



CEE

YEAR 5, ISSUE 3
MARCH 2018

LEGAL MATTERS

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



- ACROSS THE WIRE: DEALS AND CASES IN CEE ■ ON THE MOVE: NEW FIRMS AND PRACTICES ■ THE BUZZ IN CEE ■
- NOW OR NEVER: THE LOOMING GDPR DEADLINE ■ THE CORNER OFFICE: YOUR FAVORITE CLASS ■
- MARKET SPOTLIGHT: AUSTRIA ■ SMILES FROM THE MIDDLE OF EUROPE: GOOD TIMES IN AUSTRIA ■
- THE IN-HOUSE PERSPECTIVE: AUSTRIAN GENERAL COUNSEL SHARE THOUGHTS ON THE OUTLOOK FOR BUSINESS ■
- EXPAT ON THE MARKET: INTERVIEW WITH OF TIM PFISTER OF KNOETZL ■ EXPERTS REVIEW: INFRASTRUCTURE/PPP ■
- INSIDE OUT: SCHOENHERR AND FRESHFIELDS ADVISE ON VONOVIA'S PUBLIC TAKEOVER OFFER FOR BUWOG ■

Thank You To Our Country Knowledge Partners For Their
Invaluable Input and Support



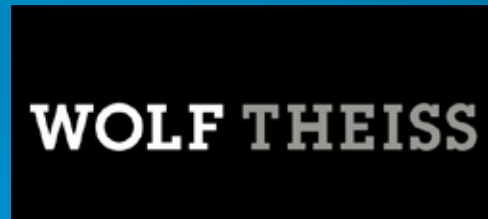
Bulgaria



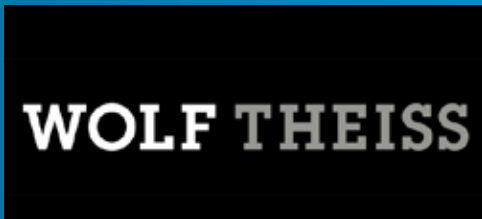
Czech Republic



Greece



Hungary



Poland



Montenegro



Romania



Slovenia



Turkey



Ukraine



EDITORIAL: THOUGHTS OVER A HUNGARIAN CUVÉE

It's Wednesday evening, March 21st, and I've stopped at a local wine bar on the way home for a glass of Hungarian cuvée, a piece of carrot cake, and a brief break from our new normal at CEE Legal Matters: the desperate, manic, exhausting attempt to keep our heads above water.

Not that things are bad. Far from it! The problem is that we have *so* much going on. Our schedule is so packed – a monthly magazine, four special issues, a website requiring daily updates, and this year, for the first time ever, *six* major events – six! – that we're paddling as fast as we can just to keep afloat.

There's a frenzy around the office, a wild look in our employees' eyes (and our own) that comes from always having something that must be done immediately ... even while you're doing something *else* that must be done immediately. Don't forget to order branded notebooks and pens for the event. We should alert firms buying tables for one event that they're qualified for serious discounts on sponsorship for another event and for automatic sponsorship of the Corporate Counsel Handbook. We have to finish the content for this issue by Friday. We have to write and edit the articles for today's website additions. Don't forget to schedule your "Buzz" calls for next week. Radu, the GC Summit website isn't up yet, and can you add these three logos to the attendee list for the Dealer's Choice event, plus there's a weird address at the bottom of the page for some reason. Nico, can you upload the articles from the issue that was published two months ago so we can send the links out to the contributors? Wait, the caterers are asking us to choose a menu, but some of our attendees will be vegetarians, and Radu can't eat fish. Wait, David's Hungarian residence permit is about to expire – we need to get on that. Do we have dates for the local GC Summits yet? Wait, one of the firms that sent us a press release about a deal it worked on is now telling us it shouldn't have done so, and is asking us to take down the article. Wait, the person we're coordinating with for the special China issue in *October* is telling us we need to start moving on it *now*.

I can't tell you how manic it is. And yet. And yet.

I've never felt happier in any job I've ever had – even delivering pizza to the sororities (ok, as well as the fraternities and everyone else) at Geppetto's during college at the University of Michigan, 30 years ago, when I got free pizza and subs on the job. Trust me – it was damned good pizza.

Still, this is better. Every email we get from a firm

or a lawyer confirming attendance at or sponsorship of one of our upcoming events, or asking to place an article in an upcoming issue of the magazine, or to purchase a Thought Leadership account on the website, is validation that our efforts are having an effect. That this company, which Radu and I started from our life savings four and a half years ago, has carved out a valued place for itself in the legal markets of CEE.

We came up with the name *CEE Legal Matters* almost on a whim, confident that it projected both seriousness and (in the subtle double-entendre in its name) reflected a sense of humor and general *joie de vivre* in how we engage with the lawyers in the region. I think those who have attended our events over the years can confirm that we are dead serious about how we put them together ... and committed to making them *fun* in whatever ways we can.

You know, an old advertising campaign for Avis rental cars in the United States in the 1970s and 1980s claimed that, in comparison to number one Hertz, "we try harder." I can relate. I don't know much about the business models of the local legal industry publications in CEE, or about the giant international publications based in London or New York or Mars. I can't speak to their costs, their value, their platforms, their strategic directions. But I can say with true confidence that *nobody* works harder in the particular field we've found ourselves in than we do to provide value for our clients, and to produce a publication and website of the highest quality. I'm remarkably proud of the effort our whole team puts in, and proud of the results.

Hmm. I didn't know exactly where this editorial was going when I sat down, but it appears that the cuvée and the carrot cake have had the desired effect. Probably time for me to finish my glass, pay, walk home, and get back to work on the features I have to edit for this issue, the articles I have to write for the website, plans for the Dealer's Choice conference, etc. etc. etc. It never ends.

I hope.



The Editors:

David Stuckey
david.stuckey@ceelm.com

Radu Cotarcea
radu.cotarcea@ceelm.com

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

Disclaimer:

At CEE Legal Matters, we hate boilerplate disclaimers in small print as much as you do. But we also recognize the importance of the "better safe than sorry" principle. So, while we strive for accuracy and hope to develop our readers' trust, we nonetheless have to be absolutely clear about one thing: Nothing in the CEE Legal Matters magazine or website is meant or should be understood as legal advice of any kind. Readers should proceed at their own risk, and any questions about legal assertions, conclusions, or representations made in these pages should be directed to the person or persons who made them.

We believe CEE Legal Matters can serve as a useful conduit for legal experts, and we will continue to look for ways to expand that service. But now, later, and for all time: We do not ourselves claim to know or understand the law as it is cited in these pages, nor do we accept any responsibility for facts as they may be asserted.

David Stuckey

GUEST EDITORIAL: WHERE HAS ALL THE WORK ETHIC GONE?

By Martin Magal, Managing Partner,
Allen & Overy Bratislava



Some memories never fade away. I remember the first months of my trainee career at Allen & Overy's newly opened Bratislava office as if they were yesterday. The year was 1998 and we had just moved into new office space. It felt way too big for the team of three lawyers, one PA, and one office manager.

A few weeks in, and without much warning, we were asked to conduct simultaneous due diligence exercises over three state-owned banks that were being privatized. Our team had little to no experience handling such tasks. We could rely on only one native English speaker in our Prague office to help us transform our convoluted and verbose notes into a halfway-understandable report for the client. The hours were brutal. We started in one data room at 7 AM in the morning, moved to another midday, and returned to our office at around 10 PM to start drafting our reports. We rarely finished before 4 AM, went home for a quick nap, shower, and change of shirt, only for it to start all over again. When I wanted to see my then-girlfriend (now-wife), I could only offer her a short walk between the data room and our office. I remember she would bring me cookies for the road and worry about me. How she ever put up with me during those weeks remains a mystery to me.

Despite all the personal inconvenience involved, there was not a shred of doubt in our team's mind that the work we were doing was exciting and meaningful. For all the anxieties about our lack of experience and qualification, we felt an immense sense of pride and privilege to be involved in such projects. We wanted to emulate the cool professionalism, eloquence, and cosmopolitan attitude of our colleagues from other offices.

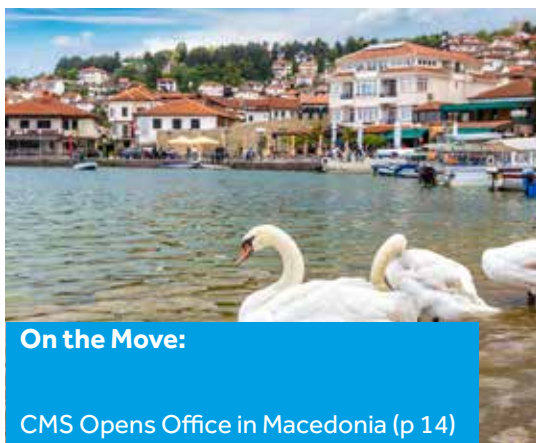
Almost two decades and quite a few all-nighters later, I try to put myself in the shoes of the new generation of lawyers, both at my firm and elsewhere. I wonder whether they feel the same sense of awe and excitement when they are faced with projects that are likely to spoil their work-life-balance plans for a couple of weeks. My conclusion is that, luckily, they do not succumb to such emotions as easily as my colleagues and I did.

Although at times I catch myself having some sympathy for the

school of thought that proclaims the new generation of young lawyers to be a bunch of spoiled and ungrateful fools, overall I must admit that they seem to have it figured out much better and earlier than most of my generation did. To them, to sacrifice one's youth on the altar of billable hours targets, deadlines, and pursuit of clients' rare praise is not a virtue, but a sign of desperation. Although they understand the importance of work, in particular of the meaningful type, they reject the slave (Slav?) mentality that will cause them to burn out before they turn 40 and, if they are women, force them to postpone or abandon plans to have a family.

Writing these words from the position of a managing partner and employer might seem heretical. But over the years, I have come to realize the truth behind the saying that any idiot can work 16 hours a day for months on end, but only smart people can consistently generate real added value working 8-10 hour days while keeping their weekends free.

It is true that I will be never able to guarantee to my colleagues that they will not end up stuck in a difficult and time-consuming project for a couple of weeks, perhaps months. But I would like to think that I lead by example in showing them that commitment does not have to be measured by the number of hours spent in the office. It takes energy and time to nurture social relationships, invest in physical well-being, and broaden one's knowledge beyond what is directly work-relevant. I know it would be detrimental to the long term interests of the firm I represent if I would continuously seek to deprive my team of that time which they need to spend outside of the office. In this day and age it is very likely that I would not be able to get away with it in the first place. And that, I believe, is a very good thing.

**On the Move:**

CMS Opens Office in Macedonia (p 14)

**Now or Never:**

The Looming GDPR Deadline (p 30)

**The In-House Perspective:**

Austrian General Counsel Share Thoughts on Business Outlook (p 42)

**Experts Review:**

CEE Experts Review Round-up on PPP/Infrastructure (p 52)

Preliminary Matters

2 - 5

- 2 Editorial: Thoughts Over a Hungarian Cuvée
- 4 Guest Editorial: Where Has All The Work Ethic Gone?

Across the Wire

6 - 19

- 6 Across the Wire: Featured Deals
- 8 Legal Ticker: Summary of Deals and Cases
- 14 On the Move: New Homes and Friends

Legal Matters

20 - 35

- 20 Legal Matters: The Buzz
- 28 The Corner Office: Your Favorite Class
- 30 Now or Never: The Looming GDPR Deadline

Market Spotlight: Austria

36 - 51

- 37 Guest Editorial: GDPR Implementation in Austria – A Milestone Rather Than the Finish Line
- 38 Smiles from the Middle of Europe: Good Times in Austria
- 42 The In-House Perspective: Austrian General Counsel Share Thoughts on the Outlook for Business
- 45 Inside Out: Schoenherr and Freshfields Advise on Vonovia Public Takeover Offer for BUWOG
- 48 Expat on the Market: Tim Pfister of Knoetzel

Experts Review: PPP/Infrastructure

52 - 65

- 52 CEE Experts Review Round-up on PPP/Infrastructure

ACROSS THE WIRE: FEATURED DEALS

Schoenherr and Buse Heberer Fromm Advise Synthomer on Acquisition from BASF

Schoenherr and Buse Heberer Fromm have advised British specialty chemicals company Synthomer Plc. on their EUR 30 million acquisition of the BASF SE paper coating dispersions business in Austria. The transaction closed on January 31, 2018.

Synthomer is an LSE-listed dispersions and special polymers supplier that specializes in latex and emulsion polymers for the manufacturing, packaging, and health industries. The company has revenues of more than EUR 1.2 billion.

BASF is the largest chemical producer in the world, with shares traded on the stock exchanges in Frankfurt, London, and Zurich.

Schoenherr provided M&A, merger control, and labor law advice to Synthomer in Austria. The firm's team consisted of Counsel Maximilian Lang and Associates Alexander Mazevski and Teresa Waidmann. Schoenherr EU and Competition Partner Volker Weiss managed the proceedings with the relevant competition authorities together with Associate Evelin Hlina.

Maravela & Asociatii Assists Interparking in Acquisition of Timisoara Parking Lot



Maravela & Asociatii has advised Belgium's Interparking company on its almost EUR 4 million acquisition of P700 Parking, in Timisoara, from S.C. Constructim S.A.

Interparking Group, which is present in nine countries and in over 360 cities, currently holds 782 units totaling 355,839 parking spaces across Europe. In 2016, the group's turnover was over EUR 410 million. Interparking holds four parking lots in Romania, in Bucharest and Timisoara.

The P700 parking lot in Timisoara has a capacity of 520 parking spaces, while the parking lots in Bucharest have a total of 1,400

spaces.

"We are glad to be involved in transactions that underline the raised interest of foreign investors, speeding the modernization of the infrastructure and offering practical solutions to everyday problems. Interparking Group intends to further expand its business in the region so we presume that new projects will be announced shortly."

– Dana Radulescu, Partner, Maravela

The Maravela & Asociatii team, which was coordinated by Partner Dana Radulescu, assisted with due diligence as well as the negotiation and drafting of transaction documents.

MARAVELA | ASOCIAȚII

Avellum Advises on USD 250 Million Loan to Energoatom



Avellum has advised the Ministry of Finance of Ukraine on the state-guaranteed USD 250 million loan extended to the "Energoatom" State Enterprise National Nuclear Energy Generating Company, which operates all nuclear power plants in Ukraine. Baker McKenzie advised Energoatom.

The loan will support the construction of the Central Spent Nuclear Fuel Storage Facility in the Chornobyl Exclusion Zone in Ukraine. It is funded through the issuance of loan participation notes in the United States capital markets and was arranged by Merrill Lynch, Pierce, Fenner & Smith. The Overseas Private Investment Corporation (OPIC), a United States Government agency, has issued an insurance policy on the loan. Sayenko Kharenko advised both Merrill Lynch, Pierce, Fenner & Smith Incorporated and OPIC on Ukrainian law).

The Avellum team was led by Senior Partner Glib Bondar, with the support of Counsels Taras Dmukhovskyy and Vadim Medvedev, Senior Associate Anna Melnychuk, and Associates Orest Franchuk, Oleg Krainskyi, Oleksii Maslov, and Vladyslav Aleksandrov.



PNSA Advises Simona Halep on Signing New Commercial Endorsement Contract

Popovici Nitu Stoica & Asociatii has advised WTA world number 1 women's tennis player, Romanian Simona Halep, on the signing of a new commercial endorsement contract with Nike.

The new commercial arrangement comes after the January 2018 conclusion of her previous four-year partnership with Adidas.

PNSA's team was led by Partner Bogdan Stoica. The firm has served as special adviser to Halep on all her legal and tax matters since 2013.

Actecon Claims Landmark Result for GOLTAS Cement in Challenging Competition Authority Penalty



Actecon is reporting that the 10th Administrative Court of Ankara in Turkey has accepted its arguments on behalf of GOLTAS Cement and annulled the a penalty of TRY 14.5 million levied by the Turkish Competition Authority against it and five other cement producers operating in the Aegean Region of Turkey.

The penalty was imposed for allegedly entering into a collusive agreement to allocate certain geographical regions among themselves and to collectively raise the prices of cement products

from January-March 2013 to October-December 2014.

According to Actecon, the TCA's penalty "was significant because the TCA was not able to find evidence of any contact between the said undertakings with respect to market allocation or collective price increase and relied on economic data," but instead "mainly compared the market structure in the said period with the preceding and succeeding periods and concluded that the market structure was similar to those markets where competition is restricted." According to the firm, "the TCA claimed that the economic evidence was sufficient to trigger the "presumption of concerted practice" which shifts the burden of proof to the investigated parties as per Act no. 4054 on the Protection of Competition. Once the burden of proof is shifted, the parties must rebut the presumption of concerted practice by showing that the alleged unusual market conditions were stemming from external factors such as an increase in demand or in the costs of raw materials."

In their defense, the cement companies submitted evidence showing that price increases had been "a result of natural market forces rather than ... anti-competitive behavior." GOLTAS Cement, for one, claimed that "its price increase of 42% in the relevant period was much below compared to the price increases of competitors and also justified by the 28% increase in its costs and the 29% increase in demand." According to Actecon, "yet, the TCA rejected that defense merely by claiming that these may not be regarded as reasonable justifications in the case at hand."

In its ruling of February 2, 2018, the 10th Administrative Court of Ankara annulled the penalty, ruling that GOLTAS Cement had in fact rebutted the presumption of concerted practice, noting in the process that "the 42% increase in GOLTAS Cement's prices were far below the market average of 83% and that the 14% difference between the 28% increase in the costs of GOLTAS Cement and its price increase was justified by the 29% increase in demand."

Finally, according to Actecon, "although the decision of the 10th Administrative Court is not final as it is subject to further judicial review in higher administrative courts, this is a landmark decision that will fundamentally change the way in which the TCA establishes concerted practice. The TCA's approach of amalgamating its claims concerning all the investigated parties rather than conducting individualized economic assessments in concerted practice cases had long been criticized. Yet, this is the first decision where an administrative court annulled an administrative fine on the ground that the required standard of proof was not met. The implications of this decision are yet to be seen, but it sends a clear message to the TCA that it must separately assess the behaviors of each investigated party by taking into consideration the specific economic circumstances. So far, the administrative courts in Turkey had been reluctant to delve into the issue of standard of proof as well as any other issues concerning the defensive safeguards associated with the general right to a fair trial. This may be a milestone in the judicial review of TCA's decisions in general since this decision is the only one in twenty-year enforcement that administrative courts, considering the essence of the case (mainly the standard of proof), annulled a TCA decision imposing monetary fine. The decision of the 10th Administrative Court may have opened Pandora's box."

ACROSS THE WIRE: DEALS SUMMARY

Date covered	Firms Involved	Deal/Litigation	Value	Country
13-Feb	CR Partners; Freshfields; Kerameus & Partners	CR Partners acted as local counsel to National Bank of Greece S.A. on the sale of NBG's entire stake in its Albanian subsidiary, Banka NBG Albania Sh.A. to American Bank of Investments SHA. Freshfields Bruckhaus Deringer served as international counsel to MBG on the sale, while Kerameus & Partners advised ABI.	N/A	Albania; Greece
12-Feb	Freshfields; Linklaters; Wolf Theiss	Wolf Theiss provided Austrian legal advice and Linklaters provided German advice on Raiffeisen Bank International's issuance of EUR 500 million additional tier notes. Freshfields reportedly advised the Joint Lead Managers on both German and Austrian legal matters.	EUR 500 million	Austria
14-Feb	Rautner	Rautner Rechtsanwälte advised an international banking consortium consisting of Landesbank Baden-Württemberg (Technical Lead), Credit Agricole, Credit Suisse, DZ BANK, and Erste Group as Joint Lead Managers for Erste Group AG's issuance of a EUR 1 billion fixed-rate mortgage Pfandbrief.	EUR 1 billion	Austria
28-Feb	Vanovac; Wolf Theiss	Wolf Theiss and Gleiss Lutz advised Liechtenstein-based construction machinery manufacturer Hilti on its acquisition of Austrian company Bst Brandschutztechnik Dopfl GmbH and its sales company in Germany. The Vanovac law firm coordinated the work of several other firms advising Bst Brandschutztechnik Dopfl on the sale.	N/A	Austria
8-Mar	Dorda; Fellner Wratzfeld & Partner	Dorda advised Cyoss GmbH, a German provider of data analytics and IT and OT security, on the acquisition of a majority stake in RadarServices, a European technology company in the field of cyber attack detection and response. The shareholders of RadarServices were represented by FWP on the deal.	N/A	Austria
9-Mar	Buse Heberer Fromm; Eisenberger & Herzog; Herbert Smith Freehills; Schoenherr	Schoenherr and Buse Heberer Fromm advised British specialty chemicals company Synthomer plc on its acquisition of BASF SE's production site for styrene-butadiene-based paper dispersions in Pischelsdorf, Austria. BASF SE was represented by Eisenberger & Herzog. Herbert Smith Freehills was lead competition counsel.	N/A	Austria

Date covered	Firms Involved	Deal/Litigation	Value	Country
16-Mar	Wolf Theiss	Wolf Theiss advised Bitpanda on the legal structuring of an Initial Coin Offering related to the company's launch of its new open-source research project, Pantos.	N/A	Austria
19-Mar	Cerha Hempel Spiegelfeld Hlawati; Kuhn Rechtsanwälte; Weber & Co.	Cerha Hempel Spiegelfeld Hlawati advised Fosun Industrial Holdings Limited on its takeover of the Wolford AG textile group, which is headquartered in Vorarlberg, Austria. Wolford AG was represented by Weber & Co and the selling core shareholder group was advised by Kuhn Rechtsanwälte.	EUR 32.6 million	Austria
14-Feb	Arendt & Medernach; Binder Groesswang; Homburger AG; White & Case; Wolf Theiss	Wolf Theiss, working with Switzerland's Homburger AG and Luxembourg's Arendt & Medernach, advised the Munich RE Group on the sale by its ERGO Group AG subsidiary of its legal protection subsidiary DAS Switzerland and the legal protection insurance portfolios of DAS Luxembourg and DAS Slovakia to the Allianz Group. White & Case and Binder Groesswang advised the Allianz Group.	N/A	Austria; Czech Republic; Slovakia
15-Feb	Sorainen	Sorainen Belarus is advising Geely International Corporation on the implementation of a joint venture with the Borisov Automotive and Tractor Electrical Equipment Plant.	N/A	Belarus
14-Mar	Clifford Chance; Egorov Puginsky Afanasiev & Partners; White & Case	The Minsk office of Egorov Puginsky Afanasiev & Partners advised joint lead managers Citigroup Global Markets Limited and Raiffeisen Bank International AG on the issue and placement of USD 600 million in sovereign Eurobonds by the Republic of Belarus. Clifford Chance advised the banks on English and American law, while White & Case advised Belarus.	USD 600 million	Belarus
14-Feb	Harrisons; Law Office Stevanovic	Harrisons advised the EBRD on matters of English law in relation to a loan of up to EUR 5 million to Addiko Bank Banja Luka to be on-lent to medium and small enterprises. The Law Office Stevanovic acted as the EBRD's counsel for Bosnian and Herzegovinian law.	EUR 5 million	Bosnia and Herzegovina
15-Feb	Kinstellar	Kinstellar advised United Bulgarian Bank and Cibank on the merger of the two companies.	N/A	Bulgaria
28-Feb	Djingov, Gouginski, Kyutchukov & Velichkov	DGKV advised VMware Bulgaria, part of the US cloud computing company VMware Inc., on its lease of more than 20,000 square meters of office space in two buildings in Sofia's Garitage Park residential and business complex.	N/A	Bulgaria
6-Mar	CMS; Hristova, Jivkov & Tsotsorkova	CMS advised Global Biomet on the acquisition of two photovoltaic parks in Bulgaria from the US/Indian venture Good Earth. The seller was represented by Hristova, Jivkov & Tsotsorkova, a recent spin off from Eurolex Bulgaria.	N/A	Bulgaria
26-Feb	Allen & Overy; CMS; Spasov & Bratanov	CMS advised PPF Group on the acquisition of Bulgaria's Nova Broadcasting Group, with 95% of the shares acquired from the Modern Times Group – advised by Allen & Overy and Spasov & Bratanov – and the remaining 5% from Eastern European Media Holdings S.A.	N/A	Bulgaria; Czech Republic
14-Feb	Kinstellar	Kinstellar advised B2 Kapital on the acquisition of the EUR 119 billion unsecured retail nonperforming loan portfolio from Moneta Money Bank.	EUR 119 million	Czech Republic
16-Feb	Kocian Solc Balastik	Kocian Solc Balastik advised Czech game development studio Warhorse on the initial crowdfunding for the launch of its "Kingdom Come: Deliverance" video game and on legal aspects of the game's development, including licensing arrangements with the software developers.	N/A	Czech Republic
23-Feb	Kocian Solc Balastik	KSB advised Skoda Auto DigiLab on its HoppyGo project, a car-sharing application developed by CreativeDock. Novalia advised the seller.	N/A	Czech Republic
26-Feb	Kocian Solc Balastik	KSB advised Karlovarske Mineralni Vody on its purchase of PepsiCo's Czech, Slovak, and Hungarian operations.	N/A	Czech Republic
27-Feb	Clifford Chance; Dvorak Hager & Partners	Dvorak Hager & Partners represented investment group Opifer on its acquisition of Euro Mall Brno Real Estate from Atrium, a leading developer and operator of shopping malls in Central and Eastern Europe. The seller was represented by Clifford Chance.	N/A	Czech Republic
16-Mar	CEE Attorneys	CEE Attorneys advised PZL Sedziszow S.A., a Polish automotive, industrial, and agricultural filter producer, in its acquisition of a 69% stake in Bohm Plast-Technik a.s., a Czech producer and service provider in the area of plastic injection moulding technologies and metallization.	N/A	Czech Republic
19-Mar	Allen & Overy	Allen & Overy advised International Campus Group, a Munich-based specialist for micro-living products, on its expansion to the Czech Republic.	N/A	Czech Republic
2-Mar	K&L Gates; Kinstellar	Kinstellar advised Genesis Private Equity Fund III and the Poland-based Avallon MBO Fund II on the acquisition of EQOS Energie Polska Sp. z o.o. and EQOS Energie Cesko spol. s r.o.	N/A	Czech Republic; Poland
12-Feb	Cobalt	Cobalt Estonia advised seed investment company Ambient Sound Investment and other sellers on the sale of Ecofleet Holding to Fleet Complete, a global provider of mission-critical fleet, asset, and mobile workforce management solutions.	N/A	Estonia
16-Feb	Leadell (Pilv)	Leadell Pilv successfully represented Aigar Lepp, the manager of Tartu Valla Kommunaal OU and Miljon Motet OU, against charges of corruption brought by the Public Prosecutor's Office including the falsification of and use of a falsified procurement document.	N/A	Estonia
19-Feb	Fort Legal	Fort's Tallinn office successfully represented a subsidiary of Baltic real estate fund EFTEN in a dispute against a former lessee.	N/A	Estonia
22-Feb	Cobalt	Cobalt advised Alexela Energia on a transaction involving its acquisition of Adven Eesti's natural gas portfolio, and Adven Eesti's acquisition of the natural gas distribution company Gaasienergia AS from Alexela.	N/A	Estonia

Date covered	Firms Involved	Deal/Litigation	Value	Country
26-Feb	Cobalt; Fort Legal	Fort Legal advised Eften Kinnisarafond II AS, the closed-end core real estate fund of Eften Capital, in its acquisition of the Marienthal commercial center in Tallinn. The seller, real estate investment company AS Gildhall, was advised by Cobalt Estonia.	N/A	Estonia
5-Mar	Cobalt	Cobalt has advised technology investment fund Rubylight on its investment in London-based Sweatcoin as part of a recently completed USD 5.7-million initial seed stage round of financing.	USD 5.7 million	Estonia
14-Mar	Cobalt	Cobalt advised SmartCap on its investment of EUR 4.2 million into accelerator fund Superangel.	EUR 4.2 million	Estonia
14-Mar	TGS Baltic	TGS Baltic's Estonian office advised property lender EstateGuru on its EUR 1.6 million loan to Finnish-based printing house Libris Oy for the purchase of real estate.	EUR 1.6 million	Estonia
14-Mar	Cobalt	Cobalt advised Luminor on the company's management structure reorganization.	N/A	Estonia; Latvia; Lithuania
26-Feb	Ellex; Nobles; Noerr; Stelios Americanos	Noerr was lead counsel to Union Tank Eckstein in relation to its acquisition of 51% of the shares of Polish company Timex Card, a franchisee and distributor of UTA service cards for car fleets issued by Union Tank Eckstein. Ellex advised UTA on Estonian, Latvian, and Lithuanian matters, Nobles advised UTA on Ukrainian law, and Stelios Americanos advised it on Cypriot law issues.	N/A	Estonia; Latvia; Lithuania; Ukraine
6-Mar	Ince & Co.; Orrick; Seward & Kissel	Orrick's London team advised Precitox Holdings, Oratosio Holdings, and Humberto Finance on the USD 367 million sale of 100% of the share capital of H.E.C. Europe Limited to Aegean Marine Petroleum Network. Aegean was advised by Ince & Co and Seward & Kissel.	USD 367 million	Greece
15-Feb	CMS	CMS advised Goodman, an Australian integrated commercial and industrial property group, on the development of an 87,200 square meter greenfield logistics facility in Hungary.	N/A	Hungary
16-Feb	Lakatos, Koves & Partners; Szecsenyi & Partners	Lakatos, Koves & Partners advised Atrium Properties on its sale of the EuroCenter Obuda Shopping Center in Budapest and the Family Center Shopping Center and the Praktiker Department Store in Szombathely, Hungary, to Hungarian real estate developer Wing Zrt. The buyer was advised by Szecsenyi & Partners.	N/A	Hungary
9-Mar	CMS	CMS Budapest advised Belgian real estate developer Atenor on the sale of Building D of the Vaci Greens complex to an unnamed Hungarian fund.	N/A	Hungary
19-Mar	Deloitte Legal; Noerr	Noerr advised Prologis on the sale of Prologis Park Hegyeshalom, in Hungary, to Horvath Rudolf Intertransport Kft. The buyer was represented by Deloitte Hungary.	N/A	Hungary
12-Feb	Ellex (Klavins); Fort Legal	Ellex Klavins advised Swedish investment company Eastnine on its EUR 24.8 million acquisition of Alojasa Biznesa Centrs and its EUR 4.8 million acquisition of two adjacent properties from the LNK Group. The seller was advised by Fort Legal.	EUR 29.6 million	Latvia
13-Mar	TGS Baltic	TGS Baltic advised the University of Latvia regarding a EUR 11.5 million loan agreement with the Council of Europe Development Bank for the further development of an Academic Centre.	EUR 11.5 million	Latvia
14-Feb	Ellex (Valiunas)	Ellex consulted Baltpool, the Lithuanian Energy Exchange operator, on launching the BiomassPool Aps biofuel exchange in Denmark with Kenneth Lykkedal, a Danish energy entrepreneur.	N/A	Lithuania
2-Mar	Sorainen	Sorainen Lithuania became a Certified Adviser on First North, entitling the firm to advise Lithuanian companies on admission to to the exchange.	N/A	Lithuania
5-Mar	Sorainen	Sorainen advised the Modus Group on entering the Nasdaq Baltic First North alternative market. The total nominal value of the Modus Group issue is EUR 4,999,900, with an annual interest rate of five percent.	EUR 5 million	Lithuania
8-Mar	TGS Baltic; Tvins	Tvins advised UAB Easy Debt Service on a loan portfolio purchase from Ukio Bankas. Ukio Bankas was advised by TGS Baltic.	N/A	Lithuania
14-Mar	Motieka & Audzevicius	Motieka & Audzevicius advised Wisdom Events, an event and business meetings organizer, on a cross-border swap of shares that involved partners splitting into different jurisdictions.	N/A	Lithuania
22-Feb	Allen & Overy; CMS; Leroy Si Asociatii	RTPR Allen & Overy advised Purcari Wineries Public Company Limited on its IPO and admission to trading on the Bucharest Stock Exchange under the WINE symbol. Leroy si Asociatii advised the IFC on the listing, representing 49% of the Purcari Wineries share capital. The offer was managed by Raiffeisen Bank and Swiss Capital, advised by CMS.	N/A	Moldova; Romania
12-Feb	Act (Bsww)	Act BSWW advised Fortuna Online Zaklady Bukmacherskie sp. z o.o. on an internal merger of its subsidiaries.	N/A	Poland
14-Feb	Bird & Bird; Dentons	Dentons Warsaw advised the Cromwell Property Group on the sale of the Warsaw Corporate Center office building to Raiffeisen Immobilien Kapitalanlage-Gesellschaft. The buyer was advised by Bird & Bird.	N/A	Poland
15-Feb	Dentons	Dentons successfully represented DZ Polska in three cases before the Polish Supreme Court.	N/A	Poland
16-Feb	Act (BSWW); Jezolkowski	Act BSWW advised Buma Group on its lease agreement of space at the DOT Office in Krakow to Shell. Shell was assisted by the Jezolkowski law firm	N/A	Poland
16-Feb	Act (BSWW)	Act BSWW advised Kulczyk Silverstein Properties on its lease agreement negotiations with the tenants of the Ethos office and retail building in Warsaw.	N/A	Poland

Date covered	Firms Involved	Deal/Litigation	Value	Country
22-Feb	Dentons	A Dentons-led consortium won a government tender to provide assistance to Poland's Ministry of Investment and Development and the Ministry of Sports and Tourism in selecting a private-sector partner for a PPP project to develop the common grounds adjacent to Warsaw's National Stadium.	N/A	Poland
22-Feb	SSW Pragmatic Solutions	SSW Pragmatic Solutions advised the Inwest Group, a group of Polish property developer companies, on its obtaining of PLN 35 million in mezzanine debt financing in the form of bonds for an unspecified project.	PLN 35 million	Poland
22-Feb	Soltysinski Kawecki & Szlezak	Soltysinski Kawecki & Szlezak advised Sokolow S.A., a company belonging to the Danish Crown A.S. group, on the acquisition of a range of companies making up the meat group Gzella.	N/A	Poland
23-Feb	Dentons	Dentons was part of a consortium winning a public tender to provide consulting services on a PPP project regarding the construction of kindergartens in Warsaw organized by the Ministry of Investment and Development in Poland.	N/A	Poland
23-Feb	Act (Bsww)	Act BSWW assisted the Immoel Group on lease agreement negotiations with retail space tenants in the CEDET project in Warsaw.	N/A	Poland
27-Feb	Chajec, Don-Siemion & Zyto	Chajec, Don-Siemion & Zyto advised Capital Partners on a multi-stage equity restructuring of Ekoplast S.A. and its group companies.	N/A	Poland
2-Mar	Kancelaria Adwokacka; Kurzynski Kosinski Lyszyk Wierzbicki; Kwasnicki, Wrobel & Partners	Kwasnicki, Wrobel & Partners advised Benefit Systems SA and its subsidiary Fit Invest sp. z o.o. on their agreement to purchase the Calypso Fitness SA chain from Glastonbury Ventures Limited in a multi-stage procedure. The seller was advised by Kurzynski Lyszyk Wierzbicki.	N/A	Poland
9-Mar	Kurzynski Lyszyk Wierzbicki	KKLW Kurzynski Lyszyk Wierzbicki advised Robyg S.A. on the acquisition of four limited partnerships which have legal title to real properties located in Warsaw's Ursus district.	PLN 82 million	Poland
9-Mar	Chajec, Don-Siemion & Zyto	Chajec Don-Siemion & Zyto advised a private equity fund managed by Value Quest on the acquisition of 100% shares in TTComm S.A., a satellite services provider in Central and Eastern Europe.	N/A	Poland
13-Mar	Lesnodorski Slusarek I Wspolnicy; Mrowiec Fialek	Mrowiec Fialek & Partners advised Centrum Rozliczen Elektronicznych Polskie ePlatnosci S.A., a portfolio company of Innova Capital, on its acquisition of 100% of shares in PayLane Sp. z o.o. LSW represented the sellers, two private individuals, on the deal.	N/A	Poland
14-Mar	Jara Drapala & Partners	Jara Drapala & Partners persuaded Poland's National Appeals Chamber to grant the appeal of a Polish-French consortium of Constructions Industrielles de la Mediterranee S.A., CNIM Poznan Sp. z o.o., and PORR S.A., regarding its rejected tender for the development of a municipal waste treatment plant in Warsaw.	N/A	Poland
14-Mar	Studnicki, Pleszka, Cwiakalski, Gorski	SPCG represented WPO ALBA S.A., a European waste management company, in a dispute involving the pick-up and management of municipal waste in a municipality in the lower Silesian voivodeship of Poland.	PLN 15 million	Poland
14-Mar	Gessel; Greenberg Traurig	Greenberg Traurig advised VLET Holdings S. a r. l., a subsidiary Abris Capital Partners, on its acquisition of the Velvet Care paper hygiene product manufacturer from Avallon MBO II BV. Gessel assisted Avallon on the transaction.	N/A	Poland
14-Mar	Kurzynski Lyszyk Wierzbicki	Kurzynski Lyszyk Wierzbicki advised Poland's Museum of Modern Art on its construction of a new headquarters in Warsaw.	N/A	Poland
14-Mar	Deloitte Legal; Gessel	Deloitte Legal advised Nettle S.A., a member of the Ortie group, on the investment by Accession Mezzanine Capital of PLN 100 million into the company. Gessel advised Accession Mezzanine Capital on the funding.	PLN 100 million	Poland
19-Mar	DWF; Kochanski Zieba & Partners; Ropes & Gray; Stolarek & Grabalski	Kochanski Zieba & Partners and Ropes & Gray International advised the US investment firm Davidson Kempner Capital Management on the GBP 180 million financing granted to Pepkor Europe of the Steinhoff Group. Pepkor Europe was represented by DWF and Stolarek & Grabalski.	GBP 180 million	Poland
19-Mar	Mrowiec Fialek; Weil, Gotshal & Manges	Mrowiec Fialek and Partners advised the Argus Capital private equity fund on the sale of its minority stake in KCR S.A. to an unnamed buyer. KCR was advised by Weil, Gotshal & Manges.	N/A	Poland
26-Feb	Maravela & Asociatii	Maravela & Asociatii advised Belgian company Interparking on its almost EUR 4 million acquisition of P700 Parking, in Timisoara, from S.C. Constructim S.A.	EUR 4 million	Romania
28-Feb	Eversheds; Deloitte Legal (Reff & Associates)	Reff & Associates advised NEPI Rockcastle on its taking over the building of a commercial center in downtown Sibiu, Romania, from Primavera Development Group. Primavera Development Group was assisted by Eversheds Romania.	EUR 21 million	Romania
28-Feb	Popovici Nitu Stoica & Asociatii	Popovici Nitu & Asociatii Stoica advised Unirii View, a company owned by Belgian investor Yves Weerts, on a EUR 23 million financing from Raiffeisen Bank meant for the development of Unirii View's 19-floor office building.	EUR 23 million	Romania
2-Mar	Popovici Nitu Stoica & Asociatii	Popovici Nitu Stoica & Asociatii advised WTA world number 1 women's tennis player Romanian Simona Halep on the signing of a new commercial endorsement contract with Nike.	N/A	Romania

Date covered	Firms Involved	Deal/Litigation	Value	Country
8-Mar	Allen & Overy; Tuca Zbarcea & Asociatii	RTPR Allen & Overy advised the EBRD on a EUR 60 million loan to Transgaz, the technical operator of the national natural gas transmission, for its construction of Romania's section of a regional gas pipeline between Romania, Bulgaria, Hungary, and Austria. Transgaz was assisted by Tuca, Zbarcea & Asociatii.	EUR 60 million	Romania
13-Mar	Fenwick & West; Gunderson Dettmer; Tuca Zbarcea & Asociatii	Tuca Zbarcea & Asociatii advised Accel Partners as lead investor in a EUR 153 million Series B funding round for UiPath, a leading enterprise robotic process automation software company. New investors CapitalG and Kleiner Perkins Caufield & Byers joined Accel, already an existing investor, in contributing. Fenwick & West also advised Accel, and Gunderson Dettmer advised UiPath.	EUR 153 million	Romania
13-Mar	Clifford Chance	Clifford Chance Badea secured a favorable decision for BRD Societe Generale in relation to a claim raised by Metexcom SRL at the Court of International Commercial Arbitration attached to the Chamber of Commerce and Industry of Romania.	N/A	Romania
16-Mar	Popovici Nitu Stoica & Asociatii	PNSA advised the Somaco Group on several multimillion credit facilities granted by BRD Societe Generale and Banca Transilvania.	N/A	Romania
19-Mar	Suciu Popa	Suciu Popa has successfully represented an Enel Group company at the Romanian High Court of Cassation and Justice in a matter involving the issuance of green certificates for a wind energy production project.	N/A	Romania
12-Feb	Capital Legal Services; Skolkovo Deal Support Center	Capital Legal Services advised the Rusnano Sistema SICAR fund on its USD 1.5 million investment project into Geosplit, a Russian oil service developer and integrator of technology for the oil industry. Geosplit was advised by the Skolkovo Deal Support Center.	USD 1.5 million	Russia
13-Feb	Goltsblat BLP	Goltsblat BLP advised Alfa-Bank on the acquisition of a portfolio of shares in Pay-Me, a mobile acquiring services company.	N/A	Russia
16-Feb	White & Case	White & Case advised JSC Siberian Anthracite, a producer and exporter of ultrahigh-grade anthracite, on a pre-export financing of up to US 570 million from a pool of international and Russian banks.	USD 570 million	Russia
27-Feb	DLA Piper	DLA Piper advised NovaWind, a Rosatom State Atomic Energy Corporation's unit responsible for new energy programs in Russia, on its joint venture with Dutch turbine developer Lagerwey to supply 388 turbines to Russian wind farms by 2022.	N/A	Russia
1-Mar	Egorov Puginsky Afanasiev & Partners	EPAM defended the interests of Razvitie Zdorovia i Sporta LLC in a dispute over billions of rubles worth of losses.	RUB 100 million	Russia
9-Mar	Egorov Puginsky Afanasiev & Partners	Egorov Puginsky Afanasiev & Partners successfully defended VEB-Leasing in a dispute against Inpromleasing.	RUB 12 billion	Russia
9-Mar	Baker McKenzie; Capital Legal Services	Capital Legal Services advised Leroy Merlin on its RUB 12 billion acquisition of 12 out of the 14 K-Rauta stores owned by Finland's Kesko, with Kesko discontinuing its operations in Russia. Baker McKenzie advised Kesko on the sale.	RUB 12 billion	Russia
19-Mar	Baker McKenzie; Goltsblat BLP	Goltsblat BLP advised the shareholder of Tymensky Fanernyy Zavod, a plywood producer in Western Siberia, on the sale of the company's 100% stake to SVEZA, a global producer of birch plywood. SVEZA was advised by Baker McKenzie.	N/A	Russia
8-Mar	Pepeliaev Group	The Pepeliaev Group successfully represented Kavminvody JSC in the Russian Intellectual Property Court in a trademark dispute with Krymservis LLC.	N/A	Russia; Ukraine
1-Mar	BDK Advokati	BDK Advokati advised the EBRD on its provision of a EUR 2 million loan to BG Reklam, a marketing materials manufacturer.	EUR 2 million	Serbia
9-Mar	Allen & Overy; Bdk Advokati; Sidley Austin; Van Campen Liem; Zavisin Semiz & Partneri	Allen & Overy, BDK Advokati, and Van Campen Liem advised Blue Sea Capital on the sale of a 55% stake in Serbia's MediGroup healthcare provider to Mid Europa, which was represented by Sidley Austin and Zavisin Semiz & Partneri.	N/A	Serbia
9-Mar	Ap Legal	AP Legal has advised Eurobank a.d. and Komercijalna Banka a.d. Belgrade in relation to a EUR 29.6 million senior loan to Retail Center d.o.o. Belgrade.	EUR 29.6 million	Serbia
19-Mar	Karanovic & Nikolic; Linklaters	Karanovic & Nikolic advised Alltech, a global animal and crop nutrition company, on the sale of its baking yeast factory in Senta, Northern Serbia, to Lesaffre, a global baking yeast and fermented products company. Lesaffre was advised by Linklaters Brussels.	N/A	Serbia
26-Feb	Norton Rose Fulbright	Norton Rose Fulbright advised Albaraka Turk Katilim Bankasi A.S. on the issuance of its USD 205 million additional tier one capital Sukuk.	USD 205 million	Turkey
28-Feb	HS Attorney Partnership	HS Attorney Partnership advised Yavuz Taner on his TRY 50 million sale of 90% of the agricultural group consisting of Alanar Meyve and Alara Fidan to Tekfen Tarimsal Arastirma, the Tekfen Group's agriculture subsidiary.	TRY 50 million	Turkey
13-Mar	Acteon	Acteon persuaded the 10th Administrative Court of Ankara to annul the a penalty of TRY 14.5 million levied by the Turkish Competition Authority against client GOLTAS Cement and five other cement producers operating in the Aegean Region of Turkey.	TRY 14.5 million	Turkey

Date covered	Firms Involved	Deal/Litigation	Value	Country
16-Mar	Paksoy	Paksoy advised Volkswagen Dogus Finansman A.S. on the issuance of TRY 5 billion asset-backed securities in various series, with the first series issued in the amount of TRY 566.5 million and TRY 250 million. There is also a TRY 239.5 million subordinated note in the deal structure.	TRY 5 billion	Turkey
12-Feb	Clifford Chance; Redcliffe Partners	Redcliffe Partners and Clifford Chance advised the EBRD on unfunded risk participation agreements with UkrSibbank.	USD 50 million	Ukraine
13-Feb	Eucon	Eucon has successfully appealed a UAH 55 million fine arising from an inspection at client Linik PJSC by the tax and customs departments of the Ukrainian State Fiscal Service at the Supreme Administrative Court of Ukraine.	UAH 55 million	Ukraine
16-Feb	Clifford Chance; Redcliffe Partners	Redcliffe Partners advised the EBRD in relation to the unfunded risk participation agreement with Raiffeisen Bank Aval of a total value of EUR 20 million. On English law, the EBRD was advised by Clifford Chance, while Bank Aval used its internal legal department.	EUR 20 million	Ukraine
22-Feb	Eucon	Eucon successfully represented the interests of Eurol in a VAT refund dispute against the State Fiscal Service of Ukraine in the Kyiv Administrative Court of Appeal.	UAH 4.2 million	Ukraine
22-Feb	Ilyashev & Partners	Ilyashev & Partners is representing the interests of BTA Bank in litigation against Kennet Alibek, a former Max-Well pharmaceutical plant director, who is accused of being an accessory to money laundering under Articles 27 (5) and 209 (3) of the Criminal Code of Ukraine related to the provision by BTA Bank of credit facilities for the reconstruction of the Max-Well plant in the Kyiv Region.	N/A	Ukraine
2-Mar	Avellum; Baker Mckenzie; Sayenko Kharenko	Avellum advised the Ministry of Finance of Ukraine on the state-guaranteed USD 250 million loan extended to the "Energoatom" State Enterprise National Nuclear Energy Generating Company. Baker McKenzie advised Energoatom.	USD 250 million	Ukraine
5-Mar	Eterna Law	Eterna Law advised the Ukrainian subsidiary of AIG on its restructuring.	N/A	Ukraine
13-Mar	Vasil Kisil & Partners	Vasil Kisil & Partners advised Lekhim in its buy-out of minority shareholders in Technolog PJSC. As a result of the squeeze-out, more than 2.5 million shares of Technolog were credited to the account of the controlling shareholder, Lekhim JSC, on February 23, 2018.	N/A	Ukraine
14-Mar	Asters; Avellum; Sayenko Kharenko	Avellum acted as Ukrainian legal counsel to PJSC Ukrzaliznytsia, the country's state-owned rail transport company, on a USD 1 billion collaboration with GE Transportation, a division of the General Electric company. Asters advised GE Transportation on Ukrainian law. Sayenko Kharenko represented Ukreximbank in connection with the deal.	USD 1 billion	Ukraine
16-Mar	Gestors	Gestors successfully represented the Ukrainian Media Holding Group in a dispute with the National Agency for the Prevention of Corruption involving its claim to assets of the Holding Group.	N/A	Ukraine
19-Mar	Eucon	Eucon successfully represented EUROL in a dispute with the SFS of Ukraine regarding about the allegedly illegal reduction of its VAT refund of UAH 4.2 million at the Kiev Administrative Court of Appeal.	UAH 4.2 million	Ukraine

Full information available at: www.ceelegalmatters.com

Period Covered: February 12, 2017 - March 19, 2018

LETTERS TO THE EDITORS

WRITE TO US

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

Letters should include the writer's full name, address and telephone number and may be edited for purposes of clarity and space.

ON THE MOVE: NEW HOMES AND FRIENDS

CMS Opens Office in Macedonia



CMS Reich-Rohrwig Hainz has opened a new office in Skopje, giving the Vienna-based member of the international CMS network a total of ten branches.

“We have been offering legal advice in Macedonia through a Macedonian Desk in Serbia since 2005,” says Peter Huber, Managing Partner at CMS Reich-Rohrwig Hainz. “Because demand has been growing constantly, opening an office was the next logical step.”

According to the firm, office head Marija Filipovska, who currently leads a team of three, will be supported in the office’s further growth and strategic orientation by Radivoje Petrikic, Managing Partner of CMS Belgrade. “CMS Skopje will offer legal advice focusing on corporate law and M&A, commercial law, banking and finance, real estate and construction, energy law, labour law, competition law, and arbitration proceedings, as well as advice in the field of technology, media and telecommunications.”

“From our Macedonian Desk, we have already successfully assisted many international clients in entering the Macedonian market,” explains Petrikic. “By establishing an office in the country, we are fulfilling our promise to provide clients with local on-site expertise and consulting services at a high international standard.”

In addition to its Vienna hub, CMS Reich-Rohrwig Hainz is now present in ten locations in CEE: Belgrade, Bratislava, Istanbul, Kiyv, Ljubljana, Podgorica, Sarajevo, Sofia, and Zagreb.

Serban Patriciu Leaves Bondoc & Asociatii to Set Up New Firm



Partner Serban Patriciu and Senior Associate Andreea Secu have left Bondoc & Asociatii to set up a new real estate boutique law firm, Patriciu Law.

According to a statement released by Patriciu and Secu, they intend to specialize in real estate investments and divestments,

real estate development and planning, zoning, construction, real estate financing, letting, leasing, real estate asset management, real estate mergers & acquisitions, concessions, expropriations, and environmental issues.

“Our expertise spans from offices to residential, from retail to hotels, from agricultural to forests, from warehouses to industrial, from infrastructure to historical monuments,” they claim in that Patriciu Law statement. “We are experienced in handling various related corporate and commercial legal matters, offering our clients the full range of legal services to achieve their real estate goals.”

Patriciu spent the past three years as a Partner with Bondoc & Asociatii, and the seven years before that as an Associate at Popovici, Nitu & Asociatii, and the five years before that with Zamfirescu Racoti Predoiu.

Secu joined Bondoc & Asociatii in September 2016 after spending six years with Popovici Nitu Stoica & Asociatii.

Goltsblat BLP Part of Global Bryan Cave - BLP Merger

Bryan Cave and Berwin Leighton Paisner have announced that the two firms will merge in April 2018. The new firm, which will be called Bryan Cave Leighton Paisner, will have a combined revenue of over USD 900 million.

As the result of the merger, the firm’s Moscow office – the former Goltsblat BLP – will drop the name of Managing Partner Andrey Goltsblat from its letterhead and operate under the new name of Bryan Cave Leighton Paisner.

According to a Goltsblat BLP press release, “the merger brings together two organizations widely recognized for their innovative approaches to client service, into one global, fully financially integrated law firm. Bryan Cave Leighton Paisner will provide clients with access to international practice and sector teams in 32 offices across 11 countries and a platform of approximately 1600 lawyers.”

The new combined firm will be led by Co-Chairs Therese Pritchard (currently with Bryan Cave) and Lisa Mayhew (currently with BLP). “Our combination is rooted in a shared determination to do something fresh and different for clients,” commented Mayhew. “Clients will benefit from our combined legal expertise; our shared values and culture and our approach to innovation in their interests. Different to most other international firms, ours will be fully financially integrated from Day One. This will enable us to work in teams whose only focus will be to provide a first class service to clients.”

“This merger will result in an expanded presence and set of service offerings in key markets around the world and accel-

erate our utilization of technology and innovation to redefine efficiency and value in the practice of law,” added Pritchard. “Both firms have long traditions of building strong relationships – both with clients and within our firms. This legacy is reflected in shared values, including a core belief that our greatest asset is our people and our greatest responsibility is to our clients.”

Andrey Goltsblat, Managing Partner of Goltsblat BLP, said: “I am convinced that this merger will be a new step for all our team. We used to be a leading national team, later on having joined forces with the major UK law firm Berwin Leighton Paisner in 2009, we offered the market a totally new and unique legal capability which proved to be a success from the very beginning and over the recent years became one of the top-tier international law firms in Russia. And now the new firm Bryan Cave Leighton Paisner purposely structured as one global team to provide clients with top-quality, integrated legal advice and a wide range of new innovative products and services whenever and wherever they may need, will let us strengthen further our unique position on the Russian legal market and globally.”

Former Pekin & Pekin Partners Launch Guner & Tapsin



Former Pekin & Pekin Capital Markets Partners Sezin Guner and Ceyda Tapsin have opened a new law firm in Istanbul: Guner & Tapsin.

According to the Guner & Tapsin website, the firm’s “specialized practice offers a range of legal services, including capital markets, banking, corporate and commercial law matters, which include all cross border transactions, M&A’s, IPO’s, listings, financings, and buy-outs.”

“We have taken the opportunity to use our extensive knowledge and skills to set up a new venture,” says Founding Partner Sezin Guner.

Act Legal Expands into Hungary and the Netherlands



Hungary's Ban Karika law firm has joined Europe's Act's Legal alliance.

With the addition of Ban Karika (and Fort Advocaten from the Netherlands, which is joining as well), Act Legal now operates 13 offices in Europe.

Martin Randa, Managing Partner at Randa Havel Legal in Prague, said: "We are very pleased to welcome Fort Advocaten and Ban Karika to Act Legal. The professionalism, expertise and working methods of both firms fit in seamlessly with those of other Act Legal offices, and the fact that these two firms are joining Act Legal will further strengthen our position as renowned legal advisor to a demanding corporate clientele."

Gergely Ban, Managing Partner at Ban Karika, commented: "We have more and more become an international law firm, with a growing number of foreign clients and an increasing count of cross-border M&A deals. Joining a growing legal alliance like Act Legal is just a perfect fit for us and our clients alike."

Pieter Twaalfhoven, Managing Partner at Fort Advokaten added: "In recent years we have seen that our clients are increasingly going global, while demand for legal advisory in markets outside the Netherlands is growing. By joining Act Legal, we can address these needs even better and offer our clients advice in most of the key European countries. It's an important step ahead, both for our clients and Fort."

Act Legal reports that it "aims to further expand into other European countries in the coming years, with special focus on Southern Europe and Scandinavia."

Galt Legal Changes Into Argon Legal in Warsaw



Warsaw law firm Galt Legal has changed its name to Argon Legal Adam Milosz i Slawomir Lisiecki.

The new Argon Legal remains led by Partners Slawomir Lisiecki, Adam Milosz, and Piotr Janiuk, working along with "a team of 20 experts who advise clients in the area of real estate."

In a firm press release, Lisiecki commented that: "Our team specializes in legal advice for businesses, in particular in the area of commercial real estate. For over eight years, since we founded the law firm, we have assisted [with] over 1,000 lease transactions. Real estate is our strong side and we have in our portfolio many significant retail, office, and warehouse projects. We try to stand out through understanding our clients' needs and matters they entrust us with. We offer the most effective and practical solutions, which results in our constantly increasing participation in providing legal advice for business clients. We change because we want to underline our leading specialization on the basis of which we built our success."

KIAP Merges with Architecture of Law Tax Boutique in Russia



Russia's KIAP law firm and Architecture of Law tax boutique have announced a merger that will result in Architecture of Law becoming part of KIAP's professional team.

According to a KIAP press release, the merger of the two

law firms under KIAP's brand will enable the teams, "to considerably enhance their capabilities in providing high-quality service to their clients, and [to] gain new opportunities to develop their expertise in tax law."

Andrey Korelskiy, Managing Partner at KIAP, said: "Our merger is the outcome of strategic planning, carried out as part of KIAP's global development strategy. It will enable us to offer our clients new significant opportunities and to enhance our position in the tax expertise market."

Andrey Zuykov, Managing Partner at Architecture of Law, will become Partner and Head of Tax Practice at KIAP. He is a tax expert with more than 17 years of experience in the market. "The fundamental principles of our company are our commitment to results, fair practice, and responsibility for our obligations," he said. "I am pleased that, in KIAP, we have found a worthy partner that shares our principles, and we will continue to work with them and provide legal services of the highest quality under the KIAP brand. I have no doubt that, together, we will be able to bring a lot of benefits to our clients and to the Russian legal market."

Serap Zuvin Law Offices Merges with Cakmak in Istanbul



Turkey's Cakmak Law Offices, the preeminent firm in Ankara, which just opened its Istanbul office in March, will join forces

with the Serap Zuvin Law Office on April 1, 2018. Going forward, the two teams will operate under the Cakmak Law brand.

The tie-up of the two well-known brands represents just the second ever law firm merger on the splintered and highly competitive Turkish law firm market, following the 2014 merger of the Davutoglu and Bener law firms, although that association ended less than two years later when Cem Davutoglu joined Akbank.

With Cakmak Law, Partner Serap Zuvin – long recognized in Turkey for her aviation law expertise – will lead the newly established Aviation Department. In joining Cakmak Law, Zuvin – who spent seven years at White & Case before leaving the firm in December 2000 – rejoins former colleague Zeynep Cakmak, who was Co-Managing Partner of the Cakmak-Gokce Law Firm, White & Case's Istanbul affiliate, until she left in December of 2017.

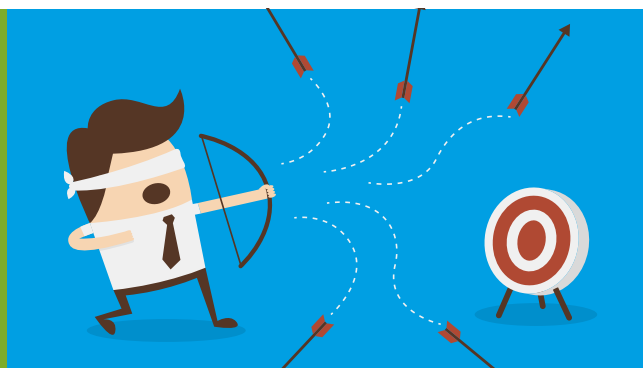
According to Cakmak Law, the firm's new office in Istanbul allows them to be close to the multinational companies, local companies, and financial institutions operating out of Turkey's biggest city. According to a firm press release: "This complements our long-time establishment in Ankara, where we benefit from our close proximity to and long-standing familiarity with all government agencies and authorities. Being located in both Ankara and Istanbul will strengthen our ability to meet our Turkish and international clients' needs in a prompt, efficient, and cost-effective manner."

Regarding the merger, a Serap Zuvin Law Offices press release claimed that "the joining of the two law firms with very similar cultures and high quality of service will enable them to provide their clients with a broader range of assistance and expertise."

In an exclusive interview with CEE Legal Matters, Cakmak Law Partner Zeynep Cakmak spoke about the decision to integrate with Serap Zuvin's team: "We share the same business culture and we worked together in the past. We are now getting back together to create a new synergy, combining our strengths in the Turkish legal market. It is an exciting time for all of us and we hope that will be shared by our clients too."

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



SUMMARY OF CEE MOVES AND APPOINTMENTS

PARTNER APPOINTMENTS

Date Covered	Name	Practice(s)	Appointed To	Firm	Country
28-Feb	Fatos Otcuoglu	Banking/Finance; Corporate/M&A	Pekin & Bayar	Turkey	Austria
28-Feb	Ozer Arda	Litigation/Dispute Resolution	Pekin & Bayar	Turkey	Austria
1-Mar	Ivan Petrovic	Real Estate	JPM Jankovic Popovic Mitic	Serbia	Czech Republic
6-Mar	Anna Halas- Krawczyk	Labor Law	Greenberg Traurig	Poland	Czech Republic
6-Mar	Dominik Rafalko	Real Estate	Greenberg Traurig	Poland	Czech Republic
6-Mar	Robert Gago	Competition	Greenberg Traurig	Poland	Czech Republic
6-Mar	Aleksander Janiszewski	Banking/Finance	Greenberg Traurig	Poland	Czech Republic
8-Mar	Olexander Droug	Litigation/Dispute Resolution	Sayenko Kharenko	Ukraine	Estonia
8-Mar	Anton Korobeynikov	Banking/Finance; Capital Markets	Sayenko Kharenko	Ukraine	Estonia
8-Mar	Anzhela Makhinova	International Trade	Sayenko Kharenko	Ukraine	Estonia
8-Mar	Oleksandr Nikolaichyk	Corporate/M&A	Sayenko Kharenko	Ukraine	Estonia
8-Mar	Alina Plyushch	Private Wealth Management	Sayenko Kharenko	Ukraine	Estonia
8-Mar	Razvan Vlad	Corporate/M&A	NNDKP	Romania	Estonia
8-Mar	Corina Dumitru	Corporate/M&A	NNDKP	Romania	Estonia
8-Mar	Lavinia Ionita Rasmussen	Real Estate	NNDKP	Romania	Greece
13-Mar	Sergei Kushnarenko	Corporate/M&A	Ivanyan & Partners	Russia	Greece
19-Mar	Alexander Popelyuk	Litigation/Dispute Resolution	Lidings	Russia	Greece
19-Mar	Boris Malakhov	IP/TMT	Lidings	Russia	Hungary

Full information available at: www.ceelegalmatters.com

Period Covered: February 12, 2017 - March 19, 2018

PARTNER MOVES

Date Covered	Name	Practice(s)	Firm	Moving From	Country
16-Feb	Costin Teodorovici	Banking/Finance	Stratulat Albuлесcu Attorneys at Law	Bulboaca & Associates	Romania
22-Feb	Karolis Smaliukas	Public Procurement	TGS Baltic	Cobalt (Senior Associate)	Lithuania
23-Feb	Patryk Galicki	Real Estate; Corporate/M&A	Chajec Don-Siemion & Zyto	Wierzbowski Eversheds Sutherland (Of Counsel)	Poland
26-Feb	Denise Hamer	Finance; Restructuring; Private Equity	Trace Capital Advisors	DLA Piper	Austria
27-Feb	Serban Patriciu	Real Estate	Patriciu Law	Bondoc & Asociatii	Romania
8-Mar	Dino Jusufovic	Litigation/Dispute Resolution	JPM Jankovic Popovic Mitic	N/A	Serbia
9-Mar	Sezin Guner	Capital Markets	Guner & Tapsin	Pekin & Pekin	Turkey
9-Mar	Ceyda Tapsin	Capital Markets	Guner & Tapsin	Pekin & Pekin	Turkey
9-Mar	Dimitar Hristov	Tax	DLA Piper	LeitnerLeitner	Austria
13-Mar	Adam Kosciolek	Insolvency/ Restructuring	Kochanski Zieba & Partners	Krakow's Kurek, Kosciolek, Wojcik	Poland
14-Mar	Andrey Zuykov	Tax	KIAP	Architecture of Law	Russia
15-Mar	Serap Zuvin	Aviation	Cakmak Law	Serap Zuvin Law	Turkey
16-Mar	Ekaterina Rudova	Private Equity	Integrites	Capital Legal Services (Principal Associate)	Russia
19-Mar	Hermann Schneeweiss	Corporate/M&A	Eisenberger & Herzog	Binder Groesswang	Austria

OTHER APPOINTMENTS

Date Covered	Name	Company/Firm	Appointed To	Country
16-Feb	Mirela Gorunescu	Zamfirescu Racoti & Partners	Head of Business Crime Practice	Romania
19-Feb	Marija Filipovska	CMS	Head of Skopje Office	Macedoania
23-Feb	Cezary Przygodzki	Dentons	Co-Head of Tax Advisory Team in Poland	Poland
2-Mar	Maxim Ali	Maxima Legal	Head of Intellectual Property and Information Law	Russia
9-Feb	Linas Sesickas	Glimstedt	Managing Partner	Lithuania

IN-HOUSE MOVES AND APPOINTMENTS

Date Covered	Name	Company/Firm	Moving From	Country
19-Mar	Martin Severa	CEE Attorneys	AZD Prague (Head of Legal)	Czech Republic
8-Mar	Yelda Dogan Yasarturk	GSK Consumer Healthcare (Head of Legal, Middle East & Africa)	Promoted	Turkey
23-Feb	Oleksandr Onufrienko	Asters	Kinto (Head of Legal)	Ukraine
8-Mar	Ece Gursoy	Global Ports Holding (Chief Legal Officer)	Lightsources Renewable Energy Holdings Limited (Chief Legal Officer, Company Secretary, and Executive Director)	United Kingdom

THE BUZZ

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

MONTENEGRO - 21 FEBRUARY

“I think we are on a good path”

The kick-off to this year in Montenegro has been quite successful, says Luka Popovic, Partner at BDK Advokati in Podgorica, who reports a number of ongoing projects in his office.

Popovic says that, as several important political issues have been resolved, and as Montenegro joined NATO on June 5, 2017, “we can finally focus on the economy in 2018.” Popovic, who says that 2017 was already a step forward (saying,

“last year the economic indicators were better compared to 2016, [as] we saw an increase in GDP growth and in foreign direct investment”), is enthusiastic about the opportunity.

According to Popovic, the focus in the tourism sector, which remains a major driver of the economy in Montenegro, has been on the diversification of the industry, combining traditional and modern types of hotels. This, he says “opens space for European investors,” as the condominium and apartment type of hotels can be sold in the market. This is especially beneficial in less-developed areas, where extra promotion can be useful. Yet the ongoing preparation of the Coastal Plan of



Montenegro, a major planning document defining construction land and construction parameters for the coast, is “the burning issue” delaying the process. “It has been pending for, I think, more than a year now. So many projects are on hold because of the lack of planning documents.”

This delay isn’t always infinite, however, and Popovic reports that some laws in the Real Estate sector allow for more flexibility. For instance, he says, the New Act on Spatial Development and Construction which was adopted in September 30, 2017, has discarded the requirement for construction permits, Popovic says, allowing investors to start construction imme-

diately.

“Major changes have occurred in the energy sector as well,” Popovic says. The government’s ongoing EUR 250 million purchase of A2A S.p.A.’s shares in Elektorprivreda Crne Gore, the major energy company in the country, following the Italian company’s decision to exercise a put option, “opens up opportunities for new investors to step in,” Popovic adds. “We will see how this unfolds in the next few months.”

Similarly to the Coastal Plan of Montenegro, the country’s Labor Law and economic passport program are still on hold. While the first one will not be revolutionary, Popovic says, in

the second there is “definitely economic interest in Montenegro.” This is especially true for Turkish and Chinese investors, Popovic says, who are looking to invest in the country.

Overall, Popovic says, “a fairly good job has been done in the past ten years or so. The country is already recognized as a business-friendly destination. There is of course always room for improvement, but I think we are on a good path.”

MOLDOVA - 22 FEBRUARY

“All work concerning insolvency has stopped recently in Moldova”



“Due to a very sudden and controversial parliamentary decision that changed the competence of the Courts of Appeal on solving insolvency cases, all work concerning insolvency has stopped recently in Moldova,” reports Cobzac & Partners Partner Daniel Cobzac, “with most of the transactions being suspended.” Simultaneously, to advance the country’s EU-integration plans, a lot of reforms are being made in order to harmonize the country’s legislation with European norms.

“A really big thing happened just a few weeks ago, without any consultation or approval from state authorities, or professionals from this domain,” Cobzac says. “In one session the Parliament passed some changes to the Code of Civil Procedure – and it changed one part of an article that refers to the competence of the Courts of Appeal on solving insolvency cases. From this moment on, the courts of appeal are no longer competent to solve or examine insolvency cases, which is quite a big thing for us, because in the past few years quite a lot of large companies went into bankruptcy due to their inability to solve their debt problems with the banks.”

Daniel admits to some frustration with Parliament’s action. “Due to this change, which I say again, was very unexpected, now everything is suspended, the courts cannot make any decisions, and we cannot help our clients for the moment.”

Another problem, according to Cobzac, is the lack of trained judges in the regional (first grade) courts. “This is a very specific kind of litigation, and judges must be instructed accordingly, and currently there are only a few who really know the procedures. The Superior Court of Magistrates, which is the body that regulates the activity of the judges, is making the effort to instruct some new judges quickly, now, but they are very young, and they have no experience – many of them are freshly appointed judges.”

Under these circumstances, Cobzac explains, lawyers from Moldova expect that for the next six months, at least, almost everything concerning insolvency will be blocked, and it will be impossible to conclude bigger transactions. “It will be impossible for creditors to pay their debts and for debtors to restructure properly, and it will also be impossible to sell goods because the decisions of creditors in sale/purchase agreements has to be approved in some case by judges.” As a result, he says, the upcoming period may be fairly discouraging for major creditors.

Still, Cobzac says, “the situation is not hopeless.” He says that the current government, despite all its blunders, has managed to implement laws in the past couple of years which forbid non-transparent share-holders from investing in the country. Pushing out shady, offshore investors, has attracted new international players – mostly banks – to the market. According to him, “39.2% of the third biggest bank of Moldova, Victoriabank, was recently bought by a Romanian bank, Banca Transilvania, which together with the EBRD owns 66.7% of shares. And Banca Intesa Sanpaolo has also acquired shares of Eximbank, which were previously owned by Gruppo Veneto Banca. The fact that all these powerful international banks are entering our market sends a good signal for other players that it is safe to invest in Moldova.” As evidence, Cobzac notes that last year German supermarket giant Kaufland announced plans to open up ten new stores in Moldova, and now it wants to acquire more properties.

Moldova’s government is pro-EU, Cobzac says, despite the fact that the country’s President is pro-Russia, and to further advance the country’s potential for eventual accession to the European Union the government is doing everything it can to harmonize its legislation with current EU expectations. “We have witnessed lots of reforms lately, and our legislation is changing on a weekly basis. Recently, for instance, the Law of Interior Commerce was adjusted to EU regulations, the Civil Code was amended, and the Mortgage Law and Insolvency Law changed as well.”

SLOVENIA - 2 MARCH

“Slovenia has been rediscovered as a reliable and stable market”



“Like everywhere else, there is a lot of talk about the GDPR right now in the market, and about blockchain, because Slovenians are very blockchain-conscious people,” says Partner Gregor Famira from CMS Ljubljana, who adds that he believes the country has the most bitcoin owners among all European countries.

Famira concedes that cryptocurrency and blockchain don’t necessarily influence the country’s business market directly, but he reports that a significant amount of attention was paid to those concepts in the recent development of Slovenia’s anti-money laundering legislation.

As for the GDPR, Famira says that data protection is a big deal for the market right now, and this is what is mostly keeping firms busy. “Companies are less prepared than we thought – most of them have had a bit of a shy approach. Big companies have mostly done their job, but middle and small-sized companies haven’t given much thought to it,” he explains. As a result, the CMS Partner adds, starting from confusing cookie policies, to weak privacy policies, there is still a lot to do. “It is quite a difficult process, for no one sees any business value in protecting consumer data. Companies won’t hugely benefit from it, so they see it like they see tax declarations: they all have to do it, but it’s not beneficial for them.” According to Famira, the Slovenian business market will experience quite a few important M&A transactions this year. “I know that at the beginning of the year lawyers always think this, and towards the end of the year only half of them will be done, but there

are clear signs that the Slovenian Insurance Company is going to change owners this year, and the two largest state-owned banks must be sold before 2019,” he reports.

The first of these, Abanka, must be sold before next year under the terms related to its receipt of state aid approved in 2013 by the European Commission. “As far as we know, they are working on it already,” Famira reports, “which is a good thing because we can avoid being under a lot of pressure at the end of 2018.”

The second-largest state bank, Nova Ljubljanska Banka, also received state aid in 2013, as a condition of which Slovenia committed itself to selling at least 50 percent of the bank by 2017, and another 25 percent a year later – then asked for an extension until 2019. “They tried an IPO last year, but it was unsuccessful, so now there is some pressure on them to solve the situation this year as otherwise the European Commission could start taking action,” Famira explains.

Finally, Famira reports that the country’s real estate market has also started to flourish. “Somehow Slovenia has been rediscovered as a reliable and stable market. We know it’s not London, or Frankfurt, or Paris, but it offers a sustainable and decent growth in value.”

TURKEY - 5 MARCH

“Business is good and continuing to perform steady and strong in 2018”



This year has begun as an extension of 2017 in Turkey, according to Guniz Gokce, Managing Partner at GKC Partners, the law firm working in exclusive professional association with White & Case in Turkey, who reports that ongoing projects are keeping her and her colleagues busy.

Due to Turkey’s current economic situation, many companies in Turkey are going through refinancing, restructuring, workout, and sales processes. Gokce reports that, while Turkey may no longer be categorized as a “booming economy,” last year

saw a dramatic increase in the number of M&A deals from 2016, and it looks like the trend will continue in 2018 with continued economic growth, especially in the infrastructure, energy, retail, and e-commerce/Fintech sectors. “Worth noting is also that we are witnessing one of the most active years in the capital markets front. We are extremely active in this area right now as we are seeing an influx of public offerings in 2018 and a couple of these have already been successfully completed,” she says.

The energy and tourism sectors were heavily affected by the country’s economic slowdown in recent years, Gokce reports, with the latter in particular continuing to suffer from a slow recovery. As a result, some smaller companies in these sectors have been struggling to perform. A similar dynamic is affecting the performance of shopping malls. That said, “there is an aligned interest in the market in making sure that there is no aggressive position on the bank side,” she explains, “to make sure that potential stress in the macro economy does not translate into defaults and liquidations, which will put further stress on the banking system.”

Thus, according to Gokce, at the moment, activity in the banking sector has shifted from new financings to refinancings and restructurings.

Nonetheless, she insists, foreign investors continue to view Turkey as an important market for long term success, and a place where liquid companies can be in beneficial positions. She also reports that Asian investors, which she reports represent the largest source of direct investments in Turkey after Europe, are “keen to maintain an opportunistic view,” especially in infrastructure projects, while mezzanine type investments continue to attract investors from the Middle East.

Five years ago, Gokce says, Turkey was a seller’s market with high IRR expectations. Now the picture has flipped, with opportunities in the market that were absent earlier. “There are really good performing assets out there that are potentially available for less than they would have been before,” she says. She reports that local sponsors are also continuing to invest in energy conglomerates, with some still being highly driven by capital expenditures, and others seeking selling opportunities of different matured investments in order to make room for new investments.

Gokce says that, going forward, access for local small and medium-sized companies to foreign currency-denominated loans will be limited after amendments to the country’s Decree No. 32 on the Protection of the Value of Turkish Currency come into force on May 2, 2018. Although Gokce acknowledges that the government’s motives are tied to the “core structural weakness of the market” due to currency fluctuation, and that the new amendments are aimed at addressing the risks of deterioration in the balance sheet, she admits to a concern that Decree 32 does not particularly “isolate and address all the different types of entities that may be caught by this reg-

ulation.”

Ultimately, she says, “we hope all these refinancings will ease the pressure on the market, so that we can go back again to the development of more intense green field projects. But overall for us lawyers, business is good and continuing to perform steady and strong in 2018,” and she emphasizes that market players are driven by an expectation that once the era of refinancings is over, the dust will settle and things will return to “business as usual,” in what she describes as “the financially attractive environment of Turkey’s emerging market.”

BELARUS - 8 MARCH

“I hope that Belarus will stand out as an IT leader”



According to Alexander Stepanovski, Managing Partner of Stepanovski Papakul & Partners, the signing last year by Belarusian President Alexander Lukashenko of new Decrees No. 7 (On Development of Entrepreneurship) and 8 (On Development of Digital Economy) make Belarus a more attractive place for investing. Thus, the beginning of the year is upbeat for SP&P.

“We get a lot of requests on how the decree works and the kind of changes to expect in the near future in cryptocurrency,” Stepanovski says about Decree 8, which, when it comes into force in a month, will make cryptocurrency legal and tax benefits for five years. The SP&P Managing Partner has al-

ready noticed the increase of ICO activities in business and law, which he calls “great, because I hope that Belarus will stand out as an IT leader.” Still, Stepanovski warns the public to be careful with cryptocurrency gambling, referring to Bitcoin as a negative experience in which a large number of people lost money. “People should understand that cryptocurrency is nothing but a digital record. This object does not have a real value. Those who want to invest in it should consider that and all the risks it may involve,” he advises.

Otherwise, Stepanovski says, Belarus is viewed as a safe haven for the high technology industry, as practice shows the Belarusian government to be protective of crypto investments and committed to ensuring safety and providing legal ways to use new technologies for profit-making. “Belarus steps ahead in regulation in these areas, with new legislation stipulating special mechanisms for safe transactions through the High Tech Park,” he says, describing the country’s new regulations as “experimental,” as they contain Common Law elements. “Hopefully, [the legislation] will improve our ability to compete with other countries in this sector,” he says. Besides, he points out, due to the lack of qualified specialists in the IT field, companies are attracting specialists from neighboring countries such as Poland, Ukraine, and Russia, as well as providing opportunities for local experts.

Decree No. 7, which came into force on February 26, 2018, exempts small enterprises in towns from paying taxes, and thus, Stepanovski says, is also designed to stimulate Belarus’ market development. He says, “small domestic businesses will continue making money without a lot of bureaucracy, especially in small towns,” with zero taxes on the sale of goods for the next five years. “There are already internal talks on opening up outlets in the countryside close to such towns as Minsk, Vitebsk, Grodno, and Brest.”

New amendments to the Belarus Competition Law will come into effect on August 8, 2018, Stepanovski says, describing them as “a first step to real competition for Belarus.” The law stipulates preventive measures of the antimonopoly authority to increase effective competition in the market.

Simultaneously, he reports, there are finally some activities seen in the retail sector, which was slow for the past two years, as well as in privatization and greenfield projects. Stepanovski expects a “fruitful year for business,” and notes that the opening of Zara in Belarus is expected to serve as an incentive to its competitors to set up businesses in Belarus, thus increasing both employment opportunities and work for law firms.

Finally, on the subject of the legal services market, Stepanovski says that, while there are not many law firms in the market, each skilled young lawyer is able to “find his or her niche in this business,” which he describes as a good sign for Belarus.

RUSSIA - 8 MARCH

“Business is good. Not great – it is not a full easy go – but pretty good”



Although January was “a little bit quiet in the market” in Russia, February was more promising, according to Eric Michailov, Partner at White & Case Moscow, who reports seeing more deals and new investors coming into the country. “I am particularly optimistic – even more so than I would have been six or twelve months ago,” he says. “Business is good. Not great – it is not a full easy go – but pretty good.”

Despite the ongoing sanctions levied by the West against Russia, Michailov sees a positive trend among investors coming not only from China and Middle East, as it was in the early years of the sanctions, but now also again from Western Europe and North America. On the question of what’s behind that change, he refers to the stabilized conditions in the country. “I think they have seen that the situation in Russia is the new normal. Everyone understands sanctions and how they work, and so after a couple years of readjustment, Russian deal-making is increasing again.” He says: “I anticipate it will be so next year as well.”

The majority of investors, both local and foreign, are focusing on e-commerce, real estate, and infrastructure, with the natural resources sector losing ground after a number of large recent transactions. Today, Michailov says, all Internet-based businesses, both finance and retail, are growing rapidly, and thus attracting investors, as in these fields Russia’s technology is of prime quality and offers auspicious platforms in the field. “Investors are taking a look at any business right now with an ‘I’ in front of it, or anything related to block chain,” he says.

The sector has drawn the attention of the government too. Although there have been no recent significant legislative changes in the area in Russia, the country’s Ministry of Finance has proposed a bill on Initial Coin Offerings that Michailov defined as “quite sophisticated.” The draft law, which was introduced on January 25, 2018, aims to regulate and define the scope of cryptocurrency actions. The bill is expected to come

into force this year after it passes the Russian State Duma and Federation Council.

Although there is a lot of talk about cryptocurrency in Russia, Michailov does not expect it to have a significant impact on law firm M&A and corporate work anytime soon, but he agrees that, once it is appropriately regulated and widely practiced, “it will be an interesting experience.”

A proposed reform of the professional legal services market – which White & Case, as a member of the working group, is helping prepare – may be more immediately significant to the country’s high end legal services market, although Michailov says he is unsure of the final outcome. “I anticipate there will be an impact,” he says. “But what kind of impact? International law firms have been regulated equally with Russian law firms in the past twenty years. I do not know if this will change or not.” The draft concept of the professional legal services market was released by the Russian Ministry of Justice on October 24, 2017.

About the upcoming presidential elections, Michailov says “this shouldn’t impact transactions in Russia.” The only thing he says is needed from the election is certainty for the coming several years. In his words: “I hope that it will be business as usual after March.”

KOSOVO - 13 MARCH

“A favorable terrain for foreign investors to invest and operate”



“Kosovo has attractive legislation for new businesses,” says Taulant Hodaj, Managing Partner at Hodaj and Partners, “which ensures lots of flexibility for foreign investors to come and start operations in our market. But unfortunately, as in the rest of the Balkan region, in Kosovo, when it comes to the application of these laws in the courts and other institutions, they don’t have a very effective implementation of the applicable laws.”

Hodaj believes that Kosovo’s modern and “business-oriented” laws and regulations are very much in line with EU standards. “In Kosovo everyone, whether foreigner or local investor, can establish and start a company and obtain a business registration certificate within just a few days,” he says. “The labor market is very accessible; we have a cheap workplace, with lots of young people ready to work with very good command of foreign languages, in particular English and German.” In addition, he says, there is no Dividend Tax for corporations; there is only a flat tax of up to 10% on profit. “These factors create a favorable terrain for foreign investors to invest and operate in Kosovo.”

Unfortunately, Hodaj reports, many challenges and difficulties remain, hindering real progress in the country. “Kosovo and the region has gone through many different legal systems in the last 20 years,” he says. “We had socialism/communism until the 90’s, when the legal perspectives and business approaches were completely different, then after 1999 we changed rapidly to Western compliance systems and Western laws, but the mentality of the people remained the same.” In his opinion, the continued existence of “old legal mentalities” makes it difficult for business and legal practitioners to take advantage of the new legislative framework.

In addition, he says, “on the negative side, a new law on notary services is making the work of lawyers in Kosovo harder.” According to Hodaj, the new Notary Law came as the result of “heavy lobbying from notary groups, which have become very powerful and very profitable in a short period of time.” He elaborates: “We didn’t have notaries just until few years ago. Now, on the one hand, notaries can provide a large scale of services, and on the other hand, public authorities require almost every document to be certified or validated by them. They have become very strong, and now, in order to protect their own profession, they are lobbying the Minister of Justice, who proposed the law to the parliament.”

In Hodaj’s opinion there is the little the country’s lawyers can do to fight back at the moment. “We can send submissions, and try to lobby in the parliament as they did, but it is hard to compete with the Ministry of Justice. If the Ministry is not on your side, the chances are weak.” Nonetheless, he reports that the Bar Association is trying to fight the difficulties that the new Notary Law has generated, but the issue remains in debate in parliament, so he is unsure whether the Bar’s efforts will succeed or not.

A new law of contested procedure is also negatively affecting the work of lawyers in Kosovo, Hodaj reports, as it allows all civil matters – including contested, non-contested, family, property, and inheritance proceedings – to be carried out by almost anyone who is 18 years old, whether or not that person is a lawyer. “This obviously interferes with the work of legal practitioners,” he says. “Our profession is not well protected if anybody can provide legal services without any legal education,” he sighs.

When asked what is keeping firms busy nowadays in Kosovo, Hodaj says, commercial law and criminal cases are the sources of most new law firm business at the moment. “We don’t see a lot of M&A transactions, because we are a relatively new country, with new regulations, thus we don’t have huge businesses. Most of the local lawyers are solo practitioners, who provide any kind of legal services: criminal law, commercial law, administrative law, etc. Our firm is also mostly busy with commercial law, M&A, legal due diligence, labor law.”

ESTONIA - 22 MARCH

“Estonia is deemed to be a crypto currency heaven”



While there have been no “tremendous” changes in Estonia recently, according to Hannes Vallikivi, Managing Partner at Derling in Tallinn, the government that came into power in the fall of 2016 has changed the tax system.

“For many years taxes were untouchable,” according to Vallikivi. As of January 2018, however, the flat income tax rate of 20% can drop to as low as 14% for distributable profit and non-taxable profit. “[The government] has changed taxes and increased expense taxes,” he says, “and that has somehow made the market move.” And he says “of course it translates to lawyers’ work as well,” with both tax lawyers and restructuring specialists expected to see more business.

Vallikivi says that additional changes are possible as well, though he calls them “quite theoretical” at this point, as the government is slowing down its legislative efforts leading up to the general elections in 2019.

Vallikivi reports that in Estonia, as everywhere else in the EU, changes in data protection regulations and in the financial sector are generating the most attention nowadays. “For Estonia the GDPR is probably the most noteworthy,” the Derling Managing Partner believes. Although the Estonian parliament has yet to pass implementing legislation, Vallikivi insists that local laws on data protection are already in compliance with the EU directive, so “there will be few major changes.” But there will be some. “What will be new are higher penalties, general fear in the market, and a more detailed regulation on the EU level,” he says.

Vallikivi pauses to note that he questions the necessity of all the new requirements under the GDPR, and although he reports generally being in favor of individual privacy rights, he says he’s not sure of the GDPR’s answer to “the difficult question: where to set a balance between the rights of citizens and the costs to business,” which will be increased by the required additional human resources and IT development programs.

Vallikivi turns his attention to changes to the financial laws coming in the form of the EU’s payment service directive and anti-money laundry directive. The former, which became fully applicable on January 13, 2018, provides a clear legal framework for existing and new payment service providers, regardless of their business model. The latter – the Fourth AML Directive, which was adopted on October 26, 2017 and incorporated into Estonian law, brings more clarity to the cryptocurrency business and new requirements involving the registration of the ultimate beneficial owners.

For investors, Vallikivi says “Estonia is deemed to be a crypto currency heaven,” as “the word has spread that Estonia is very aggressive in favor of new technologies, including crypto currency.” He smiles, noting that, “in fact it is more complicated; we are subject to the same EU regulations.” As a flip side of the crypto boom coin, he expects to see “fraud cases and really harsh regulatory interference” beyond what has been implemented so far, in Estonia or anywhere else. Indeed, despite all the inquiries and keen interest, he describes crypto-currency as a “grey area” in Estonia, with “high risks.”

THE CORNER OFFICE: YOUR FAVORITE CLASS

In The Corner Office we ask Managing Partners at law firms across the region important questions about their unique roles and responsibilities. The question this time around: **What was your favorite course in law school, and why?**



Zoltan Faludi, Managing Partner, Wolf Theiss Budapest



Among many interesting disciplines, I always find the History of Law very interesting. I was impressed by the dynamics and the long-standing values featuring the evolution of law across the ages. Twenty five years ago I felt this kind of knowledge was something paving the way for legisla-

tive efforts even in modern society.

Now when I, as a legal practitioner, look back to the past 10-15 years, I see that recent legislation has already become a history of law in itself. Just in the very recent past the Civil Code, all the procedure laws, and most of the sectorial legislation has completely changed. Hardly any substantial piece of law can be called contemporary and adequate for daily legal work.

Today, in the competitive and fast-paced world of business, the skills and systems of effective monitoring of fast changing legislation provide a competitive edge. In today's world even material from five years ago can be processed, analyzed, and researched only at a historical level. On a daily basis, following and continuously monitoring the development and the changes of legislation requires serious dedication from law-

yers. Being able to understand and cope with these challenges is a different task for an office managing partner than it was 20 years ago.

To be well-tuned, a new system had to be developed – and again teamwork comes into play: young colleagues are monitoring legal changes on the basis of a systematic allocation of legal fields and are sharing the relevant information with the whole team from time to time. By now this type of information source is integrated into their legal training.

Though the fast-changing legal environment provides opportunities for us all to explore, some stability and transparency in legislative efforts are required to obtain technically mature and well-founded pieces of legislation.

Erwin Hanslik, Managing Partner, Taylor Wessing Prague



Although I do not practice criminal law, I liked this subject in law school very much. It simply was not as boring as all the other courses. And it had a lot of practical content. I studied in Salzburg, where it rains a lot, and I often rode my bike whilst holding an umbrella with one hand. When

I learned how easily one can end up in prison due to a bodily injury caused by negligence, I decided that I would rather get wet ...

Mykola Stetsenko, Managing Partner, Avellum



My favorite course at law school was Corporate Finance, taught at Georgetown Law Center by Professor William Bratton. The subject was quite tough for me at that time (especially the part on valuation of companies), but I loved the way Professor Bratton explained it with all practical exam-

ples from real Delaware court cases. He put it in the context of famous takeovers that happened in 70s, 80s, and 90s, and added small factual details that made each case really interesting and relevant. The teaching style was the Socratic method, which provoked heated debate among students, but required rigorous preparation and tons of reading each day.

Uros Ilic, Managing Partner, ODI Ljubljana



My favorite subjects include corporate, commercial, civil, and tax law. Choosing the most useful one – the course in civil procedure however seemed the most complete and immediately applicable in practice. It consisted of three parts, of which one was entirely theoretical, while the other two were practice-based. We learned the substance of the *Contentious Civil Procedure Act* by solving real-life examples with professor *ex cathedra* and at the same time we learned how to use the substance in practice, through the production of various pieces of legal writings from the field at weekly seminars in smaller groups. This well-thought system combined with regular attendance enabled me to learn civil procedure in a relatively easy way, while maximizing my comprehension of important questions and retaining a high degree of practical relevance.

Gelu Maravela, Managing Partner, Maravela | Asociatii



I thought this over and, although initially impressed with forensics and white collar crime, my final answer is logic. Logic and legal reasoning is one of the courses that I consider most useful, as in my opinion it stands at the very core of the clear and concise analyses and assessments we make in our profession. Although it is our aim, it does not suffice for an argument related to any legal matter to have or make sense. It must have pristine logic. I really enjoyed this course, from syllogisms with their premises and conclusions to inductive generalizations, fallacies, and the uses and abuses of analogies. It helped me a lot in structuring speech, ideas and strategies. On a related note, here is a quote by Blaise Pascal: “*When intuition and logic agree, you are always right.*”

**GET THE LATEST ANALYSIS ON
CEE LEGAL MARKETS**
www.ceelegalmatters.com →
Analysis



NOW OR NEVER: THE LOOMING GDPR DEADLINE

After a two-year grace period, the GDPR is about to come into effect. How prepared are companies in CEE to deal with its demands?



The European Union's General Data Protection Regulation is, according to the EU-hosted GDPR website, "the most important change in data privacy regulation in the past 20 years." The Act, which was approved by the EU Parliament on April 14, 2016 and will become fully effective on May 25, 2018, was designed "to harmonize data privacy laws across Europe, to protect and empower all EU citizens' data privacy, and to reshape the way organizations across the region approach data privacy."

Are businesses in those CEE countries that are members of the EU that are therefore bound to follow the GDPR's requirements, ready? We asked Data Protection experts in the CEE/EU countries (and one outside the EU) to report on their clients' readiness – and their own.

AUSTRIA



According to our information, there are no official studies available on how many Austrian companies have prepared for the entry into force of the GDPR. In Germany about 12% of the companies have not even heard of the GDPR, [and] 32% have heard of it but have not taken any steps in preparation

for the regulation's entry into force yet. We assume that similar numbers may apply to Austrian companies. Our law firm has prepared company guidelines for compliance. Currently the Vienna Bar Association and the main Austrian law firm software developers are working on their own guidelines and compliance concepts. As soon as these guidelines and concepts are presented, we will add them to our latest company guideline draft. By May 2018, FWP will be compliant with the GDPR.

Alexander Kompein,
Attorney at Law,
Fellner Wratzfeld & Partners

BULGARIA



The companies' launching pads are quite diverse: some are well aware of the upcoming changes and others are newcomers to this area of law. They mainly struggle with determining their data processing landscape, which is a prerequisite to properly determine compliance gaps that need to be at least mitigated, if not eliminated, before the GDPR comes into force.

Another challenge is to implement the GDPR requirements for historically collected personal data, which is stored in various places and systems in both hard and soft copies. Other fields demanding action typically are improperly defined (or even missing) data processing agreements, consent declarations, and of course implementation of the new concepts of the GDPR. We at Schoenherr have created various tools to support the concrete needs of our clients and their businesses so they could reach sufficient level of GDPR compliance by May 25, 2018.

Stefana Tsekova,
Partner,
Schoenherr

CROATIA



The first wave of public awareness about the GDPR hit Croatia in September 2017. Over the course of the past six months, we have witnessed a numerous of awareness-raising events organized by the national supervisory authority and other public-sector stakeholders as well as private-sector consultants.

Our experience shows that multinational companies with local presence are more alert and diligent in terms of GDPR compliance. We assessed that the small and medium-sized business sector is not sufficiently informed and prepared for the GDPR. Moreover, a first draft of the national implementation statute has just been released for public consultations, which has already given rise to some heated discussions.

Olena Manuilenko,
Head of IP & TMT,
Divjak Topic Bahtijarevic

CZECH REPUBLIC



Many [Czech] companies just started to consider GDPR implications. Large scale companies, like banks and insurance companies, have been deep into the process from the very beginning (meaning 2015); they are better regulated, and way ahead of the market. Smaller companies say that they don't see a clear

national regulation or interpretation of the law, so they don't know how to implement it. Others are seeing it as a burden right now. It is an ongoing process, and at the end of the day, I don't think there will be a company with full compliance before May 25, 2018. Our firm started its compliance with a very detailed mapping of data processing. The seminars that we provided for our clients were quite beneficial for us too, especially in analyzing the gaps.

Drahomir Tomasuk,
Counsel,
Kocian Solc Balastik

ESTONIA

The preparedness of our clients at the moment can be rated as medium. During the last year we have conducted many data protection assessments, where we have mapped all possible risks to our clients and gave relevant recommendations. The follow-ups (e.g. GDPR compliance and privacy policy) to such assessments is mostly in process. Our firm is ready for the GDPR's implementation.

Tabet Toomela,
Partner,
Eversheds Sutherland Ots & Co

GREECE

The bigger companies – mainly banks, insurance, telecommunication companies, or the subsidiaries of multinationals – have started their compliance programs, but others are still hoping for an extension. Part of the problem is that there are very few private advisors in Greece on this matter; lawyers who are asked don't have the specific knowledge they need. The so-called experts lack experience. They have just started to read about data privacy, and so even if they know the theory, they have no idea how to implement it in practice. I think that very few companies will be 100% ready by May. We are busy working on the implementation for our clients, but we've already put together a working group at our firm; we will have to run the implementation through all four of our offices, so it will take time, but we will fit in the deadline.

Panagiotis Drakopoulos,
Partner,
Drakopoulos Law

HUNGARY

We can distinguish two main groups of clients: regional and/or international businesses are not only well aware of the topic, but have also commenced their internal implementation and compliance programs. Smaller businesses, with less exposure to international trade relations and/or direct private customer contacts, have so far appeared hesitant to commence their internal evaluations and to consider running a proper compliance program. Nonetheless, we find them equally conscious of this topic, which is clearly the result of the recent tsunami of communication around the GDPR in all media. We at Wolf Theiss have been carefully following the developments around the GDPR since it appeared in the lawmaking. What we find most appealing and relevant to our clients is to combine our legal advice with competent IT and technological insight so that our clients receive custom-made and readily useable advice.

Janos Toth,
Partner,
Wolf Theiss

LATVIA

I can't say that everybody is ready at the moment, but as far as I can see, large international companies are mobilized and others also are attentive. We have a lot of requests for legal services to review [clients'] internal documents, to provide opinions on their compliance status, and to measure their implementation status. We also organize seminars and trainings – and I have to say, the classes are highly demanded and well-attended. Our goal is to raise awareness on the importance of the GDPR. To be honest, I cannot tell what the preparedness level of medium and smaller-sized enterprises is. They may not have prioritized it yet, as the Latvian Supervisory Authority has promised to “go easy” at the beginning. As far as our firm, we have internally assessed what we have to improve; we sat down with the marketing team and while we were creating a concept for our clients, we were also getting ready.

**Sarmis Spilbergs, Head of Communications,
Media, and Technology,
Ellex Klavins**

LITHUANIA



At present, most of the companies are on standby because despite the fact that the General Data Protection Regulation takes effect on May 25, 2018, we may expect from the practical point of view that no issues dealing with its implementation will be addressed by the Lithuanian legislators and supervisory authorities before that date. Consequently, it may take a rather long time for the reform of European data protection legislation to be fully implemented in Lithuania. We have inventoried our hardware and software resources and the personal data processed by our law firm, and we now are taking all measures required to be taken for the implementation of the GDPR.

Raminta Stravinskaite,
Acting Head of Data Protection,
Glimstedt

POLAND



GDPR implementation is being widely discussed among business circles in Poland. Large companies have already done extensive work to ensure the implementation of GDPR regulations before the new rules come into effect, but many companies are waiting until the last moment to prepare. One reason for this may be that ancillary local data protection rules have not been adopted yet. We have already completed an audit of data processing in Wolf Theiss Warsaw. On the basis of our audit, the partners are developing and amending our internal procedures. We want to make sure we are in compliance with both European and Polish rules when GDPR comes into force on May 25, 2018 so that we will be in the best position to help our clients do the same thing.



Przemyslaw Kozdoj, Partner, and
Monika Gaczowska, Associate,
Wolf Theiss

ROMANIA



Romanian companies that have significant obligations and liability under the GDPR such as telecom operators, health service providers, and social media companies have started data privacy audits and gap analysis and are in various stages of implementation of updated policies, guidelines, etc. Among small and medium-sized enterprises the significance of the GDPR has not been fully understood and there has not been a tangible push towards compliance. This is exacerbated by the fact that Romania's National Data Protection Authority has not so far proposed any legislation for the corroboration and detailing of the GDPR's provisions in concordance to national law. Our firm's data privacy department is performing a gap analysis on our law firm's procedures and practices in order to review our data protection policies. Since the local authority has not so far proposed any legislation meant to modify the legislation governing law firms and attorney practices, it is rather unclear how the GDPR will be interpreted in light of attorney-client privilege, mandatory keeping of records of documents, etc.

Mihai Buciuman,
Managing Associate,
Maravela | Asociatii

SLOVAKIA



The Slovak Act on Personal Data Protection already imposes stricter requirements on data controllers and data processors and granted more rights to data subjects, [than laws in other] EU countries. Therefore, the GDPR should theoretically not represent a dramatic change for Slovak companies. Yet many companies are nowadays fully occupied with the implementation into their internal processes. This is due to the fact that many companies have disregarded the data protection rules altogether and now have a hard time implementing these rules under the danger of high fines. Our law firm is ready for the GDPR, both on our internal level and on the level of advising our clients on timely implementation of the regulation.

Pavol Rak,
Partner,
Noerr

SLOVENIA

So far, Slovenia has not passed any act to adjust its own data protection law to the GDPR. It has, however, already published a draft bill, but with less than three months to go, considerable uncertainty remains among companies about how to prepare for May 25, 2018. Yet, most of the companies are already in the process of adapting their internal regulations and procedures to the new requirements with a goal to ensure a timely compliance of their business operations with the GDPR, and (once adopted) the new Slovene data protection legislation. In order to avoid uncertainty related to the delayed implementation, most of the companies have decided to engage external advisors. ODI Law GDPR experts regularly provide legal support to clients belonging to different sectors, in particular those for which the compliance with the new data protection regulation might represent a more arduous task than to others.

**Katarina Skrbec, Senior Associate,
and Uros Ilic, Partner, ODI Law Firm**

SERBIA

Since Serbia is not an EU member state, the formal effect of GDPR on Serbian companies is limited to the boundaries of GDPR's extraterritorial applicability – i.e., to cases when they are processing the personal data of individuals who are in the EU, in relation to the offering of goods and services to them or monitoring their behavior on EU territory. However, the GDPR is, in practice, also important for those Serbian companies which are: (a) engaged as data processors by EU entities (or other entities to which GDPR applies), since they will be contractually obliged to meet certain processing requirements, or (b) part of multinational companies which decided to implement GDPR standards to all their operations affiliates. Karanovic & Nikolic has been providing its clients with advice and assistance in all legal aspects of the GDPR's implementation for some time now, and the volume of such requests is increasing significantly each day.

**Goran Radosevic,
Partner / independent attorney at law
in cooperation with Karanovic & Nikolic**

**June 6-8 in Prague
Dealer's Choice and
GC Summit**

**"The premier private
practice and in-house
events of the year in
CEE"**

Contact us now for details

www.dealers-choice.ceelegalmatters.com

www.2018gcs Summit.ceelegalmatters.com

MARKET SPOTLIGHT: AUSTRIA



In this section:

- | | |
|---|---------|
| ■ Guest Editorial: GDPR Implementation in Austria – A Milestone Rather Than the Finish Line | Page 37 |
| ■ Smiles from the Middle of Europe: Good Times in Austria | Page 38 |
| ■ The In-House Perspective: Austrian General Counsel Share Thoughts on the Outlook for Business | Page 42 |
| ■ Inside Out: Schoenherr and Freshfields Advise on Vonovia Public Takeover Offer for BUWOG | Page 45 |
| ■ Expat on the Market: Tim Pfister of Knoetzi | Page 48 |



GUEST EDITORIAL:

GDPR IMPLEMENTATION IN AUSTRIA – A MILESTONE RATHER THAN THE FINISH LINE

There are only a few days left until the GDPR comes into force on May 25, 2018. Despite having had a two-year grace period before the new regime becomes effective, companies all over the European Community and their advisors are struggling to meet that deadline. We at Dorda are as well, despite having introduced a nine-person GDPR implementation project team – which is relatively huge for a country the size of Austria.

We have seen an extreme increase in requests for legal data protection assistance during the last couple of months, leading to a serious shortage of expert availability. This is due to many companies having failed to take advantage of the two-year period, and which are thus starting last minute implementation projects only now. Given the seriousness of the changes, the harsh penalties, and the wide publication of what was to come, one may ask why they waited so long.

In the past, data protection compliance has not always taken a place of high priority in Austrian companies. The Austrian system was known to be extremely stringent – often going beyond what was required by the underlying EU directives – and it involved formalities such as notification duties (for almost all data processing) and the requirement for authorities' pre-approval even for data transfers based on EU Standard Contractual Clauses. Thus, it was tough and costly for companies to achieve compliance. Further, penalties for breaches of the Data Protection Act were fairly low – with EUR 25,000 being the highest possible fine (indeed, in practice, the few penalties actually imposed never exceeded a three-or-a-low-four digit figure). Thus, as a consequence, most companies did not put too much effort into data protection compliance, as it was deemed to be too expensive in relation to the risk exposure.

In this light, the GDPR came quite as a shock for Austrian companies. Although companies always complained about the old formalistic system, the strong involvement of authorities is historically deeply rooted in Austrians' hearts and minds and thus also gave some comfort: If authorities were notified of data processing activity, let alone approved it, one could rely on its propriety. Thus, the GDPR's requirement that companies set up a register of all data processing and conduct risk assessments as a basis for their own decisions regarding whether or not to pursue a particular application or process, however, conflicts with how Austrian companies were taught to proceed.

Besides the issue of the GDPR's conflict with Austrian practices, many critics have pointed out that the ambiguity

of the new provisions is contrary to its intention to provide more transparency for the data subjects concerned. Missing guidelines and the necessity of further legislative acts to specify the requirements were also perceived as good excuses for holding back the implementation processes.

In addition, the new and extremely high fines for any wrongdoing under the GDPR – including those for false assessments or decisions – are perceived by the companies as being as excessive as those under the previous regime were low. Finally, the more US-style system, which gives companies freedom to act in a certain way, coupled with high sanctions for wrongdoing, is not familiar to the continental Europe legal system. Thus, European companies not also acting on the US market have a general issue with the GDPR, concept-wise.

As a consequence, although enterprises in certain sectors like insurance, banking, or health care have been among the early adopters in GDPR implementation, most companies have been quite reluctant to adapt to the upcoming system on time. For Austria I estimate that only around 30% of the companies have already initiated proper processes and will be ready with their implementation by or close to May 25. In the public sector – which in Austria is exempt from the fines – the compliance rate and awareness of the upcoming issue is even lower.

May 25, 2018 therefore represents not a long-awaited finish line but simply an important milestone in a lengthy marathon. However, we are confident that the missing guidelines, acts of law, and guidance papers both on EU and national level will help the late adapters to conclude their projects quicker than those who started only on the basis of the GDPR. It is also just a matter of time until ECJ rulings bring more clarity to the ambiguous provisions of the GDPR. Meanwhile, we have already heard voices from various national data protection authorities that they intend to take a balanced position regarding potential fines to allow the companies time to adjust to the new regime. Ultimately, I am confident that industry will be able to adapt to the GDPR regarding the teething troubles. However, this requires ongoing legal assistance. Thus, my personal expectation is that law firm data protection practice groups will remain busy and in demand in the future.



Axel Anderl, Partner, Dorda Rechtsanwälte



SMILES FROM THE MIDDLE OF EUROPE: GOOD TIMES IN AUSTRIA



Unlike those of its neighbors to the East, Austria's economy was allowed to operate free of communist interference, allowing the country to hit well above its weight, comparatively-speaking. Thus, although Austria is the 11th biggest country in CEE in population, with 8.7 million people, it has the third largest economy, behind only Russia and Poland. And these days, with the global financial crisis now firmly in the rearview mirror, the country is once again able to capitalize on its happy geographical positioning and historical relationship with the former members of the Austro-Hungarian empire.

Unsurprisingly, then, the Austrian lawyers we sat down with recently to discuss the country's economy and outlook were enthusiastic about the country's status, describing it as a stable, essentially unproblematic market, where booming real estate, state support for technological innovation, and significant deals in the automotive and software developments sectors are thriving. Austria, it appears, is in the sweet spot.



Alexander Popp



Horst Ebhardt



Martin Brodey



Willibald Plessner

THE STRENGTHS OF THE MARKET

The experts we spoke with were unanimous in their enthusiasm for Austria's outlook at the moment. According to Schoenherr Partner Alexander Popp, much of the country's good fortune comes from its fortuitous position in the geographical center of the continent. "Austria is a good place to do business and one important aspect is its location within Central Europe," says Popp, who serves as regional coordinator of Schoenherr's M&A team "It is a good platform – a good gateway. If people from Italy want to do business in Eastern Europe, they first come to Vienna, and then travel to Eastern European cities. Its favorable location is visible in regards to the real estate market as well: everyone wants to buy here and there are a lot of transactions going on."

And investors from outside Europe increasingly see Austria as providing a hub and toe-hold for their European strategies. Just two years ago, the Bank of China— one of China's four largest commercial banks – opened a new branch in Vienna's center, and high-end train supply equipment manufacturer CRRC ZELC established its first European subsidiary in Vienna. Popp does not expect it to stop there. "Although Chinese investors are primarily looking to Western Europe, their presence is continuously growing in Central and Eastern Europe as well, especially in the technology sector and automotive industry.

Horst Ebhardt, who heads Wolf Theiss' M&A team, thinks that foreign investors are attracted to the Austrian market because of its advanced technology as well. He comments approvingly on the state support for tech start-ups and innovation, and on the number of teams coming from universities opening up their own companies. "The country is recognized as a technology hub, small and medium-sized companies are particularly successful on the high-tech market, often globally," he says. In addition, "we have an educated workforce."

Dorda Partner Martin Brodey agrees. "The government has recognized that there is a lot of brain power coming out of the universities, and if they don't feel supported by it at the right moment, and they can't get active here, they would move elsewhere."

Thus, according to Brodey, "we have the impression that the productivity gap between Austria and Germany is closing again. For a long time, Germany has been like an economic engine for us in terms of business, commerce, and transactions."

EVER BETTER

The experts we spoke with pointed to the recent improvements in the country's banking system as key factors as well. "If we look back five years, we can say that the banks are doing much better today," reports Ebhardt. "They have cleaned their balance sheets, and their capital ratios are better. There is a certain level of comfort from corporate clients as well. It has become easier again to secure debt financing— it is affordable. Retail customers have become valuable again and loan portfolios have regained value in the books. And, on the back of a booming economy, banks do not have to be as worried about people paying back their mortgages."

Real estate is moving at a good level too, says Willibald Plessner, Senior Partner at Freshfields Austria, although in this case it's a function of slowing down, not heating up. "There was a time when lots of Russians started to invest in the market and also to buy up private apartments for very high prices – a trend that happened in London as well. Prices went up unjustifiably back then, but today things are back to normal, and especially commercial real estate is again considered cheap."

In addition, while capital markets have been quiet in Austria for several years, there are signs that this is about to change. "In respect to Vienna, it was clearly a trend in the past period for investors to prefer Warsaw, Istanbul, or

even London, says Plesser. “But now in some sectors people are again paying attention to the stock exchange.” Plesser points to last October’s listing on the Vienna Stock Exchange by the BAWAG Group, which had a total offer volume of approximately EUR 1.9 billion, making it the largest IPO ever on the VSE – and the first significant listing in more than three years. “And there are more IPOs in the pipeline,” he says. “The market is definitely picking up, and people are starting to believe that you can actually make more money from an IPO than from the trade sale.”

Plesser points to the planned reform of the way foundations are used in Austria as another potentially growing source of business for law firms. “In Austria,” he says, “foundations are often used to hold family businesses, which are sometimes true ‘hidden champions.’ While the founder as long as he is alive usually exercises factual control over the company, this changes when he dies and an independent board – with no or little control rights by the beneficiaries – leads the business. This structure often immobilizes the company as the board sometimes does not feel entitled to (or does not want to) sell or restructure the company.” According to him, “Now a reform is debated which, for instance, would give more rights to the beneficiaries of the foundations, or even create a separate structure for foundations holding companies. This could cause a wave of ownership changes at those companies, which right now are frozen.” Plesser concludes, “changing their stagnant state could attract new investors to the market. These companies could be sold, or restructured, but in any way new opportunities could be opened up for hundreds of companies in the country.”

EVERY ROSE HAS ITS THORN

Of course, nobody claims everything is perfect. “As lawyers, we should also mention the hurdles,” Alexander Popp says. “Austria has three main issues at the moment: Education, the social security

system, and the distribution of powers among the federal state and the provinces of Austria. The last of these undoubtedly brings a lot of bureaucracy, and as a result, things move more slowly and inefficiently.”

Popp elaborates. “Let’s just consider nature conservation. We have different nature conservation laws for each of the nine Austrian states. Having advised on transactions involving wind parks, I am aware that a bird flying from the east to the west of Austria is protected by around six different laws – and you need to consider which ones apply to you depending on the province you’re dealing with. This is a form of over-regulation for a rather small country like Austria, which makes business complicated for foreign investors,” he explains.

Otherwise, however, the legal experts we spoke to had trouble identifying many flies in the Austrian ointment.

THE LEGAL MARKET AND ITS FEES

One of the consequences of a strong economy and a vibrant legal market is that concerns about fee pressures are, happily, muted. Indeed, according to Wilibald Plesser, while in countries like the Czech Republic firms are forced occasionally to accept rates as low as EUR 90 an hour, Austrian firms regularly agree on rates of EUR 300 plus. “Legal activities and services are still moving on a varied scale [across CEE], and to tell the truth, we still don’t see them equalizing, or coming closer to each other,” he says. “The markets in Europe and Eastern Europe are somewhat different. For a long time now, a lot of firms in Eastern Europe have seen a split market. They have their international clients with higher rates and their local ones with lower rates, with their focus primarily on international clients. Now, with less foreign investment, they had to shift their attention to the local markets because they still want to fill their desk with work. Some local markets however are terrible – Turkey is a good example for this. So firms had to bring

down prices, or adjust them to the local level.” He pauses. “As far as I am aware, we have never had such a split market in Austria.”

While hourly rates in the country are staying stable, Martin Brodey reports that clients are nonetheless increasingly seeking alternative fee structures. “It’s more in the direction of having flat fees in certain sectors, in the form of caps, or even fixed fees for the entire projects,” he explains. “Clients are simply more conscious about not to get into something they can’t finance.” Brodey emphasizes that he and his colleagues accept these requests as reasonable, but he rolls his eyes at those who make price the *only* factor in their calculation. “For law firms it is important to operate with clients that take legal services seriously and are not just considering the financial side of a project.”

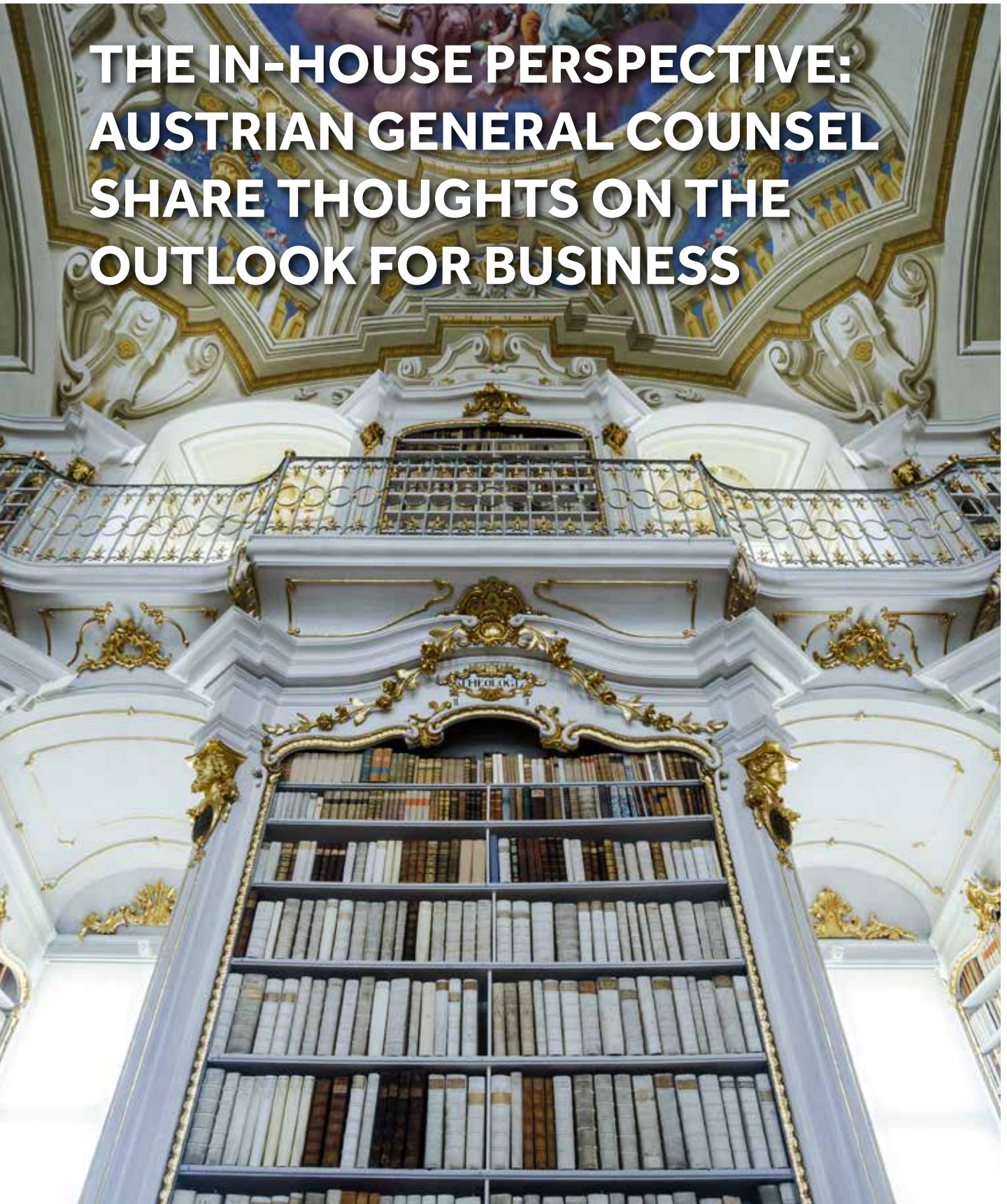
Horst Ehardt agrees that there is indeed more discussion now about fees and prices than before, but reported that clients are also demanding closer accounting and justification. “I would say that this has to do with cost control and clients applying greater scrutiny to their legal budgets. The basics have not changed – but there is a more open and frank dialogue and clients want to be up to speed on their legal spend at all times. We think this is a positive development.”

ENJOYING THE RIDE

Ultimately, there’s little debate that Austria’s in a good place at the moment, with a stable political situation, a growing economy, a competitive and balanced legal market, and a fortuitous geographic position in the center of Europe. According to Dorda Partner Martin Brodey, “progress is visible in many areas, we have a performance-oriented government, and we are under the impression that the productivity gap between Austria and Germany is closing again,” he smiles. “The market is steady, it’s the best time for law.”

Hilda Fleischer

THE IN-HOUSE PERSPECTIVE: AUSTRIAN GENERAL COUNSEL SHARE THOUGHTS ON THE OUTLOOK FOR BUSINESS



Widely recognized as an entry point for investors seeking opportunities in Eastern Europe and as a hub for the region, Austria is home to a large number of regional General Counsel and Heads of Legal. We reached out to a number of them to get their perspectives on this critical gateway to CEE.

THE GOOD LIFE

Austria's proximity and historical ties both to the Vysehrad countries and to the countries of South Eastern Europe is hardly the only reason companies set up shop in the country. Austria is also, simply, among the beautiful countries in the world, and well-known for its Alpine beauty and remarkable views. And Vienna, the country's capital, is widely acknowledged as being among the best cities in the world to live in, recently winning the top rank for Quality of Life in the Mercer Study for the ninth consecutive year.

More practically, the Austrian economy has long been among the strongest in CEE, with a 2016 GDP per capita of approximately USD 44,757 (See table). Indeed, even during the now-concluded global financial crisis of the past decade Austria did not suffer as severely as many others, with GDP in the country actually increasing in 2010 by two percent (according to the International Labour Office in Geneva).

Ingo Steinwender, Group Head of Legal at CA Immobilien Anlagen AG, for one, agrees that things have been good for a long time. "From my personal perspective it was true ten years ago too, because we have a very good social security system," he says. "And of course the environment was great ten years ago and still is." In recent years, he says, the growth of the Austrian economy can be tied to the country's significant 2016 tax reform. (Taxes are still too high, he says, but he admits to hopes that the new government will decrease them).

Similarly, unemployment figures in the

country (5.7% in 2017 according to the World Bank), while not ideal, are still better than in much of Europe. "Unemployment is quite high for Austria," says Mirna Zwitter-Tehovnik, the Head of Group Legal at state-owned Heta Asset Resolution AG. "But in comparison to other European jurisdictions rather low."

"There is a positive mood, and at the moment I am optimistic for the future," says Steinwender. "In particular in our industry, the real estate industry. There is lots of money in the real estate market – demand is higher than the offer leading to really high prices."

And Real Estate isn't the only strong area, of course. Tourism – of particular importance for a mountainous country with the most extensive nature reserves in the region – remains a dependable source of business as well. And Steinwender believes the importance of the professional services sector, including banks and insurance companies, will increase in the near future too.

Although Germany, not surprisingly, has long been the largest single trading partner, Austria has capitalized on its historical and geographic ties to the just-emerging-from-communism economies of Eastern Europe. These days, Steinwender reports, "dependency on Germany is decreasing and our ties with Eastern Europe are increasing. This is reflected by the successful Austrian companies being main players in Eastern Europe." (Indeed, CA Immo itself, though based in Austria, has branches in Germany, Czech Republic, Poland, Hungary, and Romania).

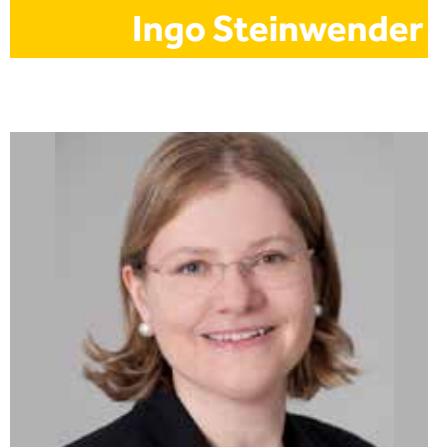
As a result, Steinwender says, many of the law firms with the most extensive footprints in the region are based in Vienna. "Austria has major law firms [that are] players in the international market – in particular CEE: Schoenherr, Wolf Theiss, CHSH, CMS, all of which grew after the fall of the communism. They were the first movers in Eastern Europe, invested in the region, and they had an



Christopher Fischer



Ingo Steinwender



Mirna Zwitter-Tehovnik



Roland Schreiner

Rank	Country	GDP per capita in USD
1.	Austria	44,757
2.	Slovenia	21,650
3.	Czech Republic	18,483
4.	Greece	17,890
5.	Estonia	17,736
6.	Slovak Republic	16,529
7.	Lithuania	14,900
8.	Latvia	14,071
9.	Hungary	12,820
10.	Poland	12,414
11.	Croatia	12,149
12.	Turkey	10,862
13.	Romania	9,522
14.	Russian Federation	8,748
15.	Bulgaria	7,469
16.	Montenegro	7,028
17.	Serbia	5,426
18.	Macedonia, FYR	5,237
19.	Belarus	4,989
20.	Bosnia and Herzegovina	4,808
21.	Albania	4,125
22.	Kosovo	3,661
23.	Ukraine	2,185
24.	Moldova	1,900

GDP Per Capita In CEE Countries
Source: World Bank 2016

enormous upside from this and they still have.” What’s more, says Zwitter-Tehovnik, “in comparison to many Western European countries, fees are still quite moderate. In English or Italian markets, fees in comparison to Austria are double.”

Many believe that Austrian law in general is favorable for business as well. “From a civil law perspective Austrian law [...] is quite effective,” Roland Schreiner, General Counsel CEE at Atos, says. “It is not formal, and it is straightforward and easily adjustable and suitable for any business.”

This in contrast to the judicial systems of

many of the country’s neighbors to the east and south, according to Zwitter-Tehovnik, which “seem to lack funding or resources and ... work slowly.”

KEEPING IT REAL

Nothing is perfect, of course. Christopher Fischer, EU Region VP and Associate General Counsel at Western Union, says that the current government “has not made the business climate worse – but they have not yet made it better.” Indeed, Fischer reports dissatisfaction with the government’s relatively conservative views on immigration. “The current government has expressed the desire to reduce the amount of immigration to Austria, which might have an impact on our business and our ability to attract the best possible talent,” he says.

Schreiner agrees. “The reduction of inflow of foreign workers is not making the market attractive,” although he notes that Atos may not be as affected as others, because, although the company employs people from abroad, the company has offshoring facilities allowing people to work remotely.

Immigration aside, the country’s labor laws “have been relaxed,” says Schreiner. “The previous and current governments have realized that Austrian labor laws generally have been too rigid,” he says, so “there has been improvement, making the law more operational and adjusted to the requirements of the market.”

Fischer, at Western Union, does not disagree. He defines Austrian employment law as “quite advantageous,” and relatively flexible for companies needing to hire or dismiss employees. “From that perspective, Austrian employment law is good for internationally active companies.” Still, he describes Austrian working hours as another area of concern, reporting that “the law reflects 20th century thinking and not 21st century reality,” since it does not consider the shift in work culture, in regard to the type of the work people do today, time flexibility,

or the businesses operating globally. “The expectation that people will work ‘9 to 5’ is not realistic in today’s world,” he says.

“...the law reflects 20th century thinking and not 21st century reality.”

And of course Austria shares the challenge of preparing for the General Data Protection Regulation’s May 25, 2018 effectiveness date – complicated, Schreiner says, by some conflicts with Austria’s own data protection law. “In Austria the law amending the Data Protection Act 2000 did not abolish the express protection of data of legal persons,” he says, explaining that this protection does not correspond to the GDPR’s focus on natural persons. “[That] has caused an unclear situation with regard to the applicability of the law. Everybody is now waiting for a clarification from the legislation.”

Steinwender rolls his eyes about the GDPR as well, even though his company is, for obvious reasons, less concerned than others about the GDPR. “Real estate companies in general do not have sensitive data, apart from certain personal data related to employees. Nevertheless, we need to comply with the legal procedures required, and it causes a lot of bureaucratic efforts and costs,” he continues, “the law does not focus on a company’s reasonable and justified business needs.”

CONCLUSION

Things could always, everywhere, be better. But none of the Chief Legal Counsel we spoke to suggested that, on balance, the outlook in Austria was anything but positive. “The Austrian market has picked up and improved considerably over the last few years,” says Roland Schreiner. “And it is stable now again.”

Mayya Kelova



INSIDE OUT:

Schoenherr and Freshfields Advise on Vonovia Public Takeover Offer for BUWOG

The Deal: On January 4, 2018 CEE Legal Matters reported that Schoenherr had advised BUWOG AG and Freshfields Bruckhaus Deringer had advised Vonovia SE on Vonovia's voluntary public takeover bid of BUWOG. The takeover offer placed the enterprise value of BUWOG at around EUR 5.2 billion.

We reached out to several of the individuals involved in the deal for information.

The Players:

- **Schoenherr:** Christian Herbst, Partner: Counsel for BUWOG AG
- **Freshfields Bruckhaus Deringer:** Thomas Zottl, Partner: Counsel for Vonovia SE

CEELM: How did you each become involved in this matter?

Herbst: Schoenherr was mandated to advise BUWOG on this specific transaction. We understand from the client that BUWOG's choice for this specific transaction was based on Schoenherr's track record in public M&A and, specifically, the corporate M&A team's expertise in high end takeover transactions as well as industry expertise.

Zottl: Vonovia SE is a long-term client of Freshfields and we have been enjoying the cooperation with Vonovia both in their home country of Germany (initially as legal advisor for Vonovia's unsolicited exchange offer for all shares in its competitor Deutsche Wohnen AG) and abroad. Following the successful takeover

and integration of Conwert in 2016 and 2017, Vonovia built on the established relationship when looking at another Austrian target, BUWOG, and called us in for support. We were of course very happy about this call.

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

Herbst: We were brought on board in December 2017 by BUWOG in connection with a potential combination of Vonovia, a German-listed real estate group. We were tasked to assist BUWOG first in negotiating a so-called business combination agreement that may be followed by a public M&A transaction, if any. Our involvement in the matter was thus from the commencement of the specific take-



Christian Herbst

ver transaction in December 2017, which then resulted in the public offer by Vonovia for BUWOG launched at the beginning of February 2018.

Zottl: We were approached by Vonovia at an early stage of their internal evaluation process and commenced our work by supporting Vonovia on the feasibility review and in the initial planning phase of the transaction, working on project timelines and their structuring analysis.

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

Herbst: The core members of the team were three: Robert Bachner, Sascha Schulz, and myself. Since we are all corporate M&A lawyers, we worked seamlessly as a team, with Sascha and me concentrating on the public M&A aspects and work stream.

Zottl: The core team for the public takeover consisted of me, Ludwig Hartenau and Thomas Mollhuber in Austria and Gregor von Bonin, Rick van Aerssen, Andreas Fabritius, and Timo Piller in Germany. Tax, Finance, and Antitrust lawyers in Germany and Austria supported Vonovia as well.

CEELM: Can you describe the final agreement for us?

Herbst: Following the announcement on December 18, 2017 regarding the successful negotiation and signing of

the Business Combination Agreement between Vonovia and BUWOG, valuing BUWOG at EUR 5.2 billion enterprise value, Vonovia launched a voluntary public takeover bid on February 5, 2018. The takeover offer of February 5, 2018 represents a cash offer volume of EUR 3.6 billion taking into account potential newly issued shares from a conversion of the convertible bonds issued by BUWOG. The BUWOG Management Board and Supervisory Board support the offer. The Schoenherr team advised BUWOG's Management Board in connection with the Business Combination Agreement and has been advising BUWOG as target company on all aspects of the public offer, which is still ongoing. The initial offer term will end on March 12, 2018, followed by an additional acceptance period of three months if the offer is successful.

Zottl: The transaction is structured as a full all-cash takeover offer addressed to all shareholders and convertible bond holders of BUWOG. The BUWOG takeover offer is rather exceptional for Austrian circumstances as BUWOG's shareholder base consists entirely of free float shareholders and does not include a controlling shareholder with whom Vonovia as potential bidder could have had a discussion prior to launching a bid in order to obtain control. Hence, unlike previous takeovers in Austria, Vonovia did not enter into an SPA or an irrevocable undertaking with a core shareholder. The deal documentation only consisted of a business combination agreement between Vonovia as bidder and BUWOG as target and the public offer document negotiated with the Austrian Takeover

Commission which sets out the terms of the offer to all shareholders and convertible bond holders of BUWOG.

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

Herbst: The successful completion of the still-pending-since-the-takeover offer is subject to the statutory minimum acceptance threshold of 50 percent plus 1 share, the condition of antitrust clearance in Germany and Austria (obtained from filing), and other closing conditions set out in the offer documents. So, it will be clear in mid-March whether the Vonovia/BUWOG transaction has been successful. One of the most challenging aspects of the process was certainly the tight timeline under which the transaction was negotiated and the public offer was launched. BUWOG is one of the rare examples of a true free float company, since most other companies listed on the Vienna Stock Exchange have a controlling or dominating shareholder. In a "controlled" listed company, such controlling or dominating shareholder would play a key role in such transaction. In a free float company the dynamics are different with the management and supervisory boards of the target having a much stronger role in the process.

Zottl: The transaction ran rather smoothly and quickly. As this was a "friendly" transaction, Vonovia did not want to announce the takeover offer until it had agreed on the business combination agreement with BUWOG. BUWOG was approached on the weekend before Christmas 2017 and the business combination agreement was negotiated in the



Vonovia CEO Rolf Buch and BUWOG CEO Daniel Riedl

course of that weekend – which gave the parties only 60 hours to come to a deal, as Vonovia wanted to announce the deal no later than on the Monday morning immediately after the weekend. We were able to deliver on this extremely short timeline because Vonovia, we, and the financial advisers were very well-prepared and interacted seamlessly.

The legally tricky part was the fact that BUWOG had outstanding convertible bonds which could be converted into BUWOG shares at a preferred conversion rate following a change of control in BUWOG. Pursuant to Austrian takeover law, the convertible bonds needed to be part of the takeover offer. The price offered for such bonds must be adequately proportionate to the price offered for the shares. In general, Vonovia must offer the same prices (for each of shares and bonds) in the initial acceptance period of the offer as well as in the additional three-month acceptance period which is triggered if the offer is successful. To incentivize the bondholders to tender their bonds in the initial acceptance period, Vonovia offered a higher price for the convertible bonds in the initial acceptance period than in the additional acceptance period anticipating the preferred conversion rate following a change of control under the convertible bond's terms & conditions. The price offered to bond holders in the additional acceptance period is based on the conversion rate prior to a change of control, which results in a lower price (even below nominal value), but the bondholders can convert and tender the shares received under the convertible into the offer at the offer price.

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

Herbst: Although the final result is still pending, our initial mandate did not change throughout the process and our expectations regarding our cooperation with BUWOG were met.

Zottl: So far, the entire transaction is running as initially envisaged.

CEELM: What individuals at your clients directed you, and how did you interact with them?

Herbst: The Schoenherr team worked directly with the BUWOG board and general counsel, but also with other members of the BUWOG transaction team. The working relationship has been and is excellent and it is also fun to work closely together with highly competent individuals towards an ambitious goal.

Zottl: Our main contact at Vonovia is Fabian Hess, the General Counsel. He is a very experienced transaction lawyer with excellent legal knowledge who always remains calm and has a very open style of communication. From our viewpoint, the working relationship is excellent – definitely one of the best clients to work for.

CEELM: How would you describe the working relationship with your counterparts at the other firms working on the deal?

Herbst: The colleagues from Freshfields have been highly competent and extremely professional. The negotiations on the Business Combination Agreement were in person and intense but fair and friendly, since the transaction was structured as a friendly not hostile takeover. As is typical for such a transaction, the negotiations were conducted day and night over the weekend when stock markets were closed and needed to be finalized by Monday early morning. Following the signing of the Business Combination Agreement, and during Q1 2018, the Schoenherr and Freshfields teams worked mostly by phone and email towards the common goal; i.e., Freshfields assisted Vonovia in launching the public offer beginning February 2018 and obtaining regulatory clearances, and Schoenherr assisted BUWOG in supporting the offer and resolving any issues that came up along the way.

Zottl: Christian Herbst and Sascha Schulz are excellent lawyers and experienced in public M&A matters. It is always good to have them on the other side of the table. They always play with open



Thomas Zottl

cards and maintain a direct line of communication.

CEELM: How would you describe the significance of the deal?

Herbst: When completed, the deal will be one of the largest public M&A deals ever in the Austrian market. Moreover, public M&A transactions initiated by a business combination agreement, securing the support by target management of the following public offer of the bidder, are a recent development in Austria. The 2017/18 BUWOG/Vonovia transaction is only the second transaction structured in such a way.

Zottl: This deal is indeed significant. Vonovia is listed in the DAX-30 and Germany's leading nationwide residential real estate provider with approximately 350,000 residential units (worth approximately EUR 30.9 billion). BUWOG is headquartered in Vienna and has a triple listing on the Vienna, Frankfurt, and Warsaw stock exchanges. BUWOG is a large residential real estate company in Austria with approximately half of its portfolio in Austria and the other half in Germany. After the successful takeover of Conwert (another Austrian formerly listed-real estate company) in early 2016, Vonovia is set to become one of the biggest residential real estate providers in Austria. The offer is also the biggest all-cash takeover in Austria ever.

David Stuckey

EXPAT ON THE MARKET:

INTERVIEW WITH TIM PFISTER OF KNOETZL



Tim Pfister, Managing Partner at Knoetzl in Vienna, is an American lawyer with over 35 years of experience. In addition to his management responsibilities at Knoetzl, Pfister acts as counsel, advising clients and colleagues on New York law matters and regarding conflicts in international transactions, cross-border financings, the Foreign Corrupt Practices Act, corporate crisis management, and corporate strategic planning. He moved to Austria in 2013 and was a founder of Knoetzl in 2016.

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

T.P.: The most relevant part of my background needed to answer your question is the personal part. My Austrian wife of three years and I had been commuting between New York, where I lived, and Vienna, where she does, for several years (with intermediate stops in places like Vancouver, Hong Kong, Singapore, London, Buenos Aires, Dublin, Amsterdam, San Francisco, Tokyo, Chicago, Frankfurt, Key West, Madrid, etc., along the way) to see each other. Then, about five years ago, I suggested we flip a coin to see how we could shorten the commute. The U.S. quarter was tossed, and it came up “Vienna.” So, here I am. Fairly simple, if not conventional.

My professional background is, in retrospect, conversely quite varied and complex – through neither previous-

times expectation nor intentional design. That simply happens with the passage of decades when one is blessed with great intellectual curiosity and good health, and has serial great opportunities to practice international transactional law at an elite level, mostly in New York. So, because I’m afraid the background book is so long, it is practically impossible to encapsulate it here without curing all tendencies toward insomnia among your readers.

I am, by tradition and choice, a transactional lawyer who has been, over time, urged, wheedled, and cajoled by law firms to – mostly reluctantly – supplement my complex deals and corporate counseling habits by assuming a variety of firm management roles, while continuing to generate revenue. It is that latter trend that paved the way for my joining with the founders of Knoetzl, a talented and experienced group of intellectually distinguished lawyers who eschew complacency, are driven to

disregard local market limitations in their practice, and measure themselves against the global elites, many of whom engage our firm as co-counsel and contributors to their major publications. The founders’ attraction for me, at the time the firm was formed a few years ago, was refreshingly magnetic, as I deeply admire the way my partners here constantly seek to raise the bar in delivering higher-quality legal representation of Austrian and international clients whose important disputes require the most exacting level of analysis and attention. So, with my long background in BigLaw practice and management, my penchant for effective legal analysis, borne in decades’ of Wall Street structured transactions, this firm’s drive and ability to do better for its clients in its market than has been done before, the lure of the challenge of guiding clients through crises – and since I was already here anyway – the fit was perfect.

CEELM: Was it always your goal to work

abroad?

T.P.: I never really had a “goal” of working abroad, but I also never had any aversion to the idea. In fact, over the course of my many years of international law practice, much of my focus has been outside of my native United States. I have also lived outside the U.S. from time to time, including for almost a year in Brussels, where I planted my large American law firm’s first (of what later multiplied into many) non-U.S. flags. Since many of the complex, structured financings and mergers and acquisitions deals I have serviced require – at a minimum – fitting systems (particularly legal systems and laws – but, also, cultures) together for the sake of the transactions – especially when such systems are not designed to fit together, I have always been required to “think abroad,” even if not eating and sleeping there. I enjoy what I do – and the people with whom I do it. It is fundamental in my legal analyses to understand the applicable law’s cultural and local-political underpinnings in order to dissect, work with, and sometimes refine or even help rebuild, the laws, rules and regulations that affect my multinational clients’ financial deals and businesses. Spending time away from the myopia of Wall Street, and being with an elite Austrian firm whose laser-like focus is on disputes now helps me reverse-engineer what went wrong with a deal in dispute. As a general matter, only transactions run in New York and London’s City practices can afford the enormous costs required to ensure that the lawyers can perform pervasively thorough analysis and structuring and – with critical support from top local counsel – get every aspect right.

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

T.P.: I have been fortunate to have started my large-firm practice at a time that had different rules and circumstances than today, and at a firm that was among the bluest of the blue chip firms on Wall

Street. That meant, essentially, two critical things in terms of my own practice. First, I was surrounded by and able to learn from lawyers I came to enduringly regard as “Blow-You-Away Smart.” Being able to learn from the very best in the world, over many years, and during more working hours than any of my rational Austrian friends would care to imagine (with the conspicuous exception of my current firm’s senior, founding partner, whose legendary passion for winning her clients’ legal disputes drives her to remarkable hours, stunning successes, and associated happiness for herself and her clients), gave me a thirst for legal knowledge and analytical understanding – and a ready means to quench it.

“The U.S. quarter was tossed, and it came up “Vienna.” So, here I am. Fairly simple, if not conventional.”

Secondly, my firm was in the historically enviable position of actively discouraging its young partners from business development, as “your most important development tool is doing the work on your desk, flawlessly.” As time passed and responsibilities grew, I found myself in a position of being sought after by investment house, banking, pharmaceutical and industrial clients to run their deals and to counsel them in times of crisis. In those crises that would occasionally come along (including two which, at the time, were characterized by the press as threatening the collapse of Wall Street; they didn’t), I learned to work closely with tough and impressive litigators, and the type of dedicated and talented disputes lawyers with which I am, again, happily and comfortably surrounded at Knoetzl.

Over time, my energy finance deals (like the conversion of a completed,

but mothballed, nuclear power plant which had been built on a geological fault into a 1278mw natural gas-fired cogeneration plant) begat more energy (and desalination) finance deals from upstream to downstream, utilizing every fossil and sustainable fuel source – and, on every continent.

ESOP-driven acquisitions (like a global rental car organization – later referred to by the legal press as “the Deal of the Decade in the Decade of Deals”) gave rise to structured re-financings of some of the world’s biggest corporations. U.S.-Canadian, double-dip financed roll-ups of what became, through the process, the second-largest global contract manufacturer of telecoms equipment, led to joint ventures in China, IPOs in Canada and, later, in New York and, even later, to the multi-billion-dollar sale of the enterprise itself, to that client’s largest competitor. The restructuring, refinancing and subsequent privatization of the largest airport in Poland was followed by airport finance work in Brazil, Washington, DC, the UK and the Middle East.

Handling large-ticket legal work (co-development, co-branding, acquisitions, and spin-offs) for a famous Swedish-Swiss pharmaceutical company instigated a mandate to assist in the ultimate sale of that business (after spinning off a globally-renowned agro-biotech subsidiary) to one of the world’s largest pharmaceuticals, and to the representation the buyer of the largest publicly-traded U.S. health care operation taken over by a larger, German, life sciences company. Restructuring an early U.S.- Russian joint venture arising out of a dispute over the world’s biggest coal strip mine operation provided my practice with assignments from various corners of the CIS and CEE.

Throughout, and almost since the inception of the Foreign Corrupt Practices Act during the Carter Administration, I have been called on to advise American and international companies on the Act and related laws

and agencies (CFIUS, the UK Anti-Bribery Act, OFAC, etc.) regarding their structures, global sales operations, government relations, investigations, and compliance.

“When I train young lawyers, I often admonish them that we are charged with knowing more about a client’s deal, or business, or dispute, than the client itself knows. Only then do we earn our keep and help them prevail.”

CEELM: How exactly did you end up at Knoetzl?

T.P.: The firm founders put everything together at breakneck speed once they withdrew from their previous law partnerships a few years ago. I was consulted in the early moments of the founding, and was still resident in New York during the mere hours between the founders’ respective withdrawals and their cutting the ribbon on the then-new firm. I had known the founders quite well – and many corporate and banking lawyers from one of their legacy firms – for a long time. I hired that firm and many of its partners to act as local counsel, for years, on deals with an Austrian element. I was also present at the IBA in Tokyo in 2014 when the senior Knoetzl founder, then a major (20+ years) partner at that firm, was told, without solicitation, in very clear terms by a famous lawyer (recently retired from a long career in the Magic Circle, and at the time the head of the preeminent law society in Great Britain) that her individual “brand” was considerably larger on a global scale than was that of her firm (which was, at that time, the largest in the region). I had no doubt that he was spot on in his

observation. So, much later, when I was asked to help elevate Knoetzl to their targeted higher standards, I wasted no time in rolling up my sleeves.

CEELM: What do your clients appreciate most about you?

T.P.: This is an interesting question. Although I am fairly confident that they generally enjoy my company personally, as one can generally tell from after-hours gatherings, I have fewer reasons to know what, specifically, clients appreciate in a way that is distinct from their appreciation of other lawyers. Of course, they like results. Nevertheless, two statements made by clients come to mind. The CEO of a global consulting firm once said that, although technical, flawless, legal skills are expected from the senior lawyers to whom he pays very high hourly fees, he liked to engage my team, also, for my business acumen – an understanding of the commercial and financial drivers of his firm’s legal matters.

When I train young lawyers, I often admonish them that we are charged with knowing more about a client’s deal, or business, or dispute, than the client itself knows. Only then do we earn our keep and help them prevail.

“They always look behind the question to see what is really bothering me, without regard to how the concern was phrased, and they work through the resolution of whatever was really troubling me.”

Another client, the general counsel of a large financial services organization for whom we were celebrating a massive, multi-continental transaction in Hong Kong, was asked by the business woman

in charge of the deal what it is that makes him (the GC) say that my firm at the time was the best group of lawyers he knows – as she confessed to not knowing enough about distinguishing between legal services providers. His response was telling. Although himself a highly credentialed and accomplished lawyer, he said that “I have known Tim and [my partner back in New York to whom we turned for help in the middle of his night whenever we got stuck during the previous two weeks of negotiating with over 20 parties] for a long time and, human nature being what it is, I’m sure that I’ve asked a lot of stupid questions. Yet, neither of them has ever made me feel that way. Instead, they always look behind the question to see what is really bothering me, without regard to how the concern was phrased, and they work through the resolution of whatever was really troubling me.”

CEELM: Do you find Austrian clients enthusiastic about working with foreign lawyers, or – all things considered – do they prefer working with local lawyers?

T.P.: Again, this is difficult to know. My direct client dealings are, in the lion’s share, with international clients of Knoetzl. I have not sensed a hesitation on the part of Austrian clients to deal with a helpful “Auslander.” But, my sample size is too limited to enable me to truly know. One interesting aspect of this, however, is that it is quite clear that more sophisticated Austrian clients are coming to understand that they can enjoy a considerable advantage in their disputes arising out of agreements when they are represented by specialist disputes lawyers, rather than by the same general or corporate lawyers they may have used in all their matters – including those who put the disputed deal together.

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

T.P.: Two areas of difference jump out.

One, as Knoetzl is a disputes firm, and I fancy myself to be something of a student of the systemic differences, I have come to understand and appreciate the fundamental distinguishing aspects between Anglo-American common law systems that permit pretrial discovery, and the Austrian civil law system where discovery (in civil cases) is mostly prohibited, allowing the matter to go to trial much sooner. Furthermore, Austrian judges rely heavily on court experts, a system that is unknown in American courts, where only judges and juries determine the factual aspects of the matter. These approaches and their differences cannot be overstated, and would be the subject of a whole, different article or tome. Having studied the vast dissimilarities in these approaches, I cannot conclude which is better. Each has big advantages, and each has big, consequential failings.

The second, and unrelated, difference that comes to mind is how Austrian legislators seem to be far less interested in promoting or enabling business interests or entrepreneurship [than many other countries], and, conversely, are driven by different social-engineering goals than are governments that actively promote such interests in their countries.

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

T.P.: I think the most resonant cultural difference between Austria and the U.S. is reflected in the last half of my response to legal systems differences above. The government in Austria – irrespective of which color or combination of colors is in charge – seems to set a tone that lowers the ceiling for businesses, instead promoting more mediocre jobs that, individually, are considerably more expensive for companies to provide than are higher quality, but fewer, entrepreneurial jobs and career-and-market-growth opportunities that are encouraged elsewhere. The result is a seemingly intentional dampening-down of business drive or ambition.

This is not new. Several years ago, when I was involved with rollups and consolidations of stock markets in places like New York, London, Frankfurt, and Stockholm, I asked my exchange clients why they hadn't considered approaching the Vienna exchanges, as it seemed to my untrained eye that connection to world markets by the SEE and CEE regions was far more historically and culturally logical through Vienna than, say, through London, or Berlin, or Stockholm. But, the disinterest I encountered in response, seemed to result from the pervasive dampened-down business environment.

“Austrian judges rely heavily on court experts, a system that is unknown in American courts, where only judges and juries determine the factual aspects of the matter. These approaches and their differences cannot be overstated, and would be the subject of a whole, different article or tome. Having studied the vast dissimilarities in these approaches, I cannot conclude which is better.”

Today, with Brexit well underway, this American expat watches in amazement as the Austrian government simply sits on the sidelines and seems to fear competing to take over as the new home for any of the European, neutral, non-political, institutions that will have to move out of the UK, and looks on as cities no more logical or qualified fight tooth-and-claw for these business-generating plums.

The multiplier effect of this is also the underlying reason the large local law firms here do not get the opportunity to handle truly large-market deals, and thereby build upon a store of knowledge and skill set that such deals in New York and London demand. But in everything there is good news! The hourly rates charged by top M&A and finance lawyers in the Austrian market are just a fraction of those charged by their counterparts whose deals are for, and supported

by, the big capital markets. And, for Austrian law firms that are focused on sophisticated litigation and arbitration matters, our post-M&A and financing disputes practices thrive!

CEELM: Outside of Austria, which CEE country do you enjoy visiting the most?

T.P.: The way you ask this question – suggesting that a single country in the region trumps all others – is impossible for me to answer. I have a significant, heart-felt, professional relationship with Poland, and have both represented Polish interests, and used Poland as a shining example of a country's getting up to speed in a market economy after a long period of absence – in lectures I've given at law schools and to international lawyer and business groups for years. I went through a period of assisting US investors who – at the time – moved quite enthusiastically into Hungary, and my visits there are always delightful. I enjoy the sea and the people of Croatia which I came to know well in former days when I had to get my passport stamped regularly. Of course, Prague and smaller cities in the Czech Republic are magical places I would visit for the beer alone! Our firm's services – particularly in our arbitration practice – are called upon routinely in Bulgaria, Romania, Slovakia, and Slovenia, so they are all on my short list of places in which I need to spend more time.

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

T.P.: Finally, an easy one! Whenever the weather is accommodating, I love to show our international visitors the 360 degree views of Vienna from our firm's client spaces in the very center of this incredible and historic city, and then whisk them away for a wonderful food, beer, and cultural experience at the Schweizerhaus in the Prater. After years of giving in to the wishes of foreign visitors to go to a New York steak house (any one), my move to Vienna has given me a much-improved option in this regard!

David Stuckey

EXPERTS REVIEW: PPP/INFRASTRUCTURE

“All right, everybody line up alphabetically according to your height.”

– Casey Stengel, American Baseball Manager.

Regular readers know that we order the articles in the Experts Review section differently in each issue. This time around, in a stunning act of editorial imagination, they are ranked alphabetically. So the article from Austria comes first – perhaps appropriately, given this month’s Market Spotlight – and that from Ukraine comes last. The subject of Experts Review this month is PPP/Infrastructure.

■ Austria	Page 54
■ Bosnia & Herzegovina	Page 55
■ Bulgaria	Page 56
■ Croatia	Page 57
■ Czech Republic	Page 58
■ Lithuania	Page 59
■ Montenegro	Page 60
■ Poland	Page 61
■ Russia	Page 62
■ Serbia	Page 63
■ Ukraine	Page 64



AUSTRIA

How Concession Can Improve the Sleepy Rollout of Broadband Internet-Access in Austria



Thomas Hamerl

Austria is definitely lagging behind in terms of Fiber-to-the-Home (FTTH) penetration: According to recent data of the FTTH Council Europe, only one country worldwide has a worse penetration rate than Austria, while other sources suggest there are two countries below Austria.

For this reason many initiatives have been implemented on municipal and provincial levels to provide Austrian households and undertakings with high-speed Internet access in parts of the country where a purely commercial assessment would not justify such investments. Obviously this is not yet enough.

Many CEE jurisdictions, including Serbia, Croatia, the Czech Republic, Poland, Ukraine, and Macedonia, are not much better than Austria at keeping their citizens waiting for up-to-date FTTH connections. Perhaps some of the points discussed below also apply to these countries.

An example how to be successful in comparable circumstances can be found in three recent French projects involving a total of almost 2.2 million households which will be connected by 2024. Each of the three projects was implemented by means of a concession contract. A major portion of the equity capital is going to be provided by investment funds, not by the state. The largest part of the gap between commercially viable investments and total investment costs is financed by state subsidies under a national broadband plan. This plan has been notified under the EU state aid regime, in particular the EU Guidelines for the application of state aid rules in relation to the rapid deployment of broadband networks. The Commission decided not to raise objections against the French plan. The same result has already been achieved for the Austrian subsidy scheme – the “*Breitbandmilliarde*” – as well as for Bulgarian, Croatian, Polish, Romanian, and Slovak broadband subsidy schemes. Additional subsidy schemes may be possible too.

Although EU law does not provide a comprehensive legal framework for PPP laws in general, or concession laws in particular, Directive 2014/23/EU at least provides clearer rules for the award procedure of concession contracts. Almost all EU member states have already transposed the concession directive; Austria is (hopefully) going to catch up with the compliant member states in 2018.

However, the EU concession directive is inapplicable to most broadband projects because it specifically excludes concessions

made for the principal purpose of permitting the contracting authorities to provide or exploit public communications networks. However, the very purpose of the kinds of broadband infrastructure projects described in this article is to enable a state/province/municipality/public entity to provide a network (*i.e.* wholesale services) to Internet service providers or to hire an active network operator to do this for the state. So broadband concessions fall outside the scope of the concession directive.

This does not mean that concessions are not allowed; but it does mean that legal uncertainties may exist.

Concessions have important advantages for broadband projects. The (private) concessionaire accepts the operating risk in exploiting the broadband network. This means that the concessionaire operating such a network will try to contract as many ISPs as possible in order to generate more income. For the public side this means that the network will be open to all service providers and will therefore have a stimulating effect on the entire economy.

Secondly, a concession contract is an effective way of requiring the active network operator to maintain high quality levels and a high level of availability of the network. Sometimes such quality levels can be achieved solely via the demand of the service providers. If they are not strong enough or have no alternative network to which they can switch, the public concession contract must provide for quality and availability requirements.

In short, a private concessionaire is more likely to permanently improve the public network or to maintain the intended level of service over the whole concession period. Austria lacks a statutory basis for such concessions, so only good contract drafting will help.

A broadband project must be feasible and bankable. Without a PPP or concession law that requires this, however, awarding authorities have to tackle these issues in their project preparation and contract drafting. Although Austria has no PPP law and (currently) no concession law, its budgeting rules contain standards of project preparation. These include the requirement that estimates be made prior to project realization of financial and economic consequences and the affordability and long term consequences for public finances, and the approval of these estimates by the Minister of Finance. Necessary securities on project assets or direct agreements providing lenders with cure rights and/or step in rights must be based on contractual provisions and civil law.

In Austria internationally accepted standards or acknowledged best practices give further guidance. Albania, Bulgaria, Croatia, Latvia, Montenegro, Russia, Serbia, Slovenia, and Ukraine have PPP and/or concession laws which provide binding guidance.

Thomas Hamerl, Partner, CMS Austria

BOSNIA AND HERZEGOVINA



Public Private Partnership Projects in Bosnia and Herzegovina



Nihad Sijercic

The Current Set-Up

The constitutional and legislative structure of Bosnia and Herzegovina (BiH) is complex since it is composed of two entities – the Republic of Srpska (RS) and the Federation of Bosnia and Herzegovina (FBiH) – and Brcko District (BD) as a separate unit, and

the legislation is adopted on the state level, entity level, and – in FBiH – on the cantonal level. This means that in BiH as such there is no unified Law on PPP, but rather 12 laws on PPP. While the RS and BD adopted their PPP laws in 2013 and 2010, the FBiH drafted a Law on PPP in 2009 which remains in the adoption process. In addition, the cantons in the FBiH have their own set of PPP laws.

The Current Status

The current state of infrastructure project and investment needs pushes a multi-billion euro obligation on the state/entity/canton which they, with the current budget structure, simply cannot cope with. There are a number of infrastructure projects, including roads (most prominently the highway corridor Vc), water (the renewal of city water systems, or the regional “Blue Water” Project) and health care (a dialysis center) which depend on finding alternative finance sources. PPP’s are considered to be an option which could present a win-win situation for the public institutions, private investors, and the general population which would benefit from such projects.

So far, however, the few large scale PPP’s in BiH have occurred mostly in the RS, where, most prominently, the International Dialysis Center and Fresenius Medical Care successfully implemented PPP projects in the health sector. The RS also entered into two PPP projects for the construction of thermal power plants: Stanari and Ugljevik 3. The FBiH has several times announced PPP models for the realization and construction of certain sections of the Vc corridor, but concerns about the bankability of the projects obviously blocked them from realization.

Contractual Issues in PPP’s in BiH

Most projects from the PPP sphere are realized through concessions, as the law on concession is in place on every level. Through a concession contract the private partner provides services for a certain period of time to the users instead of the public partner. Other projects were implemented as institutional models, under which a joint venture between the public and private partner is established.



Amina Dugum

Ultimately, all forms of PPPs require the conclusion of an adequate contract between the public and private partner. In this regard the private partner and public partner sometimes put too little effort in the creation of a contract adequately covering or specifying obligations and risk. So for example during the procurement of the PPP, the public partner will evaluate the experience and financial standing of the shareholders in the private partner. After the contract has been signed the public partner should take care to ensure that the identity of the shareholders cannot change to the detriment of the PPP. The contract therefore should foresee that the private partner has to obtain the public partner’s prior approval before any change is made to the private partner’s ownership structure.

Furthermore, in almost all cases it is necessary to obtain additional approvals and consents. Certain milestones can therefore be determined and the parties can agree to which extent the public partner has to support the private partner. The PPP contract must, among other matters, regulate a subsequent inability to perform the contract, including details regarding changed circumstances that may lead to a complete inability to perform the contract.

Operation and maintenance clauses specifying the individual responsibilities can be very different from sector to sector and project to project because many projects require the private partner to provide ancillary services to the public partner in addition to the on-going maintenance of the relevant asset(s) that were developed by the private partner. Therefore the parties should agree on aspects such as lifecycle maintenance, third party use, and demand risks.

Future Outlook

Several incentives and projects by international organizations and NGO’s are currently being realized involving attempts to foster PPP framework on all levels. This should also promote PPP’s and the possibility of realizing them in the future.

By Nihad Sijercic and Amina Dugum, attorneys at law in association with Karanovic Nikolic

BULGARIA



Review of PPP/Infrastructure in Bulgaria



Kostadin Sirleshtov

Last year was a good year for the Bulgarian economy, which registered 3.6% GDP growth. The Bulgarian Government plans to further boost the economy in 2018, and initial projections vary from 3% to 4% growth. The main trigger for this will be the continuation of spending public funds on strategic infrastructure projects.

Landmark projects still in progress include the Bulgarian highway e-toll system and the ongoing modernization of the national railway. In early 2016, Bulgaria's Road Infrastructure Agency opened a tender for the e-toll system for the republican (national) road infrastructure. Due to numerous appeals of the tender, the procedure ended in late 2017, with a EUR 92 million contract awarded to a consortium led by the Austria's Kapsch Group. The deal was signed in January 2018, but construction has not started yet, since there are still pending appeals. Kapsch will have 19 months to design and implement the e-toll system.

Another major infrastructure project is the modernization of a 50 km long railway section in western Bulgaria that was launched last summer. The section is part of European Corridor IV, which connects the ports of Bremen, Hamburg, and Rostock with Istanbul. The European Commission recently approved the financing of the project, which is expected to exceed EUR 511 million, making it the largest railway project in Bulgaria so far. On February 12, 2018, the procedure was suspended due to an appeal.

The Government's commitment to infrastructure projects is even stronger now. At the annual Strategic Infrastructure and Investments 2018 conference held in Sofia on February 27, 2018, the Chairman of the Management Board of the Road Infrastructure Agency announced that BGN 3.5 billion in contracts would be awarded this year for highways in southwestern

and northern Bulgaria and several republican roads in northern Bulgaria.

Other major infrastructure projects which are continuing from 2017 or are expected to be launched in 2018 are the Greek-Bulgarian natural gas inter-connector, the Bulgarian gas hub, the concession of the Sofia Airport – the nation's largest – and the modernization of the Bulgarian national passenger train operator.

To allow the launch of some of the strategic infrastructure projects (such as the Sofia Airport), a new Concessions Act was adopted in Bulgaria, which entered into force on January 1, 2018. This Act – which implements the provisions of the EU Concessions Directive and is considered to be modern and more investor-friendly than the previous law – takes into consideration the importance of maintaining the long-term balance between the interests of the concessionaire and the ones of the concession grantor. It explicitly defines this balance as “economic balance” and rules that the economic balance of the concession shall be preserved for the whole duration of the contract. In order to guarantee transparency and fair competition among investors, the Concessions Act also contains detailed rules on the competitive procedures for awarding concessions, signing and performing of concession contracts, and their early termination.



Angel Bangachev

The modernization of the Bulgarian public procurement regulation was done back in 2016 and was also based on the two EU Directives on Public Procurement, again implementing them in the country's national legislation.

Regardless of the improvements to the legislation that regulates PPPs and the strong political support for such projects, there are still certain difficulties that investors and their legal advisors experience, in particular during the tender phase of the projects. A major legal concern appears to be the significant number of appeals of procedures. Many of these appeals are groundless and their exercise is often perceived to abuse the right to appeal. The problem is not new, as many procedures in the past have been delayed or terminated due to such appeals. Historically, various legislative changes have been adopted to preclude groundless bad faith challenges of tenders, including increases in statutory fees. The Government and the Parliament are still searching for an appropriate mechanism that guarantees the right of appeal while discouraging its abuse. The solution will not be easy, as this is less a matter of regulation and more a matter of demanding good faith on the part of bidders. Nevertheless, the advantages outweigh the difficulties, and the sector remains quite attractive.

Kostadin Sirleshtov, Partner and
Angel Bangachev, Senior Associate, CMS Bulgaria

CROATIA

Advanced PPP Legislation But No Projects?



Marija Musec

Croatia stands among the highest ranked countries when it comes to the compliance of its PPP legislative framework with international standards. Reports issued by international institutions such as the EBRD and the EIB have praised Croatia for its elaborate legal framework, strong institutional capacities, transparent procurement practices, easy access to justice (including arbitration), and a range of security instruments facilitating financing.

PPP legislation, implemented in 2014, is well-established and tested in practice. Selection of a private partner is governed by the public procurement legislation (adopted in January 2017), which implements the Public Procurement Directive 2014/24/EC. The concessions sector, which was considered underdeveloped compared to PPPs, has been improved by the (new) 2017 Concessions Act.

Croatia seems to be advanced in a number of factors investors typically look at before making a PPP investment. The selection of the private party is made in a fair and transparent process. There are only limited exemptions allowing for direct negotiations, and the law provides clear rules on the choice of tender. Tenders are open to all candidates. Quick and effective legal remedies against decisions of the contracting authority made during the selection process provide protection for investors while minimizing delays in the award process.

The “bankability” of a project crucially relies on the availability of reliable security instruments relating to rights and assets of the private partner in the project and other instruments to contractually secure the cash-flow of the private party in favor of lenders. To stabilize a private partner (project company) in economic turbulence, “direct agreements” and “step-in rights” (without tender) are allowed; further, the possibility of government financial support or a guarantee of the contracting authority’s proper fulfillment of its obligations significantly reduces project finance risks.

A project may be awarded only after an economic feasibility study ascertains viability and financial sustainability over the whole life of the contract as well as the likely socio-economic benefits and environmental impact of the project.

However, while the market seems mature, and legislation seems advanced, there is still no significant take-off.

Currently 15 PPPs have been contracted in Croatia, for a total value of HRK 2,540,265,929.00. If the *Istrian Ypsilon* project

(1995) and the *Zagreb Airport* project (2013) are subtracted from the list, Croatia’s transaction record would come down to a limited number of small projects in social infrastructure. And no significant new project has taken place since January 2014.

Luka Gruž, a long awaited concession PPP project in the Dubrovnik area, has been presigned under a preliminary concession contract but the negotiations between the investor and the Management Council of the Dubrovnik Port Administration failed, and the preliminary concession contract expired in July 2016.

Why there is no significant transaction record?

Effective implementation of laws is a challenge in many countries, and Croatia seems not to be an exception. The country seems to be missing a firm commitment to develop PPPs., as here is no real PPP policy in the country and no single (uniform) project pipeline endorsed by the government.



Mia Kanceljak

The public perceives PPP as an expensive model with no clear benefits. Value for Money (VfM) criteria are not well understood. The public often has limited knowledge about the benefits and advantages of PPPs which in turn leads to resistance. PPPs

are often perceived by the public as an “expensive” model which favors private partners and functions as a means to hide the privatization of public wealth and services. This is especially the case in Croatia, where they have been associated in the past with corruption and negative experiences in the form of projects failures or badly managed projects.

Financial institutions often voice concerns about project documentation that is not reliable and unprofessionally prepared. Funding of proper (professionally prepared) project documentation and establishing a project preparation fund seems crucial.

Croatia has the potential to develop PPPs significantly in the next ten years. However, the benefits of PPPs and concessions should be promoted, and both public and public servants should be educated on the main features of PPPs and concessions. This would contribute to the better reputation of PPPs and concessions and address concerns associated with these models.

It is expected that Croatia will start to direct EU structural funds towards PPPs, primarily by developing model documents in the following priority sectors: (i) public lighting, (ii) public building, and (iii) broadband.

Marija Musec, Partner, and Mia Kanceljak, Senior Associate, CMS Croatia

CZECH REPUBLIC



D4 Motorway PPP Coming to Market



Christian Blatchford

It's been quite a wait, but the D4 Motorway PPP project should be coming to market in April. The project will involve the design, construction, financing, operation and maintenance of a 36 km stretch of motorway between Pribram and Pisek in the south west of the Czech Republic, with operation and maintenance of an

adjacent 16 km of existing motorway.

The last PPP road project to get off the drawing board in Czechia was the D47 project back in 2002, which ended in fiasco when a contract was awarded to an Israeli investor without a proper tender. The D4 project has not had an easy start either. The project was approved by the government in January 2016, but more than a year was lost when the advisory tender held by the Ministry of Transport (MOT) got bogged down in multiple appeals.

The key milestones of the D4 tender are expected to be notification of pre-qualification to an unlimited number of interested parties in April, submission by them of requests to participate in the competitive dialogue procedure in June (resulting in a shortlist of four participants), with the competitive dialogue proper starting in October. Commercial close (signature of the project agreement by the MOT and the selected bidder) seems doable by year-end, and financial close (the agreement of all finance documents and ancillary agreements) could be achieved in Q1 2019.

Participants in the tender will need to navigate a weird legal

landscape shaped by the specific conditions of Czech public procurement law (which has changed more than 25 times since the days of the D47!), as well as laws enacted over the years in preparation for a PPP market that has never arrived.

The provisions of the Public Procurement Act that required government approval of the project no longer apply, although the project is being structured as a competitive dialogue in accordance with the 2016 approval. Hopefully, methods developed on successful Slovak road deals over the past few years will be used and we won't have to reinvent the wheel.

Historically, there was a kind of procurement bogeyman in this country, in the existence of both public contracts and concession contracts (initially regulated by separate acts but since 2016 sitting together in the Public Procurement Act). If the substance of a given project fulfilled the statutory definition of a concession (in the context of a roads project, the private sector taking material volume risk), the contract needed to be procured as a concession. This was true even if the deal terms changed mid-tender, requiring cancellation of the tender and a return to square one. Now a concession contract can, for instance, be tendered using a competitive dialogue. There was also a requirement to request an opinion from the Ministry of Finance (MOF) on the economic impacts of a concession agreement prior to its signature. Failure to do so rendered the contract absolutely void under relevant case law. The requirement remains in the law, however it should not apply at the ministry level.

So there's no need to be worried. Or is there? A handful of paragraphs in the Roads Act, shoe-horned in to ease concerns about the legality of the D47 project, create the concept of a concessionaire contract, which, despite sounding very much like a concession contract, is a different animal. A concessionaire contract is clearly not subject to MOF supervision. On the other hand, the Roads Act does require approval of a concessionaire contract by the government and of the state's financial obligations set out in it by parliament. Since last year's general election, communists and right-wing nationalists have gained in strength and confidence. This may well cause concern for bidders — especially international ones. How to address the risk of getting within a whisker of commercial close, only for parliament to throw the project out? Not in the concessionaire contract, because the parliamentary procedure occurs before it is signed, but perhaps in a side agreement providing that bid costs (and some loss of profit?) will be compensated.

So fingers crossed that all goes to plan. If so, there should be plenty of work for firms with experience in this area, whether for the contracting authority, sponsors, banks or sub-contractors. And if a successful precedent is created, next up could be the D7, D6, or D35!

Christian Blatchford, Partner, Kocian Solc Balastik

LITHUANIA



The New Concessions Law in Lithuania



Inga Kostogriz-Vaitkiene

The new Lithuanian Concessions Law came into force on January 1, 2018. With the new legislation, Lithuania has adopted European Parliament and Council Directive 2014/23/EU on the award of Concession Contracts, which establishes a balanced and flexible legal framework for the award of concessions and ensures effective

and non-discriminatory access to the market for all economic operators. The new Lithuanian legislation aims to ensure transparency and fair competition in the development of infrastructure and the provision of services of general economic interest, as well as the attraction of national and EU-wide private investors to the public sector.

Lithuania's new Concessions Law changes the central concept of concessions, leading to a more flexible and competitive concession process. Under previous legislation, the subject-matter of the concession was limited to certain sectors. The new law distinguishes between works and services concessions, and allows mixed contracts that cover the provision of both works and services. In addition, the scope of subjects over which concessions can be awarded is now wider. Under the new Concessions Law, a concessionaire may be an "economic operator" — defined as any natural or legal person, public entity, or group of persons or entities. This includes temporary associations or undertakings that offer the execution of projects, supply of products, or provision of services in the market.

Due to complex technical and financial arrangements, concession contracts are often subject to changing terms and conditions. Although such changes are necessary for the proper and efficient execution of a contract, they may also risk violating the principles of equal treatment, non-discrimination, mutual recognition, proportionality, and transparency. To avoid such vio-

lations, and to ensure greater legal clarity, the new legislation requires the initiation of a new concession procedure where material changes to the initial concession arise. Minor changes to a concession contract do not require the creation of a new concession, but changes can not be regarded as minor if:

1) they introduce new conditions which, had they been part of the initial concession award procedure, would have attracted other economic operators; 2) the modification changes the economic balance of the concession in favor of the concessionaire; 3) the modification considerably extends the scope of the concession; or 4) a new concessionaire replaces the one to which the contracting authority had initially awarded the concession.



Ieva Zablackaite

The new provisions in the Concessions Law also change the requirements governing time limits on the validity of concessions. The previous law provided a maximum term of 25 years. The new legislation sets no maximum term, but allows the contracting authority to define the term of the concession in accordance with the public need for works or services. To speed up the process of dispute resolution, the legislation introduces a new dispute settlement procedure, which sets a shorter time limit for settling disputes. These changes will prevent unnecessary delays in litigation, and also secure the public and private interests, both of the contracting authorities and of the economic operators.

One of the major changes included in the new Concessions Law, designed to protect the award process from favoritism or corruption, is a new and detailed negotiation procedure. While previous legislation provided only that the successful candidate must be invited to negotiate, the new regulation requires that the candidate whose bid ranks second be invited if its proposal was similar to that of the successful candidate and its rating differs by no more than 15%. The contracting authority also has the right to invite other candidates even where the difference exceeds 15%. The concession contract will therefore be concluded with the candidate that proposes a better bid during the negotiations, and qualifies under the criteria of the concession requirements.

Changes introduced under the new Lithuanian legislation on concessions aim to promote new investments, increase the number of concessions being offered, encourage more operators to participate in tenders, and ensure the most efficient use of public funds. The new Concessions Law also benefits PPP (public-private partnership) regulation in Lithuania, helping to improve public access to the services of highest quality at the best prices.

Inga Kostogriz-Vaitkiene, Partner, and Ieva Zablackaite, Paralegal, CEE Attorneys Lithuania

MONTENEGRO



Condition Sine Qua Non of Large Scale Infrastructure Projects



Vladimir Radonjic

The Current Regime

The plans to regulate public-private partnerships have been in the program of the Montenegrin Government for at least ten years now. Despite its central importance to both the public and private sectors, a specific legislative and institutional framework in the

area of PPPs is still not in place. Instead, PPPs are regulated by laws from several sectors and by the Law on Concessions. The main authoritative bodies in charge of implementing PPP projects are the Privatization and Capital Investment Council and the Concession Commission.

Several PPP projects were implemented between 2007 and 2018, mainly at the municipal level and valorization of large scale tourist locations, primarily based on two PPP models: authority-pay and user-pay contracts. As the procedure for awarding authority-pay contracts is not explicitly regulated, user-pay contracts, which are defined by the Law on Concessions, are the most common. Currently, the following types of PPP user-pay contracts may be adopted by public authorities for undertaking infrastructure projects: Concession, BOT, Private Finance Initiative, and Institutional PPP. There have also been cases where the competent authority adopted a combination of those contractual arrangements, which incorporate or combine some of their elements.

A number of those projects have been identified as exposed to corruption and investigated by the Special State's Prosecutor's Office. Obviously, there seems to be consensus that the current regime is inappropriate, inefficient, and lacking in transparency.

Potential PPP Projects

Montenegro has a variety of potential PPP projects ranging from the energy sector to traffic infrastructure. The so-called "Blue Corridor" or Adriatic Ionian Highway, which is planned to pass from Slovenia through Croatia, Bosnia and Herzegovina, Montenegro, Albania, and Greece, is one of the key traffic infrastructure projects, and its Montenegrin part could be developed through the PPP model. The upgrade of Montenegro's Podgorica and Tivat airports is a necessary precondition for the further growth of the local tourism industry. Other opportunities include the second section of the Bar-Boljare Highway, which is supposed to link Montenegro with Serbia, as well as a bridge across Boka Bay. There are also several projects in the energy sector such as the Moraca River Cascade hydropower plant and the second unit of Pljevlja Thermal Power Plant, among others.

Expected Benefits of a New PPP Regime in Montenegro

All relevant stakeholders (i.e., the public authority, international financial institutions, and private investors) agree that the introduction of a new legislative and institutional framework in the area of PPPs would not only help identify successful projects, but would at the same time help guide these projects effectively and transparently towards closure, while ensuring the country's development goals are met and private investors are satisfied.

Considering the increasing public debt levels of the Montenegrin economy, to a large extent due to the construction of the Bar-Boljare highway, revising the PPP legislative framework is becoming even more important. Since Montenegro's economy growth — boosted by the implementation of large investment projects — is expected to continue over the medium term, the Government of Montenegro has the very important duty to bring the process of adoption of a new, concrete, and elaborate PPP legislative and institutional framework to closure. The new regime must clearly define the roles and responsibilities of all relevant stakeholders and it must ensure that these stakeholders are empowered to deliver projects — and that the processes are carried out in full transparency.

It does not mean that the adoption of a PPP framework shall automatically lead to the successful implementation of large scale infrastructure projects through the PPP model, since they are subject to various obstacles and challenges. The lack of knowledge and best practices, the lack of expertise on the part of contracting authorities, and poor cooperation between public authorities can all threaten the success of PPP projects, regardless of the presence of an adequate legislative framework. However, the well-elaborated legislative framework adopted in close consultations with all relevant stakeholders shall constitute the necessary tool and condition *sine qua non* of large infrastructure projects in Montenegro.

Vladimir Radonjic, Partner, Radonjic/Associates

POLAND



A Source of Optimism in Poland



Marcin Bejm

In December 2017, CMS published the latest edition of its annual “Infrastructure Index” report, which compares the political, economic, and legal environments for investors in infrastructure in 40 countries and constitutes a guide to the world’s most attractive destinations for infrastructure investment. Ac-

According to the report, the five most attractive destinations for infrastructure investment are the Netherlands, Canada, Germany, the United Kingdom, and Australia.

Poland, which debuted in the ranking this year, placed seventeenth. Given the forthcoming pipeline of infrastructure projects in Poland and the planned changes in the legal and tax framework for public-private partnerships, Poland should easily improve its position in the next CMS Infrastructure Index rating.

Poland is currently experiencing significant economic growth, which translates into dynamic infrastructure development. In 2017, the Council of Ministers adopted the revised “Program Regarding the Construction of National Roads,” which envisages that by 2023 the State Treasury will spend approximately EUR 50 billion on investments related to new motorways, expressways, and public roads. In the same period, PKP Polskie Linie Kolejowe, the state-owned operator of Poland’s public railway network, will invest approximately EUR 17 billion in the modernization of the existing railway network. Moreover, Poland is planning to launch infrastructure mega projects such as the construction of the Central Transportation Hub (consisting of a new central airport for Poland and auxiliary transportation infrastructure, expected to cost a total of approximately EUR 8 billion), the development of a new system of inland waterways covering the Vistula River and the Odra River expected to cost approximately EUR 7 billion, and the construction of a new central sea port for Poland in Gdansk, which will require investment outlays of approximately EUR 1.5 billion. These projects will most likely be implemented as PPPs.

Soon, Poland will also see the advent of new infrastructure markets concerning e-mobility investments, energy storage, and digital infrastructure. In January, the Polish parliament adopted the Act on E-mobility. The Act opens the door for local governments to implement projects consisting of the construction of electric charging stations based on a concession formula. In addition to constructing thousands of electric charging stations, the development of the e-mobility market will also force energy distributors to refurbish MV power lines supplying electricity to the charging stations.

Despite huge investments in the transportation sectors and an explosion of e-mobility investments, during the next three years the infrastructure market in Poland should be dominated by PPP projects. In 2017, the Council of Ministers adopted the “Government Policy for the Development of Public-Private Partnerships,” with a view to increasing the scale and efficiency of infrastructure investments implemented as PPPs in Poland. For the first time, the Polish government officially declared that PPPs should be treated as an instrument for implementing the national development policy. Recently, the Ministry of Development published a list of PPP projects that are currently in the pipeline. 17 projects from the list will have a capex value exceeding EUR 90 million. This group of the biggest PPP projects consists of seven projects which are to be carried out in the road sector, three urban regeneration projects, two projects involving inland water infrastructure, and two waste management infrastructure investment projects.

The Ministry of Development has been assigned the role of a PPP taskforce and will be coordinating initiatives aimed at the development of the PPP market in Poland. The government is attempting to boost PPP market growth by providing system support in relation to all pending PPP projects. The Ministry has already outsourced advisory services for five PPP projects prepared by local government units.

On March 8, the government sent a bill concerning amendments to the PPP Act to parliament. The bill envisages that public entities wishing to implement infrastructure projects with a value exceeding EUR 75 million should do this under the PPP formula unless they prove that implementation without a private partner’s participation is more advantageous for the public sector. The bill also regulates issues connected with the execution of step-in rights by lenders. Furthermore, the amendment cancels the existing limits on maximum parking fees for parking cars in city centers, which eliminates the basic barrier that has been blocking the development of PPP projects in the car parking sector.

All these developments will surely change the infrastructure market in Poland over the next two to three years. For the first time, the future seems particularly bright for PPPs in Poland.

Marcin Bejm, Partner, CMS Poland

RUSSIA



PPPs vs. Concessions in Russia



Karina Chichkanova

Public private partnerships and concessions are effective tools to allow governments to partner with the private sector to develop and finance key infrastructure projects. These forms of collaboration are particularly relevant in Russia, where infrastructure investment needs are estimated by the World Bank to be about USD

1 trillion.

Not surprisingly, Russia has a well-developed legislative framework around PPPs and concessions to ensure the balanced allocation of risk between investors and public entities, with separate federal laws on PPPs (effective from 2016) and on Concession agreements (effective from 2005) supplemented by regional and municipal legislation.

PPP and Concession Law – Similarities and Differences

The key difference between a PPP and a concession under Russian law is that in a PPP the investor gets ownership of the developed object, while in a concession the public entity acquires ownership. Another important difference is that in a PPP the technical maintenance and functional operation of an object can be split between the private and public entities; this is not allowed under a concession agreement, where both functions must be performed by the concessionaire.

Both PPP and concession laws allow direct agreements with the financing parties in order to define the details of their participation in projects, including relevant step-in and other protection mechanisms.

Currently, real (immovable) property is always required to be part of any infrastructure to be delivered under the PPP or concession agreement. Equipment, machinery, and other assets considered as movable property can be delivered under the agreement only if they are technically and functionally attached to an immovable part of the infrastructure. The Russian government is planning legislative changes to allow such agreements to be concluded with respect to IT infrastructure without requiring the involvement of immovable properties. The draft federal law on developing IT infrastructure under PPP and concession agreements was adopted in the first reading on January 10, 2018.

As a general rule, PPP and concession agreements are concluded through a competitive tender. However, as an alternative, potential investors may submit a “private initiative,” which — in a nutshell — is an unsolicited proposal to a public partner or grantor to execute a PPP or concession agreement. The proposal for the private initiative should include a draft of the proposed agreement and a financial model. The public partner or grantor will then consider the proposal and decide whether or not to implement the project, and if so, whether to accept it under the proposed or modified conditions. If the decision is positive, the government must officially publish the project to give other investors the chance to bid. If other bidders come forward, a competitive tender is required. In the absence of other bidders, the PPP or concession agreement may be concluded without a tender.

There are special rules regarding the participation of foreign companies in Russian PPP and concession projects. As a general rule, foreign companies are allowed to participate in concession agreements, with the exception of projects related to utilities or military infrastructure, but only Russian companies can participate in PPP agreements. However, these restrictions are not applicable to Russian subsidiaries of foreign companies registered as Russian legal entities.

What's Next?

Russia's PPP and concession laws are constantly developing to make such projects more attractive to investors and financing organizations. There are currently a large number of proposed amendments aimed at further improving the PPP and concession legislation, including the aforementioned draft law on IT-related projects. The Russian President also announced a new mechanism, called an “infrastructure mortgage,” which would allow the full compensation for the investments of the private partner or concessionaire by the public partner or grantor. The specifics of this mechanism are still being developed and discussed by the authorities. The Russian Ministry of Economic Development has also prepared and announced a massive set of upcoming amendments to the PPP and concession legislation to further increase its attractiveness to investors.

Leading Russian banks like Gazprombank, VTB, and Sberbank are very active in initiating and financing PPPs and concessions, and they have built up teams and departments to focus on such infrastructure projects. So far, these banks remain the leaders in PPPs and concessions in Russia, at least on the federal and regional levels. However, this situation is changing and local construction and operations companies, which historically operated based on classic public procurement mechanisms, are starting to take a more proactive position and increase their competencies in order to take a more leading role in the PPP and concessions market in Russia.

Karina Chichkanova, Partner, Dentons Russia

SERBIA



Private-Public Infrastructural Development of Construction Land



Milan Dakic

Implementation of large-scale real estate development projects almost always requires the simultaneous development of new or upgrades to existing public infrastructure necessary for the unimpeded use of the main project. Back in the old days, real estate development projects suffered, from time to time, from slow

public infrastructure development since the relevant public authorities either had no interest in or had no available funds to develop the missing infrastructure.

Serbia's Planning and Construction Act has provided investors with the opportunity to participate in the development of public infrastructure needed for their projects such as roads, public lighting, and water and sewerage networks. To achieve this, they can conclude an agreement with the municipality (or competent municipal public company) and agree on, *inter alia*, which works and designs the investor will procure, and what value the municipality will attribute to them. These agreements escape the rigid PPP and public procurement procedures.

In order to conclude such an agreement, the investor needs to submit a proposal for financing the public infrastructure development to the municipality, and the municipality must respond to it within 15 days. If the municipality accepts the proposal, the investor and the municipality need to conclude an agreement containing elements specified in the law.

Benefits for the investors in such arrangements are manifold. For one thing, such agreements escape the generally applicable and quite strict public procurement and public-private project procedures, thus significantly shortening the time required to commence work. For another, the investor takes control of the designing and development of the public infrastructure (of

course, subject to the municipality's approvals and supervision rights), thus securing itself the luxury of knowing when the relevant land will have the required level of infrastructural development that would enable it to implement its projects. This further allows the investor to retain an important level of control over the quality of work on the public infrastructure, which is one of the prerequisites for the proper use of its future project.

Finally, the value of the work and designs provided under such an arrangement (to the extent recognized by the municipality) would be set off against the development fee owed to the municipality – thus giving the investor a sense that the development fee is actually being invested in the development of public infrastructure that the investor, who is paying for it, can actually see and utilize.

Practice has also shown several points investors should be aware of if they opt for developing the required public infrastructure in this manner.

First, if the investor spends more money on infrastructural development than the municipality has agreed on, it will not be able to claim back any extra money nor set off such extra money against the development fee.

Second, the municipality retains a significant amount of involvement and control over the process: designs have to be approved by it, agreements with contractors require its sign-off, work is overseen by its supervisory body, the investor is in general required to cooperate with it, and so on.

In addition, the lack of public auctions and transparency in this procedure increases the risk that the municipality/public company could impose its favored contractor on the investor for the purpose of public infrastructure development – potentially exposing the investor to corrupt activities.

Finally, since the agreement is concluded at an early stage of the process, the value of work and designs will most probably be an estimate, meaning that annexes to the agreement would be required at some point. This opens up space for stalling and additional dependency on the municipality's will, which is an unwanted uncertainty for any investor.

All in all, the option of joint infrastructural development can be seen as a *sui generis* public-private co-operation model, one that is already providing results in practice, both in Belgrade and in other areas of the country. As an outcome, investors, the municipality, and the general public can enjoy the benefits of this model, since they all get the new infrastructure they need in a much faster and investor-friendly manner. However, investors need to be extremely cautious when implementing this model, because if the risks are not properly weighed and managed the negative impacts may overwhelm the positive ones.

Milan Dakic, Partner, BDK Advokati

UKRAINE



Ukrainian Sea Ports Attract Investors



Oleksandr Kurdydyk

The Ukrainian government has declared its intention to implement the success story of European countries in the sphere of public-private partnerships. In order to implement those ambitious plans the government has established a Project Office for PPP to work closely with international investors and lobby for relevant

legislative improvements.

Although it is too early to describe the efforts of the Ukrainian government related to PPP projects as a major success, some steps in the right direction have already been taken.

The most important recent development in Ukrainian legislation is the draft “On Concessions” law that was prepared with the involvement of international consultants to replace the few outdated laws on concessions that exist now. The new law would provide for an appropriate allocation of risks between the public and private sectors, simplify the tender procedure, and provide financing institutions the right to change the project company. In addition, the law would fill in gaps in legislation regarding land plot allocation issues and unify the rules for all types of concession projects (such as roads or concession in the sphere of public services).

However, since the adoption of the new law on concessions is still in progress, investors are encouraged to initiate their investment projects based on the lease of state property. Although the lease mechanism is simple and well-tested, it has a number of drawbacks. In particular, a lease agreement would not provide for a correlation between rent payments and the investor’s results of commercial activities. Therefore, for existing investors not satisfied with their lease agreements, the draft law envisages the transformation of a lease into a concession. Unfortunately, that transformation is not going to be automatic and would require the cooperation of various authorities — which could potentially block the process at any stage.

The results of the draft law’s implementation are going to be tested in the field. The government is currently developing

three pilot projects in Ukrainian ports. Particularly, a concession mechanism is planned to be implemented in the Specialized Sea Port Olvia (at the Dnieper-Bug estuary), the Commercial Sea Port Kherson, and the Ferry Terminal in the Sea Commercial Port of Chornomorsk. The Ukrainian government expects these projects to attract USD 300 million in investments in the modernization of existing port infrastructure, as well as in the development of new assets (for example, there is a plan to construct a grain terminal and oil-extracting factory in the Specialized Sea Port Olvia). The preparation and implementation of these projects is supported by International Finance Corporation and the European Bank for Reconstruction and Development.



Kateryna Soroka

Recently, the Ukrainian government has also made a number of institutional transformations and changes. For example, 2018 began with the establishment of the Maritime Administration by the Cabinet of Ministers of Ukraine (CMU), which is expected to function as a central office in the maritime sphere and coordinate the work of Ukrainian sea ports, ensure the safety of maritime navigation, and ensure international cooperation. The Ukrainian Sea Ports Authority has already been created to manage strategic infrastructural objects and facilities in the seaports.

Government officials have announced plans to build a new “Silk Road,” starting in Ukrainian ports and going through Georgian ports, then Baku and Kazakhstan, to China. With those plans comes the understanding that the port duties in Ukrainian ports should be competitive. Therefore, on January 1st, 2018 the CMU reduced port duties by 20%. However, even after this reduction, the amount of port duties to be paid is very high compared to other ports in the Black Sea region.

The Ukrainian government’s changes are not limited to sea ports, and there are a lot of projects in other infrastructure sectors as well. For example, the construction of the first Ukrainian toll road is being prepared and developed by Ukrainian authorities, and at the end of February the Ukrainian Parliament approved legislative changes simplifying the procedure of concession in the sphere of roads.

Although all these tasks are challenging for the Ukrainian government, the Ministry of Infrastructure would like to implement a very high-flying project. Volodymyr Omelian, the Minister of Infrastructure of Ukraine, announced that the country would like to build a platform for Hyperloop testing. Should these ambitious plans materialize, relevant changes to legislation may be expected.

*Oleksandr Kurdydyk, Partner, and Kateryna Soroka, Of Counsel,
DLA Piper Ukraine*

WE ARE YOUR CLEAR CHOICE

focus on clients

commitment to performance



C/M/S/

Law . Tax

CMS tops M&A rankings again

2016 was another outstanding year for CMS' Corporate/M&A group, with excellent M&A rankings across Europe by deal count. With over 300 deals CMS advised on more transactions than any other law firm in Europe.

#1 in CEE
in Europe
in France
in Germany*
in UK

source: Bloomberg, *Bloomberg, Mergermarket and Thomson Reuters

Your World First
cms.law