advised the Adampolis Group on becoming the official representative of MAN Truck and Bus SE in Finland by acquiring the MAN Truck & Bus Finland business from K-Auto. Finland's Borenius reportedly advised K-Auto on the transaction.	N/A	Lithuania
14-Jun	Ellex (Valiunas); Juridiniai Sprendimai	Ellex advised official Mercedes-Benz representative Veho Lietuva on its acquisition of Lithuanian auto body repair company Auto Bodyshop. The Juridiniai Sprendimai law office advised UAB Vitvela on the sale.	N/A	Lithuania
19-May	Stratulat Albulescu; Taylor Wessing	Stratulat Albulescu, working with Taylor Wessing, advised US-based product engineering provider Encora on its acquisition of Romanian software engineering services provider Softelligence.	N/A	Lithuania; Romania

Date Covered	Firms Involved	Deal/Litigation	Value	Country
26-May	Deloitte Legal; Popovici Nitu Stoica & Asociatii; Triniti (Triniti Jurex)	Deloitte Legal Lithuania and Popovici Nitu Stoica & Asociatii advised Bico Industries on its EUR 3.2 million full acquisition of Iranga Technologijos. Triniti Jurex advised the seller.	EUR 3.2 million	Lithuania; Romania
2-Jun	BDK Advokati; Komnenic	BDK Advokati advised Fortenova and Mercator-CG on their acquisition of the Franca retail business in Montenegro from the Franca family. Komnenic & Associates advised the sellers.	N/A	Montenegro
15-Jun	Harrisons	Harrisons advised the EBRD on its EUR 4 million loan to Montenegrin retailer and supermarket operator Voli for the installation of solar panels and electric vehicle charging stations.	EUR 4 million	Montenegro
16-May	Rymarz Zdort Maruta	Rymarz Zdort Maruta advised Polska Grupa Energetyczna on the formation of PGE PAK Energia Jadrowa – a joint venture of PGE and ZE PAK, each with a 50% shareholding – for the development of Poland's second nuclear power plant to be constructed in Patnow.	N/A	Poland
16-May	WKB Wiercinski Kwiecinski Baehr	WKB Lawyers advised Centrum Rozliczen Elektronicznych Polskie ePlatnosci on its acquisition of a stake in mobile application developer QRTAG.	N/A	Poland
17-May	Brzozowska & Barwinska; Chajec	CDZ Chajec & Partners advised Samito on the sale of its e-commerce optimization organized business part to the Wirtualna Polska Group. Brzozowska & Barwinska reportedly advised Wirtualna Polska.	N/A	Poland
17-May	Greenberg Traurig; Norton Rose Fulbright	Norton Rose Fulbright advised Bank Pekao on its financing for the construction of the 9.6-megawatt Miloslaw wind farm in Palczyn, Poland, sponsored by ZE PAK. Greenberg Traurig reportedly advised the borrower.	N/A	Poland
17-May	Gide Loyrette Nouel; JDP	Gide Warsaw advised B&B Hotels Polska on the facility lease agreement with Aviato and Harvent Capital for the B&B Hotel Kielce Centrum. JDP Drapala & Partners reportedly advised the lessors.	N/A	Poland
17-May	JDP	JDP Drapala & Partners advised the Sanok Rubber Company on its acquisition of ventilated facade and fixing technology service provider BSP Bracket System Polska.	N/A	Poland
18-May	BNT Attorneys; WKB Wiercinski Kwiecinski Baehr	WKB Lawyers advised the KGAL ESPF 5 Holding on establishing its cooperation with Lasuno to develop renewable energy projects in Poland. BNT Attorneys advised Lasuno.	N/A	Poland
19-May	Rymarz Zdort Maruta	Rymarz Zdort Maruta advised the Unilink Group and Enterprise Investors on their sale of the Unilink Group to Acrisure.	N/A	Poland
23-May	Gessel	Gessel advised hospitality meat product supplier Ladros and its shareholders on securing Chefs Culinar as a strategic investor.	N/A	Poland
23-May	Dentons; SSW Pragmatic Solutions	Dentons advised the Steag Group on its sale of SFW Energia to the Remondis Group. SSW Pragmatic Solutions advised Remondis.	N/A	Poland
25-May	DMS Debenedetti Majewski Szczesniak	DeBenedetti Majewski Szczesniak advised Fidera Group company Regera Sarl on its EUR 43 million financing for real estate development companies belonging to Cavatina and Resi Capital.	EUR 43 million	Poland
25-May	Dentons	Dentons advised GoldenPeaks Capital on obtaining financing from BayernLB for two new portfolios of solar farms in Poland.	N/A	Poland
25-May	Clifford Chance; CMS; Eisenberger & Herzog	Clifford Chance advised lenders Santander Bank Polska, Alior Bank, Bank Millennium, Bank Polska Kasa Opieki, and the EBRD on their financing for Gemini Polska. E+H advised Santander Bank Polska. CMS reportedly advised Gemini Polska.	N/A	Poland
26-May	Gide Loyrette Nouel; SSW Pragmatic Solutions	SSW Pragmatic Solutions advised Enterprise Investors on its investment in temperature-controlled logistics provider Goodspeed. Gide advised Goodspeed.	N/A	Poland
31-May	Clifford Chance; Linklaters	Linklaters advised NREP on a PLN 229 million loan from the EBRD, under the EBRD's _Resilience and Livelihoods Framework_, to finance two residential rental projects in Warsaw. Clifford Chance advised the EBRD.	PLN 229 million	Poland
1-Jun	Linklaters; White & Case	White & Case advised Bank Gospodarstwa Krajowego on the issuance of ten-year bonds guaranteed by the State Treasury of the Republic of Poland with a nominal value of USD 1.75 billion and a 5.375% annual coupon. Linklaters reportedly advised the managers.	USD 1.75 billion	Poland
2-Jun	Greenberg Traurig; Norton Rose Fulbright; Pestalozzi Attorneys at Law	Norton Rose Fulbright advised a financial consortium on its PLN 10.5 billion financing for Grupa Polsat Plus entities Cyfrowy Polsat and Polkomtel. Greenberg Traurig advised Grupa Polsat Plus. Pestalozzi reportedly also advised the lenders.	PLN 10.5 billion	Poland

Date Covered	Firms Involved	Deal/Litigation	Value	Country
5-Jun	Dentons; Linklaters	Linklaters advised Polish developer Develia on its acquisition of 19 Polish subsidiaries from French developer Nexity for EUR 100 million. Dentons advised Nexity.	EUR 100 million	Poland
5-Jun	Soltysinski Kawecki & Szlezak; SSW Pragmatic Solutions	SSW Pragmatic Solutions and Soltysinski Kawecki i Szlezak successfully represented the interests of Cinkciarz.pl in its dispute with Currency One regarding the latter's use of the "cinkciarz" and "cinkciarz.pl" keywords in Google Ads.	N/A	Poland
5-Jun	Clifford Chance	Clifford Chance advised documentation and facility agent ABN AMRO Bank and lenders Banco Sabadell, Credit Industriel et Commercial, BNP Paribas, Citi, Commerzbank, and SEB on BDR Thermea Group's EUR 650 million revolving credit facility.	EUR 650 million	Poland
6-Jun	DWF	DWF advised shareholder Gold Town Inv. Limited on the sale of shares in Wittchen via an accelerated book-building process with sole global coordinator and bookrunner Ipopema Securities.	PLN 98 million	Poland
6-Jun	Nikiel Wojcik Noworyta	Nikiel Wojcik Noworyta advised MAN on contracting the construction work for its EUR 200 million investment into the expansion of the Niepolomice truck factory in Poland.	N/A	Poland
7-Jun	Linklaters; Pirozek & Pirozek; Rykowski & Gniewkowski	Linklaters advised LeadCrest Capital Partners on two sale-leaseback investments in Poland – the acquisition of a light industrial and logistics facility from KGL and the acquisition of three retail warehouses from 3W. Reportedly, Rykowski & Gniewkowski advised KGL and Pirozek and Pirozek advised 3W.	N/A	Poland
7-Jun	Dentons	Dentons advised HB Reavis on obtaining additional funds for the Forest office campus in Warsaw. The syndicate of lenders – Santander Bank Polska, BNP Paribas Bank Polska, Bank Pekao, and PKO Bank Polski – increased the existing loan from EUR 162 million to EUR 205 million. DLA Piper reportedly advised the banks.	EUR 205 million	Poland
8-Jun	ITB Legal Bazanski Grabiec; MFW Fialek; Moskwa Jarmul Haladyj i Wspolnicy	MFW Fialek advised the Play Group on the full acquisition of internet, digital TV, and telecommunications company Syrion. MJH Moskwa, Jarmul, Haladyj and ITB Legal Bazanski Grabiec advised the owners and management board of Syrion.	N/A	Poland
8-Jun	Clifford Chance	Clifford Chance successfully represented Mostostal Zabrze in an arbitration dispute before the Court of Arbitration at the International Chamber of Commerce in Paris against Wood Environment & Infrastructure Solutions concerning the construction of the AEGIS Ashore system base in Redzikowo, Poland.	PLN 43.3 million	Poland
8-Jun	JP Weber; White & Case	White & Case advised the Impel Group and minority shareholders on their full sale of digital transformation company SI-Consulting to Deutsche Beteiligungs' IT services company Akquinet. JP Weber advised the buyers.	N/A	Poland
8-Jun	Allen Overy	Allen & Overy advised the Aareal Bank on its EUR 63.5 million loan to the MLP Group for refinancing the construction of the 140,000 square-meter warehouse and production MLP Poznan West project.	EUR 63.5 million	Poland
8-Jun	DLA Piper; DZP Domanski Zakrzewski Palinka; Simmons & Simmons	DLA Piper advised Inter-Turbo's shareholders on their full sale of the company to BBB Industries subsidiary Budweg Caliper. Domanski Zakrzewski Palinka, working with Simmons & Simmons, advised BBB Industries on the acquisition.	N/A	Poland
8-Jun	CMS; Kochanski & Partners; Nagashima Ohno & Tsunematsu	Kochanski & Partners, working with Nagashima Ohno & Tsunematsu, advised the Japan Bank for International Cooperation on securing Bank Gospodarstwa Krajowego's JPY 93 billion issuance of aid bonds for Ukraine. CMS advised BGK on the Japanese market samurai bond issuance.	JPY 93 billion	Poland
14-Jun	Deloitte Legal	Deloitte Legal advised Airex on its execution of a call option for the acquisition of shares in JMB.	N/A	Poland
14-Jun	GFKK Grzybczyk Kaminski Gawlik	Katowice-based GFKK Grzybczyk Kaminski Gawlik advised Alicja Kubicka and Borja Martinez – of the Interplay Architects studio – on striking an agreement with the Polish Investment and Trade Agency for the design of Poland's Pavilion at the EXPO 2025 World Exhibition in Osaka.	N/A	Poland
15-Jun	Clifford Chance	Clifford Chance advised organizer and exclusive dealer Ipopema Securities on Echo Investment's issuance of five-year unsecured bonds with a total value of PLN 140 million.	PLN 140 million	Poland

Date Covered	Firms Involved	Deal/Litigation	Value	Country
16-May	Dentons	Dentons advised arranger, original lender, agent, and security agent Raiffeisen Bank International on a EUR 21.9 million term loan facility for the development of a 31.5-megawatt portfolio of eight photovoltaic power plants in Romania to companies owned and operated by Photon Energy NV.	EUR 21.9 million	Poland; Romania
18-May	SSK&W; Stratulat Albulescu; Ventures-N-Law	SSK&W and Stratulat Albulescu advised venture capital fund CofounderZone and business angels on their investment in Romanian property technology company Milluu. Ventures-n-Law advised Milluu.	N/A	Poland; Romania
24-May	Norton Rose Fulbright; Stratulat Albulescu	Norton Rose Fulbright and Stratulat Albulescu advised the European Investment Bank on a EUR 104 million financing granted to the Maspex Group.	EUR 104 million	Poland; Romania
24-May	Integrites; Ionescu & Sava; Norton Rose Fulbright	Norton Rose Fulbright, Ionescu Sava, and Integrites advised the EBRD on its EUR 42 million senior secured loan for Cersanit to improve its production facilities in Poland and Ukraine.	EUR 42 million	Poland; Romania; Ukraine
15-Jun	B2RLaw	B2RLaw advised UK-based construction equipment supplier CMT Group on the supply contract and the separate donation contract with the Polish Government Agency for Strategic Reserves for humanitarian aid to Ukraine in the form of power generators. The EUR 27 million contract was financed under the EU's Civil Protection Mechanism.	EUR 27 million	Poland; Ukraine
17-May	RTPR	Radu Taracila Padurari Retevoescu advised Evolution Prest Systems – owner of the evomag.ro e-commerce website – on its acquisition of a majority stake in Elefant Online. The same firm advised Elefant minority shareholder Catalyst Romania on the sale of its stake to Evomag.	N/A	Romania
22-May	IPA Legal	Irimie-Pop-Andrei advised European software development company RebelDot on its acquisition of Steepsoft.	N/A	Romania
22-May	Suciu Popa	Suciu Popa advised Econergy International on its acquisition of an 80-megawatt renewable energy project in Romania.	N/A	Romania
25-May	Wolf Theiss	Wolf Theiss advised DTEK Renewables International on the staggered share deal acquisition of a 49.38-megawatt photovoltaic power plant from Finas Invest.	N/A	Romania
30-May	Wolf Theiss	Wolf Theiss advised Banca Comerciala Romana on its EUR 700 million issuance of fixed to floating senior non-preferred green eurobonds due 2027, under a multi-issuer EMTN program.	EUR 700 million	Romania
30-May	Ana Maria Andronic Law Office; RTPR	RTPR advised private equity fund Innova Capital on its acquisition of a majority stake in payment services provider Netopia. The Ana Maria Andronic Law Office reportedly advised Netopia.	N/A	Romania
31-May	Stratulat Albulescu; Tuca Zbarcea & Asociatii	Stratulat Albulescu advised the Walden Group on its acquisition of Alex International Transport 94 from Alexandru Constantinescu. Tuca Zbarcea & Asociatii advised the seller.	N/A	Romania
6-Jun	Dentons	Dentons advised London-based venture capital fund Dawn Capital on leading the USD 35 million Series A round for Flowx.AI joined by Day One Capital, PortfoLion, and SeedBlink.	USD 35 million	Romania
13-Jun	Musat & Asociatii	Musat & Asociatii advised Magna International Inc. on its acquisition of Veoneer's active safety business from private equity firm SSW Partners.	N/A	Romania
15-Jun	Schoenherr	Schoenherr advised BlackPeak Capital portfolio company euShipments.com on its acquisition of a majority stake in Romanian e-fulfillment provider Helpship.	N/A	Romania
16-May	Stratulat Albulescu; Vasil Kisil & Partners	Vasil Kisil & Partners and Stratulat Albulescu advised the Avrora Group on entering the Romanian market.	N/A	Romania; Ukraine
30-May	APLegal	AP Legal advised Raiffeisen Banka Beograd on its merger with RBA Banka Novi Sad and on the merger of CA Leasing Srbija into Raiffeisen Leasing.	N/A	Serbia
31-May	APLegal	AP Legal advised the Serbian Export Credit and Insurance Agency on the sale of an NPL portfolio to EOS Matrix.	N/A	Serbia
31-May	APLegal; Isailovic & Partners	AP Legal advised UniCredit Bank Srbija on its loan to Marera Properties member MPP Palata Beograd. Isailovic & Partners reportedly advised Marera Properties.	N/A	Serbia
6-Jun	Zivkovic Samardzic	Zivkovic Samardzic successfully defended the Crime and Corruption Reporting Network (KRIK) on appeal in a case filed by Serbia's Minister of Internal Affairs – and former Director of the country's Security Information Agency – Bratislav Gasic.	N/A	Serbia
26-May	Cytowski & Partners	Cytowski & Partners advised both South Central Ventures and Serbia's HireApp on their USD 1.5 million seed financing agreement.	USD 1.5 million	Serbia; Slovenia
23-May	Kinstellar; Winston & Strawn	Kinstellar, working with Winston & Strawn, advised Tempo Software on its agreement to acquire Old Street Solutions brand operator Amovos.	N/A	Slovakia

Date Covered	Firms Involved	Deal/Litigation	Value	Country
15-Jun	Premrl Law Office; Selih & Partners	Selih & Partnerji advised Nova KBM on its sale of the Tabor II shopping center in Maribor, Slovenia, to Boscarol d.o.o. through an auction process. The Premrl Law Office advised the acquiring company and its shareholder, Ivo Boscarol, on the acquisition.	N/A	Slovenia
16-May	Dentons (BASEAK)	Dentons Turkish affiliate Balcioglu Selcuk Ardiyok Keki Attorney Partnership advised APY Ventures' Bilisim Vadisi Venture Capital Fund and Ostim Venture Capital Fund on their investment in Buyutech.	N/A	Turkey
17-May	Aksan	The Aksan Law Firm advised APY Ventures on its investment in Turkish autonomous robot developer Saha Robotik.	N/A	Turkey
22-May	Paksoy	Paksoy advised the EBRD on its USD 110 million loan to Enerjisa Uretim.	USD 110 million	Turkey
24-May	Aksan	The Aksan Law Firm advised portfolio manager Maxis and venture capital fund Founder One on their investment in Istanbul-based online education company Argedu.	N/A	Turkey
30-May	Aksan	The Aksan Law Firm advised Simya VC on its investment in Werover, in a USD 400,000 round that also included angel investors Semiramis Kulak and Arman Koklu.	USD 400,000	Turkey
6-Jun	Dentons (Baseak)	Dentons Turkish affiliate Balcioglu Selcuk Ardiyok Keki Attorney Partnership advised Revo Capital on its investment in FileOrbis.	N/A	Turkey
14-Jun	Bagzibagli Erdem & Sahin; Kilinc Law & Consulting; Turunc	Bagzibagli Erdem & Sahin advised Octovan Mobil Teknoloji on its financing round with Vinci Venture Capital, Arz Portfoy, and several private investors. Kilinc Law & Consulting advised Arz Portfoy on its convertible loan and capital increase investment. Turunc advised Vinci on its follow-on investment in Octovan.	USD 8 million	Turkey
15-Jun	Aksan	The Aksan Law Firm advised APY Ventures on leading an investment round into Ankara-based autonomous mobile robot company Milvus Robotics.	N/A	Turkey
22-May	Kinstellar	Kinstellar advised Rheinmetall on executing a cooperation agreement with Ukrainian state-owned defense industry concern Ukroboronprom.	N/A	Ukraine
23-May	Sayenko Kharenko	Sayenko Kharenko advised the European Bank for Reconstruction and Development on a EUR 10.6 million loan to Khmelnytskyi Communal Enterprise Electrotrans under the EBRD's _Green Cities_ program.	EUR 10.6 million	Ukraine
26-May	Avellum; Freshfields; Latham & Watkins	Avellum, working with Freshfields Bruckhaus Deringer, advised Aristocrat on its USD 1.2 billion acquisition of NeoGames. Latham & Watkins advised NeoGames.	USD 1.2 billion	Ukraine
31-May	Asters	Asters successfully defended the interests of the Home Box Office company in a dispute before Ukrainian courts regarding the production and distribution of its _Chornobyl_ limited series in the country.	N/A	Ukraine
1-Jun	Ilyashev & Partners	Ilyashev & Partners provided pro bono legal support to the family of a fallen Ukraine's Armed Forces soldier in receiving UAH 15 million in financial compensation.	UAH 15 million	Ukraine
5-Jun	Aequo; CMS	CMS advised the European Bank for Reconstruction and Development on its acquisition of a 35% stake in the Lviv M10 industrial park project in Western Ukraine, developed by Dragon Capital. Aequo reportedly advised Dragon Capital.	USD 24.5 million	Ukraine

Deals and Cases:

■ Full information available at:
www.ceelegalmatters.com
■ Period Covered:
May 16, 2023 - June 15, 2023

Did We Miss Something?

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

ON THE MOVE: NEW HOMES AND FRIENDS

Czech Republic, Hungary, Poland, Slovakia, Turkey: Allen & Overy and Shearman & Sterling Announce Merger to Create Allen Overy Shearman Sterling

By Radu Cotarcea (May 23, 2023)

On May 21, 2023, Allen & Overy and Shearman & Sterling announced they are merging into a fully integrated firm: Allen Overy Shearman Sterling – A&O Shearman for short.

Globally, A&O Shearman will have approximately 3,900 lawyers and approximately 800 Partners across 49 offices. In CEE, A&O is the only one present with offices in the Czech Republic, Hungary, Poland, Slovakia, and Turkey (through its association with Gedik & Eraksoy). The firm also had a presence in Romania (through its association with RTPR, which ceased in March 2020) and in Russia (with the office winding down following Russia's invasion of Ukraine).

"This combination of two great firms is such an exciting step for us," Allen & Overy Senior Partner Wim Dejonghe commented. "Both firms have a history of excellence, and together we think A&O Shearman will be a firm unlike any other in the world.

"Client need for global elite firms has never been greater," Shearman & Sterling Senior Partner Adam Hakki added. "They are calling for integrated global legal solutions and advice: merging with Allen & Overy will dramatically accelerate our ability to meet their needs in an increasingly complex environment."

Simpson Thacher & Bartlett is advising Allen & Overy and Davis Polk & Wardwell is advising Shearman & Sterling on the merger. ■

Austria: Fieldfisher Opens Office in Vienna

By Radu Cotarcea (June 2, 2023)

Fieldfisher opened an office in Vienna on June 1 with former SCWP Schindhelm Partners and by integrating Meissner & Passin.

The new office will be led by Thomas Ruhm. Specializing in corporate/M&A, corporate finance, private equity, and capital markets, he joined from SCWP where he had worked since 2014.

Also joining from SCWP as a Partner, Philipp Reinisch specializes in TMT/data protection. Reinisch first joined SCWP in 2016 and made Partner at his previous firm in 2021. Prior to that, he worked for the Austrian Federal Computing Centre as a Legal Counsel, DPO between 2013 and 2015.

Leonhard Reis, who had been working as a sole practitioner since 2013, joined the new office as a Partner and Head of Real Estate in Austria.

The new office is also incorporating boutique law firm Meissner & Passin, which was established in 2021 (as reported by CEE Legal Matters on December 24, 2020). Specializing in international arbitration and corporate/M&A, Alice Meissner joined Fieldfisher as a Partner while Bernhard Passin joined the firm as a Director.

"We see Vienna as a strong commercial center in Europe and a gateway to Central & Eastern Europe and the Commonwealth of Independent States (CIS) regions," Fieldfisher Managing Partner Robert Shooter commented.

"We are thrilled to be opening the newest office of one of Europe's leading law firms," Ruhm added. "I am proud to be launching Fieldfisher Austria with such a strong team, drawn from some of Austria's most respected law firms and wider legal and business backgrounds." ■

Austria: SHB Law Office Simon Harald Baier Opens Doors in Vienna

By Radu Neag (June 7, 2023)

Former PwC Legal Attorney at Law Simon Baier has launched the eponymous SHB Law Office Simon Harald Baier.

SHB will focus on "business law, international trade, contracts, and proceedings" and also specializes "in both commercial aviation and national/European aviation regulation and supervision" as well as having "expertise in EU-Korea trade and legal advice in the Austria-Korea business nexus."

Eunyoung Yang, the former Financial Planning and Analysis Manager of Kompany, a Moody's Analytics Company, joined the new firm as a Business Advisor.

Before setting up his new firm, Baier spent two years with PwC Legal Austria as an Attorney at Law. Earlier, he spent another two as Head of the National Authority for Air Traffic Controller Licensing and a Regulation & Compliance Manager with Austro Control. Before that, he spent six years with Austrian Airlines AG between 2013 and 2019, first as a Senior Legal Counsel and then as Director of Legal Services. He started his career with Gugerbauer & Partner in 2005 and left the firm in 2012, while also spending one year as Head of the European Desk for AJU Kim Chang & Lee in Seoul, between 2008 and 2009.

"Together with my team and based on my many years of experience both in management positions at international companies and as a business lawyer, I look forward to accompanying our clients on their path to success with efficient and tailored advice at the highest level," Baier commented. ■

Croatia: Queritius Opens Zagreb Office with Dalibor Valincic Joining as Partner

By Andrija Djonovic (June 14, 2023)

Queritius is opening a new office in Zagreb, with Dalibor Valincic having joined the firm as a Partner on June 1, 2023.

Dispute resolution boutique Queritius opened its doors in Warsaw in 2020 (as reported by CEE Legal Matters on September 8, 2020) and expanded to Budapest the same year (as reported on November 24, 2020). It opened a new office in Kyiv in 2022 (as reported by CEE Legal Matters on May 26, 2022) and is now expanding to Zagreb.

According to the firm, Valincic has over "15 years of diverse dispute experience with a strong focus on investment and commercial arbitration and sectors including oil and gas, construction, the food industry, and distribution." Prior to joining Queritius, Valincic spent over 15 years with Wolf Theiss, having started in 2008 and leaving as a Partner. During that time, he was also a Visiting International Advisor with Dechert in Washington DC, in 2018.

"With Dalibor's arrival, we are taking another important step towards developing Queritius into a Central Eastern European disputes powerhouse," Queritius Budapest Partner Daniel Dozsa commented. "We have known Dalibor for over a decade and are absolutely delighted to welcome him as our new Partner in Zagreb." ■

PARTNER APPOINTMENTS

Date	Name	Practice(s)	Firm	Country
19-May	Martin Dohnal	Corporate/M&A; Labor; Litigation/Disputes; Real Estate	CEE Attorneys	Czech Republic
2-Jun	Abigel Sill	Corporate/M&A; Logistics/Transportation; Labor; Data Protection	KNP Law	Hungary
26-May	Monika Mackowska-Morytz	TMT/IP; Data Protection	Kochanski & Partners	Poland
15-Jun	Branko Jankovic	Corporate/M&A; Life Sciences	NKO Partners	Serbia
30-May	Dogukan Berk Aksoy	TMT/IP; Corporate/M&A; Litigation/Disputes	Yetkin Attorneys at Law	Turkey
30-May	Ece Alkan	Corporate/M&A; Litigation/Disputes; Labor	Yetkin Attorneys at Law	Turkey
25-May	Kateryna Tsvetkova	Litigation/Disputes; Labor	GoLaw	Ukraine
25-May	Oleksandr Melnyk	Corporate/M&A; Banking/Finance	GoLaw	Ukraine

PARTNER MOVES

Date	Name	Practice(s)	Moving From	Moving To	Country
2-Jun	Thomas Ruhm	Corporate/M&A; Private Equity; Capital Markets	SCWP Schindhelm	Fieldfisher	Austria
2-Jun	Philipp Reinisch	TMT/IP; Data Protection	SCWP Schindhelm	Fieldfisher	Austria
2-Jun	Leonhard Reis	Real Estate	Leonhard Reis Law Office	Fieldfisher	Austria
2-Jun	Alice Meissner	Litigation/Disputes; Corporate/M&A	Meissner & Passin	Fieldfisher	Austria
7-Jun	Simon Harald Baier	Corporate/M&A	PwC Legal	SHB Law Office Simon Harald Baier	Austria
14-Jun	Dalibor Valincic	Litigation/Disputes	Wolf Theiss	Queritius	Croatia
8-Jun	Tomas Scerba	TMT/IP; Competition; Energy/Natural Resources	White & Case	DLA Piper	Czech Republic
8-Jun	Michal Hink	Real Estate	Dentons	DLA Piper	Czech Republic
6-Jun	Lauras Butkevicius	Competition	APB EY Law	Ellex	Lithuania
26-May	Dariusz Dobkowski	Banking/Finance; Corporate/M&A	KPMG Law	Kochanski & Partners	Poland
26-May	Marek Krol	Banking/Finance	KPMG Law	Kochanski & Partners	Poland
30-May	Diana Chitea	Litigation/Disputes	Chitea Marilena-Diana Law Office	Simion & Baciu	Romania
16-May	Omer Erdogan	Banking/Finance; Real Estate	Guner Law Office	Kinstellar	Turkey
14-Jun	Cigdem Gizem	Corporate/M&A; TMT/IP	ELIG Gurkaynak	Gunay Erdogan Attorneys at Law	Turkey

IN-HOUSE MOVES AND APPOINTMENTS

Date	Name	Moving From	Company/Firm	Country
6-Jun	Marcela Kanova	IBM	Rowan Legal	Czech Republic
30-May	Nazli Tonuk Capan	HSBC	Sadik & Capan	Turkey
1-Jun	Cansu Telli	YK Legal	SST Technology	Turkey

OTHER APPOINTMENTS

Date	Name	Firm	Appointed To	Country
23-May	Dominik Zimm	DSC Doralt Seist Csoklich	Equity Partner	Austria
23-May	Robert Nespurek	Havel & Partners	Head of H&P Patents	Czech Republic
23-May	Ivan Rames	Havel & Partners	Head of H&P Patents	Czech Republic
19-May	Ksenia Kravtsenko	Lextal	Partner (from Associate Partner)	Estonia
17-May	Agnieszka Kulinska	Dentons	Head of Energy and Natural Resources	Poland
17-May	Christian Schnell	Dentons	Head of Europe Energy	Poland
17-May	Andrzej Zajac	B2RLaw	Head of Energy & Real Estate	Poland
26-May	Markiyan Malskyy	Kochanski & Partners	Equity Partner	Poland
26-May	Karol Polosak	Kochanski & Partners	Equity Partner	Poland
26-May	Piotr Kochanski	Kochanski & Partners	Head of Technology Practice	Poland
30-May	Piotr Nerwinski	Dentons	Co-Head of Banking and Finance	Poland
30-May	Bartosz Nojek	Dentons	Co-Head of Banking and Finance	Poland
30-May	Mateusz Toczyski	Dentons	Global Co-Chair of the Dentons Banking and Finance	Poland
5-Jun	Mirella Lechna-Marchewka	Wardynski & Partners	Managing Partner	Poland
25-May	Viktoriia Bublichenko	GoLaw	Head of the Tax, Restructuring, Claims, and Recoveries	Ukraine

On The Move:

■ Full information available at:
www.ceelegalmatters.com
■ Period Covered:
May 16, 2023 - June 15, 2023

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THE BUZZ

In The Buzz we check in on experts on the legal industry across CEE for updates about developments of significance. Because the interviews are carried out and published on the CEE Legal Matters website on a rolling basis, we've marked the dates on which the interviews were originally published.

Positive Poland: A Buzz Interview with Agnieszka Janicka of Clifford Chance

By Teona Gelashvili (May 26, 2023)

Despite a potential recession and high-interest rates, the overall outlook for the Polish market remains optimistic, with robust M&A activity in sectors such as IT, infrastructure, renewable energy, and gaming, according to Clifford Chance Office Managing Partner Agnieszka Janicka.

Compared to some other European markets, we have a fairly optimistic outlook on the Polish market. Despite experiencing a decrease in private equity activity this year, Poland has demonstrated some resilience.

"M&A activity is a frequent subject of discussion among lawyers in Poland. There is a concern over the question of whether it will maintain its current level or experience a slowdown," Janicka begins. "There are multiple aspects to consider: the potential impact of a recession, worries over how higher interest rates may affect financing for these transactions, as well as the ongoing conflict in Ukraine."

Despite those concerns, it would seem the overall outlook in Poland is positive. "Compared to some other European markets, we have a fairly optimistic outlook on the Polish market," Janicka continues. "Despite experiencing a decrease in private equity activity this year, Poland has demonstrated some resilience," she highlights. "Overall, M&A activity remains robust, and financing options for transactions remain accessible. The market is busy and highly transactional, with M&A activity maintaining its strength in comparison to other markets," she sums up.

And Janicka highlights that certain sectors show exceptional resilience. "The IT sector and companies, in general, which rely more on technology and intellectual property than physical assets, are among the most active sectors," she notes. "Additionally, infrastructure, including the plans for the development of a large central airport in Poland, and energy, particularly nuclear and renewable, are areas of significant activity. And other sectors such as gaming are also currently popular."

Considering those sectors that are doing less well, Janicka believes the country is still well positioned, with its banking sector being relatively secure and restructurings still a way off. "While some sectors are not performing satisfactorily, we have yet to see any signs of significant restructuring," Janicka says. "Despite the banking sector experiencing a lot of turbulence, it does not necessarily mean that our banking sector is at risk. Although no one can be certain after the Credit Suisse case, overall, our banking sector remains relatively secure," she notes.

"We are fairly optimistic about the development of the market, and there is a general expectation that the transactional activity will increase towards the end of this year," Janicka concludes. ■

The Legislative Push in the Czech Republic: A Buzz Interview with Josef Donat of Rowan Legal

By Teona Gelashvili (May 30, 2023)

The legal environment in the Czech Republic is currently undergoing significant changes, primarily focusing on the implementation of the NIS2 cybersecurity Directive, whistleblowing legislation, tax reform, and class actions, according to Rowan Legal Partner Josef Donat.

"The implementation of the *NIS2 cybersecurity Directive* has sparked extensive discussions," Donat notes. "The regulator for cybersecurity has published the first draft of the resolution, according to which the transition from *NIS1* to the new act will significantly increase the number of governed entities from 500 to 6,000, creating a vast market with new obligations and compliance requirements. As a result," he notes, "we anticipate a lot of work and new clients in the coming 12 to 18 months."

"The implementation of whistleblowing measures has been slightly delayed, but a new law is expected to come into effect in August," Donat continues. "With the law nearing implementation, clients are now becoming aware of their obligations and are keen to establish comprehensive whistleblowing systems within their companies."

"In addition, there is a significant tax reform underway, which holds great importance from a legal standpoint," Donat adds. "The introduction of new legislation, encompassing a substantial amount of content, is expected. These changes include various tax increases and decreases, which will have implications for businesses and individuals," he says.

Furthermore, Donat emphasizes that there is anticipation surrounding the finalization of regulations on class actions: "As of now, the details are not yet finalized, and the legal community eagerly awaits the official version, including crucial aspects such as the opt-in and opt-out decision. This development has the potential to significantly impact how disputes are handled and resolved by lawyers. The final wording, as determined by the Ministry of Justice, will definitely be of interest to legal professionals in the field."

The regulator for cybersecurity has published the first draft of the resolution, according to which the transition from NIS1 to the new act will significantly increase the number of governed entities from 500 to 6,000, creating a vast market with new obligations and compliance requirements. As a result, we anticipate a lot of work and new clients in the coming 12 to 18 months.

Another major talking point in the Czech Republic is the impact of AI, specifically ChatGPT, on legal services. "Recently, the bar expressed concern regarding the use of ChatGPT, and AI tools in general, for providing legal services," Donat points out. "The discussions are expected to continue for several weeks as there are concerns about the potential issues surrounding its daily use by some colleagues, particularly in meeting the necessary requirements." He explains "there are concerns that the majority of AI tools currently available may not comply with bar regulations, especially concerning confidentiality. However, it is interesting to see how things will unfold and how the regulations in this area will develop."

Finally, Donat points out "the Czech Data Protection Authority has imposed the highest fine ever recorded, amounting to EUR 13.7 million, which is one of the 20 highest GDPR fines ever imposed by EU authorities. The recipient of this substantial penalty is Avast, a company that merged with Norton a few years ago." He highlights that "Avast was found guilty of selling customer data to third parties, a significant issue in the Czech Republic. The magnitude of the fine has shocked everyone, as there is no precedent for such a substantial penalty in our country," he notes. "Even though this is a first-instance decision that was appealed, it is our hope that companies will become more cognizant of the importance of data protection in light of this high-profile incident." ■

Optimism in Moldova, Finally: A Buzz Interview with Iulian Pasatii of Gladei & Partners

By Andrija Djonovic (June 8, 2023)

There is much optimism in Moldova, following the country being awarded EU candidate status, the adoption of a comprehensive digitalization package, and the investments in IT and energy driving the economy forward, according to Gladei & Partners Partner Iulian Pasatii.

Previously, many businesses have expressed concerns over the fact that Moldova had not fully harmonized with the GDPR, a crucial data protection framework. However, with the package in place, we are finally fully aligned. Businesses can finally rest assured knowing that, for example, data processors and subprocessors are treated uniformly in Moldova and the EU. With this gap finally being bridged, we are ready to take the next step in our economic development.

"The recent European Political Community Summit is keeping everyone abuzz," Pasatii begins. "With Moldova finally getting a candidate status, the entire country is feeling a strong pro-EU vibe. This has resonated with the markets as well, and we have seen a stunning increase of investor interest and appetite flowing into Moldova." According to him, "swaths of interesting M&A projects are in the pipeline across all sectors which only spells excitement for the future."

Moreover, Pasatii reports that the country has recently seen its parliament adopt the "*Digitalization 2.0* package, a comprehensive all-out reform that seeks to push Moldova into its next evolutionary stage by overhauling a dozen legislative acts and laws. The package primarily aims to improve the legal framework from a purely digital perspective, introducing many improvements to the e-commerce, digital filings, and data protection fields," Pasatii outlines. "Right now, it is possible to set up a company in Moldova without ever having to set foot in it," he says, quickly adding that "this, of course, should not be a reason not to visit – it really is a beautiful country!"

Additionally, the *Digitalization 2.0* package has, as Pasatii puts it, finally harmonized the Moldovan legal framework to that of the EU when it comes to an important area – the GDPR, particularly from the data processors' angle. "Previously, many businesses have expressed concerns over the fact that Moldova had not fully harmonized with the GDPR, a crucial data protection framework. However, with the package in place, we are finally fully aligned," he says. "Businesses can finally rest assured knowing that, for example, data processors and subprocessors are treated uniformly in Moldova and the EU. With this gap finally being bridged, we are ready to take the next step in our economic development," Pasatii explains. "Following the pandemic and the war in Ukraine, the economy has taken a bit of a downturn, but things are finally looking up."

Still, Pasatii does stress that the reverberations of the pandemic are still being felt. "Some of the pandemic-induced hardships are still around – and the economy feels it – but the most important thing here is that there is optimism, finally," he shares. "We are on a strong growth pattern and, with the ever-growing number of helpful investments and grants from the country's institutional partners, there is reason to remain hopeful."

Finally, Pasatii shares his take on the main business sectors that are driving this market optimism forward. "Aside from the traditionally strong performing sectors – real estate and agriculture – we have recently witnessed a strong uptick in activity in the IT sector as well as the energy sector," he says. "Many tech companies have started setting up local subsidiaries and representative offices in Moldova recently, and the effects are being felt almost daily. Also, the energy sector has been pretty fruitful lately – following the energy crisis of last year, things are finally looking up and there are quite a few investments that stand to revamp the landscape," Pasatii concludes. ■

Infrastructure, Energy, and Investments Fortify North Macedonia: A Buzz Interview with Veton Qoku of Karanovic & Partners

By Teona Gelashvili (June 8, 2023)

A significant number of landmark energy and infrastructure projects are currently materializing in North Macedonia, with foreign direct investment interest constantly growing as well, according to Veton Qoku, Partner and Attorney-at-Law in cooperation with Karanovic & Partners.

"With elections coming up next year, we have an interesting period ahead in North Macedonia," Qoku begins. "The business sector, however, remains vibrant with numerous ongoing energy, infrastructure, and FDI projects."

"Among those, the estimated EUR 1.3 billion highway project, carried out by a joint venture between US-based Bechtel and Turkish Enka, stands out," Qoku says. "The project involves the construction of two motorways with a total length of 110 kilometers. The first, part of Corridor 8, is an east-west route connecting the Adriatic and Black Seas, between Albania and Bulgaria. The second one, known as Corridor 10d, is part of the EU's Pan-European Transport Corridor 10, connecting Austria and Greece. These highways play a vital role in the country's infrastructure development and are currently the primary focus of our efforts."

"Ongoing energy projects are also gaining momentum," Qoku adds. "Here, four major projects stand out, each focusing on a different aspect of the country's energy sector: a 415-megawatt wind farm developed by Germany-based WPD AG; a 400-megawatt solar energy project spearheaded by French Akuo Energy SAS; a 150/105-megawatt combined heat and power generation plant under development by Greek Mytilineos; and last, but certainly not least, the competitive dialogue procedure for the development of a natural gas distribution network in North Macedonia through a PPP project. The first three projects have received special attention from the Government, granting them a strategic investment status." According to Qoku, a substantial amount of behind-the-scenes work has been accomplished thus far, and most of these projects are nearing the finish line.

Furthermore, Qoku notes "there has been a notable surge in FDI in the country's technological industrial development zones, with the largest investment coming from Taiwanese chip manufacturing company Yageo Group, which recently announced an investment of EUR 205 million, among the biggest greenfield investments since the independence of the country. The country's business-friendly policies, regulations, favorable tax environment, and skilled workforce continue to attract FDIs and make North Macedonia a competitive destination for large foreign investments."

> *With elections coming up next year, we have an interesting period ahead in North Macedonia. The business sector, however, remains vibrant with numerous ongoing energy, infrastructure, and FDI projects.*

Qoku further highlights notable legislative developments in North Macedonia: "There have been a few legislative changes in parliament over the past couple of weeks that will have an impact on projects of strategical importance," he says. "These changes aim to fast-track certain procedures and provide more flexible regulation for such projects, which may result in an increase in similar initiatives in the future. Additionally, a new labor law draft is being prepared by the Ministry of Labor, to modernize the existing, rather outdated one."

"On the political front, the parliament is trying to find a mutually satisfactory solution that will allow for a change of the country's Constitution, to make it more inclusive towards certain minorities, in an effort for North Macedonia to ultimately join the EU, which is a crucial aspect of our commercial aspirations," Qoku says. ■

Lithuania Stands as One: A Buzz Interview with Justinas Jarusevicius of Motieka & Audzevicius

By Andrija Djonovic (June 12, 2023)

Lithuania may find itself in economic turmoil, but it is also experiencing strong political unity in the face of the war in Ukraine, according to Motieka & Audzevicius litigation Partner Justinas Jarusevicius.

"While the Lithuanian economy is dependent on export to foreign countries, losing the Russian and Belorussian markets didn't impact us that much – we managed to diversify in time," Jarusevicius begins. "Still, at this moment, exports to the West are going down as well, which is presenting an economic challenge for our country. Everybody is hoping that a major economic crisis is not in the cards."

With the economy being in a bit of a bind, there still are business sectors that are giving cause for hope. "The IT sector is very vibrant in Lithuania," Jarusevicius says. "We have two unicorns – Nord Security, a provider of digital security and privacy solutions, and clothing resale platform Vinted. In addition, IT professionals are a very attractive labor force addition and Lithuania is lucky to have a lot of them," he explains. "Further, Vilnius is a fintech hub with thousands of people being a part of it. However, opportunities to attract investments are not as plentiful as they were before. The rising interest rates made money more expensive which, consequently, impacted the ease of accessing financing and liquidity," he explains.

"Moreover, a major local fertilizer company has been sanctioned by the Lithuanian government on account of potential control ties to a person sanctioned by the European Council," Jarusevicius continues. "This made a dent in the economy. Also, as consumption is shrinking with an increase of interest rates, it has impacted the wood and furniture industry, which is well developed in Lithuania." As he explains, reverberations of this are felt throughout multiple sectors. "It is difficult to predict the outcome of all of this, but there is not much optimism."

Vilnius is a fintech hub with thousands of people being a part of it. However, opportunities to attract investments are not as plentiful as they were before. The rising interest rates made money more expensive which, consequently, impacted the ease of accessing financing and liquidity.

Shifting the focus to the geopolitical context, Jarusevicius reports that "all parties in the parliament are unified in their stance – of full support to Ukraine. This is of great importance, seeing as how Lithuania also needs to be perfectly prepared to defend itself should the war spread." Indeed, such battle readiness is also "part of our NATO obligations, so we need to stay alert," he adds. "And, speaking about NATO – the organization will have its summit in Vilnius in July, so we expect the allies' commitment to the joint cause to be solidified even further."

Finally, Jarusevicius reports interesting developments in the legal market. "Artificial intelligence is the talk of the town and the way the markets are adjusting to it – lawyers and businesses alike," he says. "Junior Associates' and even Associates' work stands to surely shrink in the near future, under the onslaught of AI-powered solutions," he explains. "At the same time, we expect the workload for mid-level and senior-level lawyers to increase significantly." Moreover, he adds that "litigation workstream-heavy offices will still have a strong need for lawyers, given the need to present, defend, and represent cases. It is still difficult to conceive how an AI solution would overtake this line of legal work," Jarusevicius concludes. ■

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Two Steps Forward, One Step Back in Bosnia & Herzegovina: A Buzz Interview with Nikolina Bajic of BDK Advokati

By Andrija Djonovic (June 9, 2023)

Legislative updates across the board in Bosnia & Herzegovina – with talks of criminalizing defamation, introducing electronic money, and overhauling the renewable energy framework – keep lawyers talking, according to Nikolina Bajic, Attorney at Law in cooperation with BDK Advokati.

In a move to keep pace with the rapid growth of modern financial services, the government is set to pass a law on electronic money, a concept yet to be embraced in Bosnia & Herzegovina.

"A contentious debate is brewing in Republika Srpska that could have far-reaching implications for all Bosnia & Herzegovina, centering on the issue of defamation," Bajic begins. "In a surprising move in March, the RS government proposed that defamation should once again be treated as a criminal offense, reversing the significant progress made in 2003 when it was decriminalized." Specifically, Bajic reports that four new criminal offenses including "insult, defamation, disclosure of personal and family information, and public humiliation based on race, religion, or nationality are being discussed. The penalties associated with these offenses are notably steep."

Bajic adds that these proposed amendments are an alarming blow to the freedom of expression in RS, "especially considering the already substantial pressure exerted by the government on the media. Lawyers, media professionals, and politicians are engaged in heated debates, recognizing the threat this poses to the fundamental right of free speech," she says, noting the EU has expressed its strong disapproval of these developments.

"The Minister of Justice has promised to take some suggestions from the public debates into account, although it remains unclear which suggestions will be considered and to what extent they will influence the final decision," Bajic continues. "If the intention is truly to take a legislative step back, it is crucial that it be done thoughtfully and not through heavy-handed measures. Especially so with citizens being increasingly prepared to voice their concerns and objections, buoyed by recent regional events that have inspired a heightened sense of activism."

Another interesting legislative development in Republika Srpska, according to Bajic, is that "in a move to keep pace with the rapid growth of modern financial services, the government is set to pass a law on electronic money, a concept yet to be embraced in Bosnia & Herzegovina." Although still in the draft stage, this legislation aims to establish a framework for the issuance of electronic money for banks and microcredit organizations throughout the country. "The draft also introduced specialized companies that will be authorized to issue electronic money," Bajic notes.

However, as this groundbreaking legislation approaches implementation, questions arose regarding the country's "preparedness for such a significant shift. Bosnia & Herzegovina is still grappling with e-document and e-signature challenges, making the introduction of electronic money an additional hurdle to overcome," Bajic opines. "The operational capacity necessary to support this new financial landscape remains a concern, and devising a functional framework for its seamless operation could be a daunting task."

Finally, Bajic reports that, after a while, the "Federation has formed a new government. One of the first items on its agenda is an update of the renewable energy framework." This change comes after the adoption of a progressive law on renewable energy by RS in 2022, which left the "Federation reliant on an outdated 2014 law. The proposal includes a fresh framework and improved technical infrastructure designed to support the development of renewable energy sources as well as an overhauled incentive system ensuring the equitable allocation of incentives for both small and large producers," Bajic explains. "With the potential to reduce carbon emissions, enhance energy efficiency, and contribute to a greener future, the pending renewable energy law holds considerable importance in the Federation's transition towards a more sustainable energy system," she concludes. ■

Hungary's Transactional Slowdown: A Buzz Interview with Andras Posztl of DLA Piper Hungary

By Radu Neag (June 14, 2023)

Lawyers are keeping busy with new legislation, dispute resolution, and technology work in Hungary, while transactional work and FDIs show a marked slowdown, according to DLA Piper Hungary Country Managing Partner Andras Posztl.

"During springtime, there was a lot of work for parliament – with many EU directives waiting to be transposed into Hungarian law," Posztl begins. "The new whistleblowing act was one of them. The concept is not new, but Hungary finally implemented the directive, and it will soon be available to every company and be tested in the current geopolitical context. Every company above 50 employees has to operate a whistleblowing system, either directly or through service providers." He goes on to explain "its effects are expected to impact not only corruption but also discrimination and gender equality. This is a time of gender equalization and the *MeToo* movement, so tackling discrimination topics in the workplace – including gender and harassment issues – will hopefully create a positive new dynamic in the Hungarian corporate world."

On the other hand, Posztl mentions "the transaction business is slowing down. And it's not just due to general trends in Europe – it is slowing down everywhere – but we're experiencing a bigger slowdown in Hungary. That's partially because of the very high inflation and our disputes with the EU – with a significant amount of EU subsidies being either frozen, held back, or not allocated at all." He says that's creating "uncertainty for investors. Just last week, the figures came out: we are facing the lowest number of investments in many years. This and the cancellation of close to 300 public projects are clearly having a huge impact on the markets and those law firms that are more focused on large scale/transactional work."

Still, some larger deals are expected soon, Posztl notes, which might improve Hungary's FDI numbers. "For one, there's Dunaferr, a vast steel producer built in communist times – that's grown to be one of the top employers in the country – and has strategic relevance as it's supplying our extensive car manufacturing industry." Dunaferr is owned by a joint venture of Russians and Ukrainians and, "because of their ongoing corporate war, is now in an insolvency procedure, with an auction process ongoing," he explains. "There is much interest from both western and eastern companies – mainly ones with Indian roots – and it will be a big deal when the auction process ends in the coming weeks. We'll see then whether the company can be saved by a foreign investor, which stands to impact FDI flows in a big way." Also, he says "there's a lot of discussions – unclear whether it's politics or business driven – about the re-privatization of Budapest airport. This won't happen in the next three or four months, but the intention and the discussions are public."

> *The new whistleblowing act was one of them. The concept is not new, but Hungary finally implemented the directive, and it will soon be available to every company and be tested in the current geopolitical context. Every company above 50 employees has to operate a whistleblowing system, either directly or through service providers. Its effects are expected to impact not only corruption but also discrimination and gender equality.*

And while transactional work is slowing down, Posztl says there's a "tremendous amount of work on dispute resolution and in the technology space, with many great mandates from international clients or their local subsidiaries." He highlights that "companies are working out their policies on whether and how they allow the use of ChatGPT and the like. There are a lot of R&D projects on how to use it properly, what kind of benefits it can yield, or which workplace positions are the most threatened. There are limitations still, of course, but it's an exciting topic for both clients and lawyers themselves." ■

Fast-Paced Developments and Lagging Legislation in Slovakia: A Buzz Interview with Annamaria Tothova of Eversheds Sutherland

By Radu Neag (June 15, 2023)

Legal AI developments, the impact of whistleblowing legislation, and the potential for a shorter work week keep lawyers talking in Slovakia, while a slowdown in legislative activity has them worried, according to Eversheds Sutherland Partner Annamaria Tothova.

"AI holds great potential for the future of law firms and lawyers," Tothova begins. "It can streamline processes and potentially allow us to handle more work in less time. There's even hope that some lawyers might actually get to have free time." Still, there are significant challenges ahead, she notes, among them "the issue of trust in the accuracy of AI-generated text. And law firms are aware that relying solely on external AI services may not be the best approach, as it involves sharing sensitive information and know-how." Consequently, she says "many law firms are investing in developing their own AI solutions in-house. This allows them to maintain control over their data and adapt the technology to their specific needs. Developing proprietary AI systems has become a top priority for law firms."

> *If AI can facilitate work and enable tasks to be completed in a shorter time, it would provide an advantage to employees. Some early trials have shown increased productivity within the four days of work.*

Moving on, Tothova says "Slovakia now has a caretaker government, with experts running the country until new elections in September. This interim period, combined with the summer months, reduces expectations for significant legal developments." Still, several important acts are awaiting a vote in parliament before the end of June, she notes, with lawyers curious about which will make the cut. "Many bills will be stuck in limbo till September, and then the outcome of the elections will shape the legal landscape, depending on who takes over which ministry."

"For one, the new legislation for construction permitting, set to come into force in April 2024, suffers from the lack of some specific decisions, regarding large industrial developments and facilities for example," Tothova says. "The environmental impact assessment and construction permitting used to be separate procedures, taking years to complete. However, there are now multiple acts in parliament proposing different procedures, oversight authorities, and setups. The timing is crucial as, even if an act is accepted by June, it may still be difficult to establish the necessary personnel and procedures in place by April 2024," she explains, with many of the developers adopting a sit-and-wait approach.

According to Tothova, "the introduction of whistleblowing legislation in Slovakia, like in other countries, brings both benefits and concerns." She notes that, while most companies welcome the mechanism, "there is a potential for abuse by employees who may use it to protect themselves from termination. Balancing the benefits and potential misuse is a challenge that still needs to be addressed."

Connecting both AI and labor, Tothova points to ongoing discussions about a shorter working week. "If AI can facilitate work and enable tasks to be completed in a shorter time, it would provide an advantage to employees. Some early trials have shown increased productivity within the four days of work," she says. "However, psychologists suggest that, after six months, those productivity gains may plateau, so the feasibility and long-term impact of such measures should still be explored."

"While there are currently no specific regulations regarding a shorter working week in Slovakia – only for a shorter working time" – according to Tothova, "it is possible for employers to implement it within the existing framework." This would involve adjusting internal documents to implement the rules for daily working hours and overtime, as well as conditions for extra days off. "However, having it formally established in legislation would provide a more secure and consistent framework," Tothova concludes. ■

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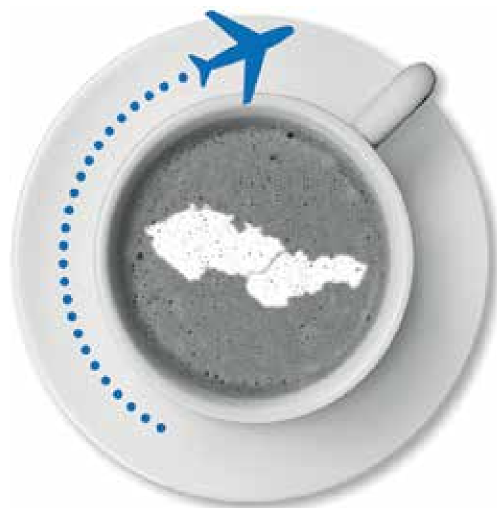

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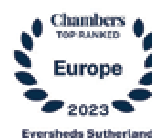

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Montenegro's Lawyers Are Never Bored: A Buzz Interview with Nemanja Radovic of Komnenic & Partners

By Andrija Djonovic (June 16, 2023)

Several updates vie for the front page in Montenegro, from politics, tax reforms, and the influx of high-skilled professionals to vibrant renewable energy sector activity and a booming M&A market, according to Komnenic & Partners Partner Nemanja Radovic.

"The political change we experienced in 2020, after almost 30 years, had a significant impact on the judicial system," Radovic begins. "There were changes made to the Supreme Court, the President of the Commercial Court, and the Special Prosecutor's office, among others. These changes have shaped the legal landscape in Montenegro and presented interesting and challenging times for lawyers," Radovic stresses.

Speaking about the reforms that have taken place recently, Radovic mentions a "tax reform, which introduced progressive tax rates ranging from 12% to 15% depending on turnover. Despite the increase in tax rates, Montenegro remains an attractive country for investors from the tax perspective," he says. "Additionally, we have seen other reforms in response to the war in Ukraine, the energy crisis, and rising product prices. These reforms have influenced various sectors such as construction, hospitality, renewable energy, and the IT sector."

Focusing on the blowback of the war in Ukraine, and the subsequent influx of immigrants from Russia and Ukraine, Radovic says that the effects on Montenegro were mostly positive. "Montenegro, being a micro-state with a population of 600,000, has experienced positive effects due to the arrival of approximately 30,000 immigrants from Russia and Ukraine. Many of them work in the IT sector and have brought their businesses and additional knowledge to our country." According to him, "this has resulted in significant growth in the IT sector, with a 40% increase compared to the previous year."

In addition, Radovic reports that the renewable energy sector has been on the up and up in the Balkan country. "We were involved in several notable projects, including two large-scale renewable energy projects named M Energy and Sunrise Montenegro, which together exceeded 600 megawatts," he says. "These projects align with the EU's green transition reform and have attracted developers and major companies in the energy sector to Montenegro."

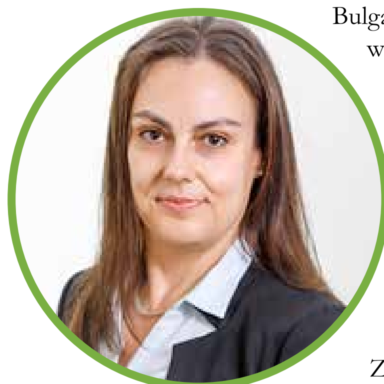
Apart from these projects, Radovic reports that there has been notable M&A transaction activity as well. "One of the largest transactions for the year in Montenegro involved the Fortenova group, where Mercator acquired one of the biggest chains of supermarkets – Franca Markeri – and established a long-term supply agreement," he reports. "Furthermore, Lidl has announced its forthcoming entry into the market, which has prompted various companies to prepare for the increased competition in different ways."

Finally, Radovic reports that there have been "discussions regarding the introduction of special provisions to the tax law framework, to tax companies that made an extra profit during the pandemic, which has sparked conversations about the legal predictability of the system due to its retroactive effects." With general elections having taken place on June 11, 2023, the business sectors of Montenegro could soon be looking at another shake-up. "It is an interesting and dynamic time for sure," Radovic concludes.

There were changes made to the Supreme Court, the President of the Commercial Court, and the Special Prosecutor's office, among others. These changes have shaped the legal landscape in Montenegro and presented interesting and challenging times for lawyers.

Packed Docket for Bulgaria's Parliament: A Buzz Interview with Zvezdelina Filova of Deloitte Legal

By Radu Neag (June 20, 2023)



Bulgaria is experiencing a wide plethora of legislative changes, from employment law and artificial intelligence all the way to the commercial sector, IT, and ESG, according to Deloitte Legal Country Legal Leader and Senior Managing Associate Zvezdelina Filova.

"The new whistleblowing act, which came into force in May, imposes several obligations on employers in Bulgaria," Filova begins. "Private sector employers with 50 to 249 employees will have to comply with the act starting from December 17 this year." The law mandates the establishment of an internal channel for "processing signals and the implementation of specific internal policies for processing those signals. The Bulgarian data protection authority will be responsible for oversight, and we are expecting secondary legislation to provide further details on how to fulfill these obligations," she says.

Aside from this significant development, Filova mentions that the Bulgarian legal landscape might become enriched by a new take on artificial intelligence. "The artificial intelligence act is still a draft on the EU level, but lawyers in Bulgaria have been actively engaging with the subject. We've had multiple events dedicated to AI, and there is also a Bulgarian bill before parliament that proposes amendments to the copyright act, which relate to AI to some extent, particularly regarding the use of copyrighted materials in AI training."

Furthermore, Filova reports additional legislative matters, adding that there are likely to be "amendments to the Bulgarian commercial act, which aim to provide clarity on different provisions which are currently disputable and unclear regarding commercial companies, their status, shares, and transactions. Additionally, there is a new act on the insolvency of individuals, which has been approved by the parliament upon first reading," she reports.

And ESG remains a hot topic: "while not purely a legal matter, lawyers are expected to be actively involved in supporting companies with their reporting obligations," Filova says. "We are closely monitoring ongoing EU-level regulations and engaging in discussions with clients to help them prepare for non-financial reporting. There are various reporting obligations for companies in the financial and non-financial sector – some are already in force, others will become effective in 2024 and the following years and the companies will need to start preparing."

Moreover, Filova reports that amendments relating to closed electricity distribution networks were introduced – as well as a "new law that regulates such networks. Additionally, the *Digital Operations Resilience Act* came into force, focusing on IT security." Furthermore, she adds that "the process of transposing the directive on collective claims into Bulgarian law is currently ongoing, with a bill before parliament that aims to regulate the rights of different associations to file collective claims in the interest of consumers."

While not purely a legal matter, lawyers are expected to be actively involved in supporting companies with their reporting obligations. We are closely monitoring ongoing EU-level regulations and engaging in discussions with clients to help them prepare for non-financial reporting. There are various reporting obligations for companies in the financial and non-financial sector – some are already in force, others will become effective in 2024 and the following years and the companies will need to start preparing.

Finally, Filova mentions that Bulgaria has seen a new parliament come into session at the beginning of June. "Its focus is primarily on constitutional reform related to the position of the Chief Prosecutor. While we expect them to address other bills as well, that remains their top priority," she says. "Moreover, it is positive news to finally have a regular government after multiple elections in the past two years. We hope for positive developments on various initiatives from the new government," she concludes. ■

Anti-Aggression Measures Ramping Up in Ukraine: A Buzz Interview with Artem Sokurov of Sytnyk & Partners

By Andrija Djonovic (June 21, 2023)

With a new cryptocurrency regulation in the legislative pipeline, Ukraine's anti-aggression measures are also ramping up, presenting even more uncertainties and challenges for all business sectors in the country and keeping lawyers on their toes, according to Sytnyk & Partners Counsel Artem Sokurov.

"The new crypto regulations draft presented by state authorities aims to address the unregulated nature of crypto in Ukraine and to finally propose a taxation regime," Sokurov begins. "By aligning with the EU's MiCA framework, Ukraine seeks to establish a transparent legal landscape, eradicating the existing gray areas. This move is planned as a step towards much-needed protection for investors and companies, and it should also bolster trust in Ukraine's potential," he says. The regulations aim to ensure Ukraine remains open and attractive to existing and future local investments as well as those from the EU and international investors, according to him, "thereby facilitating growth and keeping the status of top-3 country in the world in terms of the adoption and penetration of crypto."

Additionally, Sokurov outlines some of the effects that the Russian invasion had on Ukrainian markets of late. "The anti-aggression measures in place require companies to fill out questionnaires about their dealings and connections, in order to detect Russian influence. These have created challenges for businesses with any sort of ties to Russia – many international clients find themselves in a tough position, uncertain about the potential consequences of non-compliance," he explains. Moreover, the sanctions for failing to complete these questionnaires are not entirely clear, either. "It remains uncertain whether accounts, including securities and money accounts, could be frozen by the state, or if further escalations could occur. These questionnaires are sensible and important in their aim because detecting Russian influence is a national security interest – but they have placed additional strain on international clients and may affect their operations," he adds.

In addition, Sokurov reports that the Ukrainian state authorities compiled a list of "international sponsors of war." This list includes companies and international groups like Auchan, Xiaomi, and Metro – all of whom now face a potentially huge reputational risk," he explains. "While the current implications of being on the list are primarily and mostly reputational, the situation remains fluid, and practical consequences may arise in the future."

Continuing, Sokurov posits that, while the "anti-aggression measures and the 'international sponsors of war' list aim to uncover traces of Russian influence for state security purposes, these also place a significant burden on businesses and individuals." He notes the questionnaires, while necessary from a security perspective, "result in a substantial workload for international clients, while the 'international sponsors of war' list carries both reputational risks and the potential for market reactions." However, the practical consequences of being included on the list remain uncertain, leaving businesses in a legal and economic vacuum, he reports.

Finally, giving an example of the difficulties these measures impose, Sokurov mentions a couple of European banks having subsidiaries in Ukraine, each of them being a top-ten bank in the country. "Those banks still have an extensive presence in Russia and exiting this market is a complex, complicated, and lengthy challenge for them." The banks hold significant importance for the Ukrainian economy, both being admitted by the regulator as "systematically important banks," Sokurov says in conclusion. "Any issues affecting such prominent players would undoubtedly reverberate throughout the country. The interconnectedness of businesses, including shareholdings and accounts, means that any complications the banks encounter may have a wide-reaching impact for all citizens." ■

Tough Questions for Austria's M&A Market: A Buzz Interview with Bernd Taucher of Graf Patsch Taucher

By Andrija Djonovic (June 21, 2023)

Struggling with high inflation, tough questions are being asked of the Austrian M&A market lately, and the government responded by planning a new, more flexible corporate form with reduced capital requirements, according to Graf Patsch Taucher Partner Bernd Taucher.

"Inflation, exceeding 8%, has severely affected Austria after the pandemic and the start of the war last year," Taucher begins. "It has led to a decrease in purchasing power, causing prices to rise, and the unions are pressuring businesses for wage increases, further impacting the stability of the economy." According to him, Austria's current inflation rate, projected to be around 4% in the coming years, significantly exceeds the European Central Bank's target of 2%.

"High inflation makes it difficult for businesses to accurately value companies, particularly in the M&A market," Taucher continues. "Fluctuating prices and reduced purchasing power create uncertainty, making it challenging to assess the true worth of companies. In addition, the banks are more reluctant to finance transactions, leading to increased financing costs. This reluctance stems from the volatile economic environment and the risks associated with fluctuating prices and reduced purchasing power," he explains.

And transactional activity has been affected as well. "While the number of transactions in 2022 was comparable to 2021, the volume of transactions decreased. Uncertainty surrounding valuations and financing costs has led to caution among investors, resulting in a more reserved transactional environment," Taucher says. "Investors have become more cautious and this cautious behavior is reflected in the market's transactional activity as well. Although some sectors may experience an increase in transactions in the coming months, the overall unpredictability makes it difficult to accurately forecast market behavior," he notes.

Taucher further reports that "ESG considerations have become increasingly important in transactional decision-making. Investment funds prioritize investments that align with ESG principles, as there are growing concerns about greenwashing," he says. "Clients are seeking ESG-first investments, reflecting a shift towards sustainable and socially responsible business practices." According to him, "it is crucial for businesses to adopt transparent and authentic ESG practices to attract investors and stay competitive. As ESG considerations gain prominence, investors prioritize investments that embrace a more aware approach, which can provide businesses with a significant competitive advantage in the market."

Fluctuating prices and reduced purchasing power create uncertainty, making it challenging to assess the true worth of companies. In addition, the banks are more reluctant to finance transactions, leading to increased financing costs.

As an example, Taucher says "the CEO of MAN recently indicated that their company aims to have between 30% and 50% of the fleet be electric by 2030. It is great to finally see the market be so cognizant of the threat of climate change – there is a lot of potential in the market to enact positive changes," he posits.

Finally, Taucher reports "the government is lowering the capital requirement for establishing an LLC by more than two-thirds and is introducing a new form of incorporation that will make it easier and more tax-efficient for employees to participate. This is intended as a targeted incentive for founding and managing start-ups in Austria," he says. Additionally, the government plans to decrease the minimum income tax from EUR 1,750 to EUR 500 per year. Taucher believes the new corporate form will make it easier for start-ups to establish flexible companies and enable employees to participate in their shareholding. "Most of the provisions are currently under review and have not been decided on in parliament. However, it is anticipated that they will be implemented in the coming months, possibly before the summer recess," he notes. ■

THE DEBRIEF: JULY 2023

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

This House – Implemented Legislation

Labor law witnessed a period of heightened activity in Poland during the past two months, as new legislation was implemented. "In May, several regulations came into force regulating issues related to the recent amendment of the Labor Code," Wolf Theiss Associate Oliwia Pecht says. "Among others, the regulation of the Minister of Family and Social Policy amending the regulation on employee documentation came into force. The regulation extends the catalog of documents that an employer is obliged to collect in an employee's personnel file. New documents that will have to be recorded on file will include requests for the employment contract to be changed to an indefinite contract." In addition, according to Pecht, the scope of the employment certificate given to the employee is changing and "will now have to take into account, among other things, the days when the employee used the new type of *force majeure* leave for urgent family matters caused by illness or accident."

This House – Reached an Accord

In Hungary, notable legislative updates occurred in employment and energy. "The Hungarian Parliament adopted the implementation of the *Whistleblowing Directive: Act XXV of 2023 on complaints, disclosures in the public interest, and related rules on reporting abuses*," OPL gunnercooke Head of Employment and Labor Zsofia Olah states. "Entities with at least 250 employees have to be compliant with the law before July 24, 2023, while smaller businesses have time until December 17, 2023."

Additionally, according to Forgo, Damjanovic & Partners Partner Zsofia Fuzi, "the Hungarian Government is introducing a price cap on electricity in certain economic sectors from July 1, 2023. The Hungarian government has adopted *Government Decree No. 238/2023 (VI. 19.)*, which amends the fixed price in the already existing electricity purchase contracts and determines a price cap on electricity," Fuzi explains. "The price cap is EUR 200/megawatt, and it will be effective from July 1, 2023, until December 31, 2023. The cap only applies to entities that carry out their main activity in manufacturing, accommodation and warehousing, and support activities for transportation." According to her, it is expected that the new measure will impact more than 5,000 companies. "In exchange, the government expects the supported companies to increase their production capacity and not raise prices this year," Fuzi notes. "The electricity trader companies that are obliged to apply the price cap in their existing contracts will be compensated, but the detailed rules of such compensation are yet to be introduced."

In terms of recently signed legislation in Poland, Pecht says that "on May 29, 2023, the President of the Republic of Poland signed a law that extends the dates of legal residence until March 4, 2024, for Ukrainian citizens who have arrived in Poland due to acts of war." She continues: "Separately, the dates of legal residence of Ukrainian citizens who are still studying in schools have been extended."

This House – Under Review

CMS Sofia Managing Partner Kostadin Sirleshtov highlights that Bulgaria's energy sector developments have been very dynamic recently, evidenced by the recent renewable energy regulations drafts. "At the end of May, the Parliament adopted at first reading the draft act for amendment of the *Renewable Energy Act*," he says. "The draft act (i) simplifies the grid-connection procedures by introducing a universal grid connection agreement for greenfield renewable projects (replacing the current system of preliminary and final grid connection agreements); (ii) introduces temporary grid connections in the case of a lack of availability or partial availability of a grid connection, whereby the grid operator is obliged to invest into its grid in parallel with the investment of the producer; (iii) takes an important step towards securing a grid connection by means of migration to capacity reservation tenders on annual basis for grid connection of future greenfield projects and abolishes of the current *first come – first serve* procedure for grid connection capacity reservation."

Kostadin Sirleshtov, Managing Partner, CMS Sofia

Oliwia Pecht, Associate, Wolf Theiss

Zsofia Fuzi, Partner, Forgo, Damjanovic & Partners

Zsofia Olah, Head of Employment and Labor, OPL gunnercooke

Sirleshtov emphasizes that "the draft act aims to regulate grid connection costs where the latter shall be covered either by an advance payment or by bank guarantee as agreed between the grid operator and the producer. Furthermore, certain amendments to the draft act are expected to be proposed before the first and second readings in parliament to enhance the development of floating photovoltaics and agrivoltaics."

This House – The Latest Draft

In Poland, "in May, work started on a draft regulation amending the regulation on health and safety at work at workplaces equipped with screen monitors," Pecht says. "According to the planned changes, employers will be obliged, among other things, to provide employees working with laptops for more than half of their daily working time with a mouse, keyboard, monitor, or laptop stand. The regulations are intended to adapt health and safety rules to the current technology used in workplaces."

Done Deals

Sirleshtov highlights several noteworthy transactions in Bulgaria. "In terms of energy, we saw several transactions," he says. "Astronergy/Chint (Korea/China) successfully acquired the Boychinovtsi 60-megawatt photovoltaic project with an estimated investment cost of EUR 50 million – the first new addition to its Bulgarian solar portfolio since 2012. Furthermore, the Finnish renewables investor Taaleri Energia made its Bulgaria debut by taking over the Gorichane & Prolez 80-megawatt greenfield wind project near Shabla with estimated investments of around EUR 120 million."

In Broader Related News

"The European Parliament and the Council adopted new rules on pay transparency on April 24, 2023, to strengthen the application of the principle of equal pay for equal work or work of equal value between men and women through pay transparency and enforcement mechanisms," Olah reports. "Employers have time to prepare: the Directive will take effect twenty days after its publication in the Official Journal of the EU (likely this year), after which EU member states will have three years to implement it into domestic law. Employers with 150+ workers will need to report the pay gap information within one year, and employers with 100 to 149 workers within five years after the date of implementation." ■

COMPLIANCE AND THE IN-HOUSE LEGAL FUNCTION

By Andrija Djonovic

Are compliance teams a necessary evil or effective facilitators of business success? At the CEE Legal Matters GC Summit held in Istanbul, legal experts from across Europe discussed how to best foster a culture of compliance and ethics in order to benefit businesses, as well as why multidisciplinary knowledge and an agile approach are crucial for compliance teams.

Setting Up an Agile Compliance Structure

"While compliance teams can often be viewed as a necessary evil for businesses, hindering innovation and creating unnecessary bureaucracy, they are, in fact, facilitators of business success," posited TurkNet's Merve Oney Barlas during her talk at the Summit. "However, in order to truly embody this, it is crucial for compliance professionals to possess multidisciplinary knowledge and to have an agile approach in their work, in order to add value to the company's business."

As Barlas put it, the traditional approach to compliance teams involves "hiring external consultants or creating a separate department, with limited interaction with other departments in the organization. This approach is not only inefficient but also creates a negative image of the compliance team within the company," she said. "Compliance teams should be seen as business partners rather than consultants or authorities in a company, with a focus on adding value to the entire organization. The best way to achieve this is to apply an agile approach to their work."

With increasing regulations and expectations from customers, investors, and governments, companies must take proactive measures to ensure that they are compliant with all relevant laws and regulations.

According to Barlas, "one of the key elements of an agile compliance team is the multidisciplinary knowledge of its members. The team should have a thorough understanding of the impact of compliance on the financials, industry, advertising, customer journey, and value creation of the company," she said. "This will enable the team to collaborate more effectively with other departments and identify potential compliance issues at an early stage."

Moreover, Barlas stressed that agility is essential for compliance teams to "keep the pace with the rapidly changing regulatory landscapes. An agile approach involves breaking down the compliance process into smaller, manageable tasks, and adopting a continuous improvement approach. This enables the team to respond quickly to changes in regulations and reduce the cost of compliance."

Finally, Barlas provided the GC Summit attendees with a list of recommendations on how best to improve their compliance efforts by utilizing agile methods. "An approach of using checklists, joint working models, and agile compliance handbooks with frequently asked questions to structure the compliance process correctly will ensure that compliance requirements are met consistently, and the team can focus on value creation." She recommended, in conclusion, that compliance teams "strongly consider the use of automation tools that can streamline the compliance process and reduce the risk of errors."

Building a Culture of Compliance

As much as it is important to craft an agile framework for ensuring compliance, it is crucial to consider the long-term benefits of having a strong compliance culture. A panel of experts including Profi Rom Food's Mihaela Racles, Yemeksepeti's Duygu Tanit, Pearson's Dinc Sanver, L'Oreal's Hande Karakulah, and Unilever's Olgu Kama shared best practices for fostering a culture of compliance across the company's operations.

"In today's business world, the importance of compliance cannot be overstated," Tanit said. "With increasing regulations and expectations from customers, investors, and governments, companies must take proactive measures to ensure that they are compliant with all relevant laws and regulations." While this perception is an industry-accepted axiom, however, there are still companies out there that have only recently

Dinc Sanver,
Legal Director,
Pearson

Duygu Tanit,
Chief Legal Officer,
Yemeksepeti

Hande Karakulah,
Legal & Scientific Director,
L'Oreal

Merve Oney Barlas,
Chief Legal and Compliance
Officer, TurkNet

Mihaela Racles, Legal
Compliance Director,
Profi Rom Food

Olgu Kama,
Legal Director,
Unilever

started implementing compliance programs.

The panelists emphasized the importance of reputation and trust, noting that non-compliance can have significant financial costs and can cause damage to a company's reputation, further indicating that it is highly advisable for businesses to have robust programs in place from the very start. "The United States Department of Justice issued hugely informative and useful guidelines on this front," the panelists mentioned. "The Department of Justice has had dedicated compliance officers and policies and processes in place for a long time, and following their thought leadership is a prudent call."

Furthermore, all panelists agreed and stressed the importance of setting the tone, from the top and the middle of the company, in promoting a culture of compliance. They noted that compliance is not just a set of rules, but a culture and a process that involves everyone in the company. "Regular training and communication are key components of a successful compliance program," Sanver added.

The discussion then shifted to ethics and integrity in the compliance profession, with Karakulah disagreeing with Steve Jobs' statement that "integrity is either present or not" – "I firmly believe that integrity can be developed and strengthened over time." The panel discussed how compliance is not just about following rules, but about "promoting a culture of ethics and integrity throughout the company – where employees should be included in the compliance process at all stages."

Finally, the panelists emphasized the importance of sourcing, respecting the environment, and not paying bribes as part of an ethical company. "It is up to individuals, ultimately, to look for ethical companies to work for," Kama said. "Working in an ethical company means doing the right thing, not just in terms of individual conduct, but also in terms of that company's impact on the environment and society."

Racles concluded by saying that "the purpose of compliance professionals, lawyers, and individuals in general, should be to nurture and promote integrity and ethics. Compliance is not just about following rules, but about building a culture of ethics and integrity that permeates the entire business. With the right elements in place, including adequate resources, policies and processes, regular training and communication, and a focus on ethics and integrity, companies can build effective compliance programs that promote trust and reputation, protecting both the company and its stakeholders." ■

THE CORNER OFFICE: PARTNERSHIP TRACKS

In The Corner Office, we ask Managing Partners at law firms across Central and Eastern Europe about their backgrounds, strategies, and responsibilities. As key steps, requirements, and timeline for becoming a Partner may vary from firm to firm, this time we asked: Does your firm have a formal Partnership Track and if yes, what does it involve?

Kostadin Sirleshtov, Managing Partner, CMS Sofia: CMS has a clear and formal Partnership Track, which involves a personal assessment and a business case review of the candidate, followed by an assessment center and interviews with an evaluation board of Senior Partners. Naturally, the process is concluded once the candidate is approved by the partners' vote within the firm.

As the leading relationship law firm CMS applies this formal Partnership Track regardless of the location and the seniority of the partners, irrespective of whether the candidate is home-grown or a lateral hire. Given the diversity of our Partner candidates, we have both minimal measurable requirements (related predominantly to the business case) and various soft criteria (applicable mostly to the personal assessment of the candidate), which need to be demonstrated and achieved by each of the applicants. The process usually involves at least two sponsors, who are usually the Office Managing Partner of the respective candidate and its Practice Group Head.

Partner assessments are not a one-off exercise for CMS Partners. Following the appointment, we have various check-ins and a detailed system for the assessment of partners going forward.

Darko Jovanovic, Managing Partner, Karanovic & Partners: Our Star Track is a talent management program for Lawyers considered for promotions to Senior Associates or Partners.

The program starts with a nomination, initiated by the Partner in charge which sets development areas and objectives. Once it is approved by Senior Partners, we run what we call "Entry 360" with a development focus. After the 360-degree feedback, the tracker is invited to draft a Development Plan which is then approved by their Partner, a Mentor, and L&D and HR functions. Commitment is ensured through an action plan and regular reporting. Mentors and trackers are free to organize their work in the way they find it most useful. General advice would be to have follow-up sessions at least once in two months.

While the program is not time-limited and primarily depends on the progress and results shown by the tracker, on average it is expected that the Senior Associate track lasts one or two years, and the Partner track two to five years. The promotion won't be granted automatically with time and it depends on whether the tracker showed tangible results and consistency and achieved the objectives, and based on current business plans and potentials of the firm in general. The promotion itself is approved by Senior Partners and confirmed by all Partners.

Octavian Popescu, Managing Partner, Popescu & Asociatii: As probably in any law firm, within Popescu & Asociatii we have a formal Partnership Track ever since we founded the company. People represent the foundation of our business, as the success of our clients and implicitly our reputation depends on the perfect combination of the legal and business knowledge that our lawyers have, the soft skills, and the way in which managers and all colleagues know how to communicate, prioritize, and find the best solutions.

Thus, beyond the written criteria, which must be met, the decision is ultimately made based on the person, their proactive attitude, and their ambition. It is essential to mention that the management of Popescu & Asociatii may grant the status of Partner even before a person fulfills all the criteria stipulated in the official documents since those personality traits are the key characteristics that define me and my current team. Thus, the right qualities can transform a Lawyer into our Partner in a shorter period. That said, even after becoming a Partner, there is always room to learn and become better all the time!

Olexiy Soshenko, Managing Partner, Redcliffe Partners: We are proud that we have had several senior lawyers who have successfully developed and grown at Redcliffe Partners to be promoted to Partners. There is a formal Partnership Track, which must be completed, to become a Partner. Apart from excellent technical skills, we expect from a candidate a good mix of qualities and business skills, such as the ability to develop clients, being a team player, mentor and act as a role model for junior colleagues, and being visible in the market and recognized by peers. As to more specific requirements, there is obviously a business case that should be proved by the candidate showing a certain level of profit of the overall candidate's practice, with a certain percentage from that pool being originated by the candidate, etc. If it is some new practice, development and growth of the practice must be shown. Finally, there must be good chemistry between the candidate and the existing Partners as we are looking for long-lasting partnership relations after all!

Pal Jalsovszky, Managing Partner, Jalsovszky Law Firm: Our processes for partnership promotion are not yet institutional and universal. This is partly because that we have just transformed our office into a partnership recently. But it also plays a role that each person is different and each person should be motivated differently. To be promoted to be a Partner you surely need to have a business case – e.g., strong personal client relations and revenue from such clients. Still, on the business development side, you need to be actively engaged in corporate marketing and sales activities – both domestically and on a cross-border level. Other than this, you need to have various soft skills. It is, for example, of utmost importance that the candidate can lead a group, supervise its activity, and take care of the motivation of group members. The final decision, on accepting a new Partner, is taken at the Partners' level.

Jacek Gizinski, Co-Managing Partner, DLA Piper Warsaw: In Poland, 70% of our Partners are individuals who have built their business cases with, and advanced internally at, DLA Piper. All new Partners have developed their business and leadership skills through available training programs. Internally promoted Partners attend Career Pathways, which is a long-term leadership development program that encourages participants to explore a leadership mindset and strategy, and business growth. The program is part of DLA Piper's plan to recognize and support the firm's highly valuable future leadership. In addition, female senior lead lawyers are encouraged to participate in the Elevate Mentorship Program. Locally in Warsaw, all our lawyers are invited to attend skills training as part of the Career Subway training plan. We believe that any lawyer joining the firm is a potential future Partner and we put a lot of effort into supporting the growth of our team.

As our Co-Managing Partner Krzysztof Kycia says, creating opportunities for the development of lawyers and tax advisors is our recipe for success. Internal Partner promotions at DLA Piper provide us with a special satisfaction – they are a visible sign of the evolution of our law firm and the development of our employees. We grow together with them.

Oleksiy Feliv, Managing Partner, Integrites: The Partnership Track at Integrites is about transparency. During onboarding, lawyers get a clear vision of their growth in the firm. Even during the war, annual evaluation results are the grounds for promotions.

To become a Salary Partner, the candidate must build up a team, select and develop a certain industry focus, and have a business case with a minimum annual turnover. These prerequisites equally apply to any candidate. To become an Equity Partner, the Salary Partner must fulfill turnover requirements for three consecutive years.

The formula works: Viktoriya Fomenko, Serhii Uvarov, and Illya Tkachuk are great examples. Viktoriya joined us in 2017 as a Counsel in tax and customs. She has built a strong team and the whole practice from scratch. Serhii joined in 2018 as a Counsel in cross-border dispute resolution and led one of the most high-profile disputes over the last decades. Having met the above criteria, both got promoted to Partners in 2019 and 2021 respectively. Illya Tkachuk, corporate and M&A Partner since 2019 and Equity Partner since 2022, is an example that stands out. He has been exceptional in business development and client relations during the COVID-19 pandemic and the war.

Notably, Equity Partner promotions are quite rare in Ukraine, and equity partnership is a kind of VIP club. We try to change this perception: equity partnership is open, and the criteria are clear and straightforward.

Gabor Kiraly, Managing Partner, Dentons Hungary: Dentons has a well-established Partnership Track that encompasses various levels, including for Counsel, Managing Counsel, and different Partner positions. Candidates progress by demonstrating a proven track record of billable work, successful client acquisition, and essential qualities such as leadership, interpersonal skills, business acumen, and a strong network of contacts.

Dentons recognizes the benefits of a diverse and inclusive partnership. The firm evaluates candidates based not only on qualifications and experience but also on their ability to champion Dentons' culture and values. From the moment of induction, comprehensive in-house training programs serve as prerequisites for promotions, reflecting the firm's commitment to personal growth.

Collaboration across the Dentons network is strongly supported, allowing Partners to leverage the firm's global reach and resources effectively. By emphasizing personal development, fostering talent, and promoting diversity, the firm ensures that its Partners not only excel as legal practitioners but also exhibit outstanding leadership, and convey our value proposition embodying the Dentons culture and values. ■

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GO (SAFE) BIG OR GO HOME: PE IN CEE

By Andrija Djonovic

While international private equity players still dominate blockbuster deals in CEE, locals and regional players are gaining more and more ground – especially in terms of volume. PRK Partners Co-Head of Corporate and M&A Practice Group Milan Sivy, Tuca Zbarcea & Asociatii Managing Partner Gabriel Zbarcea, and Avellum Managing Partner Mykola Stetsenko provide an in-depth analysis of the PE landscape in the Czech Republic, Romania, and Ukraine.

Emerging (Market) Opportunities

"Historically, international funds often brought substantial capital, expertise, and a global network of resources to the CEE market and have thus played a significant role in driving private equity activity in the CEE region, including the Czech Republic," Sivy says. According to him, the key lure was the region's "potential for growth, emerging market opportunities, and favorable investment conditions." Still, things have changed in recent times.

"In the last decades, the regional private equity ecosystem has matured and local funds have gained a considerable share in the pipeline within the Czech Republic and the broader CEE region," Sivy continues. "Local funds have demonstrated an increased level of sophistication and professionalism as well as a deep understanding of the local market dynamics, cultural nuances, and regulatory landscape – which can give them an advantage in identifying attractive investment opportunities and navigating potential challenges." Moreover, he reports that "these funds are also often backed by local institutional investors, development banks or successful entrepreneurs who have experienced business growth in the region."

Zeroing in on these funds' attention, Zbarcea says that in Romania, it has been "dominated by the ICT, medical services, consumer goods, and agribusiness sectors. Green energy and sustainability are also high on the private equity funds' agenda and ESG will likely play a more prominent role in their investment decisions over the coming years."

Local and Regional Funds Taking Charge

"In the Czech Republic, deal activity appears to be driven mainly by local and regional private equity funds, capturing the majority of the mid- and small-cap transactions while international players focus on a smaller number of larger transactions," Sivy reports. "Recent years have shown an increase in the investment activity of local/and regional private equity investors in the CEE region while international private equity funds still demonstrate a strong presence when it comes to upper mid-cap and large-cap transactions," he adds. "Nevertheless, the division of the market between local/regional private equity investors and their international peers has been rather stable over the years, and is expected to remain stable in the medium term."

The situation is similar in Romania. "The most active private equity funds in the Romanian market in the past few years have been the local and regional ones, with several notable exceptions, such as recent new market entries of Macquarie Infrastructure and Real Assets, and Novalpina Capital," Zbarcea notes. "Overall, the Romanian private equity industry lags behind other CEE markets, despite a growing number of funds active locally."

In Ukraine, Stetsenko reports that local and regional funds have definitely been the leaders. "Horizon Capital is the most prominent example, having invested more than USD 1 billion over the last 20 years," he says.

Size (Still) Matters

However, matters are different with big-ticket items. According to Sivy, this is the primary differentiator that swings the pendulum towards internationals. "Generally speaking, local funds have focused more on small- and medium-sized deals, while larger transactions, for example, in excess of EUR 200-300 million, have been mostly conducted by international funds," Zbarcea also notes.

"Local and regional private equity funds tend to focus on small- and mid-cap targets and transactions, as I mentioned," Sivy adds. "As an interesting trend, in recent years in the Czech Republic, these included also some small family businesses addressing succession questions as well as independent functioning units in large corporations (capable of operating on their own) which do not fit in a corporation's general development strategy."

Gabriel Zbarcea, Managing Partner, Tuca Zbarcea & Asociatii

Milan Sivy, Co-Head of Corporate and M&A Practice Group, PRK Partners

Mykola Stetsenko, Managing Partner, Avellum

On the other hand, the international funds keep on "conducting the largest transactions in the region," Sivy continues. "When speaking about the Czech Republic, these recently included AnaCap's sale of Equa Bank to Raiffeisen Bank International, acquisition of Stock Spirits (including its Czech subsidiary) by CVC Capital Partners, and recent acquisitions of Meopta – Optika and Tescan Orsay Holding by the Carlyle Group. All of them ranked among the largest transactions in the Czech Republic in their respective years," he explains.

In Romania, things are even more international. "Most of the funding sources are still coming from international financial institutions, the likes of the European Investment Fund, the EBRD, or the International Finance Corporation," Zbarcea says. According to him, this means that "Romania lacks a more diversified range of fundraising options, such as corporate investors, pension funds, other asset managers, and sovereign wealth funds. According to some studies, only 0.02% of Romania's GDP is represented by private equity investments as opposed to 0.7% of GDP at the EU level," he explains.

Risky Business

While the Czech Republic is both part of the EU and NATO, which "provides guarantees of political, economic, and legal stability that other emerging markets lack," per Sivy, all is not smooth sailing. "Despite a decade of growth, private equity fundraising in the CEE region has not matched the global boom," Sivy adds. "Investments in private equity in CEE, as a percentage of GDP, remain behind international benchmarks, for example, when compared to Western Europe." In addition, he says that the "relative geographic proximity of the Czech Republic and the CEE region to an ongoing conflict in Ukraine can be a bugbear for risk-averse international investors."

In Ukraine, given the current context, Stetsenko reports that "international funds have mostly exited their investments." According to Stetsenko, the "absence of their presence in Ukraine has led to poor investment oversight and often bad investment decisions."

Furthermore, when it comes to the very *way* the deals are structured, Sivy highlights differences in approach indicative of how funds perceive risk profiles. "When private equity is on the sell-side, both international and local funds appear to have a strong preference for employing warranty and indemnity insurance, often together with other relevant insurance products, depending on the specifics of the transaction. Although the use of transactional insurance has become increasingly popular in recent years among local funds, it might still not be as obvious a choice as it is in the international context," he says.

"Also, in this context, when it comes to the liability for representations and warranties stipulated in the transaction documents, even when the warranty and indemnity insurance is employed, some of the international private equity funds might tend to shift the potential liability to the management of the target by proposing that the target's top management members (as natural persons) are party to the transactional documents and are giving the business representations and warranties instead of the seller," Sivy explains. "This approach is not common in local transactions."

Whether it is driven by local funds growing or the evolving risk profile of the region discouraging internationals, according to Zbarcea, local-based private equity has "become more active in recent years, with this trend likely to continue over the following years." ■

SHARING WISDOM IS CARING: EVERSHEDS SUTHERLAND'S CUSTOMIZED IN-HOUSE TRAININGS

By Andrija Djonovic

Eversheds Sutherland's Bratislava office has expanded its offering with an additional line of service – customized in-house trainings. Counsel Jana Sapakova talks about these new trainings.

CEELM: For starters, how did the original idea for the Customized In-House Trainings project come up?

Sapakova: We have been offering specialized training sessions to business professionals since before COVID-19, though our approach was a bit different back then.

Prior to the onset of the pandemic, our approach involved almost exclusively working with our own clients. We would select a topic, reach out, and organize meetings that resembled more of a business breakfast than formal trainings. Once the pandemic hit, we were no longer able to continue with these offline sessions. This forced us to adapt and transition to an online format. This shift presented its own set of challenges as everyone was grappling with the sudden change.

After a few years of online work, we started receiving some interesting feedback from our external partners, informing us that their clients were expressing a growing interest in specific trainings tailored to their unique needs. This prompted us to rethink our approach and explore the possibility of offering customized trainings for individual businesses and companies.

We decided to move ahead with it and now we aim to provide hyper-localized trainings that take into account specific frameworks that correspond to the business realities of the companies that approach us. We strive to keep these sessions small, focusing on groups of five or six individuals, rather than organizing full-blown 20+ people teaching sessions.

CEELM: What is the aim of Eversheds in putting these trainings forward?

Sapakova: Our primary objective is to go above and beyond for our clients. As someone who specializes in labor law, my main focus revolves around working closely with HR managers. We are fortunate to have some significant clients, with workforces ranging from 2,000 to 4,000 employees. In order to provide them with the most comprehensive and reliable legal resources, it is essential to truly understand each of their specific needs and, by crafting engaging trainings and establishing a strong rapport, we gain a deeper understanding of their internal processes and organizational dynamics. These tailored and informative trainings enable us to build long-term relationships with our clients.

CEELM: What is covered in the trainings?

Sapakova: I primarily focus on employment law and the target audience consists mainly of HR managers, as I mentioned. Employment law is a field that requires businesses to constantly monitor for changes in the legal landscape to be able to react quickly.

We also involve other practice groups such as those focusing on the GDPR, ESG, commercial and corporate, and compliance. These topics have become increasingly important for our clients in recent times. When we are preparing a lecture or training for a specific client, we always begin by engaging them in a conversation to understand their specific needs. This initial discussion allows us to tailor our approach and draw relevant elements from our repository of existing trainings. With each new client, we improve our approach and offer better service each subsequent time.

CEELM: What do these trainings look like in practice? What is the commonly-used format?

Sapakova: To create an inviting learning environment, we invest a significant amount of time in preparing engaging materials. Also, we constantly encourage participants to take an active part in these sessions by asking questions, moving around, and interacting with the content. Our ultimate goal is to avoid a traditional lecture-style approach and instead foster a stimulating and dynamic atmosphere.

The sessions usually last between three and four hours, which we have found to be optimal to keep everyone invested. Of course, we are not strangers to longer engagements – we once delivered a three-day training for a client, with each day consisting of up to five hours of training. However, such longer trainings are quite challenging as participants have to absorb a significant amount of information and process it effectively.

Either way, we always incorporate numerous examples from our own experiences and practice. This approach not only provides participants with real-world scenarios but also invites them to actively participate in discussions. By presenting challenges that participants are likely to encounter themselves, in their own daily work, they are more vested in participating and consequently retain more information.

CEELM: Who's delivering the trainings?

Sapakova: Typically, it is the Partners or Counsels who lead these sessions. However, we have recognized the benefits of involving our younger colleagues at times as well.

We believe that senior team members bring a wealth of experience from handling client cases, which adds immense value to the training sessions. Indeed, clients often find it more advantageous when they interact with senior professionals who have a broader understanding of their specific needs and challenges.

Junior colleagues do benefit from these as well – just recently, we have brought on a few Associates to help out during a training initiative that was organized in collaboration with the Slovak-Austrian Chamber of Commerce. By including our younger team members, we ensured that they could also gain valuable insights from the training. Of course, we do not let junior staff conduct the trainings independently.

CEELM: Who are you targeting with this project, primarily?

Sapakova: We usually focus on engaging with positions just below the decision-making level rather than directly targeting decision-makers themselves. For instance, in the field of employment law, our primary audience is HR managers who play a crucial role in shaping organizational policies. When it comes to industries like energy or pharmaceuticals, the target audience may include salespersons or other similar roles who have significant operational influence.

We understand that executive managers are often preoccupied with numerous responsibilities which makes it challenging for them to dedicate time to training sessions. Therefore, we primarily focus on those members of their organizations who are engaged in an advisory capacity. By focusing on these individuals, we ensure that our message reaches the right people, ultimately, and that our services are effective in making an impact.

CEELM: Finally, what would you say makes your program unique?

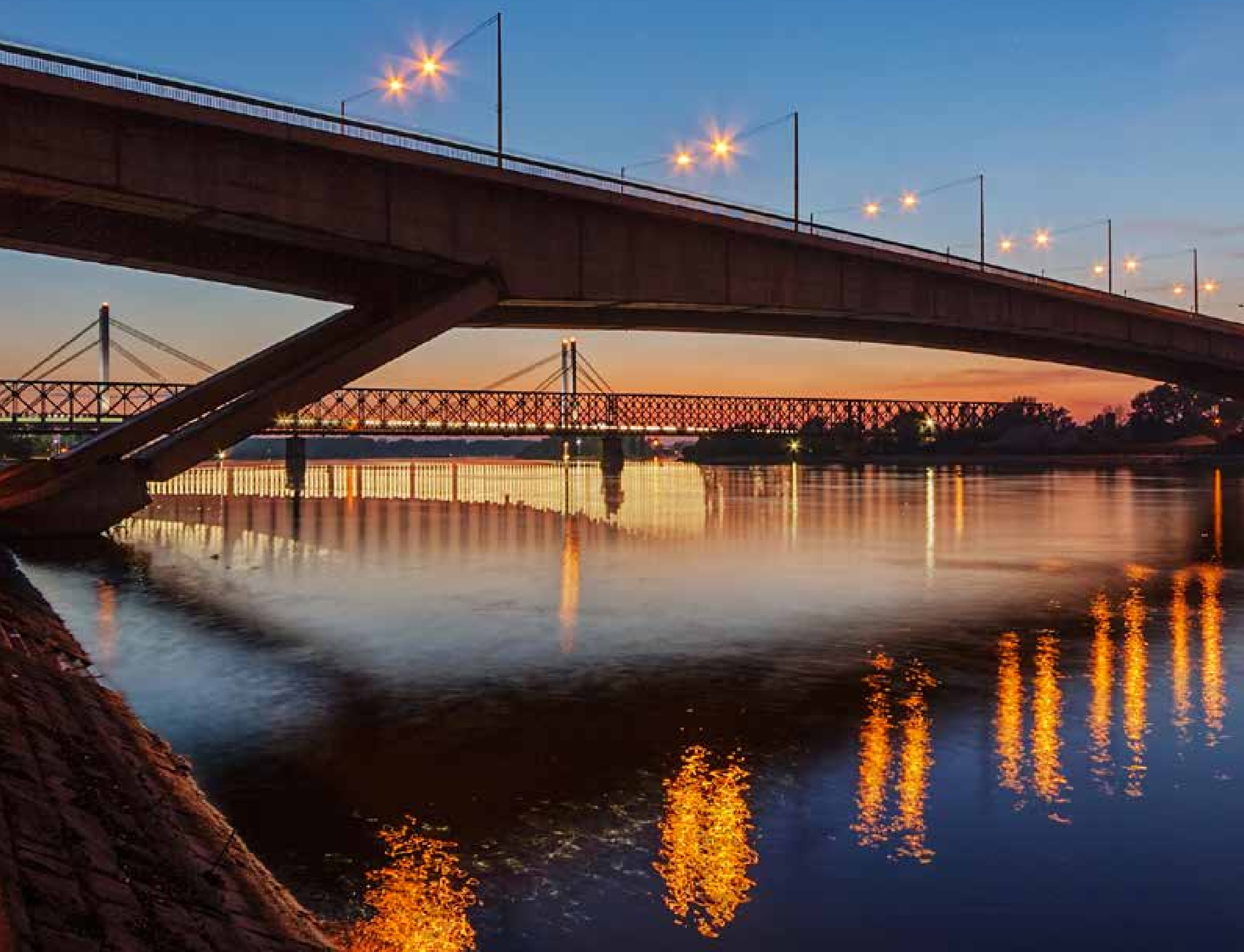
Sapakova: I believe we possess several advantages, overall.

Firstly, one of the key aspects is our ability to provide these trainings in-house. Unlike many other business training programs, we have the flexibility to travel and conduct the training directly at the client's site. This saves the employees from the hassle of traveling to a different location and allows us to deliver a more immersive and hands-on experience.

Secondly, we also offer competitive pricing compared to other business training options. By providing lower costs, we ensure that businesses of varying sizes and budgets can access our training sessions without compromising on quality.

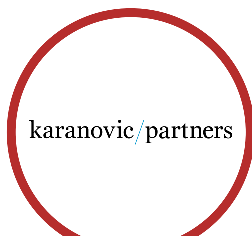
Finally, there is our multilingual capability. We are proficient in conducting trainings in Slovak, English, and German. This linguistic flexibility gives us an edge in the market, allowing us to cater to a wider range of clients and effectively communicate with diverse teams. ■

MARKET SPOTLIGHT: SERBIA



ACTIVITY OVERVIEW: SERBIA

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



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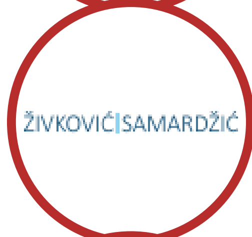

59

55

40

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

43
Vladimir Dasic

29
Igor Zivkovski

28
Djordje Nikolic

16
Nikola Poznanovic

15
Jelena Gazivoda

Activity Overview:

- Full information available at: www.ceelmdirect.com/activity-rankings
- Period Covered: December 17, 2013 - June 15, 2023

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HEALTHCARE IN SERBIA: FROM PUBLIC TO PRIVATE

By Andrija Djonovic

The Serbian private healthcare sector – including private healthcare providers and pharmacies – has been on a steady incline over the past several years. BDK Advokati Senior Partner Vladimir Dasic, Prica & Partners Partner Tijana Lalic, and Karanovic & Partners Senior Partner Marjan Poljak take a deep dive into what makes the sector tick and grow.

Private Healthcare Sector – Steady Growth

In Serbia, "publicly available information from 2022 suggests that there were up to around 1,000 healthcare institutions, including pharmacies," Poljak begins. However, "unofficial information suggests that there were almost 4,000 pharmacies in total throughout the country in 2022, including all branches of private pharmacies as well."

"Both hospitals and pharmacies are legally treated as healthcare providers," Lalic clarifies, adding that "generally, it appears that private healthcare has been growing in Serbia in recent years, especially in terms of healthcare institutions" while, in terms of private pharmacies, she says their number is already strong. However, Lalic notes that "data on the *exact* market share of private health care sector is not publicly available."

> *More and more companies are providing their employees, and their families, with private healthcare insurance as an additional perk. Bearing in mind how difficult it is to find quality labor, we can expect that this trend will also continue.*

Dasic adds that the public healthcare sector is much larger than the private sector "in terms of staff numbers and beds. In terms of the revenues, it is not possible to compare them as they have different financing and methods of payment due to the existence of mandatory healthcare insurance that is paid by every employer in Serbia and that predominantly goes to the public sector while a small fraction of it ends up in the private sector for very specific surgeries," he explains. Still, according to Dasic, in the past ten years, the "gap between public and private healthcare institutions is narrowing, and it is obvious that privately owned-institutions are taking more of the market share with the private sector now offering a variety of surgeries – even some complex ones," that was traditionally, almost exclusively reserved for the public sector.

In terms of what's been driving the growth of the private sector, Poljak explains that "challenges in receiving adequate service from the public sector, together with rising personal income, have led to individuals more often turning to private healthcare institutions, which consequently inspired their continuous growth and expansion. In the most recent years, Serbia's also been experiencing an evident increase in the number of immigrants, who naturally turn to private healthcare once they are in Serbia."

Lalic agrees, adding that the healthcare sector has been experiencing a growth trend in the "last couple of years, especially due to the COVID-19 pandemic. For example – 15% of the population used private healthcare sector services in 2013 whereas, in 2019, that number increased to 27.7%." Indeed, Lalic notes there is a recent trend of publicly owned pharmacies shutting down due to "strong competition from the private sector," especially after private pharmacies have been allowed to issue prescription drugs covered by the Republic Health Insurance Fund.

Dasic points to the entrance of "private equity firms like MEP, and strategic investors like Acibadem in two leading privately-owned healthcare institutions – MediGroup and Belmedic – as one of the main elements driving the private sector's growth." Moreover, according to Dasic, "in addition to these two major private sector players, and Euromedik as the third largest player, there are many small-to-medium healthcare providers in the private sector that are focused on the provision of niche services such as ophthalmology, cardiology, urology, and gynecology."

And it's not just about supply, but also demand, with Dasic reporting that "more and more companies are providing their employees, and their families, with private healthcare insurance as an additional perk. Bearing in mind how difficult it is to find quality labor, we can expect that this trend will also continue not only in international companies but also with local ones." In addition, "there are more doctors now that are accepting to be fully employed in the private sector as op-

posed to a trend that existed five years ago where the majority of doctors were working in the public sector and were so-called 'visiting doctors' in the private sector. Nowadays, due to the stability of the private sector and its good long-term forecasts, it can offer good salary packages and incentives to those doctors."

International Capital as Driver of Change and Growth

Outlining the specific structure of the market from a capital origin perspective, Poljak says that the "ownership of the largest players in the Serbian private healthcare market is quite differentiated." This is especially evident in the case of the three largest private healthcare providers – MediGroup, Belmedic, and Euromedik – "given that one of them is owned by local individuals, one by a foreign private equity fund, while one is jointly owned by local individuals and an internationally renowned healthcare provider majority owner."

The situation is a bit simpler when it comes to the largest players in the private pharmacies market, Poljak adds, given that "major private undertakings in the Serbian pharmacies market are almost as a rule internationally-owned."Lalic reports that the biggest ones are Benu, Lilly Drogerie, and Dr.Max – all of which are ultimately foreign-owned. "Others that are smaller in comparison are mostly in the private ownership of physical persons," she says. "The five biggest wholesalers of drugs calculated based on their turnover are Phoenix Pharma, Vega, Farmalogist, Lekovit, and Pfizer – the majority of which are in foreign direct or indirect ownership."

And "Serbia has been experiencing an increase in the number of transactions in the private healthcare sector," Poljak adds. "This is primarily driven by the growth of the sector itself and the goal of the largest players on the market to expand throughout the country, as they have, as a rule, firstly established themselves in the Serbian capital – Belgrade and/or some of the other largest Serbian cities." Tackling specifics, Lalic reports that "one of the biggest acquisitions was the acquisition of a 70% share of the Bel Medic general hospital by Acibadem City Clinic B.V., Holland, part of the Acibadem Group, in April 2021."

Marjan Poljak, Senior Partner, Karanovic & Partners

Tijana Lalic, Partner, Prica & Partners

Vladimir Dasic, Senior Partner, BDK Advokati

Further Consolidation Likely?

"At the moment, the Serbian private healthcare market is experiencing consolidation and we expect this trend to continue in the years to come, as there is still significant room for it," Poljak says. "When it comes to the private healthcare institutions market in the narrower sense, the largest players have already established themselves in the capital and this market can be considered quite consolidated, but it is now expected that these players will try to branch out and consolidate the market throughout the country," he explains. "The largest undertakings in the pharmacies market have already made the next step in this regard, as the trend of branching out from Belgrade throughout the country through acquisitions of smaller pharmacies has been notable in recent years."

On the other hand, Dasic is less convinced. "Outside of Belgrade the private sector is very fractured, whilst in Belgrade the leading three private sector providers have quite a dominant position and we do not expect that, in the near future, there could be other significant changes in the market," he says. "Leading private sector providers will continue with organic growth so we don't expect any significant acquisitions. Any acquisitions of local players are also questionable as the consumption power outside of Belgrade and Novi Sad is much lower and does not create a good business case for acquisitions," he concludes. ■

THE OPS PARTNER: GECIC LAW'S HEAD OF OPERATIONS HRISTINA KOSEC MAKES PARTNER

By Andrija Djonovic

In a move that might appear unconventional for CEE legal markets, Belgrade-based law firm Gecic Law elevated its Head of Operations Hristina Kosec to Partnership. While a lawyer by education, Kosec's career up to this point has not exactly been a typical lawyer's one.

CEELM: Congratulations on your recent appointment to Partner! It is rather unusual, especially in CEE, for a Head of Operations to make Partner within a firm. Can you walk us through your career leading up to your current role and share with us the rationale behind your Partner appointment?

Kosec: Thank you for your warm wishes, I appreciate it!

I joined Gecic Law nearly four years ago as an Operations Manager. I subsequently became Head of Operations as the next step in the firm, and I continue to effectively fulfill this role while shouldering additional responsibilities as Partner. Before joining Gecic Law, I had accumulated over 15 years of executive experience in the banking and telecommunications industries, holding various roles, including in finance and product marketing. This breadth of experience has enabled me to successfully adapt and apply principles that work in leading service-oriented organizations to our vibrant law firm, which I trust has benefited from my operational insights. An essential aspect of this story is that my educational background in law and membership in the Belgrade Bar allows me to approach situations from a lawyer's perspective and seek solutions that consider legal aspects as well.

While my appointment as Partner may be unconventional, it reflects our firm's commitment to breaking traditional molds in the legal field. At Gecic Law, we value innovation, inclusivity, and a broad perspective on leadership. It is worth noting that having a Head of Operations in a law firm is also unusual in our region. In this role, I have contributed to the firm's strategic growth, ensuring operational efficiency, and fostering an environment conducive to innovative thinking.

I have the honor of being actively involved in key decision-making processes, supporting the firm's objective of delivering the highest standards of client service. Although my appointment as Partner hasn't significantly changed these responsibilities, it has placed a greater emphasis on client-facing activities, requiring me to put on my legal hat more frequently.

In essence, my appointment as Partner underscores the acknowledgment that my contributions, although non-traditional in the legal world of our region, have indeed added value to the firm and its clients. This also aligns with our firm's multidimensional perspective, which values diverse talents, skills, and their impact on our success. Meritocracy, which prioritizes skills, contributions, and results over traditional roles and strict hierarchies, is a guiding principle we uphold as a firm.

CEELM: Since 2021, you've also been co-heading the firm's ESG practice. How do you split your time between the two roles?

Kosec: Indeed, I took on the role of co-heading the firm's ESG practice – an area very close to my heart. As someone who led our CSR efforts, I was one of the strong proponents of starting this journey, pioneering this area in the legal world of our region. Co-heading the ESG practice has been challenging and time-consuming, but immensely rewarding. The beauty of fulfilling these two roles lies in their complementarity – as Head of Operations, my perspective on the practice is unique, enabling us to provide closer guidance to clients on meaningfully integrating ESG principles into their businesses and applying them within our operations.

When it comes to time allocation, no strict formula governs how I split my time between these two roles. The interplay between ESG and operations creates an interesting dynamic where one aspect enhances the other. It requires some effort to strike a good balance based on priorities at any given moment. What makes me happy is seeing this symbiosis elevating the quality of the firm and its operations, and our standing in the community, which in turn brings positive client perceptions and better recruitment.

CEELM: Do you believe other business functions should be eligible to be appointed to law firm partnerships as well?

Kosec: Law firms should consider professionals with a business background, including for partnership appointments, as long as they meet the requirements and conditions. Their different experiences, ranging from finance, customer relationship, and information technology to human resource management, may bring various perspectives and skills and play an important role in shaping a firm's development. Introducing these individuals at a management level could drive innovative solutions and strategic decisions, enhancing the overall functioning and success of a firm.

Looking at predictions for the legal industry's future, it's clear that business professionals will be a valuable part of legal teams, bringing unique insights that complement the traditional legal skillset. Legal teams need to transform alongside the businesses they support. Digitalization, advanced technology, regulation complexity, cost efficiency, and evolving ways of working encourage diversified organizations in the legal profession, as clients increasingly rely on their legal teams to help them identify opportunities and solutions in a new reality. Embracing different perspectives from various business fields promotes a more well-rounded approach to addressing complex challenges and adapting to a changing legal landscape. Integrating diverse talents contributes to a more inclusive and collaborative work environment capable of leveraging the strengths of professionals from various backgrounds to drive results.

CEELM: Do you expect other firms in your jurisdiction to follow suit?

Kosec: As the legal market in our jurisdiction becomes increasingly competitive and dynamic, anticipating and providing effective solutions to our clients' pressing business needs will inevitably require more creative thought and a broader perspective than what is currently prevalent in the industry. In this context, I expect a growing recognition of the value that business professionals bring to the success of law firms. However, the extent to which other firms will follow suit in appointing professionals from non-legal backgrounds as partners may be subject to external conditions and limitations, which we are all aware of.

Additionally, the traditional role and skillset of lawyers are likely to evolve rapidly and become more diverse, reflecting the changing clients' demands. It would benefit the entire industry if traditional norms and boundaries were also adjusted to adapt to the evolving times. While the legal profession may appear resistant to change and adhere to traditional norms from an outsider's perspective, I remain optimistic about the future and eagerly anticipate the progressive evolution of the legal industry in our region, embracing a more inclusive approach that values diverse skills and perspectives from various professionals.

Ultimately, the success of law firms depends on their ability to navigate complex challenges and provide effective solutions. Embracing professionals from non-legal backgrounds can contribute to the industry's performance, as changing demand, technological breakthroughs, and the rise of alternative legal service providers significantly influence the legal profession's future. ■

MARKET SNAPSHOT: SERBIA

RETHINKING THE ROLE AND POWER OF CLASS ACTIONS IN SERBIA

By Jovana Velickovic, Partner, and Nikola Ivkovic and Bojan Tutic, Associates, Gecic Law

In recent years, the rise of mass lawsuits has placed a significant strain on Serbian courts. The most notable mass lawsuits, which first emerged in the mid-2000s, encompass a wide range of issues, from shift and night work disputes to overcharged fees for children's daycare and discrimination against war veterans. Recent prominent cases have involved the nullity of loan agreement provisions on application-processing costs and auxiliary school staff's entitlement to compensation for warm meals and holiday allowances. The rise of mass lawsuits carries profound legal and economic implications, sparking renewed initiatives for class action in Serbia.

In instances where an occurrence impacts the interests of many individuals, class action emerges as a crucial mechanism for providing comprehensive legal protections. This instrument achieves at least three objectives. First, it ensures legal protection for those lacking sufficient financial or other resources to pursue individual legal proceedings. Second, it fosters overall societal efficiency by replacing thousands of identical cases with a central proceeding, thereby safeguarding the interests of all parties involved. It mitigates the proliferation of mass lawsuits, which burden certain courts, adversely affect their efficiency, and potentially jeopardize the right to a timely trial. Third, it helps prevent harmful conduct by making potential wrongdoers aware that they may be liable for redressing the consequences of their actions for each affected individual, ideally encouraging more cautious behavior.

Originally from the United States, this legal institution has recently been adopted by traditionally continental legal systems in EU member states and most Western Balkans countries. The possibility of exercising collective judicial protection in litigation proceedings is now widely recognized as a critical facet of the right to a fair trial – an aspect currently absent in Serbian law. A significant milestone in this area of EU law is the adoption of *Directive (EU) 2020/1828 on representative actions for the protection of the collective interests of consumers*, marking the first EU law to introduce class action in the style of the American jurisprudence.

In Serbia, it is expected that the legislature will prioritize the implementation of *Directive (EU) 2020/1828*. As the directive establishes minimum standards, there should be no impediments for the Serbian legislature to develop a broader scope of applicability for class actions. For instance, an issue that may arise is whether to restrict class actions to consumer protection or to broaden their application to other fields. One such area is competition law, as violations can adversely impact not only individuals but a wide range of entities, including businesses.

Class actions, however, are not entirely unfamiliar to the Serbian legal system. The *Civil Procedure Act* of 2011 included provisions for *Proceedings for the Protection of the Collective Rights and Interests of Citizens*. Under these provisions, associations and organizations could represent specific citizen groups if their registered or legally prescribed activities included such protection. Yet, after a single attempt to initiate a class action on this basis, the Constitutional Court of Serbia declared the unconstitutionality of this procedure and excluded the possibility of its application in its May 23, 2013 decision (Decision).

This Decision, however, left room for a potential reintroduction of class action within the same constitutional context. Nevertheless, despite the clear purpose and function of class actions, achieving a suitable legislative framework for such lawsuits remains a formidable challenge. The *Draft Amendments to the Civil Procedure Act in 2021* (Draft Amendments) were expected to support the implementation of class action. Although the professional community highlighted their numerous deficiencies, the published Draft Amendments did not contain provisions on the protection of the collective rights of citizens. This omission has left the professional community needing a draft legal framework to demonstrate what class actions could look like in Serbia, and we are still contemplating the potential role and power of class action in Serbia. ■

WHAT DO THE CHANGES TO THE LAW ON PLANNING AND CONSTRUCTION ACTUALLY BRING?

By Djordje Nikolic, Founding Partner, and Luka Aleksic, Senior Associate, NKO Law

The Government of the Republic of Serbia recently took a significant step in redefining the rules regulating construction activities in Serbia by proposing amendments to the *Law on Planning and Construction*. If adopted, this will introduce significant changes and breakthroughs for both individuals and the industry as a whole.

A summary of the most important proposed changes and goals is as follows:

Conversion Fee – No more

Arguably, the most significant (and controversial) change is the near-complete abolition of the fee for converting the right to use land into ownership. It is proposed that compensation for conversion will be abolished, except for a specific limited group of individuals whose position will be determined by special regulations. For those relieved of this obligation, the procedure is relatively straightforward and is reviewed based on an initial request to the Agency for Spatial Planning and Urbanism. If approved, the agency will instruct the competent Cadastral Registry Office to carry out the conversion and *ex officio* register the ownership in favor of the former usage right holder. It is argued that the abolition of the conversion fee will free up numerous locations that will be eligible for sale, thereby enriching the real estate market. Additionally, it will be easier for existing usage rights holders to be able to plan further development projects and obtain the necessary permits.

The "Green Agenda"

One of the amendments' aims is to ensure sustainable and efficient construction practices by introducing mandatory "green certificates" for all new buildings exceeding 10,000 square meters (GBA). While other investors are not obliged to obtain these certificates, they are encouraged to do so because of incentives such as a 10% discount on the total amount of contribution for urban development. The amendments also require the acquisition of energy passports for both public and private buildings, with different timetables specified for building owners to obtain these passports. Finally, all investors will be obligated to prepare and submit valid proof documenting the movement and proper management of construction waste throughout the construction process so as to prevent the creation of unsanitary landfills.

Introducing Electromobility

The amendments introduce "electromobility" into Serbia's legal system, referring to the use of electric vehicles. Urban-zoning plans will now define the conditions and requirements for the establishment of a minimum number of charging stations for electric vehicles in both public and private buildings and facilities. Existing and future gas stations will have certain grace periods. These changes aim to promote the use of electric cars and facilitate the transition from fossil fuels to renewable energy sources in Serbian society.

Update of Permitting Procedures

One of the amendments' aims is to provide an alternative to the e-government procedures for investors. This will enable them to bypass the unified electronic procedure and obtain location conditions directly from the relevant public utility company. Also, investors planning construction exceeding 20,000 square meters will now have the choice to obtain construction permits either locally or before the Ministry for Construction. If delayed for more than 30 days locally, the investor may directly approach the Ministry and request the issuance of the awaited permit. Information on locations will now also be issued by public notaries or other registered entities/individuals.

Introduction of New Authorities, Positions, and Registries

The amendments recommend the establishment of the Agency for Spatial Planning and Urbanism of the Republic of Serbia. In addition to standard responsibilities, this agency will also be responsible for establishing and managing the Central Register of Planning Documents. It will also maintain the electronic system called E-Space regarding urban planning documentation. The concept of listing brownfield locations is also proposed. Local councils will collect and provide information on locations not used for a long time to the agency within six months. The agency will compile a data register on these brownfield locations and publicize it. Finally, as well as formalizing the position of a Project Manager, the amendments also propose the establishment of a new official state position – the General Urban Planner (GUP). The GUP will be the highest urban-planning authority, responsible for ensuring the harmonization of the urban-planning documents throughout the country. ■

TRENDS ON SERBIAN BANKING AND FINANCE MARKET – WHAT TO EXPECT?

By Jelisaveta Janic, Partner and Head of Banking and Finance, Vukovic & Partners

Despite global financial downturns, Serbia's banking and finance market has exhibited remarkable stability and consistent growth. It has experienced significant advancements driven by economic expansion, technological progress, and regulatory reforms aiming to enhance stability, transparency, consumer protection, and efficiency.

In recent years, the Serbian banking market has witnessed significant consolidation, reducing the number of operating banks from 31 in 2016 to the current count of 21 (this data and the rest used in this article are sourced from the official website of the National Bank of Serbia). Inflation and an increased ECB interest rate during the previous year significantly impacted loan costs. This increase in costs has influenced credit activity within the banking sector, affecting lending practices and credit accessibility for businesses and individuals. In March, total domestic loans registered a 3.7% growth.

Despite these challenges, profitability has shown significant growth. The total banking sector's profit before taxation increased from EUR 458.1 million in 2021 to EUR 837.2 million in 2022, representing an 82.75% growth. In the first three months of 2023, profit before taxation reached EUR 310.2 million, with an expected increase of 48.21% for the entire year if the current trend continues. The growth in profitability can be attributed to the consolidation trend, inflation, interest rate increases, and a decrease in the level of non-performing loans (NPLs).

Reducing NPLs has been a primary focus in the Serbian banking sector. Implementing various measures has led to a significant decrease in the NPL ratio, dropping from a post-crisis record level of 23.18% in May 2015 to a low of 3.00% by the end of 2022. The NPL ratio for the first quarter of 2023 remained unchanged.

This achievement can be attributed to a systemic problem-solving approach, timely implementation of appropriate measures, and the sustainability of results.

Several regulations have played a crucial role in successfully reducing NPLs in Serbia. The *Decision on the Accounting Write-Off of Bank Balance Sheet Assets* has facilitated the removal of non-performing assets from banks' balance sheets. Banks have efficiently addressed problematic loans by employing the accounting write-off, leading to an overall reduction in the NPL ratio.

The *Strategy for Resolving Problematic Loans* and the *NPL Program* have also made significant contributions. These strategic documents, adopted in 2017-2018 and 2019-2020, respectively, have provided a comprehensive framework for resolving problematic loans in the Serbian banking sector. They have guided banks in implementing effective measures such as collection, write-off, and assignment (sale) of NPLs to third parties, significantly reducing NPLs. By the end of March 2023, 54.0% of NPLs came from citizens and 31.4% from companies.

Divesting banks to corporate entities has emerged as an effective mechanism for addressing NPLs, with the sale of receivables held by banks in bankruptcy playing a substantial role in reducing this percentage. While the sale of claims towards private individuals as borrowers is currently not allowed in Serbia, amending consumer protection laws to permit the assignment of these claims would be a logical next step.

In addition to mitigating NPL levels, selling these receivables brings further advantages, including reactivating credit activity through debtor credit restoration and increasing public revenue by reducing illicit economic practices.

To ensure consumer protection, it is necessary to establish a regulatory framework that regulates the operations of companies engaged in acquiring such claims. Many regional jurisdictions, such as Montenegro and Albania, subject these companies to central bank oversight, stringent criteria, and financial requirements similar to those applied to other financial institutions.

Moreover, implementing new regulations would foster fresh foreign investments in a new type of loan offered for sale.

As Serbia progresses towards EU integration, further harmonizing banking regulations and integration with European financial markets may present new opportunities and challenges. These may include the application of the *Digital Operational Resilience Act* and adherence to Environmental, Social, and Governance rules.

Overall, the Serbian banking and finance market continues to improve, guided by regulatory reforms and technological advancements, with the aim of achieving stability, transparency, consumer protection, and efficiency. Notwithstanding the presence of favorable trends, the observable decline in the number of banks within the market indicates the persistent existence of underlying structural issues that need to be solved. ■

DEALING WITH FIXED PRICE ADJUSTMENTS IN INFRASTRUCTURE PROJECTS – A SERBIAN LEGAL PERSPECTIVE

By Jovan Nikcevic, Managing Partner, and Matija Savovic, Associate, Nikcevic & Kapor

In recent years, significant global events and unforeseen circumstances have had a profound impact on, among others, infrastructure projects. These events, whether global conflicts, health crises, or other significant occurrences, have triggered price changes in such projects. As a result, provisions of the *Serbian Law on Obligations* regarding claims for changes in price have gained prominence.

Article 637 of the *Serbian Law on Obligations*, titled "A Provision on Unchangeability of Prices," addresses the circumstances under which the price of works in a contract can be changed despite a contractual clause stating otherwise. According to this article, a contractor is entitled to claim costs due to market price changes even if a contract includes a provision that the price of works shall remain unchanged even if the prices of the elements on which it was based increase. Namely, a contractor can still request a change in the total price of the works if, after the conclusion of a contract, market prices rise to such an extent that the price of the total works increases by more than 10%. However, in such cases, a contractor can only demand a difference in price that exceeds 10%, unless the increase in prices occurred after a contractor became late in fulfilling its obligations (execution of infrastructural works).

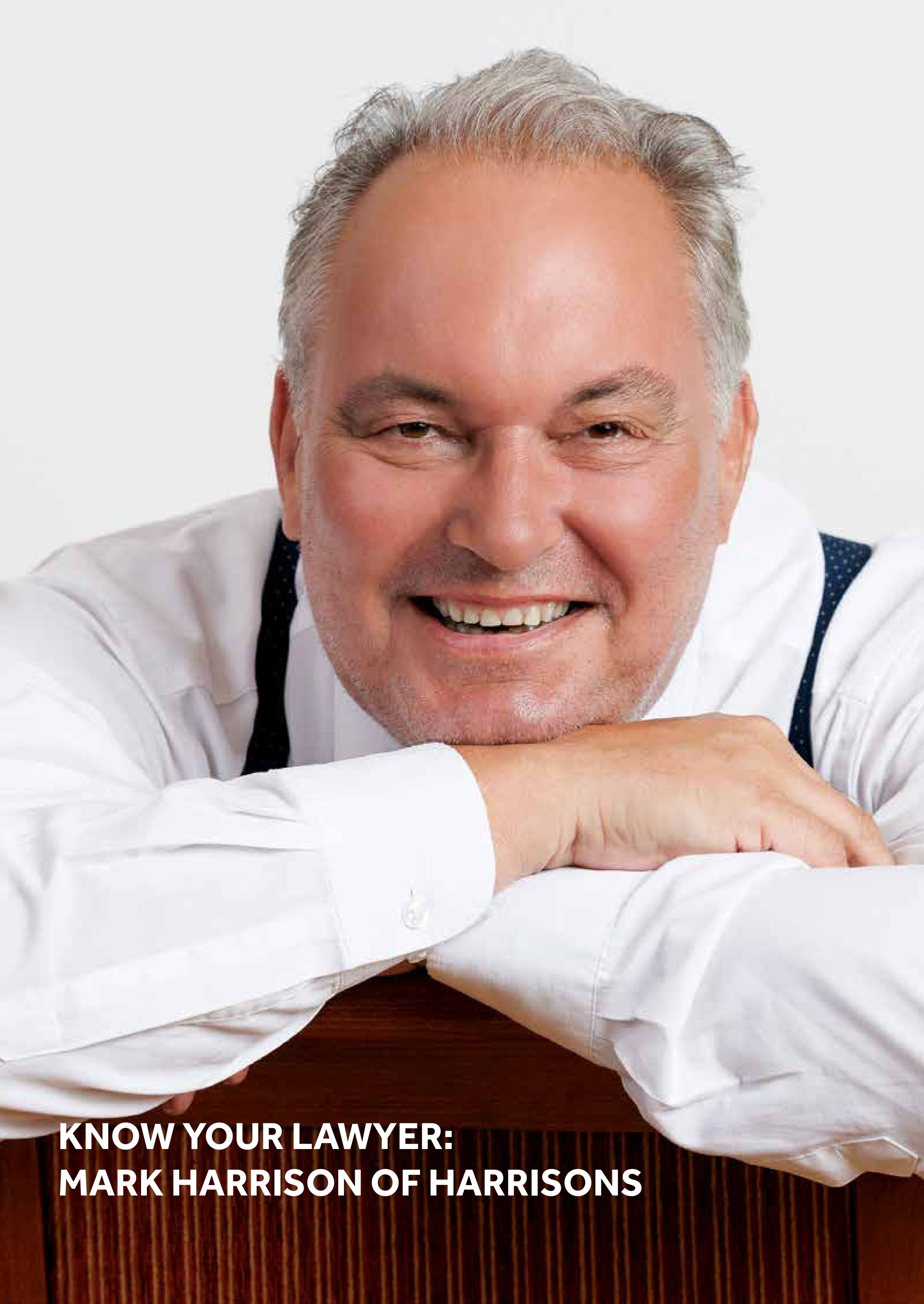
A notable decision by the Serbian Supreme Court of Cassation from 2016 shed light on the calculation of costs that occurred due to the mentioned market price change. The court ruled that the calculation of costs on a contractor's part should be done after the issuance of the final payment certificate. This decision was grounded in the reasoning that only at that point can a contractor possibly have a comprehensive calculation of the full quantity of costs incurred with respect to the totality of contracted works.

As for the calculation method, to improve a contractor`s chances of sufficiently proving its claim before a court or arbitration, it would be best to assess the change between the market price and the contracted price for each element that constitutes the contracted price of construction works (e.g., price of material, labor, overhead). Each calculation of price change shall be considered at the time of each payment that a contractor has made on the project (e.g., payment for the purchase of material). This approach allows for a thorough evaluation of the impact of price fluctuations on various aspects of the project.

Following the Serbian Supreme Court of Cassation`s reasoning, once the final payment certificate is issued, a contractor is entitled to claim costs due to price changes as per Article 637 of the *Serbian Law on Obligations*. Consequently, the above-explained calculation of costs should encompass the period from the conclusion of the contract (not before, as that would be contrary to Article 637) until the issuance of the final payment certificate. Contractors should present their claim for the total costs calculated up to the certificate, considering the price change throughout that period applying the herein proposed method.

However, it is important to bear in mind that contractors are only entitled to claim costs that exceed a 10% change in the contracted price for works due to the change in the market price.

In conclusion, the correct interpretation and implementation of Article 637 of the *Serbian Law on Obligations* are of utmost importance in infrastructure projects, particularly in light of the recent economic crisis. The decision by the Serbian court to calculate costs after the issuance of the final payment certificate ensures a comprehensive assessment of expenses incurred due to price changes. Adhering to the recommended method of calculating cost changes between market and contracted prices provides a fair and accurate representation of the impact of price fluctuations on the project. Contractors can then claim the costs calculated up until the final certificate while considering the 10% reduction threshold. By following these guidelines, the Serbian infrastructure sector can effectively manage price changes and ensure the successful completion of projects. ■



KNOW YOUR LAWYER: MARK HARRISON OF HARRISONS

Career:

- Potato Picker (GBP 1 per day!), 1973-1974
- Loading 20-ton lorries with potato bags weighing 25.4 kilograms (GBP 2.30 per day), 1974-1975
- Petrol Pump Attendant (GBP 6 per day), 1975-1975
- Jeater Houses, Barman, 1975-1975
- Carpet Cutter (Full daily wage which upset all the workers because we didn't pay tax. Still got a scar on my right finger when I nearly severed the top off.), 1976-1978
- Willey Hargrave (Leeds & London), Trainee (My job at 5:30 p.m. on Friday was to be the first in the Town Hall Tavern and get a round in for the Partners. Salary: GBP 2,200 per year. The last three months of training were in Garforth, a mining town, personally serving divorce papers on miners!), 1980-1982
- The Swan (Evershed Walk, Acton (see Eversheds below!)), Barman (Had to get permission from the Law Society as it was not technically allowed to have two jobs whilst training but I was on GBP 3,200 per year in London! Live the high life on that?!?! Great Irish Pub taught me a lot about life.), 1981-1982
- Linklaters, Solicitor – Aircraft & Shipping Financing (First time I was told "only use faxes – it's quicker!"), 1982-1984
- Francis & Crookenden, Solicitor (I needed to get into litigation so I learned every corridor and met every clerk in the High Court), 1984-1987
- Robert Gore & Company, Partner – Commercial Litigation (I really cut my teeth there on heavyweight litigation), 1987-1991
- Eversheds, Partner – Head of Central & Eastern Europe (Included training on how to use a computer keyboard! For lunch all the Partners would meet for pork pies and sandwiches in the boardroom.), 1991-1997
- Harrisons, Principal, 1997-present

Education:

- Keele University, BA Law & Economics with Philosophy & Mathematics, 1979
- Chester College, Legal Professional Examination (First time the course was one year long. Only four law colleges then. Three in the South so all Northerners and Middlesbrough fans ended up at Chester. Lived above a butcher's shop that used to give me free black pudding. Still have nightmares over those exams.), 1980

Favorites:

- **Out of office activity:** Everyone knows me as a shy, incredibly introverted guy, lacking in self-confidence who has absolutely no idea about the nightlife of Belgrade or London, the bars, restaurants, clubs, partying, and likewise the shy guy in Porto Montenegro with his boat "The Full Monte" (As if!?!?).
- **Quotes:** "Carpe Diem", "Life is not a dress rehearsal", "Today is the first day of the rest of your life", "Never, ever, give up!"
- **Movie:** I have watched the final poker scene in *Casino Royale* about 100 times – my psychiatrist doesn't know why! There's just something about ultimately winning against all odds – a reflection of many times in my life?

Top 5 Projects:

- Advising on the U.S. Steel Purchase of Sartid A.D. in 2003 – a milestone privatization of Serbia's steel industry by a leading American Company. Mentor: U. S. Steel Chairman John Goodish – a visionary man;
- Advising on Jugopetrol Kotor's 2002 highly successful privatization of Montenegro's energy company to Hellenic Petroleum;
- Advising on Fiat's 2008 purchase of the old Zastava car factory;
- Advising on Porto Montenegro's 2005 transformation from an old navy shipyard into the premier Marina & Tourist Resort in Montenegro. I'd call this deal "My Baby." Mentor: Barrick Gold Chairman Peter Munk – (also) a visionary man;
- Advising on Heineken's 2008 purchase of MB Brewery and, subsequently, of Zajecar Brewery.

What are a few things clients likely don't know about you?

Harrison: The Chancellor at Keele University was Princess Margaret and at the Winter Ball in December 1975 I managed to get passed her security give her a big kiss and wished her Merry Christmas. Fortunately, I didn't get expelled. I keep an aquarium in my office full of sharks which I name after lawyers in my little black book. I have an interest in Harry's Bar in Belgrade. I love singing Frank Sinatra songs including *My Way* and *New York, New York*.

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

Harrison: I have a place in North Yorkshire, God's own county and since March 2021 I have been acting pro-bono to oppose a planning application to build a mega egg factory nearby that would destroy peoples' way of life. We had the first application refused but we now face an appeal on July 25, 2023.

And what was your main takeaway from it?

Harrison: Giving help to a community and ordinary humans in opposing an industrial giant with loads of money is so satisfying when you see how it positively affects people's human lives. The true human face of law and how to use it. *Erin Brockovich* and *Dark Waters*.

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

Harrison: Treat everyone the same. Never believe people are stupid. Question everything. Be commercial. Common sense is key and get to be on good terms with the Managing Partner's Secretary (to cover your back). But at the end of the day what happens to you is all down to fate.

MARKET SPOTLIGHT: GREECE

ACTIVITY OVERVIEW: GREECE

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

54

48

34

31

18

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

19 Christina Papanikolopoulou

16 Nikos Papachristopoulos

12 Gus Papamichalopoulos

12 Theodore Rakintzis

9 Athanasia Tsene

9 Yannis Kourniotis

Activity Overview:

- Full information available at: www.ceelmdirect.com/activity-rankings
- Period Covered: December 17, 2013 - June 15, 2023

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MODERN POWERHOUSE: GREEK RENEWABLE ENERGY MARKET

By Teona Gelashvili

Over the past decade, the Greek renewable energy market went through an accelerated expansion. AKL Law Firm Partner Kostas Fatsis, Bahas, Gramatidis & Partners Partner Nassos Felonis, Moussas & Partners Managing Partner Nicholas Moussas, and Metaxas & Associates Associate Alexandra Kornilaki delve into the primary catalysts and the sector's outlook.

Landmark Projects

The Greek renewable energy market has experienced rapid growth, as outlined by the latest report by the International Energy Agency, according to Felonis. "At the end of 2022, Greece ranked second worldwide in potential photovoltaic penetration with a rate of 17.5%," he notes.

"Several large renewable energy projects have been developed in Greece over the past ten years," Kornilaki agrees. "The Kozani Solar farm, for instance, with a total capacity of 204 megawatts, is the biggest system with two-sided or bifacial panels in Europe." Felonis and Fatsis also highlight large wind projects of the last decade in Greece – "the flagship wind farm cluster of Terna Energy in Kafireas, Evia, is expected to begin its operation at the end of this summer and represents the largest wind farm cluster in Greece, with a total installed capacity of 330 megawatts," Fatsis says. "A complex of wind farms in Euboea Island was inaugurated recently, which is one of the largest in the country, with a total capacity of 154 megawatts," Felonis adds, noting that "it includes seven wind farms and will be able to produce around 480 gigawatts per year." Additionally, the Amfilochia hydro-pumped storage "is the largest grid energy storage investment in Greece with a total installed capacity of 680 megawatts in production and 730 megawatts in pumping," according to Moussas.

A Pole of Attraction

The factors that contributed to such development are manifold. "Greece possesses several key factors that make it highly attractive for renewable project developments," Kornilaki reports. "On the one hand, the geographical location of Greece, situated in a region known for its high solar exposure and favorable wind patterns, presents significant potential for harnessing these renewable energy sources while, on the other hand, the strategic location within the EU opens up opportunities for cross-border energy trade and collaboration."

"The country benefits from plentiful sunlight during most days of the year, especially in its islands and southern regions, making it ideal for solar power projects," Fatsis adds. "In addition, its significant wind potential, especially in its coastal areas and islands, makes the country suitable for the development of wind energy projects."

In addition to the natural factors, government initiatives appear to have a substantial influence. "The Greek electricity market has undergone liberalization, and renewable energy investments have been encouraged," Moussas points out. "The grid is undergoing significant upgrades to support the integration of large-scale renewable energy projects."

"Greece offers stable and long-term guaranteed tariffs for renewable energy production," Kornilaki continues. "The government has put in place policies and incentives such as feed-in tariffs, power purchase agreements, and other mechanisms that provide long-term revenue stability and attract private investment and has undertaken efforts to improve its business environment and attract foreign direct investment. Structural reforms, including simplifying licensing procedures and enhancing legal frameworks, have contributed to increased investor confidence in the country's renewable energy sector."

Fatsis also emphasizes state aid: "since the early stages of development of the Greek renewable energy sources market, Greek lawmakers have adopted various support mechanisms providing state aid in the form of guaranteed tariffs for the offtake of renewable energy sources production. These mechanisms provide long-term contracts and stable revenue streams for project developers, enhancing the attractiveness of renewable energy investments." And he draws attention to the country's effort to protect the environment and deal with climate change. "Greece's de-carbonization plan, largely described in the latest *National Plan for Energy and Climate*, sets ambitious targets towards full de-carbonization by 2028," he says. "A total investment of EUR 43.8 billion in renewable energy sources is required, while power from renewable energy sources production is to become the country's main energy source, reaching 65% of the overall power production in 2030."

Alexandra Kornilaki, Associate, Metaxas & Associates

Kostas Fatsis, Partner, AKL Law Firm

Nassos Felonis, Partner, Bahas, Gramatidis & Partners

Nicholas Moussas, Managing Partner, Moussas & Partners

"Moreover," Kornilaki says, "Greece has a strong track record in renewable energy development, with operational projects demonstrating a successful and reliable energy generation. This provides a level of confidence and assurance to investors that their investments will yield expected returns."

In High Demand

Consequently, a large number of investors have shown interest in the country: "both domestic and international investors have been actively participating in financing renewable projects in Greece," Kornilaki says, noting that this includes institutional investors, private equity firms, and renewable energy companies. The main players in the renewables space, according to Moussas, include Mytilineos SA, Ellaktor SA, Terna Energy SA, Public Power Corporation Renewables SA, Enel Green Power, and ELPE Renewables.

Kornilaki and Moussas say the country has drawn interest from development banks and financial institutions as well with Kornilaki pointing to "multilateral development banks, such as the European Investment Bank (EIB) and the European Bank for Reconstruction and Development (EBRD), having provided financing for renewable projects in Greece." Similarly, "according to publicly available information, the EIB backs PPC Renewables' three photovoltaics parks of a total capacity of 230 megawatts in Kozani in Western Macedonia," Moussas notes. "The EIB loan is backed by an EU budget guarantee under the *InvestEU* program." Additionally, he notes, "the EBRD supports the Kozani Solar Park with a total installed capacity of 204 megawatts by investing EUR 75 million in the successful Eurobond tap issuance by Hellenic Petroleum."

Lastly, Fatsis highlights that Greece benefits from various funding opportunities through EU programs: "funds such as the European Green Deal, the Recovery and Resilience Facility, and the European Structural and Investment Funds provide financial support for RES projects, fostering their development in the country," with Felonis adding that "thanks to *The National Recovery and Resilience Facility Greece 2.0.*, adopted in 2021 in Greece, financing for investments in the Green Energy Sector is available mainly through loans which are long-term (up to 15 years), with a very low interest rate."

Powering the Future

Considering all these factors, the outlook regarding the prospectus of the Greek renewable energy market looks positive. "It seems that 2023 will be a landmark year for the Greek energy market," Moussas notes. "The energy crisis has reinforced Greece's geopolitical role and highlighted its potential to become an energy hub in Europe through future transport of natural gas, LNG, electricity, and hydrogen from three different regions: the Caspian Sea, the Middle East, and North Africa. In addition, Greek refineries are accelerating their green transformation and there is an undeniable focus on renewable energy."

"The green energy sector in the next five years will grow even more and more rapidly and the anticipated investments in Greece for the 2021-2030 decade will exceed EUR 20 billion," Felonis further notes.

"Overall, with supportive policies, advancing technologies, improved grid integration, and international cooperation, Greece is well-positioned to expand its renewable energy capacity and accelerate its transition towards a sustainable and low-carbon energy system," Kornilaki concludes. ■

MARKET SNAPSHOT: GREECE

THE AEGEAN – THE HEAVY SEAS THAT REAL ESTATE INVESTORS MUST NAVIGATE

By Helen Alexiou, Managing Partner, AKL Law Firm

Greece is consistently ranked among the top tourist destinations in the world, with the Aegean islands being at the center of the hype. But few wonder what it takes to actually conceive, design, and construct a hotel in this gorgeous part of the world. There are so many restrictions and obstacles that one thing is certain: investing in the Aegean is certainly not for the faint-hearted. Bearing in mind that this is only a "snapshot," I will attempt to focus only on the acts currently pending at a legislative level which might greatly facilitate greenfield investments in tourism.

1. *Special Spatial Framework for Tourism* (SSFT): This is the first (and currently highest) level of spatial planning which defines the guidelines and parameters for the whole country. In 2013, the Council of State annulled the SSFT issued in 2013, and, in 2017, it further clarified that following the above annulment, the earlier SSFT (issued in 2009) was not revived. As a result, there are currently no statutory guidelines for spatial planning for tourism in Greece (except for those that may be included in the *Regional Plans*, but please keep reading…) and, although there is a lot of pressure on the Greek government to proceed with issuing the relevant joint ministerial decision, the timeframe is still unclear.

2. *Regional Framework of Spatial Planning* (RFSP) for the Southern Aegean: This is the second level of spatial planning, aimed at specifying in more detail the guidelines for the development and organization of the main productive sectors per region (in this case, the Southern Aegean). The RFSP currently in force was issued over 20 years ago and is, as a consequence, seriously outdated. It is also rather vague and does not offer much help (especially in light of the absence of an SSFT). Although the public consultation procedure for the revised RFSP was completed two years ago, it's still unclear when the relevant ministerial decision will be issued.

3. Road Characterization: This is an issue that the Council of State first raised in 2008 and has now become a major parameter in the validity of building permits not just in the Aegean but throughout the non-urban areas of the country. In short, pursuant to the relevant rulings, a valid building permit may be issued only if one side of a plot opens up directly on a road that has been determined as public by means of a presidential decree. The problem is that there are very few such presidential decrees currently in force and the procedure for the issuance of new ones is extremely time-consuming. In fact, an optimistic estimate would be that we would need between two and five years to cover a large part of Greece's non-urban areas. For this reason, the government has made repeated attempts to tackle this issue through legislative reform – so far without success.

4. Special Environmental Studies (SES): Last, but most certainly not least, there's the problem of discrepancies in the regulatory framework surrounding the Natura network. Greece, having been found in breach of its relevant obligations toward the EU, is now trying to make amends and could, potentially, be making hasty decisions along the way. The public consultation on the SES for the Southern Aegean was recently completed and, further to a review and assessment of the comments and views expressed by the Ministry of the Environment and Energy and its specialized consultants, a presidential decree is expected to be issued in the (not-so-near) future. This decree shall determine the level of protection of each zone, the allowed land uses, and any development restrictions necessary for the protection of biodiversity. However, while the consultation on the SES was in full swing, a ministerial decision was issued in March, setting conservation objectives for (among others) the Southern Aegean, making things rather complicated. I am trying to not overdramatize the situation, but this decision could potentially render the SES process irrelevant and/or lead to drafting and assessing new SES for the Southern Aegean. Now, bear in mind, this all happened just a few weeks away from the national elections, so it's still unclear how the new government will address this matter. It may just be that we need to start from scratch.

But the Aegean is still breathtaking. And exclusive to those who are willing and able to earn their place on its shores. ■

REFORMATIONS FOR TRANSFORMATIONS

By Evi Tsilou, Partner, and Anna Pavlaki, Senior Associate, Papapolitis & Papapolitis Law Firm

"*Everyone may merge with everyone; everyone may absorb everyone; everyone may divide into everyone; everyone may benefit from everyone; everyone may convert to everyone.*" This phrase, included in the *Explanatory Memorandum of Greek Law 4601/2019* (Law), sums up the rationale of the Greek lawmakers with respect to the legal framework on corporate transformations currently in force.

The purpose of the Law, which became effective as of April 15, 2019, was to provide a modern, sufficient, and solid legal framework in relation to corporate law-governed acts involving entities having their registered seat in Greece, by virtue of which the form of such entities is changed without going through liquidation procedures or separate asset transfers by way of special succession. These acts are defined as corporate transformations and are divided into mergers, demergers (common demergers, partial demergers, and spin-offs), and conversions.

In a nutshell, the main innovations of the Law were the following:

(A) The *numerus clausus* of corporate transformations is abolished and, in principle, corporate transformations may be effected between legal entities without regard to their corporate form.

(B) The facilitation of corporate transformations through common procedural steps in all types of transformations, irrespective of the type of entities involved (subject, of course, to certain deviations and special provisions based on the particularities of each type of entity).

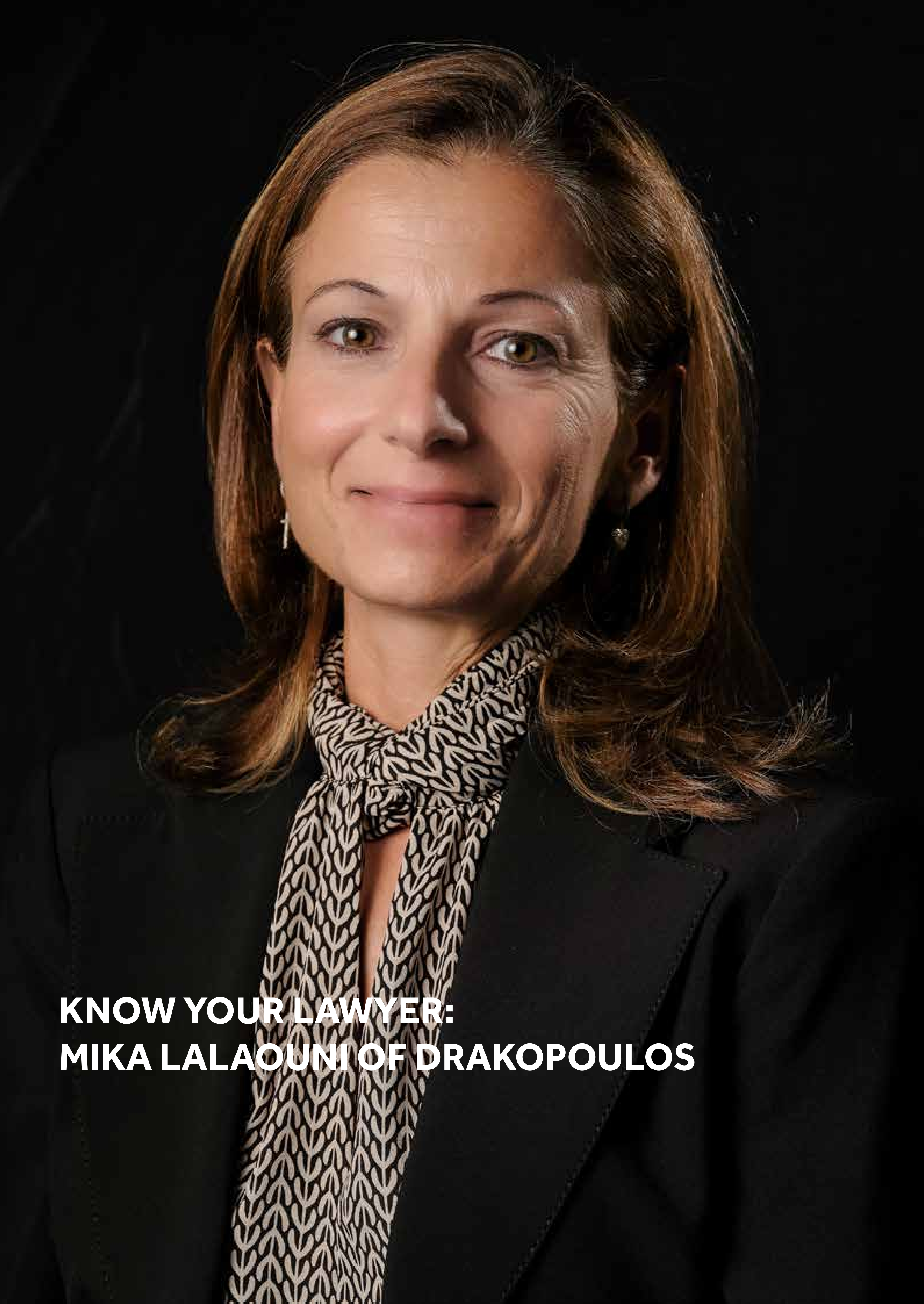
(C) Partial demergers and spin-offs are introduced, for the first time, within the framework of Greek corporate law – the demerged entity transfers one (or more) branch/unit of its activity to a benefiting legal entity (or more benefiting legal entities) either existing or established by virtue of the transformation in exchange for shareholding participation granted to the shareholders of the demerged entity or directly the spun-off entity.

(D) Ambiguities of the former framework were lifted: The Law establishes the doctrine of universal succession (*katholiki diadohi* under Greek law) in terms of the results of all restructurings under this Law, and any controversies in relation to this issue have finally been resolved. More specifically, by virtue of the universal succession, all rights, liabilities, and legal relations of the transformed entity are automatically transferred to the beneficiary legal entity (including licenses and pending trials), which substitutes as the universal successor in all the property (assets and liabilities) and relationships transferred to it and without, in principle, any formalities or procedures. In partial demergers and spin-offs, universal succession applies solely to the relationships concerning the transferred branch of activity and not the entirety of the rights and obligations of the transferor.

Overall, the purpose of the Law has been achieved and the Greek corporate framework is modernized and aligned with European legislation. Applicable provisions for corporate transformations ceased to be fragmented and scattered along legislation of other legal fields, mainly tax-related, and are now consolidated into a single legislation, thus gaps and conflicting matters of past practices are mostly eliminated, and abusive transformations are satisfactorily confronted.

Today, already more than three years following the implementation of the Law, transformations are blooming. The majority of law practitioners agree that the only major setback thereof is that the corporate framework is not accompanied by corresponding tax provisions. Prior tax incentive legislation, mainly included in the Greek Laws *1297/1975*, *2166/1993*, and *4172/2013*, continue to be in force and effect, while the recently issued tax *Law 4935/2022* only partially addresses the issue as it applies to small and medium enterprises (SMEs). The tax regime currently in force appears to be inadequate as it does not address all corporate transformations and its provisions need to be reassessed in order to be explicit and consistent with the Law.

As already mentioned in the Explanatory Memorandum of the Law, Greek lawmakers are incentivized to proceed with the reformation of tax legislation as well so as to achieve a fully coherent and sound regulatory framework applicable to corporate transformations. The highly anticipated tax reformation and relevant legislation will most likely be published as soon as the Greek parliamentary elections, which are expected to take place by the end of June 2023, are completed. ■



KNOW YOUR LAWYER: MIKA LALAOUNI OF DRAKOPOULOS

Career:
■ Drakopoulos, Partner, 2022-Present
■ Intrakat S.A., General Counsel, Compliance Officer, 2017-2022
■ Pireaus Bank, Head of Legal Department of Piraeus Real Estate, 2008-2017
■ Intracom Constructions S.A., Legal Counsel, 2005-2008
■ Empedos S.A., Legal Counsel, 2001-2005

Education:
■ ALBA Graduate Business School, M.Sc. Business Studies for Law Practitioners, 2001
■ University of Essex, LL.M., 1995
■ National and Kapodistrian University of Athens; LL.B., 1994

Favorites:
■ **Our of Office Acivity:** Theatre, reading, traveling
■ **Quote:** "The best is yet to come"
■ **Book:** *Girl, Woman, Other* by Bernadine Evaristo
■ **Movie:** *Parasite* (2019)

Top 5 Projects:
■ Advising on the concession agreement between Picar and the Army Pension Fund for the refurbishment and exploitation of the Army Pension Fund Building – the only historically preserved building utilized as a shopping and lifestyle destination;
■ Advising on the Early Contractor Involvement and Early Works contracts for the construction of Riviera Tower at Hellinikon Metropolitan Pole. The contractor is a joint venture between Bouygues Batiment International and Intrakat S.A.;
■ Advising on the merger through absorption by Intrakat S.A. of Gaia Anemos S.A., engaged in the renewable energy business, having a portfolio of 1.1 gigawatts of electricity generation licenses from RES;
■ Advising on the construction contract between Intrakat S.A. and Fraport S.A. for the concession from the Greek state to Fraport S.A. of the exclusive right of maintenance, management, and operation of 17 Greek regional airports;
■ Advising on the acquisition by Ricardo PLC – specializing in the transport and energy sectors – of 93% of shares in E3-Modelling S.A. – engaged in research in the fields of energy, economy, and environment.

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

Lalaouni: Advising the shareholders of Orphee Beinoglou S.A. – Greece's largest logistics group with subsidiaries throughout the Balkans – on the sale of their majority stake in Orphee Beinoglou S.A. to H.I.G. Capital – a leading global alternative asset investment firm.

This EUR 90 million acquisition has been reported in the Greek market as a landmark cross-border (Greece, Luxembourg, Romania, Bulgaria, North Macedonia, Cyprus, Lebanon, Serbia, Kosovo) transaction in the logistics sector, demonstrating the team's in-depth understanding and expertise in highly demanding cases and innovative transaction structures which incorporate all the legal and financial traits of the new generation of post-crisis deals.

And what was your main takeaway from it?

Lalaouni: Building a strong relationship of confidence with the clients and keeping a strong team spirit not only within our firm but also with the team of the counterparty, made the closing of this highly complexity project a unique experience.

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

Lalaouni: Everyone needs a mentor in their career if not several. And mentors can be valuable in just about any stage you're in. Even though one would most probably think that a mentor for a legal counsel would be someone from the legal profession, I dare admit that my mentor and strong influencer has been former Intrakat S.A. CEO Petros Souretis. His high spirit and strong persistency in any aspect played a consistent role in my work life, providing me with insights beyond the boundaries of my legal profession, thus being constantly motivated to conceive a solution to any problem and be as focused on closing a deal as possible (or required).

Name one mentee, you are particularly proud of.

Lalaouni: During my 25+ years as a legal professional, I had the chance to meet and work with many wonderful people and feel extremely lucky for this. If I must choose someone, then this person is former Intrakat S.A. Senior Legal Associate Zoi Nikolaidi, with whom I enjoyed working under very demanding and stressful circumstances. Even though she was valuable at that time, I am proud to have urged her to fly away and try her hand at a position of great responsibility in a governmental post and she never proved me wrong.

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

Lalaouni: One thing my clients most probably cannot imagine is my cooking skills.

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

Lalaouni: You have just stepped on your career's ladder's first step. Keep on climbing with team spirit, persistence, and patience.

EXPERTS REVIEW: COMPETITION

This edition of Experts Review centers on **Competition**, with articles presented in the order in which their countries of focus rank by new business density, i.e., the number of newly registered corporations per 1,000 working-age people (those ages 15-64), according to the World Bank's 2020 Entrepreneurship Database. Montenegro is ranked first with 7.9 newly registered corporations per 1,000 working-age people, while Austria falls last with 0.5.

Country	Registered corporations per 1,000 working-age people	Page
Montenegro	7.9	Page 65
Romania	6.2	Page 66
Slovakia	5.1	Page 67
Kosovo	4.7	Page 68
Croatia	4.4	Page 69
Hungary	4.0	Page 70
Czech Republic	3.8	Page 71
North Macedonia	3.5	Page 72
Slovenia	2.4	Page 74
Serbia	2.0	Page 75
Moldova	1.9*	Page 76
Turkey	1.8	Page 78
Ukraine	1.7**	Page 79
Albania	1.5	Page 80
Bulgaria	1.4	Page 81
Austria	0.5	Page 82

* 2018 data available only. ** 2017 data available only.

MONTENEGRO: THE UNSUNG ENFORCEMENT OF MONTENEGRO'S COMPETITION AUTHORITY

By Anja Tasic, Partner, Radovanovic Stojanovic & Partners

If one were to glance over the website of the Montenegrin Agency for Protection of Competition (Agency), one may reach what will turn out to be a premature conclusion that the Agency is not an overly active enforcer, especially when it comes to merger control-related infringements. One will also not be able to learn much about the Agency's fining practices. To gain a more realistic picture of its track record with gun-jumping cases, a deeper dive into publicly available data is required. Reasons for this lie mostly with how the Montenegrin legal system for the levying of competition fines is set up.

In the EU and in many European countries, the European Commission and the national competition authorities have the power to establish the existence of infringements and to impose fines for such infringements. In contrast to systems where these two powers rest with the competition authority, in Montenegro, the Agency may only decide on the existence of infringements, but it cannot also impose fines for them – the Agency's fining capacity ends with its ability to, in line with the *Misdemeanor Act*, issue a misdemeanor fine order, requesting from the infringing undertaking to voluntarily pay a fine. If the undertaking opposes such payment, it can challenge the Agency's fine order before the Misdemeanor Court (Court) and only the Court will be able to impose a final and enforceable fine within its misdemeanor proceedings.

Generally, in line with the *Montenegrin Competition Act*, fines for competition infringements, including gun-jumping, can range from 1% to 10% of the undertaking's turnover, whereas a fine for a late merger filing can range from EUR 4,000 to EUR 40,000. The *Misdemeanor Act*, however, limits the Agency's fine-setting freedom as it requires that in the case of prescribed fine ranges, relevant authorities must always set minimal fines in their fine orders. Although this rule is intended to be favorable towards the breaching party, for competition infringements, it is of little avail as it means that even for laxer infringements surrounded by mitigating circumstances, the Agency cannot set a fine lower than 1% of the undertaking's turnover – something that is quite common in jurisdictions where only a fine cap exists. Only the Court will be able to adjust the fine level within its misdemeanor proceedings – taking note of the gravity of the infringement, its consequences, and the mitigating and aggravating circumstances – including to below the level of 1%.

The Agency's fine orders and subsequent Court's decisions (if any) are not publicly available. Moreover, decisions by which the Agency establishes the existence of gun-jumping infringements or of more procedural infringements of late merger filings are not published either. The only insight one can have into the enforcement practice of the Agency (and the Court's) on merger control-related infringements lies within the Agency's *Yearly Work Reports*, the Agency's occasional summarized press releases, or a bureaucratic process of approaching the Court with requests for accessing data of public importance that yield mostly statistical data.

The Agency's *Yearly Work Reports* paint the most detailed picture of the Agency's (and the Court's) enforcement practice in this area. The Agency did not have any gun-jumping cases under its belt up until 2021 when it issued a total of five gun-jumping misdemeanor orders against two local companies. Four out of five orders were against M:TEL – the Montenegrin telecom operator – for the same amount of over EUR 800,000, making these by far the highest fines the Agency has ordered so far, including in cartel cases. M:TEL has challenged the fine orders and the Court's decisions are pending. The Agency also issued orders for EUR 4,000 fines for late merger filings in eight cases, out of which seven came between 2019 and 2021. The background of these cases and the Agency's rationale for trying them are unknown.

The lack of enforcement transparency means less awareness of the general rules, less deterrence for market players, less insight into the authority's expected interpretation of the applicable rules, and no possibility to accurately predict the authority's likely enforcement behavior. In Montenegro, this lack of transparency is inextricably tied to the Montenegrin convoluted fining system, criticized in the past by both the Agency and the European Commission. The Montenegrin legislators are yet to act upon this criticism and until then, we are left to battle the obscurity of information by connecting the tiny dots that are available to us. ■

ROMANIA: TOWARDS A WIDE (YET KEPT IN CHECK) SCOPE OF FDI SCREENING

By Anca Diaconu, Partner, NNDKP

On March 30, 2023, Advocate General Tamara Capeta (AG) delivered her Opinion in the *Xella Magyarorszag (C-106/22)* case, concerning the interpretation of *Regulation (EU) 2019/452* establishing a framework for the screening of foreign direct investments into the Union (FDI Regulation).

In essence, the AG recommends the European Court of Justice (Court) adopt an interpretation whereby investments made by EU-based investors controlled by non-EU entities are covered by the FDI Regulation. However, the AG also stresses that member states remain bound by strict conditions when screening and prohibiting foreign investments, as the mere existence of an administrative review makes investments less attractive.

Background

The case concerns the proposed acquisition by Xella Magyarorszag Epitoanyagipari Kft. (Xella) – a Hungarian company active in the construction sector – of a Hungarian company engaged in the extraction of sand, gravel, and clay. While directly controlled by a German entity, Xella was also controlled by a Bermuda-based company and thus regarded as a foreign investor under the national rules. The Hungarian Minister for Innovation and Technology blocked the transaction, deeming the acquisition of a "strategic company" by a foreign company as damaging to Hungarian national interests, public security, or public policy. Against the backdrop of a court challenge, questions arose as to the scope of the FDI Regulation as well as the legality of national screening mechanisms.

Nature and Scope of the FDI Regulation

The AG first notes the peculiar architecture of the FDI Regulation. Unlike regulations usually enacted at the EU level, the FDI Regulation neither introduces binding rules nor obliges member states to adopt screening mechanisms for foreign investments. It merely authorizes them to do so. This strange nature is attributed by the AG to the role of the FDI Regulation, which is to bridge the gap (and resolve the tension) between different types of competence: common commercial policy (including foreign direct investments) – representing an exclusive competence of the EU – and the internal market – a competence shared by the EU with member states. The AG then examines the scope of the FDI Regulation. While the EU Commission took the position that indirect foreign direct investments could fall within the scope of the FDI Screening Regulation only "exceptionally, for the purposes of preventing the circumvention of screening mechanisms", the AG concluded that the concept of a foreign investor must also encompass EU-based companies controlled by non-EU entities. In the AG's view, the contrary interpretation would run counter to the very essence of introducing a screening mechanism for foreign investments, as there should be no difference in situations where a third-country investor acquires control over a strategic EU undertaking directly from abroad or through an EU-based undertaking it controls.

Furthermore, the AG reiterates that the concept of a foreign direct investment, as interpreted by the Court, excludes minority or short-term investments.

Caveat

Despite the leeway afforded under EU law to enact national legislation providing for the screening of indirect foreign direct investments, member states are not given a blank cheque. As such, according to the AG, national laws, as well as individual decisions based thereon, must pursue a legitimate aim and be proportionate in order to be permitted. In this regard, investments may only be prohibited provided that the member state explained how the investment would amount to a "genuine and sufficiently serious threat to a fundamental interest of society." While the AG does not exclude the possibility that scarce raw materials be regarded (in times of crises) as a matter of public security, it seems that in the case at hand, the mere foreign ownership of a producer that accounts for just 0.52% of the Hungarian national production of sand, gravel, and clay does not constitute a genuine and sufficiently serious threat to the fundamental interest of supply chain security.

Impact on Investments

It remains to be seen whether the Court will confirm the interpretation proposed by the AG and how the national authorities, including the Romanian one, will react. In practical terms, the issue remains an additional barrier to investments from companies that may have always regarded themselves as European. Nevertheless, caution should be exercised by national authorities so as not to fall into a protectionist trap, as their powers to examine foreign direct investments from a national security perspective are not discretionary – when exercising such powers, national authorities must bear in mind that any proceeding and subsequent prohibition decision must be reasoned, necessary, and proportionate. ■

SLOVAKIA: CONDITIONAL MERGER CLEARANCES IN SLOVAKIA – CHANGE OF TREND OR ANOMALY

By Lukas Michalik, Partner, and Simon Hora, Associate, HKV Law Firm

Despite the quite long-lasting existence of a legislative framework for conditional merger clearances and imposing remedies on undertakings, the Antimonopoly Office of the Slovak Republic (Slovak NCA) has not used this option for many years. We are, however, experiencing a change in the practice of the Slovak NCA. Are we experiencing a change of trend in conditional merger clearances in Slovakia?

Reviewing data published by the Slovak NCA in its annual reports, we gather that in a period of more than 10 years, only in four concentrations did the Slovak NCA impose remedies on the undertakings concerned. Out of these four cases, three concentrations have been cleared between 2021 and 2023. It is evident that it wasn't a usual practice of the Slovak NCA to impose remedies for many years.

Introducing the Concept of Remedies

The concept of merger clearance remedies has been present in Slovak law for quite some time. It is structured in a way that if the Slovak NCA finds during the merger control proceedings that the approval of the concentration could give rise to a competition issue on the relevant market, it summons the undertakings to submit a proposal for remedies, which may be afterward approved and adopted by the Slovak NCA. The remedies shall be understood as commitments primarily leading to the elimination of the competition issue. Remedies are most often of structural nature (e.g., transfer of part of the business), but may also be of non-structural nature (e.g., removal of barriers to entry for other undertakings).

Recently Imposed Remedies

As noted above, in the last two and a half years, the Slovak NCA has conditionally cleared mergers with remedies in three cases.

The first of these recent decisions of the Slovak NCA was a decision concerning undertakings engaged in the business of publishing, selling, and distributing books. The remedies imposed in this case concerned the avoidance of discrimination in the supply and sale of printed books and respecting the information barrier between the distribution and sale of books.

The second decision which imposed remedies was the Slovak NCA's decision concerning parties active in the market for the sale of fuel and ancillary goods. In this case, the remedies imposed were of structural nature and consisted, in particular, of the divestiture of a certain part of the business.

The third, and most recent, decision containing additional remedies was the decision concerning participants in the operation of gambling and related services.

In all three of these cases, a monitoring trustee, such as a lawyer or an auditor, has been appointed.

Trend Change or Anomaly?

From the point of view of undertakings as potential participants in the concentration, the option to use remedies in merger control proceedings is certainly a preferable alternative to the definitive rejection of the concentration. Therefore, in our view, two main questions arise in relation to the above.

Is the increase in approved concentrations with remedies really a change in trend, or is it just an anomaly that will show up in retrospect a few years later? Secondly, why have there actually been so few concentrations approved with remedies so far?

Although the answer to the first question will probably only be known in time, we believe that this is a change in trend that will have a positive impact on competition and the business environment in Slovakia. We feel that if mergers are carefully investigated and perhaps critical ones are approved with additional remedies, it may lead to better stability of competition on the relevant markets. Not many things bend the competitive environment more than incorrectly assessed and approved mergers. And when it comes to borderline mergers, our clients consider it a better outcome to approve the concentration with even strict (but effective and reasonable) remedies rather than to stop it altogether and thereby block natural market activity.

We consider that such developments show that the competition law environment in Slovakia is gradually maturing and that the Slovak NCA, together with the undertakings, is capable of achieving a reasonable, efficient, and sophisticated structure of the merger in order not to endanger competition but, at the same time, to allow the concentration to proceed under specific remedies. ■

KOSOVO: KOSOVO LOWERS THE THRESHOLD FOR CONCENTRATION FILINGS

By Kushtrim Palushi, Partner, and Blerina Ramaj, Senior Associate, RPHS Law

On May 13, 2022, the Assembly of Kosovo passed *Law No. 08/L-056 on Protection of Competition*, replacing the previous law that had been in effect since October 2010. The new law aims to align the legal framework with EU rules and enhance the efficiency of the Kosovo Competition Authority (KCA). In the context of mergers, acquisitions, and other forms of concentration, the KCA aims to scrutinize concentration filings to assess potential threats to competition in the Kosovo market.

One significant change introduced by the new law is the substantial reduction in the threshold for obtaining approval for concentrations. Under the new law, participants in a concentration must meet one of the following criteria: 1) have a combined total turnover exceeding EUR 20 million in the international market, with at least one participant having a turnover of over EUR 1 million in the domestic market, or 2) have at least two concentration participants with a turnover of over EUR 3 million in the domestic market.

This lowered threshold has resulted in an increase in the number of mergers and acquisitions that require approval from the KCA, whether they result from local transactions or international transactions, which trigger a need for notification in Kosovo. Considering the new threshold and the increased number of concentrations that need to file for approval, the KCA has started to exercise its *ex officio* powers to investigate cases of gun jumping where merging parties failed to notify the concentration to the KCA, implemented the merger during mandatory waiting periods, or coordinated their competitive behavior prior to closing. Just in the first quarter of 2023, the KCA issued three conclusions for starting investigations towards parties that have filed the notice of concentration and are seeking approval from the authority.

To address non-compliance with notification requirements by companies indirectly promoting anti-competitive practices, the new law stipulates fines as penalties for Kosovar or international companies who have generated income in Kosovo. While these penalty provisions differ slightly from those under the previous law, they align with EU regulations on the matter.

The new law gives the KCA the authority to decide on the penalties which are imposed on the companies involved, depending on the type of breach. In the case of serious offenses by the companies, the KCA has the right to impose penalties of up to 10% of the total worldwide turnover realized in the last financial year. This is mostly applied by the KCA in cases where such concertation might have a significant impact on the market. Although the party found in breach cannot appeal the KCA's decision which obliges them to pay immediately the fine, the party can initiate an administrative dispute through a lawsuit against the KCA's decision in the competent court in Kosovo

It should be noted that the KCA was non-functional for a period in Kosovo, so many of the transactions which triggered notification in Kosovo passed without any revision. As such, with the change in the law and the restarting of operations by the KCA, the country authority is keeping a more detailed eye on concentration filings and non-filings to prevent the creation or reinforcement of market dominance of companies. ■

CROATIA: USE (AND MISUSE) OF COMPLAINTS IN CROATIAN COMPETITION LAW PRACTICE

By Iva Basaric, Partner, Babic & Partners

Complaints (under Croatian competition law also referred to as "initiatives"), through which different market players may inform the Croatian Competition Agency (CCA) of suspected infringements of competition laws, have been introduced in the *Croatian Competition Act* back in 2010 and are not a novelty. Complaints have proved to be a useful tool that brought certain competition law violations to the attention of the CCA and helped detect and correct discrepancies in the market.

This said, more than ten years since their introduction, a significant number of the filed complaints get dismissed, in some cases, even without the CCA conducting a preliminary market investigation. In a larger number of instances, the CCA concludes a preliminary market investigation only to establish that the statutory conditions for initiating the procedure to determine an infringement have not been met. An example of this would be a situation in which a complaint is made against an undertaking suspected of abusing its dominant position in the market, only for the CCA to determine that the relevant undertaking is, in fact, not dominant, and hence no procedure is to be initiated (investigation continued) into the activities of the undertaking. On the other hand, there have been situations where the CCA dismissed the complaint without undertaking the market investigation because the facts presented in the complaint evidently showed that there is no competition law infringement (such as, for example, where an agreement was made between the affiliates constituting a single economic unit). Even more obvious examples of such complaint dismissals were situations where violations described in the complaint did not raise competition law concerns, although they may have been a violation of some other law.

The latter case may be a result of market participants not being familiar with competition laws and interpreting the provisions of the *Croatian Competition Act* in an overly broad manner. After all, the *Croatian Competition Act* sets only the underlying rules that are then further elaborated in implementing regulations and interpreted through guidelines and the practice of the CCA and courts. Consequently, it is not unlikely for non-practitioners to erroneously consider that a certain issue amounts to a competition law violation, even though a person more familiar with competition law rules and practices would know that this is not the case.

At times, there is another side to this story, and certain undertakings have been known to use complaints as a manner of forcing the hand of the other side in business negotiations, or as a retaliation against the business partner that has terminated a business relationship with them (even though they might be aware that the situation described in their complaint would not really raise any competition law concerns). If an undertaking is looking to use competition law tools as somewhat of a leverage, a complaint filed with the CCA (where the CCA would undertake the investigation and, if needed, initiate a procedure against the other undertaking) is certainly a much more cost-effective way of going about this than filing a stand-alone damages claim before the court (where the cost of such litigation would be all on the complaining undertaking).

The types of "misuses" described above of the complaint tool may, to an extent, be reduced by the continuous education of market players and the general public on competition law rules and practices. However, the fact remains that those who wish to use this tool to apply pressure on their business partners will consequently continue to increase the caseload of the CCA which needs to spend time scrutinizing such complaints (in more or less detail – depending on the facts of the case). On the other hand, even the complaints that address violations that do not amount to competition law violations help develop local competition practice and serve as guidance for future cases, and, as such, may be considered useful to the broader local audience (albeit being inconvenient for the undertaking against which the complaint was made). ■

HUNGARY: AN EXAMPLE OF A PITFALL FOR INTERNATIONAL TRANSACTIONS COMING OUT OF HUNGARY

By Balazs Dominek, Managing Partner, and Gergely Gundel-Takacs, Attorney-at-Law, Szabo Kelemen & Partners Andersen Attorneys

Merger control clearance is a key issue in planning and implementing larger M&A deals due to the standstill obligation established by *Council Regulation (EC) No 139/2004* (EUMR) and most national competition laws within the EU. If the EUMR is applicable to a transaction, a one-stop-shop system is granted where the Commission has exclusive jurisdiction for merger clearance and the merger clearance regimes of Member States are disregarded.

However, only a few transactions in the CEE region are large enough to qualify for clearance under the EUMR. Most international transactions remain within the scope of national merger regimes and clearance applications shall be made in a number of countries where the parties to the merger have an economic footprint. Undoubtedly, national merger-filing obligations of a large international deal make transaction timing and planning very challenging, even for professionals.

Transaction-planning is not the only issue. As European legislation on merger control has not been harmonized, there are several significant differences in how member states interpret the concept of concentrations and the criteria for reporting obligations ¬– most predominantly, the definition of undertakings concerned and the calculation of merger clearance thresholds.

Not only are there severe differences in calculating merger clearance thresholds, there are also differences in the concept of concentration, even among EU member states. Consequently, transactions failing to qualify as a concentration in the application of the EUMR or at the place of the deal might still require merger clearance in jurisdictions they affect, as foreign-to-foreign transactions are usually subject to merger clearance notification in member states where the parties to the transaction realize substantial turnovers either under a payment or shipment view.

Regarding the concept of concentration (i.e., the definition of a change of control over undertaking(s) or certain assets), the case law of the Hungarian Competition Authority (HCA) has established two significant differences compared to the EUMR. On one hand, any reduction in the number of shareholders might qualify as a concentration. On the other, exclusive outsourcing agreements might also establish a notifiable concentration.

The definition of the group of undertakings concerned by a transaction (i.e., the undertakings whose turnovers shall be calculated to establish the triggering of merger clearance thresholds) remained uncontested until recent times. Nevertheless, a recent decision of the HCA brought a new dimension of expanding the jurisdiction of the Hungarian merger control regime to foreign-to-foreign transactions from this perspective.

At the end of 2022, in the *GI International* case (*Case no. Vj-43/2020*), the HCA crystallized its view on indirect joint ventures. More closely, the HCA established that if a transaction – even indirectly – involves a joint venture with a third independent party, then this third party is also considered an "undertaking concerned" and its group turnover shall not be disregarded in calculating merger clearance thresholds.

In this decision, an unnotified foreign-to-foreign merger was investigated, where the acquired group of undertakings operated a joint venture in Hungary with a third independent party. The HCA established that (a) the foreign-to-foreign transaction created an indirect acquisition of control over this Hungarian joint venture, and (b) the turnover of the other shareholder group of the respective joint venture should also be assessed in defining merger clearance thresholds (i.e., the calculation of relevant turnovers to establish the economic footprint which triggers a merger clearance obligation).

Despite the remarkable legal issues raised and nonetheless professionally a rather questionable interpretation of the law, there are many things to learn from this decision. A foreign-to-foreign transaction might be subject to a merger clearance application in Hungary regardless of the Hungarian turnovers of the acquiring group where the transaction involves an indirect joint venture with an independent party. Namely, if the Hungarian turnover of the joint venture and its independent joint shareholder is big enough, this alone shall trigger a national merger clearance obligation.

Most importantly, professionals shall not rely on the interpretations of the EUMR in international merger clearance planning where only national clearance obligation(s) is/are triggered by a transaction – not even at a jurisdictional assessment involving EU Member States. It is always advised to involve antitrust professionals with sufficient coverage in the region where the target group(s) operate. ■

CZECH REPUBLIC: VERTICAL AGREEMENTS IN LIGHT OF THE AMENDMENT TO THE CZECH COMPETITION ACT

By Jan Kupcik, Head of Competition, EU & Foreign Trade, Schoenherr Czech Republic

A long-awaited amendment to the *Czech Competition Act* (Act) is now on the horizon as it was approved by the Chambers of Deputies and is ready for sign-off by the Senate and the president. Covering primarily the implementation of the *ECN+ Directive*, it also incorporates changes to the Act. At the same time, the Czech Competition Authority (CCA) has been updating its policies on compliance programs and vertical leniency. From this perspective, how the CCA treats vertical (distribution) agreements will probably change considerably.

What the Amendment Changes

The amendment contains several evident – but also less apparent – modifications of sub-stantive and procedural rules relevant to the CCA's assessment of vertical agreements.

First, it explicitly allows for leniency requests relating to vertical agreements. So far, the leniency procedure has been applicable only to horizontal cartels. Second, the amend-ment implements a system protecting the identity of the complainant. Third, the amendment modifies the prioritization process. The change is thin but extremely rele-vant in practice. In the future, the CCA will reflect on the level of negative effects of the assessed conduct, but a low level of negative effects will no longer be required to reject a case. Fourth, settlements will see larger discretion in terms of the amount of the dis-count and the possibility to impose a prohibition of participation in public tenders. Final-ly, the CCA will be able to sanction several undertakings (from one group) for the same infringement and they will be jointly and severally liable.

Impact on Businesses

The modifications need to be read in view of the CCA's current practice and recent changes to its enforcement policies. Whereas the amendment allows for a leniency re-quest in cases of anticompetitive vertical agreements, the CCA has been willing to de-crease penalties if the party to the proceedings, which was suspected of an illegal verti-cal agreement, comes forward with additional evidence and pleads guilty. As to the ef-fectiveness of the amendment, this is going to be formally backed by the legislative text and, as such, companies will become legally entitled to it. In addition, the applicability of the formal leniency procedure means that the parties will now have the possibility to withdraw their leniency request.

In this regard, leniency remains unavailable for a perpetrator that has coerced other par-ties into participating in the anticompetitive agreement. This is a large obstacle for leni-ency applications in most resale price maintenance (RPM) cases by the companies im-posing the restriction on their distributors. Nevertheless, as the CCA declares its willing-ness to prosecute not only suppliers but also distributors if they are initiators of RPM conduct, leniency requests may also be relevant here. Moreover, the protection of the complainant's identity could further increase the number of cases the CCA will be in-formed of. In vertical relations, a party can often be prevented from complaining to the CCA by the fact that it is dependent on the other party and if that party were to find out the identity of the complainant, it could end the relationship.

Slight changes in prioritization will also allow the CCA to reject hardcore cases, such as the already mentioned RPM cases. This could happen when the effect is tiny – for exam-ple, when the supplier's market share is negligible. But given that RPM is in the CCA's spotlight, rejections of RPM cases will remain rare.

Settlement solutions have become common in recent vertical cases. Whereas prohibi-tions of participation in public tenders will mostly be irrelevant, the infringers may see lower discounts than the currently awarded flat 20%. However, the total discount may increase due to the CCA's fairly new policy of accepting existing or even new compliance programs as a reason for an additional discount (but only if the settlement route is used).

Vertical restrictions may be a result of a common action of a parent company and a sub-sidiary. The amendment allows the CCA to impose sanctions on both, making them jointly and severally liable. While it probably will not happen often, parent companies might experience an increased risk of direct liability.

Conclusion

While at the outset, the amendment may not look big, some of the changes may be just short of a game-changer for vertical agreements. Vertical leniency is clearly one of them, but also other changes may be of paramount importance in specific vertical cases. ■

NORTH MACEDONIA: ANTITRUST CONCERNS IN NORTH MACEDONIA (AND BEYOND) LINKED TO GENERATIVE AI

By Gjorgji Georgievski, Partner, and Hristina Mihajloska, Associate, ODI Law

In the era of digital technology, it is natural to contemplate the potential effects of the digital revolution on various aspects of life. Generative AI, although still in its development stage, is already causing the anticipated revolution in the markets. Generative AI is beginning to revolutionize the delivery of services and products and has already made significant strides in transforming how markets operate. It is not yet clear whether generative AI will cause competition law issues; however, based on experience with digital revolutions, it is worth noting that a few scenarios are possible that will disrupt the current competition law framework everywhere, including in North Macedonia.

It is undeniable that developing generative AI takes a lot of resources, quality datasets, and computational power. This contributes to making the generative AI market a high entry barrier market. This is characterized by market concentration and the emergence of dominant players. The Macedonian Law on Protection of Competition prescribes fair competition for all enterprises and prohibits companies from engaging in conduct that will distort the competitive process and harm market competition. Because it is a high-barrier market, it could hinder smaller companies and smaller entities from effectively competing – especially considering the relatively limited resource pool of local companies in North Macedonian compared to global giants.

Generative AI uses large quantities of data to perfect its performance, thus creating a real possibility for market dominance. If generative AI becomes widely adopted and used in North Macedonia, it could make it very difficult for competitors to attract users or even reach a similar level of performance. This can lead to consumer lock-in due to the fact that consumers may become heavily reliant on a specific generative AI model, making it very hard to switch to other alternative language AI models. The users can be locked in in a particular artificial intelligence ecosystem, reducing their abilities to work with competitors, which will contribute to further solidifying the dominant market position of the already established players.

Moreover, companies investing in artificial intelligence and developing similar models to generative AI may seek to protect their intellectual property rights. This can further enhance market dominance, since the other entities may be restricted or prohibited from developing artificial intelligence models like generative AI. This can hinder the entry of new players and ensure market dominance of the already existing companies. Even if companies are permitted to develop similar artificial intelligence models, it is undisputed that developing artificial intelligence requires many datasets with vast information. This further raises the question of access to various and extensive datasets. Companies with exclusive access to datasets may establish dominance and data monopolies, which will adversely affect other possible market players that do not have access to information.

Furthermore, generative AI may facilitate concluding collusive agreements between market players. Collusive agreements are non-competitive agreements attempting to disrupt the market's equilibrium in the supply of goods and/or services. Collusive agreements may also happen due to the possibility of market price fixing because of generative AI. Generative AI and similar artificial intelligence instruments may automatically generate pricing recommendations or prescribe set prices based on the condition of the market in question. If multiple market players adopt the AI's recommendations, that could lead to tacit collusive agreements where the players will adopt and fix the same price without independent decision-making. This may accelerate collusive decision-making, even without prior agreements.

To mitigate the abovementioned risks, the Macedonian competition authority and regulatory bodies everywhere should pay close attention to generative AI's impact on competition. They should explore whether and how the existing competition regulations can be applied to artificial intelligence (there are no specific competition regulations that would apply to AI in North Macedoniat) and what new regulations are needed to ensure adequate coverage of all potential scenarios regarding competition issues in artificial intelligence. The Macedonian competition authority should ensure monitoring and detection and remain vigilant to adequately adapt to the possible emergence of competition law issues in artificial intelligence, thus maintaining fair market practices. ■

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SLOVENIA: NEW RULES FOR FDI SCREENING AND NEW COMPETITION PROTECTION ACT

By Spela Remec, Partner, Selih & Partners

To introduce a permanent foreign direct investment (FDI) screening mechanism, an amendment to the *Investment Promotion Act* (Amendment) is expected by the end of June 2023, and the new *Prevention of Restriction of Competition Act* now foresees a simplified merger review.

I. New Rules for FDI Screening

The validity of Slovenia's current FDI screening mechanism will expire on June 30, 2023. The Amendment, which is intended to introduce a permanent screening mechanism, includes certain provisions which potential investors will surely welcome. Other changes envisioned by the Amendment will probably have the opposite effect as they could be seen as an additional unnecessary burden to investors and also because they introduce – or fail to resolve – some ambiguities and uncertainties about the review process.

1. Foreign Investor Definition: Due to the all-encompassing definition of a foreign investor under the existing legislation, the current FDI screening regime covers a national or a legal entity from any other country, including nationals and legal entities from other EU member states. According to the Amendment, the scope of this definition will be loosened to exclude investors from other EU member states (however, not if they are directly or indirectly owned by a non-EU entity). In 2021, almost 80% of all foreign investment into Slovenia came from other EU member states. Therefore, excluding these investors from the FDI screening regime will hopefully make Slovenia even more attractive to them.

2. FDI Definition: The Amendment includes a revised definition of an FDI, which covers direct as well as indirect acquisitions of participation in the capital or voting rights and shall apply to the first as well as any subsequent acquisition of a 10% participation in the capital or voting rights.

3. FDI Legal Transaction: Current ambiguous wording has caused some uncertainty as to whether all FDI transactions may be subject to review or only those which concern a merger or a publication of a takeover bid. The Amendment now clarifies that other types of legal transactions may also trigger an FDI notification requirement.

4. Sectors Covered by the FDI Regime: One major shortcoming of the current FDI regime has been the lack of clarity about the types of activities requiring an FDI notification. Unfortunately, the Amendment fails to address this. Activities involving critical infrastructure and the land and real estate crucial for the use of such infrastructure, critical technologies and dual-use items, supply of critical inputs and food security, access to sensitive information, including personal data, or the ability to control such information, media freedom and pluralism, and certain projects or programs of interest to the EU will still trigger an FDI notification requirement. Interestingly, the Amendment leaves out medical, medicinal, and pharmaceutical activities despite the need for FDI screening having been justified precisely by the need to protect national and the EU's ability to respond to potential future health crises.

5. Review Period: Under the current regime, the competent Ministry issues its decision about a notified FDI transaction within two months following the notification and any transaction which was not duly notified may be subject to an *ex officio* review for five years following the transaction. The Amendment unifies these deadlines to two years, which introduces additional uncertainty for the investors that will have to be carefully addressed in the transaction documents.

6. Required Information: Another change that investors will not be happy to see is the Amendment's requirements with respect to the information and documents that must supplement an FDI filing as under the current regime, there is virtually no need to attach any supporting documentation. One new requirement is expected to especially burden the investors: the provision of evidence demonstrating the veracity of the submitted information.

7. New Sanctions: In addition to the existing fine for non-notification of an FDI, the Amendment foresees a fine in case of submission of a non-complete notification as well as non-compliance with the prohibition, cancellation, or conditions imposed for the implementation of the investment.

II. New Competition Protection Act

In January 2023, the new *Prevention of Restriction of Competition Act* came into force which introduced a much-awaited possibility of the so-called "simplified merger review." The Competition Protection Agency is already conducting procedures and issuing simplified decisions according to this new mechanism. In our experience, this significantly shortens the review period. However, the last missing piece of the puzzle is not yet available: a simplified notification form which is expected to significantly limit the scope of the information and documents accompanying a merger notification. ■

SERBIA: IS SERBIA KEEPING UP WITH DEVELOPMENTS IN THE DIGITAL MARKETS SECTORS FROM AN ANTITRUST PERSPECTIVE?

By Darija Ognjenovic, Partner, and Iva Popovic, Associate, Prica & Partners

The expansion of digital markets is undeniable, and the need for special regulations in these areas is clearly proved by the EU in rendering the *Digital Services Act* and *Digital Markets Act*. The mentioned regulations build on the *EU Electronic Commerce Directive* to address new challenges online.

In Serbia, the only law regulating the digital markets sectors is the *Law on Electronic Commerce* (LEC). The LEC consists of very basic provisions relating to information society services, commercial communication rules, and entering into contracts by electronic means. It is explicitly provided that the LEC does not apply to restrictive agreements in terms of antitrust regulations.

With respect to antitrust rules, apart from the *Law on Protection of Competition* (LPC), which contains only general rules, there are several more decrees and guidelines regulating antitrust issues, none of which touches upon the subject of digital markets.

In practice, in the last two years, the Serbian Commission for Protection of Competition (CPC) has initiated five *ex officio* proceedings where for the purpose of infringement determination relating to retail price fixing, the CPC reviewed the prices of the retailers' online sale websites, whereby it was determined that the retail price was the same or almost the same among retailers. It may be concluded that e-commerce is of particular interest to the CPC in order to not only protect competition and consumers but also detect anticompetitive behavior.

In two of the above-mentioned cases, the CPC has also performed dawn raids, collecting from the companies under review relevant agreements and other documents, including e-mail correspondence. Through such correspondence, it was determined that the suppliers under review monitored the online prices of their retailers, mainly by visiting their online sale websites or by using price comparison tools. Based on such information, suppliers enforced restrictions on their retailers to freely determine the retail price. Any such actions that directly or indirectly set the purchasing or selling prices are considered to be restrictive agreements under the LPC and are therefore null and void.

In the cases that have been finalized, the CPC has determined that most of the undertakings concerned have committed infringement by entering into restrictive agreements relating to price fixing, and were thus fined.

In addition to the above, the CPC has completed a sector analysis of the market of digital platforms that intermediate in the sale and delivery (on-demand delivery platforms) of mainly restaurant food and other products. The CPC stated the dynamic development of digital on-demand delivery platforms and the rendering of new regulations in the EU regarding online platforms as reasons for the analysis of this particular sector. The CPC's aim was to review the state of competition in the market in question and to point out possible problems in terms of antitrust issues.

In its final remarks, the CPC has recommended that the competent Ministry of Trade begins drafting relevant legislation that would regulate the operation of digital platforms, and establish a register of digital platforms and one of services for the delivery of mainly restaurant food.

During the course of this analysis, the CPC initiated a proceeding for the determination of abuse of a dominant position against one of the major market participants. Based on the agreements delivered to the CPC during the process of sector analysis, the CPC noted provisions that result in behavior that can represent an abuse of a dominant position. At the time of writing, the mentioned proceeding is still ongoing.

In light of all the above, it may be argued that the CPC has certainly recognized the need for monitoring and controlling digital markets, focusing for now primarily on e-commerce, i.e., online sale and digital on-demand delivery platforms.

On the other hand, considering the described current legal framework, the dynamic development of digital markets, and the obligations undertaken by Serbia under the *EU Stabilization and Association Agreement*, it may be argued that the harmonization of local legislation with the current legislation of the EU is promptly needed. The purpose of such a legislative update would be to create a safer digital space where the fundamental rights of both consumers and businesses would be protected, as well as the establishment of a fair, transparent, and predictable business environment, thus further fostering competitiveness and a level playing field. ■

MOLDOVA: WILL HIGHER COMPETITION FINES IMPROVE COMPETITION?

By Emil Gutu, Competition Manager, ACI Partners

By the middle of 2023, Moldova will likely have a modified *Competition Law*. The existing *Competition Law* dates back to 2012, and its material and procedural norms are almost intact in their original form. Since then, however, the Moldovan economy and society underwent profound changes.

After *Directive 2019/1 of the European Parliament and of the Council of 11 December 2018 to empower the competition authorities of the member states to be more effective enforcers and to ensure the proper functioning of the internal market* was enacted in 2019, the Moldovan Competition Council started a drafting process to modernize the national competition legislation, but the process picked up speed only after Moldova became an EU candidate state in June 2022.

Firstly, *Directive 2019/1* is intended to be fully transposed. Most of its provisions are already part of the current Moldovan *Competition Law*, as it originally transposed the fundamental EU competition norms, including Articles 101-106 of the TFEU, *Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty*, and *Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings*. Existing discrepancies that are going to be addressed referred, among others, to the maximum levels of fines, worldwide turnover as a basis for calculating fines, and entities that can be held responsible for competition infringements.

Secondly, the draft law intends to respond to evolutions in the Moldovan economy and society and resolve the procedural challenges in the implementation of the existing *Competition Law*. Notification thresholds for economic concentrations and the notification tax will be doubled, in line with the overall GDP dynamics and accumulated inflation. Procedural rules for the investigations will evolve, making them more resemblant to the ones used by the EU Commission in its competition investigations.

A notable absence in the draft law is direct clauses ensuring that the competition authority has indeed a sufficient number of qualified and motivated staff and necessary financial, technical, and technological resources for the effective performance of their duties. Although the need for sufficient resources is recognized in the document, the draft does not go as far as to change the existing budgeting procedures and principles.

Fair competition rules for all are the cornerstone of the common European market. It is quite obvious to anyone in Moldova that becoming an EU member and getting full access to its common market is impossible without a due synchronization of the competition rules. So, the debate sparked by the draft law is not about the direction of change. Rather, it is about the need to synchronize the moment when EU rules enter into force in Moldova with the accession to the common market, and about the possibility to raise the levels of fines only after the competition authority is given sufficient human and material resources to effectively investigate anti-competitive actions and avoid costly mistakes.

The critics of the immediate *ad litteram* application of the directive note that EU competition rules are crafted for the world's biggest and most affluent common market with strong and reliable institutions. As such, they cannot be mechanistically transplanted without severe drawbacks into an incomparably smaller and less attractive economy, dependent on foreign investments and still outside of the common market, with underdeveloped institutions.

For example, setting fines based on the worldwide turnover of the undertaking or its mother company will likely make foreign investors reconsider the risk profile of their investments in Moldova. However certain of their internal compliance systems international corporations are, they may not disregard the risk that an underfinanced and understaffed national competition authority will apply the potentially lethal fines incorrectly, inconsistently, or arbitrarily. Critics of the draft law fear that, if enacted, under existing conditions of uncertainty and inconsistency in the application of competition legislation, it will become a major deterrent in investors' decisions to invest in Moldova.

The need for fines to be effective, proportionate, and dissuasive cannot be overestimated. However, eliminating the risk of their arbitrary or inconsistent use by an understaffed and underfinanced national competition authority is of paramount importance and should be of primary concern. No matter how big the fines for anti-competitive infringements will be, they will be neither effective nor dissuasive if no institutional capacity to consistently target them in the right direction is in place. ■

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TURKIYE: AUTORITE DE LA CONCURRENCE'S EDF CASE AND POTENTIAL IMPLICATIONS FOR THE TURKISH ELECTRICITY MARKET

By Metin Pektas, Partner, and Alper Yanar and Huseyin Taha Kaya, Associates, Nazali Tax and Legal

The French antitrust authority – Autorite de la Concurrence (Autorite) – has recently finalized a significant investigation against Electricite de France (EDF) and reached a notable decision that is expected to shape business models in electricity markets. Examining the case, here are its potential impacts and replicability on the Turkish electricity market.

Background

EDF underwent a partial privatization process in 2005 and 95.95% of EDF shares are still owned by the state as of 2023. The French retail electricity market is also undergoing a liberalization process and all consumers in France are eligible for market offers since 2007. The significance of the EDF case lies in the fact that the practices that will be discussed occurred during the progressive liberalization process of the electricity market.

Summary of the Decision and Learnings

Being in the dominant position in the supply of electricity to residential and non-residential customers market in France, EDF was found by Autorite to be abusively using the means at its disposal as a regulated tariff operator to promote its own gas offers and energy services to preserve its market share in the electricity supply market thus strengthening its position in the gas and energy services.

In response to these claims, EDF applied for a settlement procedure and committed to making the information on customers who buy electricity from regulated tariffs available to alternative electricity providers and to separate the subscription processes for regulated contracts from those for non-regulated contracts. Autorite acknowledged the commitment package and made the commitments binding for three years, alongside an antitrust fine of EUR 300 million.

Pursuant to the antitrust approach in the EDF decision, instances of incumbent utility companies taking advantage of historical consumer data to create confusion among consumers between products and services and providing incorrect data to competitors to hinder competition are considered as antitrust violations. The assessment that makes this case a precedent for competition law in the energy markets is Autorite's approach to *non-reproducible means*. It can be inferred that by non-reproducible means, Autorite refers to the factors that constitute EDF's dominant position in the market and cannot be easily obtained by competitors, such as various data, especially that related to consumers, which EDF obtained through its monopoly status before privatization. In this respect, undertakings in dominant positions are prohibited from exploiting their control over non-reproducible means to maintain their market share and impede competition.

Takeaways for the Turkish Electricity Market

No doubt that Autorite's antitrust approach is sound and it is expected for it to affect other authorities. For Turkish antitrust enforcement in the energy market, however, it is not possible to predict if this approach will be replicated. Despite uncertainties, we believe that the antitrust approach in the EDF decision does not seem to be fully applicable to the Turkish energy industry due to the differences in the liberalization process of Turkey and France that created dissimilar market structures.

The Turkish electricity market has also experienced a privatization process and retail market liberalization in the period of 2000-2013, where 21 geographic distribution regions were privatized separately. Alongside the privatization, each of these companies was mandated to legally unbundle distribution activity from retail activity and so two group companies were created – one for distribution and the other for retail. Unbundling is a key difference between the Turkish electricity market and the French one. Through it, it was expected that an information flow between two entities would be prevented. Therefore, unlike in France, there is no state-owned and vertically integrated company like EDF in Turkey after all that market restructuring.

Just after the privatization and unbundling period, between 2012 and 2018, the Turkish Competition Authority (TCA) conducted investigations into the practices of a number of incumbent retailers and distribution companies, ending with violation decisions and fines. In these investigations, the TCA focused on whether a competitive advantage was provided to the incumbent retailers by the distribution company or not. Unlike in the EDF case, the TCA did not focus on the use of consumer data possessed by the incumbent retailers.

It is a fact that the TCA has not scrutinized the use of consumer data that is historically held or created during retailing. Thus, it is still unclear how the TCA will assess the concept of non-reproducible means and how the antitrust idea of Autorite in the EDF case will be handled by the TCA. ■

UKRAINE: THIRD PARTIES' INTERVENTION IN MERGER CONTROL CASES – OPPORTUNITIES AND RISKS

By Mykyta Nota, Partner, and Anton Arkhypov, Counsel, Avellum

This article explains the tools available under Ukrainian competition law that allow interested third parties (customers, suppliers, competitors, etc.) to participate in the merger review process and protect their rights and interests. It also addresses merging parties' potential risks associated with the involvement of third parties.

Time for Action

Under Ukrainian law, if a merger may lead to monopolization or significant restriction of competition in the Ukrainian market, the Antimonopoly Committee of Ukraine will conduct an in-depth investigation (Phase II).

While the merger notification is not accessible to the public, the regulator announces the start of Phase II to maintain transparency in the merger review process. This enables any interested party to share their perspective on the proposed transaction and its potential effects on competition. However, it also creates an opportunity for third parties to use this as a means to stall the merger review process.

Grounds and Procedure

A third party (for example, a competitor) who believes that its rights and interests might be significantly restricted due to the notified merger, may request the regulator to permit it to join the investigation proceedings. In practice, there have been instances where minority shareholders of one of the merging parties submitted such requests to the regulator. A third party may submit the request anytime during the investigation, which may delay the merger review process. If the regulator approves the request, the third party will have similar procedural rights as the merging parties, including limited access to case files to preserve the confidentiality of sensitive information.

Regulator's View

In practice, the regulator does not take the information provided by the third party at face value since it may be biased in its influence on the regulator's decision-making process. Therefore, any request to be involved in the investigation proceedings and objections to the merger which the third party may have should be well grounded and, ideally, supported by solid evidence (for example, expert reports).

Court's View

If the regulator denies the request, the third party may appeal such decision in court. Under Ukrainian law, the third party would have two months following the receipt of the regulator's decision to challenge it on the following grounds: (a) non-compliance with or incorrect application of the rules of substantive or procedural law; (b) incomplete investigation of the relevant circumstances of the case and failure to prove the relevant circumstances which the regulator's decision considers as established; and/or (c) lack of correlation between the case circumstances and the conclusions in the case.

The review of such claims by Ukrainian courts does not automatically terminate the consideration of the merger case. However, if the court dispute makes it impossible to continue considering the merger case, the regulator must suspend the investigation of the merger case pending the outcome of the court dispute.

Takeaway

By employing such strategy, a third party may achieve several goals from administrative and business perspectives.

For example, the regulator would be required to assess information received from the third party in deciding whether to clear the merger, even if it is communicated at a late stage of the investigation. Therefore, it is likely that all or at least some concerns of the third party about the merger would be addressed. This, however, may delay the merger review process. At the same time, by getting involved in the merger case, the third party may create more room for negotiation with the merging parties about their commercial relationships to secure its business position post-merger.

Even though often overlooked, Ukrainian competition law provides for a wide range of tools, which, if used correctly, may ensure the efficiency of the investigation and effective protection of the merging parties and interested third parties that are not directly connected to the notified merger. ■

ALBANIA: RECENT TRENDS IN ALBANIAN COMPETITION LAW

By Shpati Hoxha, Partner, and Selena Ymeri, Senior Associate, Hoxha, Memi & Hoxha

During the past year, the competition enforcement activities of the Albanian Competition Authority (ACA) have seen a considerable increase. The ACA approved 99 decisions, a record since its establishment 17 years ago, and fines during the year were the highest imposed in the last five years. Most of the ACA decisions were related to approvals of merger transactions, followed by decisions on market conduct investigations.

Merger control activities: Foreign-to-foreign transactions account for the vast majority of cases cleared by the ACA in 2022. Very few filings (approximately 5%) concerned transactions directly involving Albanian companies.

This trend, which is not new, is likely due, on one hand, to the lack of awareness of filing obligations by Albanian investors and, on the other, to the low value of applicable turnover thresholds. The high volume of foreign-to-foreign transaction filings may have also exhausted the administrative resources of the ACA in investigating unfiled domestic mergers.

Similarly to EU law, Albanian competition law uses the turnover of the undertakings participating in a merger as a key criterion for a merger control filing. However, Albanian competition law applies the turnover threshold criteria regardless of the domestic presence or of the size of the business activities of the target in Albanian territory. For a merger control filing, it is sufficient if the acquirer alone meets the required turnover thresholds.

Back in 2010, the turnover thresholds relevant for merger control filings were deemed too high for the size of the domestic economy, and an amendment to Albanian competition law was passed, significantly reducing the values of the required worldwide and domestic turnover thresholds.

Despite the fact that the aim of the legislative intervention was to increase the number of domestic filings, the reduction of the value of the applicable turnover thresholds, coupled with the absence of a specific domestic turnover requirement for the target, has caused a spike in filings of foreign-to-foreign transactions that have marginal or no effect in the domestic market.

Considering that the turnover values provided by the Albanian competition law are very low compared to Western economies, it is common for foreign companies acquiring foreign targets with no domestic turnover to be obliged to file in Albania, despite that a merger control filing might not be required in the relevant jurisdictions or at EU level.

Several foreign investors in Albania have raised concerns regarding this situation; however, to date, there is no initiative for legislative amendments giving specific relevance to the domestic turnover of the target for the purpose of a merger control notification. Nevertheless, in practice, notified foreign-to-foreign transactions are swiftly cleared by the ACA following simplified notification procedures.

Investigation proceedings: During 2022, the ACA was particularly active in competition rules enforcement. It had initiated 11 new investigations in sensitive markets directly affecting the Albanian consumer, such as the market of wholesale of diesel fuel and gasoline, the market of wholesale of international call termination, the market of drugs and medical devices, which has grown significantly during the COVID pandemic, the market of import, production, and wholesale of vegetable oil, the market of non-banking financial entities, etc.

Two of the procedures initiated by the ACA regarding the existence of restrictive agreements or abuse of dominant position have been terminated, with fines imposed on the investigated parties. The first investigation concerned the market of import of wheat and import, trade, and production of flour and the other – the market of import and wholesale of chemical fertilizers. Two other fines were issued by the ACA in 2022 to companies failing to comply with previous decisions issued by the ACA or failing to provide the ACA with the information requested by it during investigation proceedings.

Announced amendments to the competition act: During the month of December 2022, the ACA organized a conference and a roundtable where it presented also certain amendments to the *Competition Law*. The aim of the proposed amendments was to grant the ACA the competence of investigating public procurement procedures in cooperation with the Albanian Public Procurement Commission. However, the proposed amendments have not yet started the formal legislative approval process. ■

BULGARIA: SAFEGUARDING COMPETITION – THE ROLE OF ANTITRUST LEGISLATION IN PRESERVING MARKET FAIRNESS

By Yoanna Ivanova, IP and Data Protection Head, and Tsvetelina Paskova, Attorney at Law, Gugushev & Partners

This article aims to explore key aspects of *Regulation (EU) 2022/720* (Regulation), which governs the block exemption of specific vertical agreements in the European Union market, with a focus on its implications within the Bulgarian market, particularly for its dynamic IT sector, which had a 26% growth in 2022 and reached 4.5% of the country's GDP. Further to that, Bulgaria has seen even more foreign investments by VCs and big corporations alike, therefore such antitrust legislations are closely followed by the business ecosystem. Some of the world's biggest automotive giants also have software and engineering development centers here, with new leading players expected to enter soon.

The government has always aimed to strike a balance between encouraging entrepreneurialism and safeguarding broader economic welfare by enforcing competition law. By scrutinizing M&As, imposing restrictions on market concentration, and regulating dominant players, antitrust legislation seeks to maintain a level playing field and protect the interests of smaller market participants. But that was hard in the past couple of years as Bulgaria was not able to form a stable government and, therefore, implement new principles. Against this background, *Regulation (EU) 2022/720*, which establishes revised regulations governing the block exemption of specific vertical agreements in the EU, enters the stage. The Bulgarian market, recently recognized for its vibrant IT and BPO sectors, presents unique challenges and opportunities for fair competition. Under the regulation, a vertical agreement refers to an agreement or concerted practice between undertakings that operate at different levels of the production or distribution chain. These agreements regulate the conditions for purchasing, selling, or reselling specific goods or services. In Bulgaria, the IT sector plays a critical role in the economy, with numerous tech companies driving innovation and contributing to market competition. Understanding the implications of vertical agreements within the Bulgarian IT sector is essential for businesses and legal professionals to ensure compliance with antitrust legislation.

Market Share Thresholds and Exemptions

The regulation establishes market share thresholds for the application of exemptions. The supplier's market share should not exceed 30% of the relevant market for the contract goods or services, and the buyer's market share should also remain below 30% in the relevant market. Exemptions provided under Article 2 apply to vertical agreements containing vertical restraints, subject to certain conditions.

The exemptions cover vertical agreements between associations of undertakings and individual members or suppliers, provided all association members are retailers of goods and if no individual member of the association, together with its connected undertakings, has a total annual turnover exceeding EUR 50 million. The exemptions also extend to vertical agreements involving intellectual property rights if these provisions are not the primary objective and are directly related to the use, sale, or resale of goods or services.

Exceptions and Hardcore Restrictions

The regulation identifies certain hardcore restrictions that remove the benefit of the block exemption. These restrictions include those on (1) resale price – while suppliers can impose maximum sale prices or recommend prices, fixed or minimum sale prices resulting from pressure or incentives are not permitted; (2) active and passive sales – exclusive and selective distribution systems face restrictions on territories, customers, and end users, though some limited exceptions apply to ensure fair competition; (3) online sales – preventing the effective use of the internet by buyers or customers for selling contracted goods or services is considered anti-competitive unless specific conditions are met; and (4) spare parts and repairs – agreements that limit a supplier's ability to sell components as spare parts or restrict repairs by unauthorized service providers are prohibited.

Challenges for Bulgarian Digital Business

While antitrust legislation has proven effective in maintaining competition, it faces certain challenges in the digital age. The rise of dominant global tech giants presents a unique challenge due to the disparity in scale between Bulgarian tech companies and these industry giants. Complex cross-border transactions and emerging technologies further complicate the enforcement of antitrust laws in Bulgaria's evolving digital landscape. Regulatory bodies and antitrust authorities in Bulgaria must adapt to these challenges by employing innovative approaches, fostering collaboration, and staying vigilant against emerging anti-competitive trends.

The regulation plays a crucial role in promoting fair competition. As Bulgaria is becoming more and more interesting for foreign investments, understanding the definitions, exemptions, market share thresholds, and hardcore restrictions outlined in the regulation is essential to avoid anti-competitive practices and contribute to a level playing field for all participants in the marketplace. ■

AUSTRIA: CAN VICTIMS OF COMPETITION LAW INFRINGEMENTS GET ACCESS TO LENIENCY STATEMENTS AND SETTLEMENT SUBMISSIONS IN AUSTRIA?

By Robert Wagner, Partner, Wolf Theiss

Where behavior is investigated in parallel by the Austrian competition authorities and the Public Prosecutor's Office (PPO), the latter usually requests the competition authorities to provide it with copies of their files, including leniency statements and settlement submissions that have been filed with the Federal Competition Authority (FCA), and adds (parts of) these documents to its own file. Victims of competition law infringements can thus indirectly get access to leniency statements and settlement submissions through an inspection of the PPO's file. This practice risks weakening the effectiveness of the Austrian leniency program and settlement procedure as it may deter undertakings from cooperating with the FCA.

The Higher Regional Court of Vienna has recently referred questions which aim to clarify whether the described practice is in line with EU law for a preliminary ruling to the Court of Justice of the European Union (CJEU). We expect the CJEU to decide on the matter by the middle of next year.

Background on Relevant EU Law

Directive 2014/104/EU (Damages Directive) aims to promote the private enforcement of competition rules through actions for damages. Amongst others, it provides for rules under which national courts are able to order the disclosure of evidence. However, according to the Damages Directive, national courts cannot at any time order the disclosure of leniency statements and settlement submissions. Furthermore, *Directive (EU) 2019/1* (ECN+ Directive) requires member states to ensure that access to leniency statements and settlement submissions is only granted to parties subject to the relevant proceedings and only for the purposes of exercising their rights of defense.

Risk of Indirect Access to Leniency Statements and Settlement Submissions

Some competition law investigations have revealed that victims of competition law infringements may indirectly get access to leniency statements and settlement submissions in Austria. This risk exists where the same fact pattern is investigated by the Austrian competition authorities under competition law and the PPO under criminal law (e.g., in the case of bid-rigging practices). In criminal proceedings, the PPO is obliged to pursue every initial suspicion and clarify it by taking appropriate investigative steps. Other public authorities, including competition authorities, are required to provide mutual assistance to the PPO. The PPO may request the Austrian competition authorities to provide it with a copy of their files related to a parallel investigation under competition law, including leniency statements and settlement submissions. Victims of a criminal offense have the right to inspect the PPO's file if it is necessary to protect their interests related to the claim asserted. Consequently, where the PPO has added leniency statements and settlement submissions that had been filed with the FCA to its file, victims may indirectly get access to these documents.

Do Leniency Statements and Settlement Submissions Enjoy Protection in Criminal Proceedings?

This practice raises the question of whether the protection of leniency statements and settlement submissions laid down in the Damages Directive and the ECN+ Directive has an absolute effect, i.e., whether it also applies to the PPO and criminal courts so that leniency statements and settlement submissions may not be added to the file in criminal proceedings or at least not be inspected by victims. This tension between the protection of leniency statements and settlement submissions and the rules on access to the file in criminal proceedings recently came up in a procedure related to parallel investigations of a construction cartel by the Austrian competition authorities and the PPO. Two companies that had applied for leniency with the FCA requested the PPO not to add leniency statements and settlement submissions to its file and in any case, to permanently exclude them from inspection. The PPO did not comply with this request but provisionally excluded the leniency statements and settlement submissions from inspection.

The companies lodged an objection against the PPO's decision which is currently pending with the Higher Regional Court of Vienna, which decided to stay the proceedings and to refer questions for a preliminary ruling to the CJEU to clarify whether the protection of leniency statements and settlement submissions also needs to be observed by public prosecutors and criminal courts.

Outlook

The reference made by the Higher Regional Court of Vienna is highly welcome as a clarification of this question by the CJEU is of paramount importance for undertakings and their legal advisors in Austria. We believe that the better arguments support the view that the PPO may not add leniency statements and settlement submissions to its file. A different view may jeopardize the attractiveness of the Austrian leniency program and settlement procedure. ■

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