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# CEE Legal Matters

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

# EDITORIAL: PLAYGROUND EMAILS

**By Radu Neag**

Maybe I'm still new at this – but emails are one of those activities that still take up an inordinate amount of my time. I'm particular about writing them. I agonize over tone (am I being too familiar?) and clarity (did I get my point across?) and length (am I taking too much of their time?). Most of all, I'm actively trying not to be an asshole.

As always, it's the little things that make it or break it. If I'm writing to someone in the office, asking for this file, that photo, or the other update – I'm asking kindly but, in essence, I'm issuing an order. It pays to be polite, ask kindly, and say "please." Still, I take it as a given that my ask will be delivered, and soon. So, I can also end my email by saying "thank you."

Conversely, when writing to outside partners and contributors or staff, I'm genuinely asking for something. I'm not ordering them around, as they're not mine to manage. My "Can you please send in your stuff by Monday, COB?" question is an actual question. I can't objectively rely on the stuff being delivered, or it being delivered on time. Though, mercifully, it usually is.

In this context, ending my email with a "thank you" is, I feel, thoroughly impolite. It implies I have the full expectation of my ask being met, and on time. It essentially turns my ask into an order, again, where I have no business issuing such orders.

And still I persevere. Before hitting send on each email, I cross my Ts and dot my Is. Was I clear? Was I brief? (I fail this one frequently) Was I just familiar enough? Did I say "please" and "thank you?" Was I really supposed to say thank you? Or does that make me a jerk? And while I'm getting better at these on-the-fly evaluations, and they're happening much quicker, the amount of time those take is not zero.

So imagine my surprise (shock and awe and mouse thrown across the room) when my carefully curated email etiquette meets playground emails – these don't happen a lot, but they do happen with disturbing frequency. What are playground emails you ask? I'll tell you: they're those emails where all the above form concerns don't apply. And they're those emails where content concerns don't apply, either. So, if matter and manner are no issue, what are those emails even about?

Well, they're essentially a playground fight – with the protagonists varying in age between eight and thirteen – all through email. They're full of veiled insults, little jabs, roundabout threats, and quite direct orders – or name-calling, actual jabs, groin kicks, or the occasional left hook. They also include hair pulling, clawing, and biting. Sometimes a rock thrown through a window. And they usually end with a strongly worded "thank you." To make sure you'd understand you're being ordered around.

You probably know the emails I'm talking about. You sometimes see them coming and sometimes you're taken aback. Kinda like that left hook. They come from lawyers, and law firms and their staff – but then again, those are literally all the people I work with. And, every time, I remind myself why (I thought) we'd left playground fights behind: nobody really escapes unharmed, they're poor form (less clean shots, more rolling around on the ground), and – because there are no refs and no points system – both sides will always think they've won.

And while those reasons might, contextually, not always apply – if I'm annoyed enough, I might not care about a bloody nose or mud on my knees – there's always one overarching argument to avoid playground emails like the plague: I don't have time for this shit. ■

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**Letters to the Editors:**

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

# GUEST EDITORIAL: LAWYERING AT THE EDGE OF LEGAL LANDSCAPE TRANSFORMATION

**By Sabina Lalaj, Local Legal Partner, Deloitte Legal Albania & Kosovo**

The legal landscape has changed remarkably since 2008 when I made the jump from being an in-house lawyer at the Central Bank of Albania to a legal associate at a law firm. At the time, for a lawyer working in two small-sized non-EU countries such as Albania and Kosovo, work was predominantly focused on the local markets, with no or little exposure to international activities. This started to change as the CEE region became more attractive to foreign investors, who were looking at opportunities often spread across several countries. The legal work in M&A, privatization processes, and energy investments often involved teams from various law firms, both in CEE and in Western Europe or the US, and was my gateway to gaining knowledge of the regional market and understanding the space for growth there.

Almost 15 years later, looking back, I am amazed by the development of legal practice in the CEE region. However, in the last decade, important changes have shaken – in a positive way, I would dare say – the legal market worldwide, not only in CEE.

One of the most important shifts I see is that of market participants. Over the years, we have witnessed reputable partners and teams changing firms, new firms being created, and international players reducing their presence in the region and pulling out of certain markets. In addition, the law firms associated with the Big Four have thrived and set up a firm footprint. As a reaction to market consolidation, the networks of small independent local firms are on the rise. Such organizations have been more and more active, aiming to establish an efficient network across the region, to ensure they can represent clients in multiple geographies.

In addition, technology has impacted nearly every aspect of our lives – both private and business – and has changed the way we work with each other and with our clients. COVID-19, despite its dark side, further accelerated the development and application of technology solutions in legal practice. Cooperation across borders became more feasible and effective, making national borders less significant. New working models such as virtual secondments, staff exchange, cross-country assignments and teams have emerged and are here to stay. More Western European companies are looking at the region as a suitable location for their shared services centers. These developments have made it easier for lawyers in smaller jurisdictions to gain international exposure and access to knowledge and assignments.

Changing clients' needs are another significant factor reshaping lawyering, globally. Clients today are more focused on tailored multi-disciplinary solutions that address the complex business challenges they face. Companies have easier access to global opportunities and work more often across borders to achieve growth. This has made it critical for law firms to be able to offer an international perspective and support clients in their cross-border activities. In addition, company leaders are looking at ways to utilize data-driven insights and gain efficiencies through technology. For the legal practice – technology has come to stay – and I expect that clients' needs for innovative solutions will continue to grow.

Finally, the political arena has a significant impact on cooperation across the CEE legal market. With the EU expansion towards the southern part of Europe, cross-border cooperation in CEE will see a boost, as the new candidate countries and those soon-to-be candidates will be in need of experienced legal advice from countries that have recently walked the same path.

15 years after I started my journey in private practice, I see the market has undergone a tremendous positive change. Legal professionals, especially the younger ones, enjoy many opportunities for professional growth, different career paths within the legal sector, and cross-border experience. Beyond the traditional areas of M&A, privatizations, PPPs, and real estate investments, new areas such as digital, AI, environment, and new financial products attract the interest of legal professionals and offer opportunities for development, nationally and internationally.

I am truly glad and thrilled to be part of, and witness firsthand, these transformative years for the legal market in CEE and I am excited about the future of the legal profession in a more interconnected and technologically advanced landscape. ■

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# ACROSS THE WIRE: DEALS AND CASES

| Date Covered | Firms Involved | Deal/Litigation | Value | Country |
|---|---|---|---|---|
| 27-Jul | Bird & Bird; Boga & Associates; Kalo & Associates; White & Case | Bird & Bird advised Hungary's OTP Bank Group on its acquisition of the Albanian subsidiary of Greek Alpha Bank for EUR 55 million. White & Case advised Alpha Services and Holdings. Boga & Associates reportedly advised OTP as well. Kalo & Associates reportedly also advised Alpha. | EUR 55 million | Albania; Greece; Hungary |
| 20-Jul | E+H; EY Law (Pelzmann Gall Gross) | E+H advised the joint venture of STC Development and RoomBuus Baudienstleistungs on the development and sale of the Linz High Five lighthouse project to the Zentral Boden Immobilien Group. EY Law's Pelzmann Gall Groess Rechtsanwalte advised ZBI. | N/A | Austria |
| 21-Jul | Allen & Overy; CMS; Cuatrecasas; Dorda; E+H; Freshfields; Gleiss Lutz; Latham & Watkins; Morgan Lewis; Noerr; Schoenherr; Weil, Gotshal & Manges | Dorda and Allen & Overy advised the DigitalBridge Group on its joint acquisition with Brookfield Infrastructure and its institutional partners of a 51% stake in GD Towers from Deutsche Telekom. E+H and Latham and Watkins advised the bidding consortium of GIP, KKR, and Stonepeak. Reportedly, Morgan Lewis also advised DigitalBridge, Freshfields and Weil Gotshal & Manges advised Brookfield Infrastructure, while, on the sell side, Gleiss Lutz, Noerr, CMS, Schoenherr, Cuatrecasas, and Freshfields advised Deutsche Telekom on the deal. | N/A | Austria |
| 22-Jul | Baer & Karrer; Bowmans; Brandl Talos; Webber Wentzel | Brandl Talos advised Sportradar Group AG on the formation of a joint venture with Ringier AG. Reportedly, Bowmans and Baer & Karrer also advised the Sportradar Group, and Webber Wentzel advised Ringier on the deal. | N/A | Austria |
| 22-Jul | Herbst Kinsky; Watson Farley & Williams; Wiener Advocatur Bureau | Herbst Kinsky, working with Watson Farley & Williams' Munich office, advised software and IT service provider Mait on its acquisition of enterprise resource planning specialist Nittmann & Pekoll. The Wiener Advocatur Bureau reportedly advised sellers Christian Nittmann and Angelika Pekoll-Sarica. | N/A | Austria |
| 25-Jul | Schoenherr | Schoenherr advised Austria's Altstoff Recycling on a cooperation agreement for the construction of a new sorting plant in Upper Austria with Duales System Deutschland and Bernegger. | N/A | Austria |
| 27-Jul | Schoenherr | Schoenherr advised Red Bull on the establishment of a joint venture with Van Deer-Red Bull Sports Equipment founding shareholders Marcel Hirscher and Dominic Tritscher and the subsequent acquisition of Augment Ski by Van Deer-Red Bull Sports Equipment. | N/A | Austria |
| 3-Aug | Brandl Talos | Brandl Talos advised Kiprion on registering as a virtual currency service provider before the Austrian Financial Market Authority. | N/A | Austria |
| 8-Aug | Herbst Kinsky; Schoenherr | Herbst Kinsky advised Helu.io on its USD 10 million Series A financing round led by CommerzVentures, with the participation of Iris Capital and early-stage investor Speedinvest. Schoenherr advised CommerzVentures. | USD 10 million | Austria |
| 9-Aug | E+H; SCWP Schindhelm | E+H advised German real estate investor KanAm Grund Group on the purchase of the last-mile logistics hall Cross Dock Upper Austria in Enns near Linz from the Meir Immobilien Group. SCWP Schindhelm advised the sellers on the deal. | N/A | Austria |

| Date Covered | Firms Involved | Deal/Litigation | Value | Country |
|---|---|---|---|---|
| 15-Aug | BKP Brauneis Klauser Praendl; E+H | E+H advised Zeta Holding on establishing the Eridia joint venture with Buehler. Brauneis Klauser Praendl advised Buehler on the deal. | N/A | Austria |
| 21-Jul | Tokushev and Partners | Tokushev and Partners advised on Bee Smart Technologies' initial public offering of shares on the Beam growth market of the Bulgarian Stock Exchange. The First Financial Brokerage House acted as lead broker on the deal. | BGN 1.2 million | Bulgaria |
| 2-Aug | Djingov, Gouginski, Kyutchukov & Velichkov; Schoenherr | Djingov Gouginski Kyutchukov & Velichkov advised Unicredit Bulbank, DSK Bank, and United Bulgarian Bank on their approximately EUR 160 million financing for Maxcom, Chipolino, and Maxbike. Schoenherr advised guarantor EBRD on the financing. | EUR 160 million | Bulgaria |
| 3-Aug | CMS | CMS successfully advised Shell Energy Europe on obtaining a license for trading natural gas in Bulgaria. | N/A | Bulgaria |
| 9-Aug | Tokushev and Partners | Tokushev & Partners advised public listed company Sofia Commerce Pawn Shops on increasing its capital with own funds in the amount of BGN 7.12 million. | BGN 7.12 million | Bulgaria |
| 26-Jul | Divjak Topic Bahtijarevic & Krka | Divjak Topic Bahtijarevic & Krka advised Merkur Osiguranje on its acquisition of Wustenrot Zivotno Osiguranje. | N/A | Croatia |
| 1-Aug | Karanovic & Partners (Ilej & Partners); Marohnic Tomek & Gjoic | Ilej & Partners, in cooperation with Karanovic & Partners, advised Enlight Renewable Energy on the acquisition and joint development of a 525-megawatt renewable energy project portfolio in Croatia. Marohnic Tomek & Gjoic advised the sellers. | N/A | Croatia |
| 9-Aug | Buterin & Partners; Karanovic & Partners (Ilej & Partners) | Ilej & Partners, in cooperation with Karanovic & Partners, advised Chiron Group on its acquisition of Croatia-based HSTEC. Buterin & Partners advised HSTEC on the deal. | N/A | Croatia |
| 19-Jul | BDV Legal; Bojovic Draskovic Popovic & Partners | Batarelo Dvojkovic Vuchetich and Bojovic Draskovic Popovic & Partners advised Infobip on its acquisition of Netokracija. | N/A | Croatia; Serbia |
| 19-Jul | Kocian Solc Balastik | Kocian Solc Balastik advised British architecture firm William Matthews Associates on the agreements for the new Prague headquarters project for Sprava Zeleznic, the Czech National Railway Administration. | N/A | Czech Republic |
| 21-Jul | Havel & Partners | Havel & Partners, working with Jones Day, advised T-Mobile on European Commission proceedings relating to a potential restriction of competition. | N/A | Czech Republic |
| 21-Jul | Kocian Solc Balastik | Kocian Solc Balastik advised arranger J&T IB Capital Markets on J&T Banka's issuance of subordinated unsecured income certificates without a maturity date. | EUR 100 million | Czech Republic |
| 26-Jul | Weinhold Legal | Weinhold Legal advised Siemens Healthcare on the disposal of its full ownership interest in Meomed to Meopta. | N/A | Czech Republic |
| 28-Jul | Kocian Solc Balastik | Kocian Solc Balastik advised Prazska Plynarenska on obtaining financing from banks and the Prague municipality to build up its gas reserves for the winter. | N/A | Czech Republic |
| 4-Aug | Kinstellar; Noerr | Noerr advised Espira on the sale of Icon Communication Centres to Youmday. Kinstellar advised the buyer. | N/A | Czech Republic |
| 5-Aug | Luther; Mayer Brown; PRK Partners | PRK Partners, working alongside Luther, advised the shareholder of the I.G. Bauherin Group on its sale to US automotive supplier Lear Corporation. Mayer Brown reportedly advised the Lear Corporation. | N/A | Czech Republic |
| 5-Aug | Glatzova & Co; Kocian Solc Balastik | Kocian Solc Balastik advised Ronaldsay on the sale of Hampshire Green Point to Wood & Company. Glatzova & Co advised the buyers on the deal. | N/A | Czech Republic |
| 8-Aug | PRK Partners | PRK Partners advised SCS Software on relocating its Prague headquarters to the Roztyly Plaza project. | N/A | Czech Republic |
| 8-Aug | Kocian Solc Balastik | Kocian Solc Balastik advised Taiwan's Yeong Chin Machinery on the acquisition of a majority stake in Trimill. | N/A | Czech Republic |

| Date Covered | Firms Involved | Deal/Litigation | Value | Country |
|---|---|---|---|---|
| 10-Aug | Havel & Partners; Rowan Legal; Svoboda & Koubkova | Havel & Partners advised IF Invest East on the acquisition of the Ostrava Airport Multimodal Park from Concens Investments. Rowan Legal and, reportedly, Svoboda & Koubkova advised the sellers. | N/A | Czech Republic |
| 10-Aug | Hartmann, Jelinek, Frana and Partners; JSK | JSK advised Komercni Banka group company KB SmartSolutions on the acquisition of Enviros. Hartmann Jelinek Frana and Partners reportedly advised the seller. | N/A | Czech Republic |
| 11-Aug | KPMG Legal; PwC Legal | PwC Legal advised VDV Packaging on its acquisition of Unipap. KPMG Legal advised the sellers. | N/A | Czech Republic |
| 12-Aug | Kocian Solc Balastik | Kocian Solc Balastik advised J&T Zemedelstvi a Ekologie on its acquisition of the Poline agribusiness. | N/A | Czech Republic |
| 15-Aug | Clifford Chance | Clifford Chance successfully defended Czech steel and rail manufacturer Moravia against claims for antitrust damages before Frankfurt Regional Court. | N/A | Czech Republic |
| 28-Jul | Dentons; Kirkland & Ellis | Dentons advised private investment firm B-Flexion and the Affidea Group on the sale of Affidea to Groupe Bruxelles Lambert. Kirkland & Ellis reportedly advised the buyer. | N/A | Czech Republic; Hungary; Poland; Romania; Turkey |
| 26-Jul | JSK; Solivan Pontes | JSK and Solivan advised Topforsport on its acquisition of shares in Eleven Teamsports Polska from Robert Julga. | N/A | Czech Republic; Poland |
| 12-Aug | Kinstellar; Kinstellar (Gen Temizer Ozer); Norton Rose Fulbright (Pekin Bayar Mizrahi); Skils | Kinstellar and its Turkish affiliate Gen Temizer Ozer advised Baskent Dogalgaz Dagitim and Torunlar Enerji on their acquisition of CEZ Group's 50% stake in Akcez Enerji. Skils and, reportedly, Norton Rose Fulbright Turkish affiliate Pekin Bayar Mizrahi advised the CEZ Group on the sale. | N/A | Czech Republic; Turkey |
| 19-Jul | PwC Legal | PwC Legal advised the eAgronom start-up on the spin-off transaction of blockchain-based carbon credit trader Solid World DAO, as a decentralized autonomous organization. | N/A | Estonia |
| 20-Jul | PwC Legal | PwC Legal Estonia successfully represented the interests of Espak Ehitustood in a construction contracts dispute. | N/A | Estonia |
| 21-Jul | Sorainen | Sorainen successfully represented Kirsti Valdstein-Timmer in litigation proceedings regarding the publishing of incorrect facts and statements in media by Ekspress Meedia and former Kroonika journalist Vahur Joa. | N/A | Estonia |
| 22-Jul | PwC Legal | PwC Legal advised the Wolf Group on the issuance of non-fungible tokens. | N/A | Estonia |
| 11-Aug | Sorainen | Sorainen advised Estonian health technology company Antegenes on raising EUR 2.3 million in funding. | EUR 2.3 million | Estonia |
| 15-Aug | TGS Baltic | TGS Baltic advised two of Kilo Health's shareholders on selling a minority stake in the company to Scandinavian and Estonian funds. | N/A | Estonia |
| 28-Jul | Bernitsas; Zepos & Yannopoulos | Bernitsas Law advised Hoist Finance on the acquisition of a portfolio of unsecured non-performing loans with a total gross book value of approximately EUR 400 million from Alpha Bank. Zepos & Yannopoulos advised Alpha Bank. | N/A | Greece |
| 10-Aug | Lambadarios Law Firm; Norton Rose Fulbright | The Lambadarios law firm advised Hellenic Petroleum on its EUR 90 million acquisition of a 55.2-megawatt portfolio of operating wind farms in Mani from the Copelouzos Group and International Constructional. Norton Rose Fulbright reportedly advised the sellers. | EUR 90 million | Greece |
| 18-Jul | TGS Baltic | TGS Baltic advised the City Development Company on its sale of four real estate properties in Riga to Estmak Capital group company Riga Properties 3. | EUR 6.5 million | Latvia |

| Date Covered | Firms Involved | Deal/Litigation | Value | Country |
|---|---|---|---|---|
| 22-Jul | Sorainen | Sorainen represented Primekss in a composite concrete flooring-related patent dispute. | N/A | Latvia |
| 25-Jul | Sorainen | Sorainen advised Ipas Indexo on the development and implementation of a share option plan for the management and employees of the company. | N/A | Latvia |
| 29-Jul | Cobalt | Cobalt successfully ensured the dismissal of bodily harm charges filed against Latvian journalist Olga Dragileva. | N/A | Latvia |
| 1-Aug | Cobalt | Cobalt advised plywood producer Latvijas Finieris on the investment project for the expansion of its RSEZ SIA Verems production facility in the Rezekne district. | EUR 67 million | Latvia |
| 8-Aug | Cobalt; Eversheds Sutherland | Cobalt advised Coffee Address Holding on its EUR 5 million unsecured bond issuance. Eversheds Sutherland Bitans advised on collateral agent matters and undertook collateral agent functions for the term of the bonds. Signet Bank was the arranger of the issuance. | EUR 5 million | Latvia |
| 10-Aug | Sorainen | Sorainen provided pro bono legal assistance to Aswell on setting up the terms and conditions for the corporate application users. | N/A | Latvia |
| 21-Jul | Cobalt; Ellex; TGS Baltic | Cobalt advised Norwegian technology company Kongsberg Defense & Aerospace on the acquisition of the Lithuanian small satellite manufacturer NanoAvionics. TGS Baltic advised NanoAvionics founders Vytenis Buzas and Linas Sargautis who, together with AST & Science, sold NanoAvionics. Ellex advised AST & Science. | N/A | Lithuania |
| 22-Jul | Cobalt; Triniti | Cobalt advised Bewi on its acquisition of the Lithuanian insulation company UAB Baltijos Polistirenas. Triniti advised the sellers on the deal. | N/A | Lithuania |
| 25-Jul | Cobalt; Motieka & Audzevicius | Cobalt advised Asgaard Oriens on its investment in a vertical farm in Lithuania co-developed by the Leafood Group. Motieka and Audzevicius advised the Leafood Group. | N/A | Lithuania |
| 25-Jul | Cobalt; Mayer Brown; Sorainen | Cobalt, working with Mayer Brown, advised Aurelius on the acquisition of McKesson UK. Sorainen advised the seller. | N/A | Lithuania |
| 26-Jul | Averus | Averus advised American fund X5 TG Acquisition Co on its acquisition of a Lithuanian IT company. | N/A | Lithuania |
| 26-Jul | Cobalt; Walless | Cobalt advised Practica Capital on its investment in a wellness and rehabilitation center in Druskininkai operated by UAB Upa MCT. Walless advised UAB Upa MCT. | N/A | Lithuania |
| 29-Jul | Deloitte Legal; JBLaw; NautaDutilh | Deloitte Legal advised Quadrum Capital on its acquisition of The IT Channel Company from NPM Investments XIII via its subsidiary DTNQ. Reportedly, JBLaw advised DTNQ on the deal. Nautadutilh reportedly advised NPM Capital. | N/A | Lithuania |
| 2-Aug | BNT Attorneys | BNT Attorneys in CEE advised Aros Marine on the insolvency proceedings of Germany's MV Werften group. | N/A | Lithuania |
| 4-Aug | Fort; Walless | Fort Legal advised Eften Capital on the acquisition of the Talino real estate project from Rewo. Walless advised the seller. | N/A | Lithuania |
| 5-Aug | Gernandt & Danielsson; Hengeler Mueller; Noerr; Roschier | Noerr advised Rebelle as the target company of a public takeover offer made by Lithuania's Vinted. Gernandt & Danielsson reportedly also advised Rebelle. Roschier and Hengeler Mueller reportedly advised Vinted. | N/A | Lithuania |
| 15-Aug | Cobalt | Cobalt advised Braitin on its acquisition of the Prie Vilneles project in Markuciai from developer Realco. | N/A | Lithuania |
| 15-Aug | Motieka & Audzevicius; Noor | Motieka & Audzevicius advised Orbio World on the acquisition of Neorus from Ingrida Cerniauskaite. Noor advised the seller on the deal. | N/A | Lithuania |
| 9-Aug | Vukovic & Partners | Vukovic & Partners advised ODM Collections on obtaining a purchase of receivables work license from the Central Bank of Montenegro | N/A | Montenegro |

| Date Covered | Firms Involved | Deal/Litigation | Value | Country |
|---|---|---|---|---|
| 15-Aug | ODI Law | ODI Law advised Cine Grand on its long-term lease agreement with the East Gate Mall for a 3,000 square-meter space for operating a cinema within the mall in Skopje. Reportedly, solo practitioner Zekir Zekiri advised the lessor. | N/A | North Macedonia |
| 18-Jul | Dentons; Rymarz Zdort | Rymarz Zdort advised the Play Group on its acquisition of a 92.5% stake in Redge Technologies from Custodia Capital. Dentons reportedly advised Custodia. | N/A | Poland |
| 18-Jul | Ostrowski and Partners; Sobczynscy i Partnerzy | Sobczynscy i Partnerzy advised Pozdental on the sale of the enterprise to Tar Heel Capital's Dentity Group and on establishing corporate governance in Pozdental. Ostrowski i Wspolnicy advised the buyer. | N/A | Poland |
| 19-Jul | Gide Loyrette Nouel; Philippi Prietocarrizosa Ferrero DU & Uria | Gide Loyrette Nouel's Warsaw office advised subsidiaries of KGHM International on the sale of their shares in Sociedad Contractual Minera Franke – which owns the Franke mine in Chile – to Minera Las Cenizas. Philippi Prietocarrizosa Ferrero DU & Uria reportedly advised the buyer. | N/A | Poland |
| 20-Jul | Clifford Chance; KKMP; Soltysinski Kawecki & Szlezak | Soltysinski Kawecki & Szlezak advised the Alternus Energy Group on its PLN 750 million acquisition of a 184-megawatt photovoltaic farm portfolio from Famur Group company Projekt Solartechnik. Clifford Chance and, reportedly, KKMP advised the seller. | PLN 750 million | Poland |
| 21-Jul | Clifford Chance; Linklaters | Clifford Chance advised BNP Paribas Bank Polska and Santander Bank Polska on the financing for Pad Res group's photovoltaic farm in Genowefa. Linklaters advised the Pad Res group. | N/A | Poland |
| 22-Jul | Partners You Trust; Think Legal | Partners You Trust advised EEC Magenta on a PLN 10 million investment in SmokeD. Think Legal Kopinski i Wspolnicy advised SmokeD. | PLN 10 million | Poland |
| 22-Jul | Soltysinski Kawecki & Szlezak; Wardynski & Partners | Wardynski & Partners advised the Lars Larsen Group on Polish aspects of the sale of Garia and its subsidiary Melex to Club Car. Soltysinski Kawecki & Szlezak advised Club Car. | N/A | Poland |
| 22-Jul | Greenberg Traurig; Linklaters | Linklaters advised the Garbe Industrial Real Estate fund Garbe Logistics Real Estate Fund Plus III on its EUR 650 million acquisition of a logistics properties portfolio. Greenberg Traurig advised the seller. | EUR 650 million | Poland |
| 25-Jul | Gessel | Gessel advised Cavatina Holding on its PLN 60 million public offering of P2022B and P2022C series bonds. | PLN 60 million | Poland |
| 25-Jul | Linklaters; Norton Rose Fulbright | Norton Rose Fulbright advised a consortium of banks that included Powszechna Kasa Oszczednosci Bank Polski, Bank Polska Kasa Opieki, CaixaBank, Bank Handlowy w Warszawie, Erste Group Bank AG, Industrial and Commercial Bank of China, Santander Bank Polska, and China Construction Bank on the PLN 4 billion sustainability-linked financing for Tauron Polska Energia. Linklaters advised Tauron Polska Energia. | PLN 4 billion | Poland |
| 26-Jul | Krzysztof Rozko i Wspolnicy; Roedl & Partner; Soltysinski Kawecki & Szlezak | Soltysinski Kawecki & Szlezak advised AniCura on its partnership with Legwet Calodobowa Klinika Weterynaryjna. Krzysztof Rozko i Wspolnicy advised Legwet. Roedl & Partner reportedly also advised AniCura. | N/A | Poland |
| 27-Jul | Answer Wojciechowski i Partnerzy; WKB Wiercinski Kwiecinski Baehr | Wiercinski Kwiecinski Baehr advised Polskie ePlatnosci on the acquisition of a majority stake in Team4U. Answer Wojciechowski i Partnerzy advised the seller. | N/A | Poland |
| 28-Jul | Moskwa Jarmul Haladyj i Wspolnicy | Moskwa Jarmul Haladyj advised the owners of Klonex-VCS on the sale of the company to the ETC Group. | N/A | Poland |
| 28-Jul | Clifford Chance; Greenberg Traurig | Greenberg Traurig advised the Polsat Plus Group on the joint venture agreement between its affiliates and HB Reavis and the EUR 24.3 million sale of 50% stakes in Port Praski City II and Port Praski Medical Center to HB Reavis. Clifford Chance advised HB Reavis. | EUR 24.3 million | Poland |

| Date Covered | Firms Involved | Deal/Litigation | Value | Country |
|---|---|---|---|---|
| 29-Jul | Deloitte Legal; Norton Rose Fulbright | Norton Rose Fulbright advised a consortium of banks including Santander Bank Polska and Bank Ochrony Srodowiska on a financing for Bakalland. Deloitte Legal reportedly advised Bakalland on the deal. | N/A | Poland |
| 29-Jul | Wardynski & Partners | Wardynski & Partners represented an OKO.Press journalist before the Supreme Administrative Court of Poland in a case concerning press access to a session of parliament. | N/A | Poland |
| 1-Aug | MFW Fialek | MFW Fialek advised Develia on forming a joint venture with corporate venture-builder company The Heart to develop a flat rental management platform. Solo practitioner Jakub Koziol advised The Heart. | N/A | Poland |
| 1-Aug | SSW Pragmatic Solutions; Viroux and Partners | SSW Pragmatic Solutions advised Kom-Eko subsidiary Eko-Azbest on the acquisition of an asbestos landfill site from Srodowisko i Innowacje – Skladowisko, previously spun off from Srodowisko i Innowacje. Reportedly, Viroux and Partners advised the sellers. | N/A | Poland |
| 2-Aug | Gessel | Gessel helped Synthos Green Energy obtain regulatory clearance from the President of the Office of Competition and Consumer Protection for the establishment of the Nuclear Energy International LLC joint venture with GE-Hitachi. | N/A | Poland |
| 2-Aug | Deloitte Legal; Greenberg Traurig | Greenberg Traurig advised the Stock Spirits Group on the acquisition of Polmos Bielsko-Biala. Deloitte Legal advised Polmos Bielsko-Biala on the deal. | N/A | Poland |
| 3-Aug | Taylor Wessing | Taylor Wessing advised the MLP Group on a public bond offering and listing on the Catalyst alternative trading system. Pekao Investment Banking was the issuing agent. | N/A | Poland |
| 8-Aug | Rymarz Zdort | Rymarz Zdort advised Bank Millennium on the consolidation of its brokerage business into the capital group and represented the bank before the Polish Financial Supervision Authority for the extension of its brokerage license. | N/A | Poland |
| 8-Aug | Greenberg Traurig | Greenberg Traurig advised JV partners 7R, MFC Real Estate, and DIL Polska Baumanagement on the sale of the 7R City Flex Warsaw Airport I logistics complex to Macquarie Asset Management. | N/A | Poland |
| 8-Aug | DWF; Linklaters | Linklaters advised Iberdrola on acquiring a 98-megawatt portfolio of wind and solar projects in Poland from Augusta Energy. DWF advised Augusta Energy, a joint venture between GreenVolt subsidiary V-ridium Power Group and KGAL. | N/A | Poland |
| 10-Aug | DWF | DWF advised Zeitgeist Asset Management on its acquisition of the Raclawicka 48 co-living project in Krakow. | N/A | Poland |
| 11-Aug | Deloitte Legal; Wardynski & Partners | Wardynski & Partners advised Bio-Rad Laboratories on its acquisition of Curiosity Diagnostics from Scope Fluidics for a total consideration of up to USD 170 million in upfront and future milestone payments. Deloitte Legal advised Scope Fluidics on the sale. | USD 170 million | Poland |
| 12-Aug | Deloitte Legal | Deloitte Legal advised ZPUE and its main shareholder Koronea on the tender offer for 100% of ZPUE's shares, with mBank as the broker. | N/A | Poland |
| 15-Aug | Gorazda, Swistun, Watroba i Partnerzy; Konieczny Wierzbicki | Konieczny Wierzbicki i Partnerzy advised Van der Vorm Vastgoed on its acquisition of 128 apartment units in Krakow from Quelle Loqum. Gorazda Swistun Watroba i Partnerzy reportedly advised the seller. | N/A | Poland |
| 15-Aug | Brockhuis Jurczak Prusak Sroka Nilsson; Dentons | Dentons advised Nord/LB Norddeutsche Landesbank on its EUR 53 million financing for developer European Energy. Brockhuis Jurczak Prusak Sroka Nilsson advised the borrower. | EUR 53 million | Poland |
| 15-Aug | JDP; Norton Rose Fulbright; Orth Kluth | JDP Drapala & Partners, working with Orth Kluth, advised BestSecret on the lease agreement for a new warehouse and office building to be delivered by Panattoni. Norton Rose Fulbright advised Panattoni. | N/A | Poland |

| Date Covered | Firms Involved | Deal/Litigation | Value | Country |
|---|---|---|---|---|
| 25-Jul | Filip & Company; Maruta Wachta; Masiota; MVVP; Nestor Nestor Diculescu Kingston Petersen; SRG Stock Rafaseder Gruszkiewicz; SSW Pragmatic Solutions | SSW Pragmatic Solutions advised the Avallon MBO PE Fund on the full disposal of its stake in Novo Tech to Isosport Verbundbauteile Gesellschaft of the Constantia Industries group. Masiota and Nestor Nestor Diculescu Kingston Petersen advised the buyers. Filip & Company and MVVP reportedly also advised Avallon. SRG Stock Rafaseder Gruszkiewicz and Maruta Wachta reportedly also advised the buyers. | N/A | Poland; Romania |
| 28-Jul | Konieczny Wierzbicki | Konieczny Wierzbicki & Partners advised on the establishment of the Light and Love Home in Poland and the acquisition of a hostel to support Ukrainian refugees. | N/A | Poland; Ukraine |
| 21-Jul | Popovici Nitu Stoica & Asociatii; Tudorache & Associates | Popovici Nitu Stoica & Asociatii advised Romanian Business Consult on its acquisition of SmartPay Software. Tudorache & Associates reportedly advised SmartPay Software on the deal. | N/A | Romania |
| 21-Jul | Antico & Partners; Filip & Company; Gianni & Origoni | Filip & Company advised the Holcim Group on the acquisition of General Beton Romania. Antico & Partners, working with Gianni & Origoni, advised the seller. | N/A | Romania |
| 27-Jul | Popovici Nitu Stoica & Asociatii | Popovici Nitu Stoica & Asociatii advised Meta Estate Trust on its IPO and listing of shares on the AeRO market of the Bucharest Stock Exchange. The IPO was brokered by the BRK Financial Group. | N/A | Romania |
| 29-Jul | RTPR; Wolf Theiss | Wolf Theiss advised the Sunman Group on its acquisition of Noriel Impex, Intertoy Zone, and Toys & Games Industry from Jonagold CEE Holding. Radu Taracila Padurari Retevoescu advised the sellers on the deal. | N/A | Romania |
| 29-Jul | Reed Smith; RTPR | Radu Taracila Padurari Retevoescu, working with Reed Smith, advised the EBRD on a loan of up to EUR 12.5 million to Dona company Calihory Group. | EUR 12.5 million | Romania |
| 5-Aug | Tuca Zbarcea & Asociatii | Tuca Zbarcea & Asociatii advised Mol Romania on the development, authorization, and opening of two new service stations on the A2 Motorway. | N/A | Romania |
| 5-Aug | Clifford Chance; Filip & Company; Freshfields | Filip & Company advised RCS & RDS and its Digi Spain Telecom subsidiary on a EUR 128 million five-year term loan for investment purposes. Reportedly, Freshfields' offices in Spain and the Netherlands advised RCS & RDS as well. Clifford Chance reportedly advised the financing banks, with Spain's Banco Santander acting as agent. | EUR 128 million | Romania |
| 5-Aug | Zamfirescu Racoti Vasile & Partners | Zamfirescu Racoti Vasile & Partners advised Ana Hotels on a hotel management agreement with international group IHG Hotels & Resorts for the operation of the Athenee Palace hotel under the InterContinental Hotels & Resorts brand starting from 2023. | N/A | Romania |
| 8-Aug | Nestor Nestor Diculescu Kingston Petersen; Popovici Nitu Stoica & Asociatii | Popovici Nitu Stoica & Asociatii advised the Ameropa Group on obtaining a EUR 347 million senior secured multicurrency revolving credit facility from a syndicate of banks including BCR, Raiffeisen, ING, and UniCredit. Nestor Nestor Diculescu Kingston Petersen advised the lenders. | EUR 347 million | Romania |
| 9-Aug | Bondoc & Asociatii; White & Case | Bondoc & Asociatii, working with White & Case, advised the Stabilus Group on a long-term EUR 450 million credit facilities financing. | EUR 450 million | Romania |
| 10-Aug | RTPR | Radu Taracila Padurari Retevoescu advised Aqua Carpatica founder Jean Valvis on the strategic agreement between the company and PepsiCo. | N/A | Romania |
| 12-Aug | Filip & Company | Filip & Company advised Bucharest Stock Exchange-listed One United Properties on its share capital increase. | N/A | Romania |

| Date Covered | Firms Involved | Deal/Litigation | Value | Country |
|---|---|---|---|---|
| 19-Jul | BDK Advokati; Freshfields; Krogerus | Freshfields Bruckhaus Deringer and BDK Advokati advised One Equity Partners on its acquisition of the Fortaco Group from Nordic investor Capman. Reportedly, Krogerus advised One Equity Partners in Finland. | N/A | Serbia |
| 21-Jul | NSTLaw | NSTLaw represented Molson Coors Group members Apatinska Pivara and Trebjesa on obtaining a competition exemption for a distribution agreement of Guinness beer. | N/A | Serbia |
| 25-Jul | Schoenherr | Schoenherr advised Banca Intesa Beograd on providing a EUR 26 million loan to Israeli Big Group company Minel Kotlogradnja Real Estate. | EUR 26 million | Serbia |
| 3-Aug | Zivkovic Samardzic | Zivkovic Samardzic advised Serbia's commercial broadcasters Prva, B92, and Play Radio on obtaining national broadcasting licenses from Serbia's regulatory authority for electronic media. | N/A | Serbia |
| 4-Aug | NKO Partners | NKO Partners advised CTP on yet another acquisition of land in Novi Sad, this time from the City of Novi Sad itself. | N/A | Serbia |
| 11-Aug | Karanovic & Partners; Mcdermott Will & Emery | Karanovic & Partners, working with McDermott Will & Emery, advised Hidden Harbor Capital Partners on its acquisition of Dayco. | N/A | Serbia |
| 12-Aug | Cvjeticanin & Partners | Cvjeticanin & Partners advised Lenovo on the implementation of GDPR rules for its OhrabreNA educational program in Serbia. | N/A | Serbia |
| 1-Aug | Taylor Wessing | Taylor Wessing advised Slovakia's GA Drilling on an EUR 8 million investment from US-based Nabors Industries. | EUR 8 million | Slovakia |
| 28-Jul | ODI Law | ODI Law advised Holding Slovenske Elektrarne on a EUR 350 million cross-border syndicated debt refinancing. | EUR 350 million | Slovenia |
| 19-Jul | Allen & Overy (Gedik Eraksoy); Baker Mckenzie (Esin Attorney Partnership); DLA Piper; YC Law | Esin Attorney Partnership and Baker McKenzie advised the board, principal shareholders, and equity investor Invus on the sale of Airties to Providence Equity Partners. Gedik & Eraksoy and Allen & Overy advised the buyer. YC Law and DLA Piper reportedly also advised the seller. | N/A | Turkey |
| 27-Jul | Moroglu Arseven; Paksoy | Paksoy advised Fedrigoni on its acquisition of Unifol from Birol Cakir and Erkut Cilvez. Moroglu Arseven advised the sellers on the deal. | N/A | Turkey |
| 3-Aug | Guleryuz & Partners; PwC Legal | Guleryuz Partners advised Haver Farma Ilac on its full acquisition of MS Pharma Ilac. PwC Legal reportedly advised the seller. | N/A | Turkey |
| 4-Aug | Paksoy; Yonet Attorneys at Law | Paksoy advised OLX Group's Letgo Otoplus on its acquisition of a 25% stake in Pilot Garage from its founders, the Emre family. Yonet Attorneys at Law advised the sellers. | N/A | Turkey |
| 19-Jul | Avellum; Lexence | Avellum advised the seller on the sale of the Pep Group to Locaria. Lexence reportedly advised the buyer. | N/A | Ukraine |
| 27-Jul | KPD Consulting | KPD Consulting provided legal support to Porsche Ukraine in criminal proceedings seeking the return of automobiles stolen during the occupation of the Kyiv region. | N/A | Ukraine |
| 3-Aug | Asters | Asters successfully defended the interests of PrivatBank before the Supreme Court in a case relating to the bank's nationalization. | N/A | Ukraine |
| 8-Aug | Asters | Asters advised Olson Family Trust Director Chuck Olson prior to and during his visit to Ukraine on the implementation of the first phase of the trust's humanitarian mission. | N/A | Ukraine |

**Legal Ticker:**

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

**Did We Miss Something?**

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

# ON THE MOVE: NEW HOMES AND FRIENDS

### Turkey: Moral & Partners Scoops Up Sertac Kokenek and Rebrands to Moral, Kinikoglu, Pamukkale, Kokenek

**By Radu Cotarcea (July 22, 2022)**

Moral & Partners has announced that former Baker McKenzie Turkey affiliate Esin Attorney Partnership Partner Sertac Kokenek has joined its team as Senior Partner and Head of Advisory. With Partners Efe Kinikoglu and Serkan Pamukkale also elevated to Name Partners, the firm rebranded to Moral, Kinikoglu, Pamukkale, Kokenek Attorney Partnership.

Kokenek had been with Esin since 2010. There, he served as Head of the Employment and Compensation practice and made Partner at the firm in 2021 (as reported by CEE Legal Matters on July 14, 2021). Before Esin, he worked for the Bener Law Office between 2007 and 2009. At Moral, Kinikoglu, Pamukkale, Kokenek he will be leading the Advisory practice, and his areas of focus will be M&A / Private Equity, Corporate, Employment, and Compliance.

Kinikoglu has been with the firm since 2015. Prior to that, he was a Partner with the GSI Law Firm between 2014 and 2015. Earlier still, he worked as a Senior Lawyer with the Cerrahoglu Law Firm, between 2012 and 2014, as a Lawyer with Ozak Global Holding, between 2011 and 2012, as a Senior Lawyer with Avea, between 2010 and 2011, and as a Lawyer with Birsel Law Offices, between 2005 and 2009.

Pamukkale has also been with the firm since 2015 and was promoted to Partner in 2017 (as reported by CEE Legal Matters on August 11, 2017). Before that, he worked at Birsel Law Offices between 1994 and 2014.

"As Moral, Kinikoglu, Pamukkale, Kokenek, we are excited to step towards a bright future, carrying the 55-year-old legacy forward and we can't wait to see what 100 will look like!" commented Managing Partner Resat Moral. ■

### Romania: Bancila, Diaconu si Asociatii Announces Development of Climate Change, Sustainability, and Transportation Practice

**By Teona Gelashvili (July 22, 2022)**

EY-associated firm Bancila, Diaconu si Asociatii has announced that former Ratiu si Ratiu Senior Lawyer Andra Iftemie has joined the firm to develop and coordinate its new Climate Change, Sustainability, and Transportation practice.

Specializing in public procurement, Iftemie previously spent over six years at Ratiu si Ratiu, having first joined as a Junior Lawyer in 2016, and later promoted to Lawyer and Senior Lawyer in 2017 and 2018, respectively. Earlier still, she was a Junior Lawyer with Livescu & Associates from 2015 to 2016.

"It is of great importance for our law firm to continuously improve our service offering," Bancila, Diaconu si Asociatii Director Andrei Stefanovici commented. "Andra joining our team is an example in this respect. We see our clients' increasing interest in ESG and fully understand its importance."

"I am happy to join Bancila, Diaconu si Asociatii to develop the climate change, sustainability, and transportation practice of the firm," Iftemie commented. "This is an extremely dynamic area with a regulatory framework that is continuously improving. We see a constant concern from the business community for the development of sustainable businesses with a positive response from the government that is taking actions towards sustainability and the circular economy." ■

## Slovakia: Hugh Owen Becomes Head of Legal at PwC CEE

**By Radu Cotarcea (July 26, 2022)**

Hugh Owen was appointed to the role of Head of Legal at PwC Central and Eastern Europe.

Taking over from Karl Paadam, Owen will be covering 27 countries in his new role. He first joined PwC as an Of Counsel on September 1, 2021 (as reported by CEE Legal Matters on September 2, 2021). He was previously a Partner with Allen & Overy, having joined the magic circle firm in 1994. He was the Head of the SEE Desk and, since early 2016, head of the Ukraine Desk. He set up A&O's Slovak office in 2000 and established A&O's associated office in Romania in 2008. At the end of 2018, Owen established his own consulting firm, called Go2Law.

Former PwC Legal Central and Eastern Europe Managing Partner Paadam announced: "The time has come for me to step aside from PwC and join the ranks of Estonian founders and leave the business in the hands of exceptionally driven Partners who are passionate about our clients, people, and solving complex business problems that go beyond law."

"I am really excited about this amazing role, where I will work with several hundred talented PwC lawyers and other professionals and staff across the region in 27 countries (and more)," commented Owen. "Our team can, together with their PwC colleagues who are absolutely at the top of their game in their respective fields, offer unique capabilities to help our clients. I have lots of plans, and plenty of energy and enthusiasm, and I am really looking forward to rolling my sleeves up and embracing the challenges and successes that lie ahead." ■

## Lithuania: SPC Legal and Wint Join Forces to Create Noor

**By Andrija Djonovic (July 28, 2022)**

Lithuania's SPC Legal and Wint have joined forces to form a new law firm: Noor.

According to Noor, the newly formed law firm is 60 lawyers strong and covers nine practice groups. The management team comprises four board members and Managing Partner Giedrius Murauskas, who also heads the firm's Restructuring and Bankruptcy group.

The other eight practice groups will be led by: Daiva Usinskaite-Filonoviene for the Dispute Resolution group; Giedrius Danelius for the White-Collar Crime and Compliance group; Mindaugas Rimkus for the Corporate and Transactions group; Marius Rindinas for the Labour Law, Migration, and Gambling group; Povilas Karlonas for the Real Estate and Construction group; Dainius Daugirda for the Tax Law group; Daiva Lileikiene for the Public Procurement group; and Andrius Iskauskas for the IP & Technology, Media, and Telecommunications group.

"The word noor stems from Arabic and means light and lightness. This word perfectly captures our goal of creating the maximum value for our clients while staying casual and cordial ... Working with us will be a breeze," the newly formed firm announced. ■

# PARTNER MOVES

| Date | Name | Practice(s) | Moving From | Moving To | Country |
|---|---|---|---|---|---|
| 28-Jul | Giedrius Murauskas | Corporate/M&A; Insolvency/ Restructuring | SPC Legal | Noor | Lithuania |
| 28-Jul | Giedrius Danelius | White Collar Crime; Compliance | WINT | Noor | Lithuania |
| 28-Jul | Mindaugas Rimkus | Corporate/M&A | SPC Legal | Noor | Lithuania |
| 28-Jul | Daiva Usinskaite-Filonoviene | Disputes | WINT | Noor | Lithuania |
| 28-Jul | Marius Rindinas | Labor | SPC Legal | Noor | Lithuania |
| 28-Jul | Povilas Karlonas | Real Estate | SPC Legal | Noor | Lithuania |
| 28-Jul | Dainius Daugirda | Tax | WINT | Noor | Lithuania |
| 28-Jul | Daiva Lileikiene | Infrastructure/PPP/ Public Procurement | SPC Legal | Noor | Lithuania |
| 28-Jul | Andrius Iskauskas | TMT/IP | WINT | Noor | Lithuania |
| 22-Jul | Sertac Kokenek | Labor; Corporate/M&A | Baker McKenzie (Esin Attorney Partnership) | Moral, Kinikoglu, Pamukkale, Kokenek | Turkey |

# PARTNER APPOINTMENTS

| Date | Name | Practice(s) | Firm | Country |
|---|---|---|---|---|
| 20-Jul | Pavel Vintr | Corporate/M&A; Energy/Natural Resources | BPV Braun Partners | Czech Republic |
| 5-Aug | Ondrej Havlicek | Banking/Finance | Schoenherr | Czech Republic |
| 20-Jul | Iulian Pasatii | Real Estate; TMT/IP; Data Protection | Gladei & Partners | Moldova |
| 18-Jul | Michal Glowacki | Banking/Finance; Capital Markets | Baker McKenzie | Poland |
| 18-Jul | Lukasz Targoszynski | Corporate/M&A; Private Equity | Baker McKenzie | Poland |
| 29-Jul | Diana Fejer | Corporate/M&A | Reff & Associates | Romania |
| 28-Jul | Vitaliy Odzhykovskyy | Tax | Sayenko Kharenko | Ukraine |

# IN-HOUSE MOVES AND APPOINTMENTS

| Date | Name | Moving From | Company/Firm | Country |
|---|---|---|---|---|
| 9-Aug | Katja Tautscher | Borealis | OMV AG | Austria |
| 3-Aug | Marcin Czarnecki | Naspers Limited; Prosus Group | PayU | Poland |
| 8-Aug | Agnieszka Dziegielewska-Jonczyk | Skanska CEE | Nordea | Poland |
| 2-Aug | Onur Sumer | Herguner Bilgen Ozeke Attorney Partnership | Ericsson | Turkey |
| 5-Aug | Pinar Tuzun | Global Kapital Group | HSBC | Turkey |
| 8-Aug | Dilek Akdas Kokenek | CicekSepeti.com / Lolaflora.com | Moral, Kinikoglu, Pamukkale, Kokenek | Turkey |

# OTHER APPOINTMENTS

| Date | Name | Firm | Appointed To | Country |
|---|---|---|---|---|
| 27-Jul | Stefan Adametz | Fellner Wratzfeld & Partner | Equity Partner | Austria |
| 9-Aug | Pavel Dejl | Kocian Solc Balastik | Managing Partner | Czech Republic |
| 5-Aug | Kirill Lezeiko | PwC Legal | Head of Banking and Finance | Estonia |
| 22-Jul | Yianni Cheilas | Norton Rose Fulbright | Head of Greece | Greece |
| 19-Jul | Pawel Zelich | Noerr | Head of Warsaw Office | Poland |
| 8-Aug | Pawel Cholewinski | Kochanski & Partners | Head of Transactional Practices | Poland |

**On The Move:**

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

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# THE BUZZ

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

## Relocations, Real Estate, and Fees Trending Up in Serbia: A Buzz Interview with Branislav Zivkovic of Zivkovic Samardzic

**By Andrija Djonovic (August 17, 2022)**

High levels of migration from Russia and Ukraine have been causing a boom in the real estate sector in Serbia, in a period of overall legislative slowdown, according to Zivkovic Samardzic Partner Branislav Zivkovic.

Following the elections that took place this spring, no government was formed yet, Zivkovic begins. "The process is still within its legal deadlines, but longer – a technical government is still in session. So, no new laws, no new pieces of legislation, other than urgent decrees," he reports. "Since early spring, legislative activity essentially stopped."

However, the major topic that impacts Serbia is the war in Ukraine. "We also feel the repercussions and consequences of it," Zivkovic says. This is something he believes is ushering in new market challenges. "Serbia is in a very delicate position, in so far as it has not yet joined with the EU sanctions against Russia, but it did condemn the war," he explains. "We support independent Ukraine, but on the other hand – because of the sentiment among the general population, as well as strong economic ties, especially in the energy sector – no sanctions have occurred yet."

Tens of thousands of Russian citizens now seek to emigrate to Serbia – both individuals and legal entities – as well as a smaller number of Ukrainian nationals, because of this peculiar status. "This has generated huge amounts of work, with many family businesses, tech company employees, and the like. Freelances that worked for international companies have begun relocating to Serbia – as there are strong levels of support for the IT sector and tech companies here," Zivkovic explains.

Furthermore, this situation has impacted the local real estate market. "There have been many, many acquisitions and leases that took place in the past few months, and the already-booming real estate sector has only continued trending upwards," Zivkovic stresses.

Additionally, the energy sector is seeing interesting levels of activity on account of investor interest in alternative energy sources, such as solar and wind. "This has accelerated up to the point that we need new legislation to cater for these upticks and stronger investor interest, mostly when it comes to making grid connections easier," Zivkovic says. "Clearly, this is a trend, with mostly local companies as first-phase investors, and foreign investors stepping in afterward." He reports that, even though there is no one single huge project in the market, "investors think that this course of investment is safe, and it is only a matter of time until such larger undertakings will occur."

Finally, Zivkovic reports that Serbia is "soon to finalize" a free trade agreement with China. "This will impact the market for sure, seeing as how tariffs will go down, and we might see an introduction of preferred rates or cancellation of customs duties to agricultural and other exports. Levels of mutual investments are likely to go up, even with Chinese investors having been strongly present in Serbia's infrastructure projects for a while now," he explains.

"Either way, all business sectors are coming along nicely, and we're even getting some previously unseen client inquiries related to cryptocurrency regulation and autonomous driving vehicles." Whatsmore, the market appears to be adjusting to the overall global instability as well, with "many law firms introducing inflation adjustment clauses when contracting client work. The overall market outlook continues to look promising," Zivkovic concludes. ■

## Austria Staying the Course: A Buzz Interview with Herbert Hildenbrandt of BMA Law & Tax

By Andrija Djonovic (August 17, 2022)

A strong flow of legislative updates, a number of active business sectors, and the upcoming presidential election in the fall – this is what's in the cards for Austria, according to BMA Law & Tax Attorney at Law Herbert Hildenbrandt.

"We have a presidential election coming up in October," Hildenbrandt begins. "It is expected that the incumbent president will retain his position, given the fact that he's managed a turbulent period in the past years, including many inaugurations." This projected period of stability suits Austria well, as Hildenbrandt points out that the country implemented a number of EU directives into national law, that came into force recently. "One of these is the consumer protection act, changing the rules for product warranties in favor of the consumer," he explains.

Hildenbrandt also reports that the tax system is set to be updated. "The corporate income tax is coming down from its current rate of 25% – to 24% in 2023 and 23% in 2024," he says. "Also, the personal income tax is decreasing: for annual income between EUR 18,000 and EUR 31,000, the income tax rate is reduced from 35% to 30% in 2022; and for annual incomes between EUR 31,000 and EUR 60,000, the income tax rate is reduced from 42% to 41% in 2023, and then to 40% in 2024," he explains.

"On the other hand, Austria has introduced a crypto asset tax recently, starting from 27.5% on all crypto asset-related profits, like the general capital gains tax in the same amount," Hildenbrandt reports. There are also talks, he says, of "introducing a basic energy consumption subsidy, keeping prices lower for the average household, and encouraging consumers to use less energy. But it's still early days, and we don't even know what that average household looks like yet."

As for other legislative updates, Hildenbrandt reports that the Condominium Act of Austria is set to be updated, to cater to the current realities of "energy consumption, insulation, photovoltaic, and solar thermal systems. The changes should make it easier for residents to engage contractors to install such alternative energy systems in buildings," he explains. Moreover, the Telecommunications Act has also had a makeover, "following EU Directive 2018/1972. Detailed regulations were put in place related to network expansion and use, with the aim of protecting market competition. Additionally, higher penalties for cold calling and unwanted emails were introduced," he outlines.

> ***[Austria is] more than vibrant. Just recently, we have had a second unicorn emerge in the form of GoStudent. Bloomberg estimated its value in January to be EUR 3 billion. Education will always be important, and homeschooling during the pandemic led to at least this one positive development.***

Turning to the most active business sectors in Austria, Hildenbrandt reports that the service sector, the steel industry, as well as the energy sector are "going strong. However, with the country still dependent on Russian gas, we will have to see what the winter brings," he says. To offset these unclear areas, he reports that the "tourism sector is performing quite well, with a lot of employers seeking workers." Furthermore, the automotive sector in Austria is "quite active," he reports, with "BMW seeking to invest EUR 1 billion to transform its production capacities in Steyr focusing on electric mobility. Still, with the levels of entanglement of production outputs with chip shortages and the Russian market, it is unclear in which direction the sector will go," he says.

Finally, Hildenbrandt reports that the startup sector in Austria is "more than vibrant. Just recently, we have had a second unicorn emerge in the form of GoStudent. Bloomberg estimated its value in January to be EUR 3 billion," he says. "Education will always be important, and homeschooling during the pandemic led to at least this one positive development." ■

## Kosovo's Commercial Court Now in Session: A Buzz Interview with Ardian Rexha of Deloitte Legal

By Teona Gelashvili (August 18, 2022)

The long-awaited Commercial Court finally being functional and the anticipated reforms on minimum wages and the verification and confiscation of unjustified assets are the key talking points in Kosovo, according to Deloitte Kosova Legal Manager Ardian Rexha.

"The major development in Kosovo is related to the establishment of a specialized Commercial Court," Rexha begins. "The law came into force in February 2022 and, after a rather long process of nominating judges and adopting a relevant framework, we finally have a functional Commercial Court." According to him, just recently – on August 1 – the court received its first submission. "This is great news for the private sector and will likely improve the investment climate, as its main purpose is to resolve complex commercial disputes, as well as administrative cases involving private players in a more efficient manner," Rexha points out. "In the past, it took years to settle commercial disputes. We hope that the new court will be an essential step forward in changing that."

However, Rexha says there is still a lot of work to be done, "since so far only seven judges have been appointed to the court's chamber of first instance. That chamber, on the other hand, has already received close to 7,000 case referrals, meaning that each judge has to adjudicate almost 1,000 cases at the moment." He says this has already created a backlog – judges have to make decisions within very tight timelines introduced by the law, especially with regard to interim injunctions. "Consequently, the Judicial Council has announced further openings for judges and support staff, to expedite the process," he notes.

"Another important update is a draft law on minimum wages," Rexha points out. "We expect that a new law introducing a non-taxable minimum wage of EUR 250 will be adopted soon by the Assembly, which will be a significant improvement compared to the previous amount," he adds, noting that the proposal was followed by protests from war veterans, demanding for their benefits to be included in this update. "Around 100,000 employees are expected to benefit from the new minimum wage," he points out.

"In Kosovo, there is also a draft law on the verification and confiscation of unjustified assets," Rexha says, adding that the law will establish a new institution – a bureau to verify and request the confiscation of illegally obtained assets. "Corruption is an issue of serious concern, therefore, in general, the proposal has been welcomed by the public," he says, "yet, despite its justified purpose, there are concerns about the law shifting the burden of proof to owners, its retroactive effect, the independence of the Bureau, as well as rule of law standards and respect for human rights."

From the business perspective, Rexha highlights that micro-finance institutions' transformation has been one of the main topics in the financial industry. "Deloitte and the International Finance Corporation are advising the government in drafting sound legislation to transform NGO micro-finance institutions into for-profit corporations," he notes. "Additionally, the IT sector is doing well despite the global challenges – many companies from the EU and the US are opening branches in Kosovo and providing outsourcing services for other countries." Still, Rexha says that, "similarly to many other countries, the high inflation rate and the emigration of highly-skilled professionals are big concerns for Kosovo, reaching unprecedented levels of late." ■

> ***"In the past, it took years to settle commercial disputes. We hope that the new court will be an essential step forward in changing that.***

## Lithuania's Optics Problem: A Buzz Interview with Giedrius Murauskas of Noor

By Teona Gelashvili (August 18, 2022)

Influenced by geopolitics and the ongoing state of emergency measures, Lithuania is dealing with high construction prices and a decreasing number of investments, according to Noor Managing Partner Giedrius Murauskas.

"We have direct borders with Russia and Belarus and, of course, we are deeply affected by the geopolitical situation," Murauskas begins. "Lithuania has an active start-up market but, these days, some of the projects are on hold. Investors from the UK and the US see us as a conflict-bordering country and are more cautious about their investments. Our close neighbors – Latvia, Estonia, and Poland – on the other hand, have a less radical view of the situation. But in their case, there is an issue of available finances."

"Immediately after the war broke out, the oil and construction material prices increased drastically," Murauskas adds. "It took us some time to renegotiate contracts for clients, as it was impossible to continue contracts with the initially allocated prices. It was also a challenge for governmental institutions to renegotiate ongoing projects." Yet, according to him, only a few cases ended up in courts, as the majority of them were resolved peacefully.

Murauskas highlights that state of emergency measures are still in place in Lithuania. "In practice, it does not have many implications – we don't have soldiers on the streets," he notes, adding that, "however, it allows the state to allocate resources differently and send funding wherever it is needed the most. This is not very pleasant for foreign investors and is negatively affecting the market."

"Other than that," Murauskas says, "unrelated to the geopolitical situation, we have seen an increasing number of cases on the GDPR. Certain instances of databases being breached and data being leaked have resulted in various litigations between consumers and companies. The government is closely supervising these particular areas as well, and looking into potential fines, to ensure the future protection of consumer rights."

"Interestingly, Lithuania recently liberalized the energy market – consumers can now choose between six suppliers who will provide electricity," Murauskas adds. "Many companies initiated large PR campaigns to promote their products and prices.

> ***The trend is quite obvious, as some law firms have already increased prices twice since the war started. Of course, inflation affects the legal services market and it will likely continue to do so, depending on how deep the recession will be.***

This has led to some practical issues as, on the one hand, some schemes are quite complex and create challenges for consumers." On the other hand, he notes, "just last week we witnessed an interesting development – a company which had already signed agreements with 180,000 customers announced that it cannot provide the service according to the planned prices. There are some talks about initiating a class action against the company, with the government also considering imposing certain sanctions." For him, the company's bankruptcy is a distinct possibility.

"Overall," Murauskas says, "there are noticeable changes in the Lithuanian legal market. The SPC Legal and Wint merger to form Noor is definitely among the bigger events – we're hoping it will change the legal services market landscape in Lithuania." Another noteworthy change, according to him, is the significant increase in the prices of legal services. "The trend is quite obvious, as some law firms have already increased prices twice since the war started. Of course, inflation affects the legal services market and it will likely continue to do so, depending on how deep the recession will be," Murauskas concludes. ■

## Running the Gauntlet in the Czech Republic: A Buzz Interview with Robert Nespurek of Havel & Partners

By Andrija Djonovic (August 19, 2022)

Potential political switch-up, construction legislation changes, and economic ups and downs are the talk of the town in the Czech Republic, according to Havel & Partners Partner Robert Nespurek.

"The municipal and senate elections, slotted for late September, are likely to shake up the local political landscape," Nespurek begins. "We also have the presidential elections in January 2023, so, from a political perspective, the scenery might change somewhat," he says. Last year, following a general election, "the Czech Republic saw the rise of a new, center-right government, made up of a five-party coalition," he adds.

> ***National Bank has been raising interest rates, which has, in turn, affected businesses and finance, leading to rising financing costs as well as costs of mortgages and loans.***

On legislation, Nespurek reports a few updates of note. "The new construction legislation, which passed all approval stages and was set to enter into force in 2023, has been postponed by the government," he says. For the housing sector, he stresses that "construction is delayed on account of permits being tough to obtain as well as the diminishing supply of materials and rising prices – the new legislation was meant to address some of these issues, but the delay means the problems are likely to persist."

Nespurek then says that the legislative landscape has been changing to take into account "over 300,000 refugees coming in from Ukraine. Catering for their needs, making sure they receive access to work, healthcare, and education systems – as well as relaying material and military aid to Ukraine – was a legislative priority," he says. Finally, he indicates that the "parliament is expected to pass legislation implementing the whistleblowing directive framework of the European Union. The legislation should take effect in the middle of 2023 and is set to affect the compliance work of lawyers," he explains.

As for the economy, Nespurek points out the "National Bank has been raising interest rates, which has, in turn, affected businesses and finance, leading to rising financing costs as well as costs of mortgages and loans." The rising energy prices, only exacerbated by the war and rising price of gas, have been affecting the country as well. "The country is heavily dependent on Russian-sourced gas," he says, "so the current crisis spurs questions of what will happen by winter and how the government would tackle the problem."

With the Czech National Bank changing leadership recently, Nespurek shares that "it remains to be seen if the interest rates would rise further. The new head, Ales Michl, has expressed that no further increases are likely, on account of prediction models showing that inflation should decrease over the next couple of years." Nespurek feels, however, that it is difficult to predict if this "wait and watch" approach will bear fruit. "We would have to look at the numbers of this year's third quarter, once available, and analyze these thoroughly before making any calls," he explains. Still, the economy overall is "performing strongly," and he emphasizes that this is a good indicator for the immediate future.

On that point, Nespurek highlights the issues in the automotive industry. "Unfortunately, we've seen a decrease of the production capabilities of the automotive sector – Ukraine was an important supplier of parts, so the war hit this sector hard," he explains. This came at a particularly inopportune time, as the market is also faced with "the transition to electric and other alternative energy source engines. Now, with additional stress, the industry will have to run the gauntlet."

Not to end on a grim note, Nespurek does point out that the TMT and IT sector has been thriving. "Following Rohlik – a food e-commerce and delivery company – becoming a unicorn, the entire sector has been experiencing growth and has continued to attract a strong flow of venture capital funding," he concludes. ■

## Slovenia's Course Correction: A Buzz Interview with Igor Angelovski of Ketler & Partners

By Teona Gelashvili (August 19, 2022)

The new government, looking to implement sweeping tax reform, introduce more socially oriented policies, and reorganize the country's energy framework, is keeping Slovenian lawyers talking, along with the steady stream of M&A and financing mandates, according to Partner Igor Angelovski of Ketler & Partners, a member of Karanovic.

"The most crucial update in Slovenia is related to a recent change of government, with more left-leaning political parties coming into power," Angelovski begins. "This includes the new prime minister – previously the CEO of GEN-I, one of the largest energy companies in Slovenia. The new government is now looking into old legislative measures and announcing some reforms to implement more social policies."

"One of the most important aspects is the upcoming tax reform," Angelovski says. "So far, only minor changes have been implemented, however, the government plans to increase taxes, including imposing higher taxes on capital and high-income taxpayers. In addition, the government intends to annul the previous tax changes, which were set to decrease taxes." Angelovski adds that "this might make Slovenia less attractive to foreign investors or businesses. But we will need to wait for proposals before jumping to any conclusions."

Additionally, Angelovski notes that the government plans to have more restrictive policies with regard to privatization. "For that reason, we expect less M&A activity with businesses owned by the Slovenian government," he says. "We also expect changes to the management of those government companies."

Angelovski highlights that some positive developments are also expected. "Considering his background, the new prime minister announced that he would like to encourage investments in the renewable energy sector and reorganize energy policy," Angelovski explains. "We expect more investments in the energy field, including in large-scale solar power plant projects. The new government will likely aim to attract foreign capital and there will be some movements in that direction."

"Further, even with the introduced measures and general economic uncertainty, there is an active M&A sector in Slovenia," Angelovski notes, adding that there is a high appetite among foreign companies in terms of local acquisitions. "The increasing prices and geopolitical situation have hit some construction companies, yet there is an appetite for mezzanine finance to bridge the liquidity gap. If inflation goes up, and other negative economic trends would start to apply, some businesses are likely to fail and face restructuring processes. Still, we are quite prepared for this, since we, at least from the legal point of view, faced something similar during Slovenia's acute financial crisis in 2014, and we learned how to circumvent it." On a brighter note, Angelovski says "the healthcare and agriculture sectors are doing well in Slovenia," noting that "we also have a lot of innovative companies, ready to be invested in by the VC market."

> ***The increasing prices and geopolitical situation have hit some construction companies, yet there is an appetite for mezzanine finance to bridge the liquidity gap.***

Angelovski also highlights the challenges faced by the Slovenian market. "Some business entities, especially some manufacturing suppliers, on the other hand, are susceptible to the European markets," he points out. "In addition, real estate prices at the moment are increasing massively, and the market could be shaken – this might spell trouble for some. In general, we are an export-oriented country and what happens in Europe influences us a lot." Finally, Angelovski says, "from agriculture and farming to the legal profession itself, there is a significant shortage of employees, especially for low-paying positions, but felt across the board. This is something that all our clients are concerned about." ■

## Montenegro's Political and Judiciary Conundrum: A Buzz Interview with Vanja Mugosa of Jovovic Mugosa & Vukovic

**By Andrija Djonovic (August 22, 2022)**

Fraught with institutional uncertainty and political instability, times are difficult and uncertain in Montenegro, according to Jovovic Mugosa & Vukovic law office Managing Partner Vanja Mugosa.

"The situation in Montenegro has been somewhat unstable, of late," Mugosa begins. "There is a high number of important state institutions, especially those performing judiciary functions, which are headed by 'acting' managers, or lack the required number of people for undisturbed operation."

> ***The government had ambitious goals, but they failed to focus on resolving the accumulated problems in the judicial system and its much-needed overhaul. That only exacerbated an already problematic and complex situation, threatening to hamper Montenegrin accession to the EU.***

Mugosa explains that "the Supreme Court, the Constitutional Court, the High Council of the Judiciary, as well as the Supreme State Prosecutors office are all stuck in this limbo. The Constitutional Court is in danger of ceasing to function: only four of the prescribed seven judges' seats are filled, and one of them could likely retire in September," he says, "making the court unable to render any decisions."

Coupled with the fact that the only commercial court in the country and a number of basic courts are facing similar issues, the wider Montenegrin legal landscape looks in peril, according to Mugosa. "For the Supreme State Prosecutor and members of the Judicial Council to be elected, a two-thirds majority is needed in the parliament's first round of voting. Barring that, the requirement is to then have three-fifths; this too has failed to materialize," Mugosa elaborates.

And the state bar is facing similar issues. "The Montenegrin Bar Association's elective assembly should have been held in December 2020, to appoint the Chairman and other bodies of the chamber. That hasn't happened to date, with the Chairman's and Vice President's terms long ended and an incomplete Managing Board, and it is unknown when the assembly will actually happen," Mugosa explains. "Such an overall condition of the country has had a major impact on lawyers, businesses, and investors," he says. "Further, the Bar practice in Montenegro has been in a state of strike for more than two months in mid-2021," he adds, "because of issues related to fiscalization and different interpretations of the lawyers' status. Even though a joint working group has been formed with the Ministry of Finance, that issue has not been solved either."

According to Mugosa, the current status quo has been "going on for a while. It was believed that the last three months – following the election of a new government – would see some much-needed changes and resolutions to the accumulated problems. Alas, political turmoil and instability prevented that." The government, after just three months, fell to a vote of no-confidence on August 19. "We will either see a new one get elected or go straight for new extraordinary parliamentary elections," he says. "Neither option will lead to resolving key problems and decreasing tensions. And the extraordinary parliamentary elections would be quite problematic – as only the Constitutional Court is in a position to deliberate on election matters – if the court fails to maintain at least four members, such matters could not be heard. It would be almost impossible to hold regular elections, with results acknowledged by all participants," Mugosa explains. "It's all a bit of a paradox."

Speaking about the recently toppled government, Mugosa feels that it had dropped the ball in its first 100 days in office. "The government had ambitious goals, but they failed to focus on resolving the accumulated problems in the judicial system and its much-needed overhaul. That only exacerbated an already problematic and complex situation, threatening to hamper Montenegrin accession to the EU," he says.

Finally, Mugosa says the overall status of the Montenegrin economy is "difficult to estimate, as it's the middle of the tourism season. With the sector accounting for almost a third of the country's GDP, the current good projections might be deceptive." He believes that it could be a tough autumn. "Looking at all the global problems – the energy crisis, the war, the rising inflation – it is likely that tough times are ahead." ■

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## Financing, Equity Investments, and ESG Go Big in Bosnia and Herzegovina: A Buzz Interview with Andrea Zubovic-Devedzic of CMS

By Teona Gelashvili (August 22, 2022)

A lull in the markets and legislative activity, due to political and global concerns, is offset by high foreign finance confidence and high foreign investor interest in Bosnia and Herzegovina, with client-driven ESG projects a particularly bright spot, according to Attorney-at-Law Andrea Zubovic-Devedzic, a Partner of CMS Reich-Rohrwig Hainz.

"The current political setup remains intricate in light of the upcoming general elections," Zubovic-Devedzic begins. "In general, the situation has always been complex over the past years but, considering the pandemic, war, and economic conditions, we are facing a distinct challenge. So, everyone is waiting to see what the next months will bring, in terms of political and economic changes."

Despite that general feeling, Zubovic-Devedzic highlights a recent winner in Bosnia and Herzegovina. "At the end of 2021, we achieved the equivalence of standards in banking between BiH and the EU," she explains. That was followed by the "very strong regulator reaction on the issue of Russian banks in the country, with temporary administration proceedings, and their swift offload, which did a lot to ensure that the overall banking system and the markets weren't too badly affected." It all raised the confidence that "foreign financiers have in the Bosnian banking sector, despite the global situation: we've seen over ten deals involving financing in the financial sector in BiH happen so far this year," she says, "and we're barely past the halfway mark."

"We're also seeing a fundamental shift of the M&A market," Zubovic-Devedzic reports. "Unlike previous years, there are fewer regional M&A transactions involving local subsidiaries. The market's being driven by direct investments," she points out. "Foreign partners, that have been cooperating with local businesses for some time now, decided to opt for equity investments – whether a controlling or a significant stake in local companies."

Most of these investments relate to industry and production, historically one of the country's strong points, according to Zubovic-Devedzic. "This could well become a trend," she says, "with the investors further securing their supply chain and streamlining quality control, while also bringing in capital, know-how, and further improvements in corporate governance and structures." This is important, she notes, "as it creates a chain reaction, opening up markets for other local players, securing exports, and moving everyone closer to alignment with the requirements of EU legislation." The one downside to the markets becoming more integrated? "With the worldwide workforce shortage, we're seeing a significant spill out of our workforce into other countries. If no remedies are implemented, we're just years away from facing the same workforce issues of Western economies," she says.

"There is also an increasing interest in renewable energy," Zubovic-Devedzic adds. "Recently, certain restrictions were imposed on the development of small hydropower plants, mostly on environmental impact grounds. And the project for a massive thermal power plant is faltering, for both objective and contractual reasons. Accordingly, the focus has shifted to solar and wind energy, with increased financial institution activity on financing such projects."

"We still haven't developed an ESG framework," Zubovic-Devedzic points out, "but it's on the agenda of the banking sector, which is definitely having a spillover effect in other sectors." Looking back, she says "compliance used to be unpopular and often considered cumbersome." Compared to those GDPR early days, she notes that clients already know about ESG and willingly seek and engage in that conversation. "When initiatives come from the business side – it's much easier and more efficient to answer those needs because the change is not perceived as imposed – the market changes swiftly as a result. There are fewer gaps between local and international markets now, and the butterfly effect is more direct, so local players understand they either get on board or face negative impacts." ■

## Estonia Hard at Work, Despite Slowdown, Crisis, and Tensions: A Buzz Interview with Marina Kotkas of Cobalt

By Andrija Djonovic (August 25, 2022)

A slowdown in capital market transactions and some M&A activities, a governmental crisis and tensions with the Russian-speaking population, and rising energy prices and inflation were all hallmarks of Estonia's past six months. While the geopolitical situation and economic situation remain tough, direct investments in Estonia seem to be getting back on track, across a number of sectors, according to Cobalt Partner Marina Kotkas.

"Estonia has been in a stalemate between May and the middle of July, following the collapse of the government," Kotkas begins. "Finally, in mid-July, a new three-party coalition government was formed, and some stability regained, with the stated priorities of the new government including providing continuing support to Ukraine against the Russian invasion, combating inflation, and dealing with the skyrocketing energy prices and security concerns," she says. "There were also tensions with the Russian-speaking population in the easternmost city, over the government's decision to remove Soviet-era war monuments," she reports.

To combat the ongoing energy crisis, Kotkas says the government has introduced amendments to the electricity market act, "seeking to form new universal services which would include a regulated price set by the Estonian competition authority, with the aim to bring prices down." Also, a "range of measures was set out to boost energy investments and accelerate the transition to renewable energy sources," she reports.

As for the deal market, Kotkas reports a slowdown in the levels of direct investments on account of "the war in Ukraine and a general decline in global M&A markets." Regardless of that, however, she reports that the "deal flow is quite strong" and that transactions are happening across all sectors. "Investors and businesses are hopeful that there will be further stability in the next six months, but it depends on global market moves," Kotkas says.

Estonia has the highest number of tech startups per capita in Europe. "These startups have been performing quite well and have been attracting numerous investment rounds; however, the valuations have been under increasing pressure," Kotkas says. "Still, the deals are happening, and with ten Estonian unicorn success stories already, the ability of local startups to scale globally is being emphasized even more."

> ***Investors and businesses are hopeful that there will be further stability in the next six months, but it depends on global market moves.***

Given such strong levels of tech sector development, it comes as no surprise that "crypto regulations and crowdfunding regulations have reached the Estonian regulator, which is seeking to provide a common framework for the two," Kotkas reports. "This has been in the works for many months and has received a lot of attention and comments from market participants, but there is still a lot of work to be done before this regulation can be implemented properly," she explains.

Turning to the status of the capital markets, Kotkas says that while they "had been booming for three of four years, both in equity and debt transactions," the events in Ukraine have changed that significantly. "We've been experiencing low activity levels and much investor caution for six months already, but things are cautiously looking to turn around."

Finally, Kotkas reports that in anticipation of the key interest rate hikes by the ECB that were finally decided last month, the interest rates for corporate and consumer lending also started rising a few months ago. "The availability of financing remains quite good, despite it being more expensive," she says. "Even real estate projects, which have been a bit endangered on account of rising construction materials costs, have been receiving financing." Kotkas feels the continuing availability of loan financing is very important, "despite it being more expensive." ■

## Romania at an Energy Crossroads: A Buzz Interview with Oana Ijdelea of Ijdelea & Associates

By Teona Gelashvili (August 22, 2022)

Energy is the major topic in Romania, with updated regulations on energy trading and offshore gas production already being in place, and the business sector hoping for a legal framework on hydrogen projects, according to Ijdelea & Associates Managing Partner Oana Ijdelea.

"The most relevant changes that either already happened, or are expected to happen soon in Romania, both from a political and legal standpoint, are related to the energy sector," Ijdelea notes. "We are past the halfway mark for 2022, and yet, we are still uncertain about the energy crisis. Neither our government nor the EU has a clear long-term strategy for associated risks." However, she adds, "whatever will happen in the energy sector in the upcoming period will be the main driver of the economic growth or recession in the next five to ten years and this will ultimately impact everybody, irrespective of their income, their activity, or whether they are individuals or legal entities."

> ***Whatever will happen in the energy sector in the upcoming period will be the main driver of the economic growth or recession in the next five to ten years and this will ultimately impact everybody.***

"In that respect," Ijdelea says, "very early this year, Romania started passing several legal updates, including capping gas prices and demanding from suppliers to increase their storage capacities to the maximum level. However, the legislation did not fully take into account all players in the chain – the government is supposed to compensate suppliers for the difference between capped and market prices, however, there are no provisions for traders." According to her, now "the Minister of Energy has a deadline of September 1 to propose the legislation that would implement supplemental taxation on energy and gas traders. It appears that liberalization of the market is no longer welcomed or accommodating for the government, and we will likely see more regulations in this area."

Another important enactment in energy, according to Ijdelea, is an amendment of the fiscal part of the offshore law. "Initially, it was only applicable to offshore gas producers but now has been extended to deep-field onshore gas producers," she notes. "Additionally, the deductibility of upstream investments was increased from 30 to 40%. The other stability provisions are also included in the law and will be applicable from January 2023, giving some space for further legal amendments."

Other than that, Ijdelea says, "the government officials say that we are well prepared for winter, but the main actors on the market are not that confident. The industry sees very targeted rules, rather than approaching the chain in a more holistic way," she highlights. "In addition, the introduced price caps for gas fields can be also regarded as an export ban and might contradict EU regulations."

"It is also noteworthy that the European Commission approved under EU state-aid rules a support scheme for developing hydrogen projects under the NRRP in early August," Ijdelea adds. "For now, despite funding being available, Romania lacks a specific strategy and coherent legal framework enabling hydrogen projects, including its production, transportation, transmission, and storage."

Not related to energy, according to Ijdelea, other noteworthy updates are related to the fiscal code, passed in July 2022. "The amendments extend the exemption from paying a profit tax for those profits that are reinvested in production activities," she notes, adding that "the tax exemption on income for micro-enterprises has also been extended to entities in the banking sector, gambling, oil, and gas, as long as they meet the relevant criteria. From January 2023, the tax on dividends will also increase from 5% to 8%." Finally, Ijdelea notes that "the tax on real estate will no longer be based on the type of owner but rather on the type of property. And taxes will be determined based on the evaluation reports of public notaries, instead of the ones of local authorities." ■

## Latvia's Energy All-In: A Buzz Interview with Liga Merwin of Ellex

By Teona Gelashvili (August 30, 2022)

The energy crisis has a pivotal role in Latvia's political agenda, with the government focusing on investments in onshore and offshore energy projects and legislative packages to mitigate the crisis-related outcomes, according to Ellex Managing Partner Liga Merwin.

"Summer is always an exceptional time – even with the geopolitical situation and its influence on the region, the past few months have been rather slow," Merwin begins. "Still, the absolute highlight of our situation is the energy crisis. In Latvia, there are huge efforts to reach energy efficiency by supporting the launching of solar parks and alternative energy sources." According to Merwin, there is a huge interest in energy from potential investors, including funds from the US and all over Europe. Merwin says that, traditionally, Latvia has always had a high number of hydropower plants. "In good years, these plants could satisfy all internal consumption needs, therefore the government was reluctant to push towards other types of renewables. In light of the current challenges, this attitude has changed – now the government aims to focus on potential investments in onshore and offshore wind and solar parks so that we have energy independence even during subpar years, or when facing acute challenges," she notes. "The government recently established a company to undertake onshore wind park projects. This is a joint venture between the state-owned electricity utility Latvenergo and the Latvian state forest management company. We're also developing an offshore wind park in the Baltic sea, together with Estonia, and the government is looking to support the building of an LNG terminal near the coast."

Merwin points out that – despite the general developments at the EU level such as the digital market and platforms regulations – from the local perspective, the major legislative activities are related to mitigating the energy crisis-related consequences for businesses and individuals. "The government is to adopt initiatives targeting businesses, making sure that they have easier access to funds and investing towards energy independence," she adds.

> ***There is also the issue of potential election fraud, including disinformation on major social media platforms. Major institutions are focused on ensuring the fairness of elections and making sure that, given the geopolitical pressure, no other powers undermine the country's sovereignty.***

"Additionally, this is an election year in Latvia and there are concerns about geopolitics," Merwin says. "Similar to other countries, we have concerns about populist political parties, which already got a large share of seats in the Saeima four years ago. There is also the issue of potential election fraud, including disinformation on major social media platforms. Major institutions are focused on ensuring the fairness of elections and making sure that, given the geopolitical pressure, no other powers undermine the country's sovereignty. Unfortunately, we have a small share of conspiracy theorists and other extremists who are looking to cast doubt on the validity of the elections and the democratic system as a whole, just wanting to 'tear it all down'." Moreover, Merwin notes, the current government is not necessarily business sector-oriented, having a primarily technical or bureaucratic background. "We need more efficient measures to boost the economy, especially considering the damage done by the pandemic and war," she says.

"In other news, inflation is definitely a concern for our firm. We renegotiated most of our contracts, even before the war in Ukraine, because we saw the market changing. We're now looking at ways to support our staff through what looks like a difficult winter ahead," Merwin says. "And inflation has been very difficult for the construction sector, where we expect a large number of disputes. Many projects are on hold – everything seems almost to be stagnating because it is hard to renegotiate contracts and price increases. Hopefully, this will all be resolved in the coming months," she concludes. ■

1 Getting things done

2 Prepared to stand out

3 Building long-term relations

4 Serving as a gateway

5 Going where eagles dare

PENTERIS

Keeping you ahead of the market

## Poland's Polarising Points: A Buzz Interview with Przemyslaw Kastyak of Penteris

By Teona Gelashvili (August 29, 2022)

Major transactions are taking place in the energy sector in Poland and the country is preparing to address gas shortages for the upcoming winter, while dealing with soaring inflation and high interest rates, according to Penteris Partner Przemyslaw Kastyak.

"The War in Ukraine remains the main topic in Poland," Kastyak begins. "It is almost unbelievable to see how our society has grown – we have two to three million refugees at the moment in the country, or close to 10% of Poland's population, by some estimates." This, of course, has become a political topic and influenced the economy, he says. "Consumption went up in recent months and the residential real estate market was also heavily impacted – in March, it was almost impossible to rent an apartment in Warsaw," he notes. "Additionally, many corporations with offices in Ukraine now have moved to Polish cities, sometimes also relocating their workers as well."

Other than welcoming refugees, Kastyak says that Poland also supports Ukraine in many other aspects. "We are the third biggest military aid provider after the US and the UK. As an example, we provided approximately 350 tanks to Ukraine, which is an impressive number," he notes.

On the economy, Kastyak says "the very recent announcement of the Polish statistics office indicates that economic growth in the second quarter was slightly lower than expected. In terms of inflation, in July we faced the highest rate – 15.6% – since 1997." According to him, these issues stir polarization in public opinion, with the opposition pointing also to local factors and populist policies potentially leading to this outcome. "The economic factors, on the other hand, are affecting interest rates on mortgages, financing, and loans – they have been increasing constantly since late 2021," he notes. "All of this had a big impact on mortgage availability and the ability to buy apartments."

The Polish Deal 2.0 is among the widely discussed topics, Kastyak reports. "The initial Polish tax reform was the subject of criticism since it proved to be defective and did not serve its intended purpose," he says. "Now we have a second deal introduced in July, with certain provisions having a retroactive effect to cure major defects."

On a brighter note, Kastyak says that the country is relatively optimistic when it comes to gas sources after deliveries from Russia were cut. "We have a port to receive liquified natural gas," he says, noting that major suppliers include Qatar and the US. "In September, the Baltic Pipe providing gas from Norway will also start operating."

Kastyak notes that the major transactions taking place in the energy sector are set to continue. "PKN Orlen merged with Grupa Lotos, and Hungary's Mol, Saudi Aramco, and local Unimot were involved in the EC-ordered remedy transactions. Now PKN is also set to take over PGNIG – the Polish gas operator – with the government looking to establish one large, national, integrated energy company." More developments in energy are expected, he reports: "the government aims to remove the restrictions on the development of wind farms in Poland, by decreasing the minimum distance of turbines from residential buildings from 1,5 kilometers to 500 meters." ■

> ***"It is almost unbelievable to see how our society has grown – we have two to three million refugees at the moment in the country, or close to 10% of Poland's population, by some estimates.***

# ROMANIA'S DISASTER MOVIE: THE FILM INDUSTRY CASH REBATE SCHEME THAT WASN'T

By Andrija Djonovic

**2018 saw the introduction of the Romanian movie production cash rebate system and a subsequent uptick in movie productions seeking to develop in Romania. The ambitiously outlined rebate system seemed quite appealing, initially. However, over the past three years, it failed to live up to its original goals.**

## Pre-Production

"The initial outline of the scheme consisted in a cash rebate that covered up to 45% of the total eligible expenses for film production in Romania," Spataru explains. "It covered 35% of eligible expenses for the purchase, rental, and manufacture of goods and services for the development of movie projects and movie production in Romania, as well as fees, salaries, and other payments to persons related to the implementation of movie projects." In addition, the scheme covered an extra 10% if the movie promoted a "Romanian geographical area, a Romanian city, or Romania as a touristic destination," she reports.

"By granting this state aid, Romania aimed at developing European and international cinematographic cooperation, supporting film producers to increase local film production, creating new jobs in the creative industry and related industries, as well as promoting cultural identity and national minorities in Romania," Popescu & Asociatii Partner Loredana Popescu says. She describes this approach as "extremely attractive," more so than in other countries: for example, in Croatia the rebate stands at 20%, in the Dominican Republic at 25%, in Estonia at 30%, or in Germany at 20%.

Spataru agrees, adding that "the only countries that covered expenses to a comparable degree were some of those where

tourism has an important role in their national economies: Italy, Greece, and Malta." The scheme was so attractive that, as Wolf Theiss Partner Ligia Popescu reports, the maximum annual budget of EUR 50 million, initially set from 2018 to 2020, was significantly increased. "Since August 2020, the duration of the scheme was extended until 2023, and the total budget increased to approximately EUR 250 million," she reports.

Still, with all its benefits and perks, the scheme did not get as much traction as it was hoped, even with Romania being "known on the market as a relatively inexpensive production site, with good and experienced professionals available, while also offering substantial advantages over similar countries," according to Musat & Asociatii Managing Partner Paul Buta. "It did not result in a substantial increase in the number of movie productions in Romania: 50/51 productions in 2018, versus 41/42 in 2017 – which might seem significant – but was only slightly up from 49 in 2016," he reports.

## Ready, Camera – Action

Things did not go according to the script, however. "The system had all the features of a too-good-to-be-true governmental initiative," according to Ligia Popescu, "put together in a rather hasty and populistic way, with little thought given to the practical mechanisms such as logistics, budgetary allocations, or secondary legislation explaining specifically how the scheme would work." Consequently, she reports, the scheme triggered "the disruption of business plans for the applicants and their commercial partners as well as political tensions."

Leroy si Asociatii Head of IP Adriana Spataru provides further insight. "According to the Film Commission in Romania, there are recommendations for taking into consideration the already-submitted payment requests, concluding the projects that are under analysis, and amending the cash rebate system in a manner that would make it less bureaucratic," she reports. Still, she believes it would be premature to evaluate the system's viability, as that would require "careful monitoring of the evolution of disputes over time and of any changes the Romanian state would bring forth to overcome the current obstacles – assuming the national policy regarding the movie industry would continue to favor this project."

Indeed, the number of disputes is not negligible. "According to our information, the Romanian government owes the applicants for state aid regarding the film industry more than EUR 35 million," Loredana Popescu reports. "As for the irregularities, from a procedural/bureaucratic perspective, official sources admit that the aid has not been paid due to

**Adriana Spataru, Head of IP, Leroy si Asociatii**

**Ligia Popescu, Partner, Wolf Theiss**

**Loredana Popescu, Partner, Popescu & Asociatii**

**Paul Buta, Managing Partner, Musat & Asociatii**

a missing payment procedure at the Ministry of Economy level," she further explains.

Ligia Popescu agrees, stressing that "the scheme has been substantially delayed by bureaucratic hurdles created by the constant restructuring of the institutional architecture responsible for implementation." As she reports, the "initial provider of the state aid scheme" was switched from the National Commission for Strategy and Prognosis to the Ministry of Economy, Energy, and Business Environment. After that ministry was restructured, Ligia Popescu says the provider changed again, this time to the Ministry of Economy, Entrepreneurship, and Tourism.

Buta echoes the others in saying that "the main objective of the scheme – to support the local movie production industry and increase Romania's appeal as a movie production site – would have required, more than anything else, stability and predictability, neither of which could be achieved when the mechanism stopped working so early after it being established." Functionally, he says, the scheme appears not to be working.

## Development Hell

"The extent to which the analyzed situation impacted the Romanian economy should be investigated in the medium and long term," Spataru says. As she reports, there are currently eight cash rebate cases pending before Romanian courts, 29 unpaid payment requests valued at over EUR 30 million, and a further 19 projects "currently under analysis," valued at over EUR 25 million. "Indeed, the reputational damage for Romania could also be taken into account," she adds. "The situation could result in fewer movies being set in Romania and also a potential hit to our tourism industry, which would no longer benefit from the same number of movie productions featuring Romanian locations, naturally promoting these locations beyond our country's borders," she explains.

"Right now, the government is in an apparent deadlock, with the competence to administer state aid under fire, since the amount due to be paid is not included in the 2022 state budget," Loredana Popescu chimes in. However, she does point out that the slowdown in movie production has coincided with the COVID-19 pandemic, making it difficult to pin on the cash rebate scheme alone. "According to some estimations, the Romanian economy has lost tens of millions of euros from the cinematographic industry, a loss that can jointly be attributed to both causes," she continues, adding that the "Romanian Alliance of Film Producers estimates that more than EUR 50 million is owed to international productions that were filmed in Romania after the state aid program was launched." Buta agrees it is "very difficult to estimate the number of productions derailed by the malfunctioning of the state aid scheme." Still, he does stress that "the number of productions dropped to 41 in 2020 (from 54 in 2019), which is identical to the number of productions before the establishment of the support scheme."

## The Government's Cut

"An increase in the institutional celerity of the Romanian government – undertaking specific measures to remedy the already identified deficiencies – would be highly desirable," Spataru stresses. Out of eight pending proceedings, she reports "most of them were lost by the government in the first instance, and one of them was also lost on appeal. The only cases the government won were a result of the expiry of the limitation period," she says. "The government officially stated that they are working on finding solutions to make the granting of state aid more efficient," Loredana Popescu chimes in. It intends to continue the scheme at least until 2025, "however, it has suspended applications for the program, which was supposed to receive EUR 50 million annually," she says.

While the scheme is "included in the current government's program," Buta believes its problems persist. "The fact that the authority in charge of granting the state aid has changed numerous times has prevented these flaws from being properly addressed," he explains. "In terms of litigation outcomes, the plaintiffs seem to prevail the vast majority of times," he continues. However, all that is won, in most cases, "is an order for requests to be analyzed, not money paid," he explains. "Therefore, when computing the resources needed for even such limited success – and the delay in obtaining any payment, when and if such would be, eventually, ordered by courts – the whole exercise becomes not very practical."

Loredana Popescu concludes that, even with a high rebate percentage, the institutional blockage and lack of actual payments could spell trouble for Romania's film industry: "film producers have turned their attention to countries such as Croatia, Bulgaria, or Hungary, despite their lower percentage of eligible expenses." Spataru agrees that those countries "probably managed to maintain a reputation for punctuality regarding their movie funding systems." Still, beyond the current circumstances of its movie financing system, she stresses that the country's strong points yet apply: "Romania offers both a natural and anthropogenic setting that is completely remarkable." ■

# IN SEARCH OF A NEW HOME: BUSINESS RELOCATION TRENDS IN CEE

By Teona Gelashvili

**With the war in Ukraine raging for more than six months, law firms across the region have reported increased workloads in corporate and M&A, tax, employment, immigration law, and inquiries on the sanctions regimes in relevant jurisdictions, noting that companies from Ukraine, Russia, and Belarus are variously looking for a new home. Whether to avoid sanctions or escape the war, those companies consider a variety of factors in determining where to go.**

## The Popular Destinations

Among the Partners we spoke with, those in Poland, Serbia, and Slovakia reported having a large number of new arrivals. The origin of the relocated companies and their reasons for choosing a specific jurisdiction, however, vary from country to country.

In Poland, according to Penteris Partner Tomasz Kudelski, a high number of businesses have relocated recently, particularly from Ukraine and Belarus. "Ukrainian companies account for 23% of foreign companies in Poland," he says, highlighting that they operate "mainly in the construction, trade, and transport sectors, but there are also many in administration and support services, such as employment agencies." Meanwhile, he notes, "numerous Belarusian engineers, programmers, and IT companies are finding refuge in Poland, as are Belarusian doctors, nurses, and other healthcare workers."

Dentons Partner Stanislav Durica also reports that many Ukrainian companies are moving to Slovakia: "these days, the relocation of entire businesses is quite usual." In addition to those Ukrainian businesses, he highlights the trend of "international businesses looking to exit the Russian market." Initially, "we saw knowledge-based businesses," Durica says, "which could be operated from various locations, such as consultancy or IT. Now clients from other industries – some of which have production facilities – are thinking of or have already started moving to CEE or western EU countries."

In Serbia, on the other hand, it's predominantly Russian businesses that are moving, according to PR Legal Managing Partner Ivana Ruzicic. "From February until June 15, 2022, more than 1,000 business entities were founded and registered in Serbia by Russian natural or legal entities," she points out. By contrast, only around "20 companies were registered in Serbia – mostly by Ukrainian natural persons" According to her, the

Aigest Milo,
Executive Partner,
Kalo & Associates

Ales Lunder,
Partner,
Senica & Partners

Ivana Ruzicic,
Managing Partner,
PR Legal

Lucian Bondoc,
Managing Partner,
Bondoc si Asociatii

Sasa Vujacic,
Partner,
Vujacic Law Office

Stanislav Durica,
Partner,
Dentons

Tomasz Kudelski,
Partner,
Penteris

relocated companies include those in wholesale trade, information technology consulting activities, advertising agencies, restaurants, and mobile catering facilities. "Certain large and international companies, well-known in the IT sector, such as Yandex, DataArt, and Luxoft, have opened offices in Serbia," she adds.

## More Perks than Drawbacks

Ruzicic, Durica, and Kudelski highlight several factors affecting a company's choice of destination country. "There are incentives put in place by the Government of the Republic of Serbia to attract such businesses," Ruzicic says, adding that "the country is a business-friendly environment for all investors, and especially for the ones that are coming from these particular countries." Additionally, she notes that "Serbia is the only country in Europe that still has direct flights from its capital to Moscow and St. Petersburg."

"Most of our clients are focused on the safety and wellbeing of their employees, as the most important driver of their decision," Durica says. While "there are no specific incentives related to the relocation of entire businesses, at least for now," he notes "some governments are implementing rules in order to attract specific professions, such as health care professionals in Slovakia's case."

Kudelski lists a few reasons that apply to both Belarusian and Ukrainian businesses when choosing Poland. "Despite Poland's ever-changing tax system and Polish judicial system, the legal turmoil seems to have little effect on day-to-day business," he notes, as "Polish commercial law has matured in the last 20 years," and "company incorporation takes little time, is relatively easy, and can even be undertaken online." Further, there are the advantages of Poland's EU membership – "a huge economic market, the availability of a mostly young, educated, and highly skilled workforce, reasonable salaries and low living costs, aid programs such as government grants, as well as a developed services sector." Finally, he points to Poland's location, large population, and relative political stability as a factor making "the country an attractive place for foreign businesses and investors."

Still, Poland is not quite the land of milk and honey, according to Kudelski. "Understanding Poland's seemingly ever-changing tax regime can often be a burdensome task, making having a trusted tax and legal advisor of immense importance in Poland," he notes. Further, he says that "other costs like growing social security contributions and health insurance payments increase the total expense for companies

wishing to relocate to Poland." And there are also immigration-related barriers, according to him, with "bureaucracy and a slow judicial system being further hurdles. Patience is certainly a virtue in Poland."

Finally, Durica points to the complexity of the relocation process itself. "It is important to recognize the fact that if you build up your business activities over a period of many years, those can't be relocated in just a few days. Finding the right place and attracting employees with the right skills is also quite time-consuming." Still, "supply chains and customer routes – if well established – can often be adjusted pretty smoothly," he says.

### Frequent Inquiries, Few Confirmations

While they report a similarly high level of interest, experts from Albania and Romania say that, by contrast, relocations remain rather rare. "Relocations due to the war in Ukraine remain limited to date," Kalo & Associates Executive Partner Aigest Milo says, despite "interest remaining high, and having received many inquiries from multinationals wishing to relocate their operations to the Western Balkans in general, and Albania in particular." He says there is, specifically, increased interest from many Russian companies "aiming to avoid sanctions and operate freely in Europe." While not necessarily a pattern, he notes that "several inquiries came from IT companies and those operating in the automotive industry," with a focus on the "sanctions enacted by the Albanian Government."

Bondoc si Asociatii Managing Partner Lucian Bondoc says that, for Romania, "any newcomers are predominantly companies located in Ukraine that are part of groups of companies with a pre-existing presence in our country." Their industries vary "from software development, IT solutions, and video games, to automotive, mechanics, and textile processing," he reports, with relocation mainly manifested "in terms of staff transfer and/or transfer of certain business operations." Still, he says "the phenomenon has not taken on the scale anticipated in Romania earlier this year," as "heavier capital investments would naturally require some more time to really start in any visible manner."

Looking at the whys, Bondoc says that Romania's membership in NATO and the EU makes the country potentially attractive for Ukrainian companies, on the one hand. In addition, "the geographical proximity to the markets served by the initial businesses also counts," he says, with "Romania's still relatively low labor force cost, compared to EU average, also being a factor."

On the other hand, there are difficulties in actually relocating a business from Ukraine. According to Bondoc, they mainly stem from the fact that "Ukraine is not an EU member state and companies cannot take full advantage of the legal tools to facilitate relocation in all its dimensions," for instance, "in terms of permitting, ownership rights, IP rights, etc. Then, there are also the EU regulatory production and operations standards and procedures to be considered." More generally, he notes "the inherent drawbacks of any relocation may be a factor, in terms of potentially unfamiliar markets, new competitors, new regulatory framework, new or adapted logistics circuits needed, etc."

### Barely a Dent

Finally, there seems to be little to no interest in businesses relocating to Montenegro and Slovenia on account of the war. Senica & Partners Partner Ales Lunder and Vujacic Law Office Partner Sasa Vujacic report there are no visible changes in their countries' business environment. "Apart from one inquiry from Belarus, which we redirected to Croatia, we haven't seen any newcomers from Ukraine, Russia, or Belarus," Lunder says. "However, we've had several inquiries, from US-based companies for example, for establishing subsidiaries in Slovenia."

"In Montenegro, there are a number of legal entities from Russia, and much fewer from Ukraine, which have been registered and have been engaged in various activities for many years," Vujacic reports, noting "this fact has nothing to do with the current unpleasant events." The most common obstacles relocating companies would face "are related to the submission of documentation when establishing a company," he says. "Also, considering the overall situation, the process of proving ownership of companies that would eventually like to start business activities in Montenegro is quite difficult," he adds.

For Slovenia, Lunder highlights an "extremely unfriendly tax regime, making employee option schemes unattractive." Additionally, "for investors from non-EU countries, the biggest hurdle would be obtaining work and residency permits," he explains. "The main problem is that Slovenian public services perceive immigrants primarily as a potential security risk, rather than as an opportunity, with the process being extremely long and time-consuming, as three different ministries are involved." ■

# THE LEGAL MARKET'S ONLINE MARKETPLACE: INTRODUCING QUICKLEGAL

By Teona Gelashvili

**The QuickLegal online marketplace was launched in 2021 in Romania, aiming to provide answers to legal questions for individuals and small businesses by effortlessly connecting them with relevant lawyers. CEE Legal Matters spoke with QuickLegal Co-Founders Iulia Caizer and Luminita Busuricu to learn more about the project.**

**CEELM:** First, tell us a bit about the platform – how would you describe QuickLegal?

**Busuricu:** QuickLegal is an online marketplace for legal services, connecting individuals and small and medium-sized enterprises with lawyers in Romania. In a nutshell, the way the platform operates is the following: after creating an account and filling out the questionnaire, applicants are instantly matched with the three most suitable lawyers, followed by a 15-minute free consultation with a lawyer of their choice. This gives the users a chance to choose whether they want to continue working with the suggested lawyer or not. What sets us apart is our legal matchmaking algorithm – we are not simply asking questions – we use other filters, such as area of law, lawyer profile, location, years of experience, potential fees to be charged, and more.

**Caizer:** And the offer that clients receive is not just about a lawyer, but also includes some guidance, like the estimated fees to be charged and a brief proposed solution. We believe that this is an essential tool for SMEs, as this could be either an alternative to the traditional legal departments or a valuable resource for it. We offer a fast, reliable, and cost-effective tool to help SMEs deal with their legal matters.

**CEELM:** How did you come together to establish QuickLegal?

**Busuricu:** We are three female co-founders – all lawyers, with international backgrounds, looking to improve the legal market in Romania through innovation. I am a dispute resolution lawyer working for Leroy si Asociatii.

**Caizer:** And I'm an in-house counsel for UiPath, the Romanian unicorn.

**Busuricu:** We all noticed problems in the Romanian legal system and came together in wanting to make a change. We came up with this idea in 2018, at the Global Legal Hackathon, where legal and IT professionals meet to identify problems in the legal field and solve them through tech solutions. We wanted to, on the one hand, give individuals and SMEs easy access to legal information and services and, on the other hand, tackle the lawyers' difficulties in reaching out to potential clients. Now that legal platforms like QuickLegal are gradually being regulated, both at the EU and national level, we believe it is the perfect time to bring to the market a solution like QuickLegal.

**CEELM:** What were the specific steps, from an idea to implementation?

**Caizer:** As all founders are legal professionals, we knew little about being entrepreneurs at first. There were a lot of steps that we took to get to where we are now, and we had to learn everything along the way. First, we had to think about how the project would work and put that into practice, understand the market needs, the product, and how it would change the status quo. We participated in incubator and accelerator programs to improve the product and find new members for the team. We also had to refine our market strategy and update our business plan – learn how to best approach potential investors or increase our market visibility, for example.

**Busuricu:** We formed the co-founders' team in 2018 and we launched the platform in 2021. Since then, we've consolidated the team, launched our minimum viable product, and participated in various programs. We've marketed the business with the founders' personal funds, yet we already have over 200 users and 80 lawyers.

**CEELM:** Which stage of development are you at, right now? And what's in the pipeline?

**Busuricu:** We are still testing and developing – I would say that, for now, we have the MVP. In terms of investment, we are pre-seed. We're looking forward to April, when we're invited to join the 2023 Silicon Valley Conference and get to pitch our business to US investors – by then the project and our revenues should be in a more advanced phase.

Iulia Caizer

Luminita Busuricu

**Caizer:** We're also investing in bringing technologies into our platform, to improve customer experience and functionality, and expanding our team. At this point, we are looking for lawyers and business advisors who have experience as legal market entrepreneurs, to learn from their understanding and incorporate it into the business. In the future, we also want to expand the core legal team. But right now, we are more focused on partnerships with law firms and key legal players and on adapting the platform to better address market needs.

**Busuricu:** To date, we have been focusing on labor law but we're working with lawyers specializing in every area of the legal field. In the near future, we aim to expand the platform to some Eastern European countries and France. And we're also working on using the conversations between the client and attorney – anonymized and with the parties' consent, of course – to launch an AI-powered robo-lawyer. We are also launching our virtual office soon, to bring lawyers and clients together online.

**CEELM:** That's quite the pipeline. How are you promoting QuickLegal and building the user base?

**Caizer:** We're also developing our marketing strategy, to increase visibility. SMEs, and sometimes even foreign investors, don't necessarily follow legal news. Rather, they search online and use recommendations to target law firms in Romania. So, we're looking at paid ads and social media platforms, but also those more traditional ways of spreading the news, such as IT-focused TV programs, to reach a broader audience.

**CEELM:** And what's the plan for revenue generation?

**Busuricu:** Our business model includes subscriptions for lawyers. At this point, all of them are registered for free, but after reaching 150 lawyers we'll start implementing a subscription model. The same applies to users: after registration, they receive 12 free queries per year. Beyond that, they will have to pay a small subscription fee, covering platform expenses.

**Caizer:** The market potential is huge. According to our estimates, legal services are a EUR 4 billion business in Romania. With the right investment, we expect to have around EUR 4 to 5 million in revenue in the upcoming five years. An initial investment of EUR 250,000 is needed to launch a fully equipped platform and accelerate our market visibility. We will need further investment rounds, but we are hopeful, since it's the first stage that is usually the hardest, and we have received excellent feedback so far.

**CEELM:** You mentioned your focus on labor law. Why did you choose this field?

**Caizer:** During the pandemic, we saw a high number of employment contracts being terminated, and those people needed advice on how to deal with it. After studying the market, we learned that labor law was the top field, in terms of legal issues, in the past five years. There are around 5.6 million employees and 400,000 SMEs in Romania, so we saw plenty of opportunity in this field.

**Busuricu:** In addition to the pandemic, following the war in Ukraine, we saw an increased demand for employment lawyers, with many companies relocating from war-affected countries. We received many inquiries about moving businesses to Romania, dealing with taxes and work-related regulations. And we also offered pro-bono legal services to some of these companies from Ukraine, in partnership with local NGOs.

**CEELM:** And how was your project received by your colleagues in Romania?

**Busuricu:** Many of our colleagues have already registered on the platform – they support the idea and have been encouraging us to keep going. It's good to see QuickLegal resonates with Romanian legal professionals – that's a good sign looking forward to our next, April 2023, milestone.

**Caizer:** We all have a personal reasoning for developing this project – we want to democratize the legal market and bring more transparency – so it was great to have my co-workers' support. Law is mostly an old-school profession in Romania: it has to adapt to societal needs and current technology. It will take time to see that change at a broader level, but we're confident we'll reach that stage sooner than most expect. ■

# HEROES DO NOT DIE:
# THE ROMAN RATUSHNYI SCHOLARSHIP

By Teona Gelashvili

**On July 5, 2022, Avellum announced it was joining an international team of professionals from Allen & Overy, Morgan Lewis, and Norton Rose Fulbright to establish a legal education scholarship in the name of fallen Ukrainian hero, lawyer, and activist Roman Ratushnyi. CEE Legal Matters sat down with Avellum Partner Maksym Maksymenko to learn more about Roman and the team's aims and hopes for the Roman Ratushnyi Scholarship.**


"Roman Ratushnyi. Heroes don't die" – an inscription in Protasiv Yar, a green zone in the center of Kyiv that Roman fought to save from being built up.

**CEELM:** Tell us a bit about Roman Ratushnyi and his life before the war.

**Maksymenko:** Roman was born in 1997 to the family of Taras, an activist for the Save Old Kyiv initiative, and Svitlana, a writer. He studied Law at the College of Finance and Law. In 2013, he participated in the Maidan Revolution, being among students who suffered the Berkut attack for merely supporting the country's pro-EU aspirations. After the revolution, he continued being a civil and environmental activist and became a leader of the initiative to preserve the green zone in the middle of Kyiv. Roman did not go into law to make money, but he rather used his law degree as an activist, creating positive social change and helping those who couldn't afford such services.

Once the Russian invasion began this year, he voluntarily joined Ukraine's armed forces to defend Kyiv, and later became a military intelligence officer with the 93rd Independent Kholodnyi Yar Mechanized Brigade. He took part in the liberation of Trostianets, in the north of Ukraine, and he fought in the Kharkiv region, where he was killed a month before his 25th birthday.

**CEELM:** How did the idea to establish a scholarship honoring Roman originate?

**Maksymenko:** The idea came from Thomasz Wozniak, a Partner with Morgan Lewis, and Anna Buyevska, a Global Business Development Manager with Norton Rose Fulbright. Together with their friends, they raised and spent over USD 1 million on purchasing and transferring aid to the Ukrainian army. The aid included pick-up trucks, which are highly sought-after on the frontlines. They worked closely with the 93rd brigade, where they met Roman.

When the news about his tragic death became public – and we were all shocked and heartbroken – Thomasz and Anna had the idea to establish the scholarship. The next day, Thomasz sent me a video of Roman, driving together with his comrades in the pick-up truck they had purchased for them, thanking them for the vehicle, and saying that we would definitely win the war. Soon after that, we started working on establishing the scholarship, with colleagues from Allen & Overy, Morgan Lewis, and Norton Rose Fulbright involved as well. Avellum provided pro-bono legal support on all Ukrainian jurisdiction matters, including creating the charitable fund and negotiating with the Taras Shevchenko National University of Kyiv. The idea was met with a warm welcome from students, faculty, and university officials alike.

**CEELM:** Who stands to receive the scholarship, and what will be the selection criteria?

**Maksymenko:** At the moment, we are preparing the procedure for awarding the scholarship and we are discussing specific details, including selection criteria and the schedule for awarding it. What we plan now, presumably for this year, is to grant scholarships to some graduates who were admitted for their master's program in Law. The scholarship will cover tuition fees and other living expenses. We are still uncertain about the schedule, as many students are on the frontlines, passing exams online while at war. Because of martial law, we still don't know when the master's program admission results will be announced, and that makes the planning process a bit difficult.

As for the criteria, we want to target students who have a background in community service and who are passionate about creating positive social change, as Roman did. We want to give opportunities to students who, rather than choosing to practice law at some of the best law firms, looking to earn a lot of money, would choose the work that is not as highly paid in society but is crucial for the country's development.

**CEELM:** What are your hopes and dreams for the Roman Ratushnyi Scholarship?

**Maksymenko:** Thomasz' and Anna's dream is for the scholarship to last for at least 10-20 years, being awarded to students on an ongoing basis. Given what is happening right now, we predict that the demand for justice will grow and reach the highest levels and that, someday, with the help of international friends and partners, we will build a socially and environmentally active community. We hope that our scholarship will encourage and support Law students to orient themselves toward that goal. ■

# MARKET SPOTLIGHT: BULGARIA

# ACTIVITY OVERVIEW: BULGARIA

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

| | |
|---|---|
| CMS law·tax·future | 70 |
| DJINGOV GOUGINSKI KYUTCHUKOV VELICHKOV | 60 |
| BOYANOV & Co. | 47 |
| KINSTELLAR | 35 |
| schönherr | 30 |

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

**40** Kostadin Sirleshtov

**20** Georgi Tzvetkov

**15** Diana Dimova

**14** Damian Simeonov

**11** Alexandra Doytchinova

**11** Antonia Mavrova

**Activity Overview:**

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

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# BULGARIAN WHISTLEBLOWING WOES – A CEE LEGAL MATTERS ROUND TABLE

**By Radu Cotarcea**

**Hosted by Penkov, Markov & Partners, nine lawyers from Bulgaria – six working in-house and three in private practice – sat down for a round table conversation to discuss the EU Whistleblowing Directive and how it will impact companies in the country.**

Alexander Tsanev, Legal Counsel, SumUp

Anton Petrov, Deputy Director Legal, First Investment Bank

Elina Vardeva, Head of Legal, Siemens

Iliana Byanova, Chief Legal, Sopharma Trading

Ilya Komarevski, Managing Partner, Komarevski, Dimitrov and Partners

Ivelina Vassileva, Attorney at Law, Schoenherr

Nikolay Voynov, Attorney at Law, Penkov, Markov & Partners

Tsvetelina Yotova, Legal Counsel, SumUP

Vladislav Nikolov, COO, General Counsel, EnduroSat

## A Familiar Tool for an Old Problem

To set the background of the conversation, Petrov points out that, at the moment, only about 20% of fraud is detected and prosecuted, 40% is detected but not prosecuted, while the remaining 40% simply goes undetected – the so-called "dark number." According to him, "the regulator is trying to figure out how to clear this up while keeping in mind that 60% to 70% of prosecutions result from anonymous tips." The *EU Whistleblowing Directive* is aimed at just that.

The principles of the *EU Whistleblowing Directive* are not necessarily completely new, according to Byanova, who points to the fact that a whistleblower protection regulation was introduced in the financial sector already several years ago (and in aviation and maritime transport as well): "In fact, it has been around for about a decade now as it was introduced as part of the *Basel Committee guidelines and the Capital Requirements Directive* (*CRD IV*). I believe that pretty much all that we are reading now in the new directive is already in place in terms of policies within banks." She also highlights that there already is a

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national hotline meant to report cases of conflicts of interest and corruption. Furthermore, Nikolov points out that there already is a "good legislative ground for whistleblowing in competition law – the so-called 'leniency program' where one (even a participant in a violation) can inform the competent authority about a forthcoming or existing infringement of the competition regulations. This has been a well-used procedure in the EU and US law systems for years and a good example that the whistleblowing regulations are not new, but further development of already existing rules."

Voynov agrees with Byanova but notes that is really the case only for internal channels – "external ones will be a different matter. Unlike in most countries where whistleblowing has been in place for at least a decade, especially when it comes to anticorruption channels, an unfortunate equality has been drawn between a whistleblower and an informer (*snitch*) in the public perception, as illustrated in various NGO reports and studies on the matter.

## Cause(s) for Concern

Drawing from her own company's experience, Vardeva says that Siemens already has strict reporting channels in place – "so nothing new is really on the horizon for us." The one potential problem that Vardeva highlights is an interpretation paper issued by the European Commission, (in response to a letter sent by certain Danish companies) according to which, she explains, "groups of companies with 50 or more employees cannot use just the channels established in their central HQ – rather they also need to set up new local ones." This, she argues, "is something that is not very reasonable – we already have the resources and the channels built there and now it'll take additional capacity to establish internal channels in each country and train the relevant people to take this on. Whether or not we'll be able to rely exclusively on our already created, centralized tools and they will be considered sufficient is the main concern for us." And she is not the only one for whom this is the case, with Yotova saying that SumUP also has well-established channels in place equipped to cover all elements required by the directive, but to what extent their current system meets the local requirement is a question mark. "There is no real exception for international groups, unfortunately, so the real question for someone like us, with a system in place globally, is what needs to be done locally."

And a particularly difficult element going forward, according to Yotova, is that the directive specifies that a national body should investigate reports. "Imagine someone in Germany files a report about a breach in Luxembourg using a channel in Bulgaria. How will the Bulgarian authority step in, in this case?" And to further add to this issue, Voynov highlights that this is a directive – not a regulation – which can "very well lead to astonishing differences in transposition in local markets. Whistleblowing within global organizations will be very difficult because of this." Even in Bulgaria, it is as of yet unclear how it will be transposed into local law, with Vassileva explaining that the current draft has yet to be passed by the national assembly.

"I see several things that concern me," Voynov comments looking at the current draft, with a particular focus on the aspect of anonymous whistleblowing. He notes that the threshold of 50 employees, as set in the directive and "directly translated into the Bulgarian draft," will be "very challenging." Beyond the threshold, he believes that "both the aspect of anonymous signaling and the specific authority in charge of it in Bulgaria need to be carefully reassessed and perhaps even reconsidered." On the latter, Petrov agrees, noting that "the current spectrum is very wide, and the authority will need some time to educate itself if it is to investigate every single one." Of anonymous tips, however, he is a promoter, reminding us that they comprise 60-70% of all investigations. "Whistleblowing is often discouraged in Bulgaria. We are scared of the process, and we need to become more comfortable with it to accept elements such as anonymous tips, which are still deemed 'not reliable.'"

Komarevski agrees, adding that "culture here in Bulgaria does not help. We don't like reporters, and we need to educate all that it is not bad to report on wrongdoing. Without anonymous reporting, I believe we'd have very few cases reported to begin with. I believe that, for all its challenges and risk of abuse, anonymous reporting is the way to move forward here, especially since I believe the current culture is in place because there was no legislative support in the past for anonymous reporting." Nikolov believes that this cultural aspect can be addressed by the update, describing it as a "good step towards empowering people," while Vardeva, drawing from her exchanges within business associations, points out that she was "really surprised to hear that most business representatives support anonymous reporting – something I would not have necessarily expected from large employers."

## The Drawbacks of Anonymous Signaling

The first question raised by Byanova is whether anonymity can be protected, to begin with: "does anyone know of a single huge whistleblowing case where the whistleblower remained

anonymous?" Tsanev agrees: "if it's a big case, indeed, it's impossible." Further, it's not just about the size of the case but also that of the team, with Nikolov explaining that, "in a relatively small organization, even an anonymous report could be easily tracked by management to its origin, which could prevent the proper implementation of this regulation in practice. As we are well aware, the regulation is enforceable for teams of 50 (and above) employees, but from my practice, I can assume that even in a team of 100-150 a potential whistleblower could be easily revealed and become subject to retaliatory actions by the respective company. I see this regulation as really only applicable and working for bigger organizations."

But Yotova highlights the distinction between anonymity and protecting the identity of the whistleblower. "There are ways to ensure the system knows the identity of the whistleblower but keeps it a secret," she explains, adding: "In my opinion, anonymity itself won't bring anything helpful to a major investigation, especially keeping in mind that the lawyer of the persons concerned will, from the very beginning, argue the right of defense of their client is compromised by not knowing who is giving the signal. And, ultimately, the relevant authority won't be able to investigate properly because of the shortage of information." On this point, however, Petrov argues that, at this stage, getting to prosecution is key: "As a reminder, 40% of cases of fraud are recognized by the state as never being identified. Even if the prosecution would not be as effective, it'd still be better to initiate investigations into those cases that we'd otherwise not even know about." Tsanev agrees that, "even if anonymous reports do not lead to anything, it's still a red flag that something is going on, meaning that authorities can pay closer attention. It's like a tax audit – the authorities can't physically go into every single entity, rather screen and test here and there. If a report is filed, at least the authorities know an investigation is warranted."

Voynov, however, is concerned with how these anonymous signals might be abused. "If the investigation is carried out by a competent authority, Anton is right, but I've seen instances where if an authority comes into your office, it may very likely kill your business. Also, think of a simple instance of public procurement – with only one anonymous signal you can entirely derail a competitor. I see risks of this being weaponized and used abusively," he explains. "Indeed, there's a lot of risks," Yotova adds. "Just imagine the damages that might arise from an abusive report that affects trade secrets – if any are abusively disclosed, we could be talking about millions in damanges against a possible fine of untruthful reporting." And Nikolov also points to potential abuses from within the organization itself: "I see a risk with employees being very well aware that they can prevent themselves from being fired if they are a whistleblower. It'd be a simple matter of submitting a two-sentence completely ungrounded signal and you'd become subject to unbeatable protection from dismissal – it's quite scary from a Bulgarian system of law perspective."

## Underpromoted But Not Underdiscussed

In terms of awareness, Byanova feels that, as with compliance matters in general, there is "huge awareness and everyone I know is well aware of whistleblowing. They all want to be prepared and that will be furthered by the fact that, as soon as the draft bill becomes law, law firms will put up newsflashes, and solution providers will look at offering off-the-shelf services for it." Indeed, Komarevski points out they are already offering digitalized online solutions, acting as a third-party whistleblowing channel keeper to their clients. Vardeva agrees that "businesses are quite aware of what is coming. Within the associations where I am active, we did have a discussion on the whistleblowing directive and the draft law, and I can say that most members are apprised of what is going on. Especially noteworthy is that these members were not just colleagues from other legal departments, but management representatives of their companies."

Petrov, however, looks at the general population and points out that, "as opposed to say the GDPR, which was a topic of discussion for what feels like a century, there has been little talk on whistleblowing leading up to this update." Indeed, Komarevski agrees that there has been "no real effort to promote the change to the wider public," with Voynov adding that the government has done little to help in this regard. In fact, he adds, "Transparency International raised a red flag on it already but the topic seems to have plunged into some kind of an abyss – there was a working group with the Ministry of Justice put together to address it – but between the Green Deal, ESG, and the Russian invasion it seems to have slipped in the background. When the GDPR came around there wasn't such stiff competition for attention."

Petrov echoes the need for a government-led campaign. "We have active ongoing campaigns against human trafficking, for example – and that's certainly a worthy cause – but the effects of fraud and corruption are far more far-reaching." Vassileva closes the conversation with the hope that the new law will be a catalyst and "that the state authority takes the lead and informs people and runs campaigns to encourage people to report more." ■

# IN SEARCH OF STABILITY: BULGARIA'S MISSING AND MISSED LEGISLATION

By Teona Gelashvili

**In Bulgaria, one ordinary and two extraordinary parliamentary elections were held in the span of eight months in 2021, and the country is now preparing for yet another extraordinary election on October 2, 2022. Which outstanding legislative packages are critical – considering the absence of regular parliamentary activities – and what are their implications for the country?**

## Unusual Circumstances

"The absence of regular government and the short-lasting parliaments have unreasonably delayed some essential legislative initiatives," Penkov, Markov & Partners Partner Roman Stoyanov points out. The short mandate of the previous National Assemblies "was extremely inadequate for any substantial legislative activity," adds Tokushev and Partners Law Office Managing Partner Viktor Tokushev. The substantial national and global crises, as well as the war in Ukraine, created hurdles for the most recent parliament too, PPG Lawyers Managing Partner Irena Georgieva says, noting that "the last parliament was focused on very disparate and sometimes inconsistent actions and measures, where real legislative activity was reduced to a minimum."

## One Priority Above All Others

Considering the unique circumstances of the country, all the interviewed lawyers agree that the most pressing legislative updates are the ones related to European funding under the Recovery and Resilience Plan (RRP). "In order to receive the EUR 724 million second tranche, the adoption of 22 legislative measures is necessary," Tokushev says, noting that the deadline is December 31, 2022. "The legislative changes stemming from the country's obligation to fulfill some of the milestones outlined" in the RRP are "an absolute condition for receiving the second payment," Kambourov & Partners Managing Partner Veronika Hadjieva adds. "The plan offers not only an opportunity to implement several large energy, infrastructure, and social projects but also to advance much-needed and long-awaited reform," Kinstellar Managing Partner Diana Dimova explains, noting that "the national budget has been set up in expectation of receiving EU funds. In view of the pessimistic prognoses about economic conditions in the upcoming months, ensuring that Bulgaria continues receiving funds under the RRP is essential."

The laws to be amended for receiving funding, according to Hadjieva, include "anti-corruption legislation, public procurement legislation, energy legislation, biological diversity legislation, as well as changes in the Bulgarian commerce act aimed at improving the efficiency of insolvency proceedings, and changes in e-governance legislation to reduce administrative burdens for people and legal entities."

Among the legislative updates required as a precondition to receiving the second tranche of the RRP, several reforms stand out, having a significant impact on the country as well. For Stoyanov, Dimova, and Schoenherr Attorney-at-Law Elena Todorova the legislation ensuring energy independence is the most critical. "Of course," Todorova says, we need the "legislative amendments that will enable the establishment of Bulgarian energy independence, such as a bill enabling small photovoltaic plants for family use." Further, "any changes that stimulate the uptake of renewable energy and energy storage should be prioritized," Dimova notes. And Stoyanov also highlights the importance of "the implementation of the European Green Deal," noting that the Bulgarian economy, "is one of the most carbon-intensive economies in the union." Georgieva, Stoyanov, Dimova, Todorova, and Hadjieva all note that the amendments to public procurement are also much needed. "A number of public works projects, including in infrastructure, are pending," Dimova notes, with Stoyanov adding that the absence of proper regulations "resulted in multiple cases of abuse of competition" as well as "uncontrollable subcontracting to third parties without using competitive procedures."

Another major issue, according to Dimova and Todorova, are the changes needed by the commercial act. The commercial act introduces "the variable-capital-company and accelerated liquidation of legal entities," Todorova notes, with Dimova adding that "the change aims to attract more investments into the innovation and technology sectors. In addition, the

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Viktor Tokushev,
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Tokushev and Partners

commercial act transposes the EU Directive on preventive restructuring frameworks and introduces measures to enable preventive restructuring to avoid insolvency proceedings."

Finally, among the legislative updates required as a precondition to receiving the second tranche of the RRP, Hristov & Partners Senior Associate Dragomir Stefanov says that "the draft law on the bankruptcy of natural persons stands out. Bulgaria lags behind all other EU member states in that field. Its importance goes well beyond the receipt of funds under the RRP." According to him, "adequate legislation in this area will likely address some of the negative economic and social effects that the economic crisis and upcoming recession will have on the most vulnerable members of society."

## In Other News

Still, there are also a number of pending legislative proposals that are not related to the RRP. According to Stefanov, among these is the law implementing the EU Whistleblowing Directive. "This is a particularly sensitive field for multinational companies in Bulgaria," he says. "The progress on that topic within the EU varies significantly between member states, and this complicates the companies' efforts to introduce the necessary centralized and/or local internal procedures and rules."

"Bulgaria has also set a goal to adopt the euro in 2024," Tokushev adds. "Among the essential amendments for the adoption of the euro are changes to the Bulgarian National Bank Act and the preparation of the so-called 'euro law.'" According to him, "with a functioning Parliament in the fall – at the earliest – the government's timelines are extremely tight to meet the set schedule. It is necessary to make changes in over 100 acts." Georgieva highlights the need to urgently introduce changes to the national budget. "Due to the dynamic inflationary processes in the country, the law on the budget in Bulgaria was voted in such a way that it was expected to be updated in the autumn, which at the moment seems rather unrealistic," she notes. Tokushev also underlines "the raging inflation" in the country, noting that "it is necessary to prepare a legislative program, as well as instructions from the government, to prepare the economy."

"In addition, there are several legal instruments to which Bulgaria has to adhere in order to advance its accession process to the OECD," Dimova adds. "These instruments include legislative and non-legislative measures on anti-bribery, corporate governance, cyber security, tax transparency, etc."

## Making Up For Lost Time

All things considered, "adopting the legislative reforms in time might be a challenging task in the context of a political crisis and the absence of a functioning parliament, especially considering that some of the changes concern sensitive matters such as judicial reform and the energy market," Dimova says. "What needs to be expedited is the election of a new parliament and a new regular government," Todorova concludes, "but this is a process that cannot be legally expedited – it is stipulated and with fixed time frames. However, if the elections on October 2, 2022, lead to a truly functioning parliament and a new government, Bulgaria still has the opportunity to meet the conditions for receiving the funds and maintain its current industry growth." ■

# NEW IN TOWN: EVERSHEDS SUTHERLAND INCORPORATES TSVETKOVA BEBOV & PARTNERS TO ENTER BULGARIA

**By Radu Cotarcea**

**On June 23, 2022, CEE Legal Matters reported that Eversheds Sutherland entered the Bulgarian market by combining with Sofia-based "long-standing relationship firm" Tsvetkova Bebov & Partners. CEELM spoke with the Bulgarian firm's Co-Managing Partners Irina Tsvetkova and Nikolay Bebov to learn more about the tie-up and their plans going forward.**

**CEELM:** First, congratulations on the new set-up! How did it come to be and for how long have you been working on this update?

**Tsvetkova:** We began discussions before the pandemic so the whole process took about three years. Eversheds Sutherland wanted to ensure that it was the right choice, both commercially and culturally, for both TBP and the firm. Eversheds Sutherland was keen to have a reach in the Bulgarian market and, on our side, we particularly had to assess the impact on our growth, the reaction of our clients, and the market as a whole.

**CEELM:** Were you actively seeking an international firm to team up with or did Eversheds first approach you?

**Tsvetkova:** We've known the partners at Eversheds Sutherland for many years and we have been cooperating on some projects. We have always benefited from excellent contacts with great firms (our history relates to PwC's legal offering, and we have worked with many global law firms and on many global projects), so we always knew that our place is leaning towards an international feel – not only in relation to our way of working, ethics, and principles but also in view of the profile of our clients.

**Bebov:** On the other hand, we have always been deeply rooted in our Bulgarian and Balkan environment, with excellent domestic and regional clients, alongside our international ones. Both aspects surely made us an interesting partner to have discussions with.

**CEELM:** What were the main selling points for both sides in your view? Why does this tie-up make sense for you and why does it for Eversheds?

**Tsvetkova:** As I said, for us, it was all about working in an international environment, with high standards of quality, access to interesting multi-country projects, and access to international expertise and learning. For Eversheds Sutherland, it was a matter of expanding to a new country in CEE.

**CEELM:** And what made Bulgaria particularly attractive?

**Bebov:** Bulgaria has been a sustainably growing economy for the past decade, and the legal business follows suit.

**CEELM:** As with any such tie-up, there's always going to be downsides – from a loss of some degree of independence to some potential referral work going away. What were the main factors you considered and (a) why did you decide they are not important and (b) how did you plan to minimize their impact?

**Tsvetkova:** Of course, we considered eventual risks to our business, potentially losing referrals from other international law firms. But we have had discussions with many of them and the majority reacted positively.

**Bebov:** For many of them, our quality as lawyers and our knowledge of the local market will prevail over the normal concerns of how you work together on a project with a potential competitor somewhere else. It also helps that Eversheds Sutherland has a network structure of independent law firms.

I have to point out that our clients and business contacts also reacted very positively to the news.

**CEELM:** How did the team members react to the news internally? What were the main concerns raised and how were their minds put at ease?

**Tsvetkova:** The team reacted very positively – for our staff to be a part of a global law firm in Bulgaria, with access to even more interesting clients and projects and with the opportunity to learn and get know-how from a wider team, is a big advantage.

Of course, every change raises some concerns. But we have been very transparent and open in our communications, and our colleagues from Eversheds Sutherland invested a lot of time during the onboarding process – they did presentations on every aspect of teaming up and the new requirements and opportunities and made people feel like they are a part of the wider team. I have to say that the onboarding was fantastically organized.

**CEELM:** What about the local bar association(s)? How open are they to such moves and what are the main, if any, barriers currently in place that had to be overcome?

**Bebov:** Bulgaria's Bar, and the Sofia Bar Association in our case, are well-functioning self-governing organizations. We believe that the legal profession in Bulgaria is maintaining a high stature and Bulgarian lawyers hold high values, and of course, the legal profession is also changing and adapting to Bulgaria's status of an open economy, which evolves continuously. Also, we have had on the Bulgarian market, for many years, quite a few international players or groupings, so we are not unique in this respect. Importantly, we continue to view ourselves proudly as part of the legal profession in Bulgaria.

**CEELM:** The announcement went out and the firm is now officially a part of the Eversheds family. What are the next steps in your ongoing integration efforts?

**Tsvetkova:** To continue to provide high-quality services to our clients, to be an active member of the network, and to grow Eversheds Sutherland's client base.

**CEELM:** What will be the biggest challenge and what are you most excited about going forward?

**Bebov:** The biggest challenge will be overcoming the context of the current economic situation in Europe and worldwide.

**Tsvetkova:** We are excited to be a part of a global network, we are eager to meet our new colleagues and to actively contribute, based on our history and track record, to the growth of the network and its client base.

**CEELM:** Looking at the overall Bulgarian market, do you believe there is a business case for further internationals to contemplate entering the market? And why?

**Bebov:** The market is growing but it is hard to opine on the pace of this growth, especially having in mind all the negative global developments since 2020. As part of this market, we will be welcoming all developments that make it more sophisticated, more ethical, and more advanced. ■

# MARKET SNAPSHOT: BULGARIA

## THE RENAISSANCE OF THE BULGARIAN CAPITAL MARKET

**By Viktor Tokushev, Managing Partner, and Boris Teknedzhiev, Partner, Tokushev and Partners**

The year 2021 effectively brought back the Bulgarian capital market into the spotlight of public interest. Seven IPOs were listed on the Bulgarian Stock Exchange (BSE), raising a total of EUR 12 million, which is the highest number of offerings in 15 years, going back to the period before the 2008 financial crisis. There is only one reason for this development: the rise of the SME Growth Market – *beam* – where all said IPOs have taken place.

By its nature, *beam* is not a regulated market, but a multilateral trading system, which is organized by the BSE, the regulated market operator. Its main purpose is to provide opportunities to small and medium businesses for acquiring investments that are alternative to bank financing and under lighter conditions, compared to the regulated market.

There are three essential characteristics of the *beam* market in comparison to the regulated market, which allures more interest from the companies:

First and foremost, in order to raise funds on the *beam* market, there is no requirement for prospectus approval by the Financial Supervision Commission (FSC), the Bulgarian regulator of capital markets.

Second, the companies allowed on *beam* do not become public companies (to which are applied numerous law regulations) but are rather subject to a much lighter regulatory framework as per the BSE's market rules.

Third, companies allowed on *beam* are primarily those that cover the requirements for SMEs.

Undoubtedly, the highlight is the first of these characteristics because two of the companies that have successfully raised funds through *beam* IPOs – Biodit and Smart Organic – have had previous refusals by the FSC to approve their prospectuses. Despite these refusals, the IPOs of these companies were successful as the full amount of the financing was raised. We see this as a clear indication that investors don't need the FSC's overprotection.

Concerning the requirements for companies admitted to the *beam* market, it should be noted that these companies should publish only their annual and six-month financial statements. Furthermore, the requirements for transactions above a certain threshold or with affiliated parties to be approved in advance by the general meeting of shareholders do not apply, nor is the obligation for tender offering in case of a shareholder increasing his/her company share applicable. Nevertheless, companies are expected to comply with all requirements against market abuse.

The new significant development in the *beam* market that happened in 2022 is that the maximum amount of sought financing through an IPO was increased from EUR 3 million to EUR 8 million, the latter being the absolute maximum under the applicable EU regulation. This is an important amendment because it provides the option for already developed companies, which may have been discouraged until now by the lower maximum amount for sought financing on the growth market, to place an IPO. Since most Bulgarian companies are medium-sized enterprises at best, *beam* is now converted into a very attractive opportunity for practically any company that has not already acquired public status.

To summarize, for a company to be allowed on the *beam* market, it first needs to be a joint-stock company, regardless of how long it has existed, meaning there is no requirement concerning the company's history. Second, it needs to draft a document for the offering, which is simplified in comparison to the prospectus, and the company needs to choose an investment intermediary that will carry out the offering itself. Third, there should be a contract in place with an advisor that will support the process of acquiring approval for the *beam* and the first two years on the market. Such advisors can be investment intermediaries as well as law firms, accountants, or financial consultants, being subject to a preliminary assessment by the BSE and should obtain the respective approval in this regard. ■

# BULGARIA SIMPLIFIES RULES FOR OWN-CONSUMPTION ELECTRICITY GENERATION

**By Kostadinka Deleva, Partner and Head of Energy, and Mihaela Dimitrova, Associate, Gugushev & Partners**

Bulgaria is making significant efforts to boost the share of renewables in its energy mix and reduce its dependence on fossil fuels. The new *REPowerEU Plan* provides for a massive scaling-up and speeding-up of renewable energy in power generation, industry, buildings, etc.

The proposal of the European Commission is the headline 2030 target for renewables to be increased from 40% to 45% under the *Fit for 55* package. A *Solar Rooftop Initiative* with a phased-in legal obligation to install solar panels on new public, commercial, and residential buildings is also on the table.

In compliance with the European Union's goals, Bulgaria will strive to achieve at least a 27.09% share of energy from renewable energy sources (RES) in gross final energy consumption by 2030. The *National Recovery and Resilience Plan* (NRRP) outlines the need for stimulating the production of electricity from RES by reducing the administrative burden on renewable investments with regard to the installation, connection, and operation of the facilities.

Consequently, on June 7, 2022, an act supplementing the *Energy from Renewable Sources Act* (ERSA) was published in the *Bulgarian State Gazette No. 42*. The amendments' aim is to optimize the deadlines for the construction of power plants up to 5 megawatts for covering own consumption and its faster implementation to optimize electricity costs.

The act introduces a notification regime in the cases where an end customer installs a power plant on the roof or facade of buildings or properties in urban areas, the energy from which will be used only for own consumption. The notification shall be addressed to the electricity transmission network operator, the relevant electricity distribution network operator, or the closed electricity distribution network, as the case may be. Prior to entry into force of the amendments, the investors had to follow the procedure for connecting to the grid, which, in some cases, could take considerable time.

In order to avoid any possibilities to circumvent the law, it was decided that in order to build the power plant in the simplified order, the total installed capacity of the power plant could be up to twice the amount of the capacity provided to the end customer as a consumer but not more than 5 megawatts.

According to the new provisions of the ERSA, the respective operator shall provide an additional agreement to the access and transmission agreement signed with the end customer within 14 days of receipt of the notification, in which the technical requirements for the connection scheme of the power plant to the electrical system are specified and the rights and obligations of the parties are regulated. The agreement shall serve as a guarantee for the security of the power grid and prevention of the entry of electricity and disturbances in the network, as a statement of opinion on the conditions and manner of connection is no longer required. It is also expressly regulated that the owner of such a power plant may return surplus or sell electricity to the distribution network only after fulfilling the requirements of the procedure for joining as a producer.

In view of the applicability of the new rules, the respective provisions of the *Spatial Development Act* and *Excise Duties and Tax Warehouses Act* have also been supplemented. Unlike under the previous regime, approval of development-design projects is no longer required for the issuance of a construction permit for such projects. For the constructions in question, only an opinion of a specialist engineer and the additional agreement to the access and transmission agreement are now required.

Given the energy crisis, society, businesses, and the government realized the significant importance of having an accessible, reliable, and sustainable form of energy. Thus, the interest of businesses in investments in the RES sector for their own consumption is rising and further law amendments favorable to investors are expected. ■

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# ESG – A GENTLE REMINDER FOR A CORPORATE STRATEGY UPDATE

**By Stefana Tsekova, Partner, and Dimitar Kairakov, Senior Associate, Schoenherr**

ESG initiatives are rapidly becoming the *status quo* in the business world. Most corporations have some kind of sustainability measures in place in at least one of the three pillars – environmental, social, or governance. The majority of businesses in Bulgaria currently implement ESG projects voluntarily, indicating that stakeholders are not legally required to, for instance, incorporate climate mitigation and social responsibility initiatives into their organizations. But ESG trends aren't going unnoticed by the regulators and ESG is gradually transforming into a compliance matter. However, beyond compliance, ESG lays the foundation for a competitive corporate strategy, positive climate action, and the discovery of new business opportunities.

## ESG Reporting Requirements

Many of the recent regulatory initiatives at the EU and national levels are aimed at encouraging capital allocation to sustainable investment. Thus, investors need a clear framework to screen ESG-related information and weed out companies that are all talk and no do. This issue is addressed by the proposed *Corporate Sustainability Reporting Directive* (CSRD) and *Regulation (EU) 2020/852 on the establishment of a framework to facilitate sustainable investment* (*Taxonomy Regulation*).

The CSRD extends the scope for mandatory non-financial reporting to all listed companies on EU-regulated markets and all companies that exceed at least two of the following: (1) annual turnover of EUR 40 million; (2) balance sheet total of EUR 20 million; or (3) 250 employees on average per year. It introduces an obligation for external assurance of the reports following applicable auditing standards. The CSRD will also require reporting specific information on sustainability matters as well as the role of management toward sustainability targets. Companies will need to gather quantitative and qualitative data to demonstrate and prove progress. Therefore, obligated entities need to prepare for such reporting in advance, especially in the case of large multinational companies where reporting obligations will have to be managed in parallel in different jurisdictions, including outside the EU. As the reports will be much more data-driven, corporations will need to establish internal processes for the collection and analysis of the necessary data. It is expected that the first reports will need to be submitted in 2024 for the 2023 financial year. Once the CSRD is adopted, we expect its provisions will be replicated in Bulgarian legislation without change.

The *Taxonomy Regulation* focuses on the environmental aspect of ESG and defines sustainable activities based on six environmental objectives. It requires the disclosure of key performance indicators such as the proportion of the company's turnover accrued from environmentally sustainable activities. Overall, the *Taxonomy Regulation* aims to prevent greenwashing by defining technical and measurable standards for a sustainable business and Bulgarian companies will have to swiftly adjust their policies to it. Currently, greenwashing may trigger liability under Bulgarian law for misleading advertisements or unfair commercial practices applied to consumers.

## Risk Mitigation Strategy

Although the above-mentioned legislation may seem like yet another administrative burden, the mere reporting requirements are not the heart of ESG regulations. The goal for each director should be strategic planning and the adoption of risk mitigation policies for all ESG-related risks. The risks in question may seem distant and directors tend to prioritize more pressing matters over climate goals set for 2050. However, such risks can strike suddenly and the unprepared may fall behind. No company is immune to increasing consumer pressure looking for *green* products or reputational damage arising from poor employee satisfaction or a lack of environmental awareness.

Bulgarian companies have to recognize the growing emphasis on ESG standards and legislation, which will become crucial for their global competitiveness in the near future. A good starting point for the risk mitigation strategy of every company is the revision of all corporate policies on ESG or their creation if overlooked in the past. These may include environmental measures such as going paperless, limiting waste, and improving the energy efficiency of buildings and processes. Further, amendments to contractual terms might be required to ensure that business partners share the same environmental and social values. A default on contractual ESG obligations or misleading disclosures may be caused not only by the company's actions but also through association with questionable clients and suppliers. Directors need to be particularly careful with inaccurate disclosures to state bodies as, under Bulgarian law, they are criminally liable for them. ■

# KNOW YOUR LAWYER: ALEXANDRA DOYTCHINOVA OF SCHOENHERR

## Career:

- Schoenherr, Co-Head of the firm-wide Corporate M&A Practice Group, August 2022
- Schoenherr Attorneys at Law, Partner, 2013-present
- Schoenherr Sofia Office, Establishment of office and Management, 2004-present
- Schoenherr Attorneys at Law (Vienna, Austria), Associate, 2002-2007
- University of Graz – Institute for Civil, Foreign Private Law, and Private International Law, Teaching Assistant, 2000-2002

## Education:

- University of Graz, Austria, Magister Juris, 2000

## Favorites:

- **Out of office activity:** Traveling and exploring cities, cultures, and food
- **Quote:** "Stay away from negative people. They have a problem for every solution." – author unknown, but so very right.
- **Book:** *The Diary of a Young Girl* by Anne Frank – still gets me emotionally like no other.
- **Movie:** *Love Actually* – perhaps not my top pick, but still on my Christmas watchlist.

## Top 5 Projects:

- Advising Chaos Software, a global leader in photorealistic rendering technology, on the Bulgarian law aspects of its merger with Enscape;
- Advising Ringier AG, a media conglomerate, on its acquisition of a controlling stake in Sportal Media Group;
- Advising the MET Group on the acquisition of a 60-megawatt operational wind park in Bulgaria;
- Advising Enery Development on the acquisition of the owner and operator of the biggest solar park in Bulgaria;
- Advising VTB Capital on the acquisition of the Bulgarian Telecommunications Company.

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

**Doytchinova:** What stands out in recent years is Enery's acquisition of the largest photovoltaic park in Bulgaria. It wasn't only huge for market standards in terms of asset and value, but also complexity. And it was the most significant transaction that was negotiated and implemented during the peak of the pandemic in 2020. In addition to the standard M&A workstreams, complexity was added by having one of the first ever commercial refinancings of an existing financing granted by the IFC and the US DFC, through a multimillion bond issue. Various workstreams were handled in virtual meetings across global time zones. It was also one of the first big closings during the pandemic. We had to isolate afterwards, as one of the attendees had tested positive. This led to our first virtual closing celebration.

**And what was your main takeaway from it?**

**Doytchinova:** Whatever the complexity of the deal, the number of parties, the legal issues to be solved, or transaction structures to be designed, and however difficult the environment – if all stakeholders and, crucially important, their legal counsels pull on the same string – a deal can be pushed through smoothly, to a satisfactory conclusion for all parties.

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

**Doytchinova:** We spend so much time communicating with our clients, including evenings, weekends, and during vacations, that we also chat about private interests and time spent outside the office. As people's interests are different, so are the topics of discussion. While one client may know that I like sailing or that I prefer working nightshifts, as this is the calmest time of the day, others may have learned that I grow chilies.

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

**Doytchinova:** If I had to name one single person, that would be Christoph Lindinger, former Managing Partner of Schoenherr and the driving force behind our CEE expansion, who took me on board in 2002. Although I had no relevant experience at that time, nor the international education of my fellow colleagues, Christoph put a huge amount of trust in me. I wouldn't be where I stand today without him believing in me twenty years ago. Even though he was never a traditional mentor, he was a leader by example: his passion and excitement for legal work and unwinding the most complex issues was truly infectious. But it was not just dedication to client work that I learned from him. It was also leading a team, how to motivate and be there for your people in any situation. This is what forms the strongest teams.

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

**Doytchinova:** Plan ahead. Work is exciting, and you want to embrace the chances you get. But also plan ahead in terms of personal development. Spend time abroad, studying or just living in a different environment and a new culture. This would be so enriching.

# MARKET SPOTLIGHT: TURKEY

# ACTIVITY OVERVIEW: TURKEY

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

| | |
|---|---|
| Paksoy | 120 |
| Baker McKenzie. | 56 |
| 大成 DENTONS | 49 |
| WHITE & CASE | 39 |
| TURUNÇ | 38 |

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

**36**
Elvan Aziz

**35**
Kerem Turunc

**34**
Muhsin Keskin

**28**
Sera Somay

**24**
Togan Turan

**Activity Overview:**

- Full information available at:
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- Period Covered:
December 17, 2013 - August 15, 2022

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# THE TURKISH TECH UNIVERSE: AGE OF TURCORN

By Andrija Djonovic

**In the past few years, Turkey has experienced a veritable tech miracle. A swath of start-ups, primarily in the gaming and e-commerce sectors, has attracted multi-billion-dollar investments and achieved record valuations. Two companies have even reached decacorn status – a valuation of over USD 10 billion.**

## Act 1 – The Origin Story

"Turkey finally ended its long wait for the first unicorn back in 2020 through the acquisition of Peak Games, a mobile gaming company with an estimated worth of USD 1.8 billion, by Zynga," Solak begins. Following this success story, he says that the start-up ecosystem in Turkey blossomed, with "four more unicorns and a decacorn in just the past two years."

These companies are mobile gaming company Dream Games (valued at USD 2.75 billion), e-commerce company Hepsiburada (USD 3.9 billion), software and AI company Insider (USD 1.2 billion), e-commerce shopping platform Trendyol (USD 16.5 billion) – the country's first decacorn – as well as its most recent decacorn, grocery delivery company Getir (valued at USD 11.8 billion).

Such a strong presence of successful tech start-ups in Turkey was primarily proliferated by private equity, according to Esin Attorney Partnership Partner Orcun Solak, KP Law Managing Partner Onur Kucuk, and GKC Partners Partner Emre Ozsar. "Most were founded as 'garage start-ups' in the form of partnerships of friends where, in minor cases, pre-seed and seed periods were funded from friends and family, or angel investors," Kucuk explains. In their later stages, these companies sought growth mostly via "local and international VC firms," he says. "All of Turkey's unicorns are PE driven," Ozsar underlines, with Solak adding that "venture capital and private equity investors have acted as catalysts in the growth of the country's first unicorns in most cases, with a few exceptions – where the growth has been advanced by internal resources and investments from the strategic investors."

These investors included, among others, Hummingbird Ventures, Earlybird Venture Capital, Index Ventures, Makers Fund, BlackRock, Sequoia Capital, Tiger Global Management, Wamda Capital, Riverwood Capital, and Aslanoba Capital, as well as sovereign funds such as Mubadala and the Qatar Investment Authority.

## Act 2 – Sequel Investments

Following their successful streak, these pioneer companies continued investing elsewhere. Of all the tech unicorns, Solak says that "Getir is definitely the most active company in terms of investing the funds received elsewhere, to enhance its services offerings and turn its app into a 'super app' that provides multiple services in addition to the delivery of groceries." To this end, Solak reports that Getir has acquired interests in car rental company Moov, e-commerce platform n11.com, and taxi platform BiTaksi.

Additionally, Getir made "two strategic outbound investments last year, as part of its global expansion plan," Solak adds. "It has acquired Blok, a Spain-based rapid grocery delivery company, to branch out into Spain, Italy, and Portugal, and Weezy, a UK-based rapid grocery delivery start-up, in order to consolidate the UK market."

Similarly, "Trendyol acquired Dolap, a company facilitating the C2C sale of used clothing items, and integrated those services

in its platform, resulting in increased growth for both Dolap and Trendyol itself," Guleryuz Partners Partner Zahide Altunbas Sancak reports. Moreover, Trendyol is quite interlinked with another prominent Turkish tech unicorn. "The founder of Trendyol was an early investor in Peak Games, while one of the founders of Peak Games, Evren Ucok, is still acting as the Chairman of Trendyol," Altunbas Sancak explains, adding that "another founder and the face of Peak Games, Sidar Sahin, has previously acted as an executive in several Trendyol departments."

She reports that, while both Trendyol and Peak are still "mainly operating in their primary area, the founders have also been making separate investments. In this vein, Peak founder Sidar Sahin is now making VC investments with Earlybird Venture Capital and, reportedly, making angel investments in smaller gaming companies as well."

To illustrate the ripple effect that tech investments in Turkey have had, Balcioglu Selcuk Ardiyok Keki Attorney Partnership Partner Okan Arican highlights another gaming company – Rollic. In 2020, Rollic was also acquired by Zynga, for USD 126 million. "Afterwards, Rollic acquired four local gaming companies: Uncosoft, Creasaur Entertainment, Bytetyper (Forgerhero), and Zerosum."

Arican also points out that former Peak employees have formed a further "28 successful video game studios" and that Peak co-founder Rina Onur Sirinoglu has, "following her successful exit, become the founding partner of 500 Istanbul, which is an early-stage VC fund." Sirinoglu has also co-founded Spyke Games, which Arican reports has "raised USD 50 million from Griffin Gaming Partners in its last investment round, with an approximate valuation of USD 250 million."

### Act 3 – Success, at Home and Abroad

Such vibrant tech sector activity has also produced benefits for the broader economy in Turkey. "The fact that Turkey has generated unicorns and decacorns recently can bolster the tech-savvy young population's belief in the Turkish start-up ecosystem and avoid human capital flight out of Turkey," Solak says. "Moreover, the birth of new start-ups by entrepreneurs who have gained experience under Turkey's unicorns could generate more foreign direct investment."

Given the fact that Turkey has had a "significant current account deficit," according to Solak, attracting as much FDI as possible is critical. "In recent years, technology start-ups have boosted their shares in Turkish FDI inflow, and according to the Successful FDIs in Turkey in 2021 report published by

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**Partner,**
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**Guleryuz Partners**

> ***The fact that Turkey has generated unicorns and decacorns recently can bolster the tech-savvy young population's belief in the Turkish start-up ecosystem and avoid human capital flight out of Turkey.***

the Presidency of the Republic of Turkey Investment Office, Turkey's entrepreneurship ecosystem raised USD 1.6 billion of funding in 2021, while international investors were involved in 89% of the investment volume," Solak says, explaining the impact.

Moreover, these investments have had a positive impact on employment rates. "For instance, in her press statement after Trendyol's latest investment round, Trendyol CEO Demet Mutlu said that Trendyol, directly and indirectly, contributed to the employment of 1.1 million people," Solak reports.

"Currently, there are six Turkish unicorns, and four more are expected to come by the end of 2023," Altunbas Sancak reports. "According to the Startup Watch 2021 Report, Turkish start-ups attract nine times more investment compared to the previous year." She stresses that more and more international investments are being made in Turkish tech companies, "bringing liquidity to the country in a time of need."

Kucuk agrees with both, adding that "it would not be misleading to comment that the financial resources created through the exits were somehow reinvested in the digital economy," pointing again to the example of Peak. "The team who founded Peak Games then founded Dream Games and moved it to a success story as well," he says. Such is the positive impact on the economy, Arican chimes in, that there is even a new term – Turcorn – created for Turkish unicorns. "The Turkish government has embarked on a mission to increase the number of Turcorns."

And how wouldn't it, given the numbers? "According to the Startup Watch Year in Review 2021 report, 15% (44 deals) of the 294 deals that were completed at the angel and venture capital level were joined by foreign investors and, in terms of the total investment amount, the share of foreign capital is 89%," Solak outlines. Moreover, in the first half of 2022, he reports that foreign investors participated in 25% of angel investor and VC deals.

Kucuk builds on this and sheds light on the most attractive sectors for investors. "Turkey is an attractive platform for start-ups, especially in gaming, fintech, and e-commerce. Other hot verticals include SaaS, artificial intelligence, health technology, marketplace, and mobility," he says. "These industries attract more attention because Turkey has great engineering talents with lower costs, has an attractive consumer market, and its population consists of young and tech-savvy generations." Kucuk feels that the upwards momentum of the past few years is a good indicator of the "potential of the start-up ecosystem for the next decade."

Focusing on a specific sector, both Solak and Arican agree that gaming in particular is thriving. "In the aftermath of successful investments in Peak Games, Dream Games, and Rollic, as well as the achievements of local game studios on the global stage with their products, 305 new gaming studios were set up from 2019 to 2021, and Turkey has become a vital gaming hub in Europe," Solak says.

"Gaming is an interesting vertical in Turkey because the country has both a large population of users and qualified developers," Arican adds. "Moreover, Turkish founders have proven themselves through many successful companies." He too points to the Startup Watch Year in Review 2021 report, saying that the "gaming sector became the center of attraction, with 52 deals for a total of USD 265 million raised, and valuations increased by 80% in Turkey."

### Act 4 – Governmental Input

"The Turkish government supports the local venture capital and technology start-up ecosystem through a variety of public institutions and organizations, granting many types of support, including direct cash support, tax exemptions, con-

sultancy services, and others," Solak reports. He specifically highlights the beneficial effects of TUBITAK, the state-owned Scientific and Technological Research Council of Turkey, and KOSGEB, the Small and Medium Scaled Industry Development and Support Directorate. Moreover, Solak says that the Ministry of the Economy provides financial incentives, tax breaks, and other benefits for tech companies and start-ups and those investing in them.

Altunbas Sancak adds that the government provides particular support to companies located in special zones – technoparks. "There are income, stamp, and corporate tax exemptions for the enterprises located and operating in these zones, and tax exemptions for salaries of R&D employees working there," she explains.

Altunbas Sancak and Kucuk both point to the additional structural incentives that venture capital investment companies and funds enjoy. These companies "operate under the regulation of the Capital Markets Board of Turkey but are also subject to many financial incentives," Altunbas Sancak says, pointing primarily to tax breaks. "The revenues of VCICs and VCIFs are exempt from income tax, while dividends earned from VCIC and VCIF shares are also exempt from corporate tax," Kucuk chimes in. "Companies that invest in VCICs or VCIFs also benefit from a variety of other tax incentives, to increase participation in venture capital investments.

### Act 5 – Aftermath

Still, even the strong and continuous development of the Turkish start-up ecosystem is not impervious to global events. "The Turkish economy has been directly and indirectly affected by the unpredictability of the exchange rates, rising inflation, the COVID-19 pandemic, and the ongoing Russia-Ukraine war," Arican says. "So, there is uncertainty in the Turkish market which may cause a decrease in the valuations of some technology companies," he believes, and this "may result in down-rounds for some unicorns."

Solak says that "the upcoming 2023 general elections to be held in Turkey create further uncertainty for investors." This situation, "coupled with Turkey's current account deficit and dependence on external energy sources, puts more pressure on the Turkish lira, which will eventually cause high volatility and inflation." He feels that, on the one hand, tech start-ups must be mindful of such volatility; on the other hand, foreign investors might use this as an opportunity.

Altunbas Sancak agrees, adding that foreign investors are already stepping in to take advantage of the profitable currency exchange rate in Turkey. "After the devaluation, we have observed that the foreign companies either start a business or grow their businesses in Turkey, to take advantage of low salaries and expenses." She believes that "every decline in the Turkish lira is a massive benefit for investors, because foreign buyers have access to foreign currency," especially if investors move quickly, before prices in Turkey readjust.

Still, not to end on a gloomy note, Kucuk says that – despite all of the global turmoil – "record high investments were witnessed in the first quarter of 2022, and Turkish ventures are still ambitious to reach more funds, also spurred by the fading of the pandemic." He further adds that the war in Ukraine has "led to some flow of capital to Turkey, as investors look for safe environments to channel their capital, in addition to Turkey being a great hub both for the East and the West, with tremendous potential." Solak agrees with Kucuk, saying that "Turkey's start-up ecosystem has maintained its momentum in the first half of 2022, with approximately USD 1.4 billion invested in seed, early, and later VC stages," a new half-year record, and stresses "Turkey has still managed to present a new unicorn, Insider, and a new decacorn, Getir, in the first half of 2022." ■

# MARKET SNAPSHOT: TURKEY

## THE RISE OF GREEN FINANCE IN TURKEY

By Hulya Kemahli, Partner, and Arcan Kemahli, Counsel, CMS Turkey

Turkey, a G20 country, has been experiencing an increase in energy demand with its high-speed economic and population growth which makes it even more dependent on energy imports for primary energy sources. To ensure the security of its energy supply, Turkey has set its mind to increase the share of renewable energy resources, as per its renewable energy and energy efficiency action plans. That being said, besides other obstacles, the country's priority target cannot be achieved without an innovative financing resource.

### Issued Green Bonds

In the last seven years, Turkey has introduced many green financing methods such as green loans, green sukuks, and green bonds. Among others, high investment costs, longer periods for investment returns, and investors' high-risk perception of green investments make green investments less favorable compared to other investment methods. In this regard, green bonds as a capital market instrument step forth, by reducing the risk and cost of investment by attracting a more diverse base of investors.

The first green bond in Turkey was issued in 2016 by Turkiye Sinai Kalkinma Bankasi (TSKB), with the USD 300 million raised to be used in energy, health, and education projects. The launch of the bond is considered a significant success since the bond was demanded 14 times more than expected. Following the first green bond, several other companies issued green bonds to finance their sustainability-linked projects. Moreover, after TSKB, Turkey's two biggest banks also issued green bonds to fund the construction of green buildings and renewable energy projects.

### Recent Developments

Turkey has proved its commitment to sustainability principles. In 2020, the Turkish Capital Markets Board (CMB) amended its corporate governance regulation which requires public companies to indicate in their annual activity report whether they apply sustainability principles. If they do not, they must give detailed reasons for this and list the social and environmental risks arising from non-compliance by using a template sustainability report published by the CMB within the financial report submission period but, in any case, no later than three weeks before the general annual meeting. Thereafter, in mid-2021, Turkey published the *Green Deal Action Plan* to harmonize the EU's actual and planned policy changes by adopting compliant roadmaps for foreign trade.

The *Green Deal Action Plan* included two specific goals regarding green bonds which are to establish the *Sustainable Bond Framework Document*, under which Turkey intends to issue green and sustainable bonds in international capital markets, and to draft a guide on green bonds. Not long after, on November 3, 2021, a draft guide on green bonds and green lease certificates was published by the CMB for public review, and later on, on February 25, 2022, the CMB introduced the applicable version of the guide. As of November 12, 2021, the *Sustainable Bond Framework Document* became applicable to any sustainable financing instrument to be issued by the Republic of Turkey. Also, both the mentioned guide and framework document were drafted as per the principles outlined in the International Capital Market Authority handbooks. Further, the CMB has decided to apply a 50% discount to the administrative fees applicable to capital market instruments to incentivize green investments.

### Remarks and Suggestions

Between the invasion of Ukraine and the rapid increase in energy prices, Turkey has suffered from being heavily reliant on energy imports. Considering Turkey's new economic model, which primarily aims to increase production and exports despite the risks and uncertainties related to its energy supply, Turkey's priority target to ensure energy supply and maintain, and even increase, its economic growth depends on green energy and, hence, green financing. Accordingly, with the recent and expected interest rate increases, green bonds are expected to be in high demand for green projects, and recession concerns may make green bonds even more appealing for investors, with their low-risk fixed revenue opportunities.

The volume and amount of the current green bonds may not be considered adequate for Turkey, where its energy needs increase each day and most of its energy supply is provided through imports. So far, Turkey has shown its eagerness to increase green energy through green investments and attract foreign investment through legislative and administrative action. ■

# REMOTE WORK NEEDS ITS OWN SET OF RULES

By Onur Kucuk, Managing Partner, and Cigdem Soysal, Senior Associate, KP Law

The labor markets have been disrupted by the COVID-19 pandemic globally and Turkey had its fair share of lockdowns, economic downturns, and unprecedented shifts in the business landscape. One of these structural changes in, and challenges for, the Turkish market is remote working.

Working from home was just an existing perk – usually a one-day-off incentive granted by some companies in Turkey before the pandemic. During the pandemic, it became a widespread work model, also evolving into a hybrid model, especially for people who are not necessarily required to work on site. And we clearly see that this structure is becoming permanent for increasingly more organizations in the post-pandemic future, as employees and employers witnessed its benefits – less commute, fewer office costs, and efficiency (though this one is a never-ending debate). Remote work has never been as high up on the business agenda as it is today, with the trickiest area both for local and international companies located in Turkey: employing foreign citizens in Turkey.

## Legal Aspects of Remote Working in Turkey

From a legal aspect, remote working caught Turkey off-guard. The first legislative provisions regarding remote working in Turkish law were included in the labor law in 2016, with only a few clauses including the definition of remote working and one article on the content of its contract. And as the pandemic significantly accelerated the adoption of remote work, companies had to consider the financial costs and safe work environment of their remote workforce. Many questions arose in practice: Which costs of remote employees must be covered by the employer? Should transportation and meal allowances paid for on-site workers continue to be paid also for the remote workforce? What utilities and equipment should employers provide to remote employees? If an accident occurs during the working hours of a remote employee, will it be considered an "occupational accident"? Considering the principle of interpretation in favor of the employee in Turkish law, what will be the approach of the courts against malicious overtime pay demands?

While legal professionals were trying to answer these questions according to the provisions of the existing legislation, the Ministry of Family, Labor, and Social Services published a new regulation on remote working, which came into force on March 10, 2021.

This regulation covers all employees who work remotely under article 14 of the Turkish Labor Act. As per this regulation, many matters such as the costs arising from the arrangements of the workplace, the transition to remote work, and its duration depend on the mutual agreement between the employer and employee, while the employer still holds responsibilities such as informing the employee regarding the occupational health and safety measures, or providing the necessary training.

## Open Questions and Remedies

Although the regulation eliminated some of the uncertainties, there are still many questions that will need clear answers – such as the legal consequences of remote working without a written remote working contract, the conditions of work accidents in the remote work model, the failure to agree on which expenses will be covered by the employer, the consequences of overtime work without the employer's written request – not included in the regulation. Undoubtedly, as remote work is here to stay, the regulatory framework will need to revisit the fast-changing contours of the labor market.

To manage a smooth and compliant transition to remote work, it is essential for companies to: publish a procedure that includes the principles of remote working; make an additional protocol to the employment contract with the employee and reach an agreement on the transition to remote working; determine the occupational health and safety measures to be taken at home, together with occupational safety experts, and notify employees of these measures in writing; determine which utilities and equipment will be provided by the employer; not to request the employee work overtime; warn the employee in writing if they work overtime without the written request of their manager; and research the reasons for the need of overtime work.

The approach of Turkish courts to the legal problems arising from the remote work model will become clear as further court decisions are made in the future. ■

# TURKEY GEARING UP FOR THE NEXT BOOM?

By Dogan Eymirlioglu, Partner, Balcioglu Selcuk Ardiyok Keki Attorney Partnership

The Turkish M&A market never lacked surprises or activity and has always been one to watch, even at times when other markets were navigating doldrums. The rest of 2022 and 2023 are not likely to be exceptions and there is certainly room to be optimistic in terms of increased activity.

A number of factors, both domestic and international, play into Turkey's hand and fuel the fires of optimism. The war in Ukraine and the ever-increasing number of sanctions against Russia and China appear to be helping Turkey recapture its position as the close-to-home manufacturing hub for European investors. Consequently, we see an increasing number of European manufacturers, in particular, those with a *buy and build* strategy, looking into Turkish manufacturing businesses. The lower cost of labor, a central location offering logistics advantages, and a gateway to otherwise not accessible markets as well as the size of its domestic market close to 85 million people make mouthwatering returns possible.

Venture capitalists are probably having the best time of their lives in the Turkish markets as activity is buoyant. Capital is not scarce as numerous funds have been raised recently and are looking to invest. Various legislative changes and incentives for technology development contribute to the investment fauna. Turkish tech entrepreneurs are becoming more and more global-minded and US or UK flips followed by Series A deals are common currency. As a consequence of the foregoing, Turkey ranks first in Europe – ahead of the UK and Norway – in terms of investments in the gaming industry, with Turkish startups receiving investments in the amount of USD 333 million in the first six months of 2022.

Turkey's energy deficit is by now a known phenomenon and keeps fueling both local and foreign investors' appetite for investing in energy projects, ranging from green energy to classic power plants. Joint ventures are a natural consequence of the foregoing, as Turkish players seek to partner with foreign investors either for financing or technology and know-how transfer reasons.

However, for anyone who has been keeping an eye on Turkey, it is never all sunshine and roses. The war in Ukraine is as much a risk factor as an opportunity. The elections in 2023 may be a concern for some, but it could also be easily argued that the market has already priced all scenarios. Perhaps more importantly, the soaring inflation and devaluation of the Turkish lira make life very difficult for companies that feed off the domestic market and whose revenues are primarily in liras.

Historically, volume business was the name of the game in Turkey, rising on the back of its large consumer base. However, with the devaluation of the lira and inflation, companies with no hard currency income appear to be stagnated and recording no growth in USD terms, although they record lira-based growth. E-commerce/marketplace companies with millions and millions of users are perfect examples of this.

The purchasing power of locals is in decline, and this has a direct impact on business growth. Investors of various PPP projects, typically on toll roads and in healthcare, look for exit opportunities. Companies with export capabilities and focusing primarily on foreign markets are, on the other hand, registering record profits and growth as their costs shrink.

Fintech companies were once the rising stars. We now observe a slowdown in fintech deals as a series of new regulations appear to have triggered more of a *wait-and-see* approach from investors. Ventures around telehealth solutions also lost a bit of steam as the panic in the early days of COVID-19 seems to be behind, and investors look at these companies with a more conservative lens due to new regulations.

With a few exceptions, Turkey has always been a mid-market deal making space. An interesting recent phenomenon is that the number of mid-market deals appears to be decreasing significantly, with mega deals and lower market deals taking the front stage.

Overall, Turkey remains a hotbed for deals where risk and opportunity walk hand in hand. The market remains as rich as Turkish cuisine, with something for all tastes. One just has to find that which fits their risk appetite. ■

# FINANCIAL RESTRUCTURING TRENDING IN TURKEY

By Onur Kucuk, Managing Partner, and Ekin Kotan, Associate Partner, KP Law

Recent decades have witnessed economic turmoil, crises, recessions, inflation surges across the world, and, lately, the long-lasting effects of the pandemic globally. During these downturns, the issue of financial restructuring has surfaced as a key concern of policymakers, financial institutions, and market players.

As of the second half of 2018, the concept of "financial restructuring" has become a trending topic again in the Turkish market, both because of the impact of changes made in relevant legislation and the economic developments in the country.

With the additional article introduced in *Banking Law no 5411* on July 19, 2019, it became possible to restructure the debts of commercial loan debtors (Debtors) arising from loan arrangements with banks, financial leasing, factoring, and financing companies (Credit Institutions) within the scope of framework agreements and contracts, for a period of two years. The two-year period was extended by Presidential Decree for an additional two years to July 19, 2023.

A total of 43 Credit Institutions, 21 of which are banks and 22 other financial institutions, have become parties to the framework agreement approved by the Banking Regulation and Supervision Agency so as to ensure that their debtors could benefit from this financial restructuring model.

Two different framework agreements were entered into force depending on the amount of total principal debts of the Debtors to the Credit Institutions. The large-scale framework agreement is applicable for Debtors with a total principal debt of TRY 25 million or more and the small-scale framework agreement is applicable for principal debt below that threshold. In 2021, the threshold was amended to TRY 100 million.

In the framework agreement, the main purpose of the financial restructuring is expressed as enabling the Debtors which have already faced or are likely to face temporary difficulties in their loan repayments to the Credit Institutions to fulfill their repayment obligations and to continue contributing to employment, through measures given in the framework agreement. These measures include, among others, an extension of the maturity dates; a reduction of the amount of, or waiver from, principal, interest.

A Debtor that intends to benefit from financial restructuring should apply to any of the three Credit Institutions that have the highest amount of receivables from them and already signed the framework agreement.

Upon the acceptance of a proper submission of the application by the Credit Institution, the protection period named the *Standstill Process* commences for the Debtor and the Creditor Institutions. During the Standstill Process, execution proceedings cannot be conducted, and other legal remedies cannot be applied by the Creditor Institutions with regard to the receivables in the scope of the financial restructuring, except for the cases that may cause loss of rights due to statute of limitations.

If the Creditor Institutions which own two-thirds of the receivables subject to financial restructuring agree on implementing the financial restructuring project for a Debtor, all Credit Institutions which are the creditors of Debtors have the obligation to restructure their receivables as per the framework agreement.

According to information provided by the Banks Association of Turkey, 325 debtors with total outstanding payment obligations of TRY 99,5 billion have benefitted from financial restructuring as of May 2022. 290 such companies are within the scope of large-scale applications, with TRY 99,085 million, and 35 of them are small-scale applications, with TRY 421 million in payment obligations. The data does not include the loans that banks have restructured on their own initiative, apart from the aforementioned regulations.

Considering the increasing global risks such as the Russia-Ukraine conflict, which has a critical impact on energy and food resources, supply-chain problems, and fluctuations in major economies, it is safe to conclude that companies will increasingly continue to restructure their finances. Having said that, restructuring tools will need to expand beyond the conventional *amend & extend* policy and introduce more comprehensive items such as debt to asset swaps, debt to equity swaps, or haircuts. Above all, the relevant legislation is expected to evolve to meet the changing needs for more complex structures and to open the path for companies and financial institutions to benefit from such tools. ■

# TURKISH LIRA BORROWING RESTRICTED BASED ON FX-ASSETS

By Zahide Altunbas Sancak, Partner, and Yasemin Keskin, Senior Associate, Guleryuz Partners

For For the last few years, and especially since the second half of 2021, Turkey has been struggling with an ever-growing financial and economic crisis. Dubbed as one of the "Fragile Five" economies in financial circles, the country has long been seen as a developing economy with a high degree of dependence on foreign investment and US monetary policy, limiting its power to control and contain financial emergencies.

With new global and regional risk factors affecting a big part of the world, Turkey – already a fragile economy – decided on a highly unconventional monetary policy, resulting in extremely high inflation and currency devaluation as well as falling real wages and purchasing power for wage-earners.

Turkey is now taking unprecedented legislative and executive measures in an effort to slow down the depreciation of the Turkish lira. These measures have lately included a new banking instrument protecting lira investors against foreign currency appreciation and restrictions on mortgages and, most recently, the restriction on Turkish lira borrowing for corporations holding foreign currency assets.

With the Banking Regulatory and Supervisory Authority's (BRSA) *Decision No. 10250*, dated June 24, 2022 (Decision), Turkish lira borrowing by companies subject to independent audit, except for banks and financial institutions, has been restricted, depending on the amount of foreign currency assets (FX-Assets) they are holding.

## Companies Subject to the Decision

Companies that fall within the scope of the decision are those holding FX-Assets worth the equivalent of TRY 15 million, which form more than 10% of total company assets or 10% of the most recent year's sales total (whichever is higher). In this respect, companies that meet the two foregoing conditions will no longer be able to borrow Turkish lira commercial cash loans from Turkish banks. Companies' assets will be reviewed via the consolidated balance sheets or the most recent annual financial audit report.

Moreover, gold deposits, foreign currency denominated securities and stocks, and other monetary assets such as reverse repo with non-residents are also regarded as foreign deposits, while other financial assets such as Eurobonds, non-resident securities, and debt instruments denominated in foreign currencies are not considered so.

Companies Not Subject to the Decision

Companies with a foreign currency net position deficit will still be able to use commercial cash loans in Turkish lira limited to the amount of such position deficit. However, it is required that these companies: (1) have their position deficit determined, and (2) apply to the lending bank with their most recent financial statements prepared by authorized independent audit firms.

In addition, companies holding FX-Assets below TRY 15 million as of the loan application date, need to determine the company's total assets and net sales revenue for the last year, along with their FX-Assets portfolio and the most up-to-date financial statements prepared by an independent audit firm. Additionally, these companies are to declare and undertake to the bank that the TRY equivalent of their FX-Assets will not exceed TRY 15 million until the term of the loan and, even if it exceeds such amount, they will still stay outside the scope of the restriction. Banks will be able to determine whether the threshold has been exceeded during the loan period through statements that must be submitted within the first 10 business days of each month, based on the companies' prior month-end balance sheets.

Banks may also require the companies to disclose all information and documents regarding the loan and will be responsible for updating the agreement within this scope and adapting business transactions accordingly. However, no standard form will be issued regarding the information and documents customers must provide.

## Structural Changes Needed

Foreign currency speculation has no doubt been an aggravating factor for the ongoing financial and economic crisis in Turkey, and the BRSA's decision supposedly aims to prevent speculation, in order to strengthen the lira.

However, with the underlying structural reasons for the speculation still present, the restriction, which is arguably a form of capital control, may act more as a red flag for potential new investors. In any way, it is clear that such measures can only act as a lifeboat in the short term, and deep structural changes are needed for the Turkish economy to thrive.■

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# KNOW YOUR LAWYER: NAZIF KARATAS OF NAZALI ATTORNEY PARTNERSHIP

## Career:

- Nazali Attorney Partnership, Partner, 2022-present
- Nazali Attorney Partnership, Director, 2017-2021
- Private Education Institutions, Lecturer on Constitutional Law, Criminal Law, and Labor Law, 2006-201

## Education:

- Marmara University, PhD Candidate, 2009-present
- Marmara University, LLM Degree, 2008
- Marmara University, LLB Degree, 2001

## Favorites:

- **Out of office activity:** Traveling and trekking
- **Quote:** "It's easy to be good, it's hard to be fair." – Victor Hugo
- **Book:** *Sophie's World* by Jostein Gaarder
- **Movie:** *My Father and My Son* by Cagan Irmak

## Top 5 Projects:

- Advising Bosal Turkey on closure, with more than 250 employees, and managing negotiations with the union (2021-2022);
- Advising Cargill on its first union authorization and collective bargaining negotiation process by carrying out the company's best interest in the process (2021-2022);
- Advising Duravit Turkey regarding the collective dismissal process of the employees and the execution of this issue before public authorities, upon the decision of the company to cease production in Turkey;
- Managing the collective bargaining negotiation processes of Fritolay and Fruko, within Pepsico Turkey (2018-present);
- Advising more than 50 large companies located in Turkey, such as Vakko, Eczacibasi Ilac, Ipragaz, or ThyssenKrupp, on the transition processes to the short-time working practice for employees after the closure, reduction, or temporary suspension of activities caused by the COVID-19 pandemic (2020-2021).

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

**Karatas:** It was a very difficult period for me and my colleagues when advising our clients as employers regarding the closure decision taken in Turkey due to COVID-19, the measures implemented by the government, and the resulting temporary stoppage of activity in most workplaces, across the country, or the decrease in production, due to the large number of workplaces and workers affected by this process. Considering the size of our clients, the volume of work, and the disinformation about short work, I remember that we had a hard time back then, and we worked overtime to clear our clients' questions, despite the pandemic.

**And what was your main takeaway from it?**

**Karatas:** I learned that we can always encounter unexpected events – and in these situations, it is necessary to take a determined stance, without panic, and by taking calculated risks. I realized the importance of taking all the relevant data into account and then making a decision without delay. Because the worst decision is still better than indecision.

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

**Karatas:** One of my areas of expertise is criminal law. At Nazali, I am responsible for both labor law and criminal law. However, since I spend a lot of time on labor law projects, I think that the clients I work with may not know about my criminal law expertise.

**Name one mentee you are particularly proud of.**

**Karatas:** I am especially proud of Zeynel Sahin. After his university education, he could not find what he wanted in business life. I mentored him and provided direct support on Constitutional law, Criminal law, and Labor law trainings, to prepare him for the exams. He first became a Social Security Inspector, then took the exams and became a Tax Inspector.

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

**Karatas:** I would advise that young man to pursue his dreams without giving up, without fear of making mistakes and failure.

# EXPERTS REVIEW: LITIGATION/DISPUTES

**This issue's Experts Review section focuses on Litigation/Disputes. The articles are presented ranked by the Calculated Disposition Time for first instance civil and commercial litigious cases, according to 2018 CEPEJ Indicators on Efficiency data.**

**The article from Ukraine leads the section, with an estimated 129 days to resolve such a case, followed by the articles from Austria and the Czech Republic, with 138 and 149 days, respectively. Wrapping up the issue are the articles from Croatia, with an estimated 374 days to resolve a case – or a little over a year – and Kosovo, with 947 days – around two-and-a-half years.**

**CDT estimates how many days should be required to resolve the pending cases based on the courts' current capacity to resolve cases. It is used as a forecast of the length of judicial proceedings.**

| Country | CDT (days) | |
|---|---|---|
| Ukraine | 129 | Page 74 |
| Austria | 138 | Page 76 |
| Czech Republic | 149 | Page 78 |
| Hungary | 151 | Page 79 |
| Romania | 157 | Page 80 |
| Bulgaria | 201* | Page 81 |
| Serbia | 225 | Page 82 |
| Poland | 273 | Page 83 |
| Croatia | 374 | Page 84 |
| Kosovo | 947 | Page 85 |

* CDT data not available for Bulgaria. Median data used instead.

# UKRAINE: AN INTRODUCTION TO WAR-INFLICTED DAMAGES

By Olexander Martinenko, Partner and Head of Dispute Resolution, Kinstellar

What do you do if your country is invaded, your parents and kids are killed when trying to escape the occupation, your wife is gang-raped, and you are beaten to death because you speak a language the invaders hate? What do you do if the invaders have looted your house, plundered your farm, or taken your factory away from you?

The 2022 Russian war against Ukraine has already become the biggest military disaster in Europe after World War 2. This war was initiated by a nuclear super-power and a permanent UN Security Council member against a nation whose security the former had guaranteed with its own sovereign signatures under numerous international treaties. The aggressor-state has clearly manifested its primary agenda behind launching the war: it clearly aims to erode the fundamentals of post-WW2 public international law by undermining the global security framework. It has decided to start with demolishing Ukraine.

By launching and waging the war, Russia has already severely breached the most important rules of public international law as well as numerous national laws of various jurisdictions. The scope of such violations is simply overwhelming – they go across almost all branches of law, both national and international, and they cross national boundaries and continents.

Many of them hurt the sovereign rights and interests of various states, including Ukraine. Yet many of them also hurt the rights and interests of private parties. And here comes the key question – do private parties have the right of recourse against the aggressor-state for such losses?

Regretfully, the question remains largely open. The key obstacles are three-fold: (1) under public international law, private parties are precluded from having direct recourse against the aggressor-state (however imperfect those public international law instruments may currently be); (2) in the national law dimension, private parties' ability to act is constrained by the sovereign immunity defense principle; and (3) finally, there is a challenging 2012 decision of the International Court of Justice in *Germany vs. Italy: Greece Intervening* where the ICJ confirmed the jurisdictional immunities of the state in the context of private-law claims for war-inflicted damages.

Hence, the injured private parties seem to avail themselves of only the national legal means to protect their legitimate rights. Those means are still severely restrained by the sovereign immunity defense that is regretfully available also to the aggressor-state.

The above legal obstacle must be overcome one way or another to provide injured private parties with the right of full redress against the aggressor-state. Theoretically, that can be achieved either (1) by taking purely national legal measures aimed at dishonoring the aggressor-state sovereign immunity defense, or (2) by changing public international law.

There are certain indications that selected countries plan on going along the former route. By doing that, they will certainly encounter legal difficulties in (1) breaching the sacred *comity of nations* doctrine and (2) likely limiting the effect of any such court decision to their own territorial realms.

Given that, the latter route may seem to be more straightforward yet longer to achieve. The two known international conventions – the already effective *European Convention on State Immunity* (*ETS no. 074*) and the yet to become effective *2004 United Nations Convention on Jurisdictional Immunities of States and Their Property* – took ages to develop. Plus, they lack the degree of coercion that is needed for the aggressor-states. And, certainly, they have no universal application.

In reality, the most reasonable way to achieve the goal may be a combination of both mechanisms. If a critical number of states legislate that aggressor-states be denied sovereign immunity defenses within their domestic jurisdictions, they will jointly set up a new public international law custom. That would be fairly quick to achieve on the one hand, and the custom will have a universal application on the other hand. On top of that, a new international convention can eventually be adopted.

The current war, the egregious violations of both public international law and domestic law rules of various nations by Russia, and the level of atrocities committed by its troops impel the international community to weave the above coercion mechanism into the fabric of public international law. We believe that it will be the primary task of the New Allied Nations – a new coalition of democratic nations that is being formed before our very eyes. ■

# AUSTRIA: ONLINE GAMING AND THE TENSION BETWEEN NATIONAL AND EU LAW

By Claudine Vartian, Country Managing Partner, and Nicole Daniel, Counsel, DLA Piper

Approximately two and a half years ago, online gambling providers started being sued by their customers, in various courts in Austria and Germany, demanding reimbursement for their losses by arguing that these services are offered illegally. This article will highlight some of the main issues surrounding these claims.

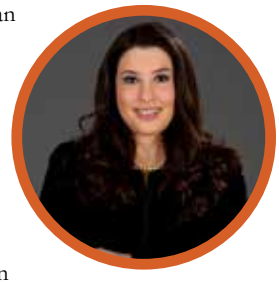
The *Austrian Gambling Act* holds that only licensed companies are allowed to offer gambling. Accordingly, the offering of these services by foreign companies in Austria under a foreign license is considered illegal, entitling the foreign company's customers to reclaim their gambling losses (apart from sports betting, which is subject to provincial law and therefore cannot be reclaimed).

In terms of liberalization, the European gambling market has changed a lot over the past twenty years. While most EU member states either had no dedicated regulations for online gambling or only state-owned online gambling monopolies, nowadays the multi-licensing system has been adopted by nearly all EU member states.

Austria, however, still holds on to a strict licensing system, whereas Germany is currently liberalizing the gambling market. In mid-2021, a new edition of the *Interstate Treaty* came into force, which regulates four categories of betting products: online casino table games, virtual (online) slots, online poker, and sports betting. The new law has a series of player safety measures in place, with the aim of protecting vulnerable players, preventing underage gambling, and combating problem gambling behavior.

Hungary abolished its monopoly recently. In the process of liberalizing the Hungarian online gambling market, the system was gradually changed from a monopoly to a licensing system. Austria, on the contrary, assigned the only available license to the partly state-owned operator win2day, leading to a de-facto-monopoly in Austria.

Foreign operators holding a license from another EU member state, such as Malta, offer their services in Austria based on the freedom of services the EU provides. As Austria is a member state, the applicability and supremacy of EU law are a given. The main issue here is that the de-facto-monopoly in Austria violates the freedom to provide services, and restrictions on fundamental freedoms are only possible under special circumstances.



The tension was reviewed by the Austrian Constitutional Court, which ruled in 2016 that the restrictions of the Austrian law are justified and adequate to reach their intended objectives, such as preventing excessive incentives to attract more players. Limited licensees can be monitored more effectively and therefore serve the aim of player protection. Therefore, Austrian civil courts currently base their judgments solely on the aforementioned Constitutional Court judgment, without assessing whether the situation has changed since then.

The main aspect that is being disregarded by the courts is that the shareholder structure of the Austrian lotteries has changed significantly over the past years. It is majority-owned by CASAG, which in turn is majority-owned by a Czech company through complex structures. The monopolist has been pursuing aggressive advertising practices to increase its large profits in recent years. These practices are not in line with advertising practices in the member states, with a licensing system and strict sector-specific rules. Accordingly, the protective purpose with which the licensing system was justified is thus thwarted, and new target groups are lured into gambling. Nevertheless, Austrian courts continue to adhere to the outdated line of jurisprudence. Neither do they review whether there is a comparable situation to 2016, nor do they examine the monopolist's advertising behavior.

Further issues that arise in these claims which are based on unjust enrichment are that the statute of limitation amounts to 30 years and even the claimant's knowledge of the alleged "illegality" of the offering does not impair the claim. Moreover, poker game losses in a multiplayer modus are to be reimbursed by the online gaming provider, even though the provider has never been enriched in the amount of the total loss, but only in the amount of a so-called table fee. In addition, the Austrian state profits from the court costs in these proceedings, and where these costs are supposed to be partially refunded, this currently takes up to several months.

It remains to be seen whether both the flawed case law as well as the problematic license system in this particular form can be maintained in Austria. ■

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# CZECH REPUBLIC: THE DISPUTE RESOLUTION LANDSCAPE – COMMERCIAL DISPUTES

**By Petr Sabatka, Partner and Head of Litigation and Regulatory, and Jan Karabeles, Associate, DLA Piper Prague**

In this article we provide a brief summary of the Czech dispute resolution landscape, focusing on commercial disputes.

## Litigation Before State Courts

Most civil-law disputes – including commercial disputes – need to be initiated in one of the 86 District Courts. Based on local competence rules, the respective court then hears the case in the first instance. The second instance (appeal) proceedings are heard in Regional Courts. However, Regional Courts also act as the first instance court for selected agendas (e.g., intellectual property and corporate disputes). In these complex cases, High Courts function as courts of appeal. Above this structure stands the Supreme Court, which deals with cassation requests (extraordinary remedies). The highest court in the system is the Constitutional Court, which stands outside this general structure. According to statistics, the Czech judicial system continuously ranks among the fastest in the EU, with an average duration of less than one year in the first instance. But the reality is different. If the disputes are more complex, first instance proceedings extend to several years. Although improvements are visible, the slowness of justice is often frustrating for entrepreneurs.

An area that could be improved is digitalization. Although this topic is intensively discussed and certain projects for improvement are in progress, Czech courts currently still mostly use physical files. Although submissions can be made electronically, judges (and parties) still need to work with physical case files, which can't be accessed outside the court's building. A limited electronic filing system is currently only used in insolvency proceedings because of publication requirements.

In terms of witness testimonies, a relatively recent change in legislation has finally established a much-needed framework for examinations via video conferencing, which has been used during the lockdowns of recent years.

## Arbitration and ADR – a Reasonable Alternative?

In the two decades following the fall of communism, arbitration became a popular alternative to the general state court system – especially among commercial entities. However, this instrument was also misused to the detriment of consumers – leading to significant changes in legislation. As a result of these developments, arbitration is no longer available for consumer disputes.

The role of arbitration in commercial disputes is also not as prominent as it used to be. Local arbitration, whether institutional or *ad hoc*, has undergone a crisis of confidence, resulting in a decline in interest in this dispute resolution framework among businesses. The initiatives in existing institutions and those aiming to establish new ones give hope that we could see changes in this area relatively soon. This is certainly positive news because arbitration can offer speed, flexibility, and expertise that state courts simply cannot compete with.

Aside from arbitration, Czech law also includes a framework for mediation – another method of alternative dispute resolution. Although the popularity of mediation for commercial disputes is not overwhelming, there's a growing trend in this area. Agreements reached in mediation are not directly enforceable under Czech law unless they are subsequently approved by a court at the parties' request. This flaw is being addressed (at least at an international level) by the *Singapore Convention on Mediation*, which opened for signature in 2019. But the Czech Republic is not yet a signatory and there's no indication this will change anytime soon.

## What to Expect in the future?

Possibly the most significant change in terms of civil-law disputes could be brought by the much-anticipated *Class Actions Act*. Czech procedural law does not currently make any provisions for class actions. The bill on class actions aims to change this area completely, most likely with the introduction of an opt-in mechanism for consumers. The bill is currently in the early stages of the legislative process, and it remains to be seen in which form it will be enacted. As the implementation deadline prescribed by the respective EU directive will lapse by the end of 2022, we expect to learn more in the coming months. ■

# HUNGARY: HYBRID ARBITRATION CLAUSES – DO THEY EVER REALLY WORK?

**By Milan Kohlrusz, Founding Partner, and Katalin Bendzsel-Zsebik, Senior Associate, Bittera Kohlrusz & Toth**

No one signs a commercial contract expecting or wanting a dispute. But a watertight contract with a solid arbitration clause can provide a vital sense of security to the signing parties. In some cases, however, an arbitration clause itself can cause procedural complications that have to be addressed even before a dispute between the parties can begin to be solved.

Contractual parties can choose between an institutional or *ad hoc* arbitration clause. With an *ad hoc* clause, the parties address any issues as and when (and if) they arise. In this case, the parties decide on aspects of the arbitration and draft the arbitration clause themselves.

Institutions such as the ICC have solid arbitration clauses that can be simply incorporated into any agreement without much (if any) need for tailoring. This option has several advantages. It provides an automatic format for dispute resolution with established rules and procedures, which usually ensures smooth and timely proceedings. The parties also receive support from the institution, including administrative assistance and a list of qualified arbitrators for the parties to choose from.

The main disadvantage is naturally the costs involved, with administrative and service fees sometimes even exceeding the amount in dispute. As with any institution, there may be a certain level of internal bureaucracy involved, which can create further delays (and costs), as well as unrealistic deadline demands.

Our dispute team sees plenty of institutional arbitration clauses. Most are straightforward and allow for subsequent relatively uncomplicated proceedings. But what happens when an arbitration clause cites two different institutions? We experienced one such situation when a client came to us with a rather strange arbitration clause in their quota share & purchase agreement.

The clause stated that the arbitration should be settled by the Hungarian institutional arbitration forum (HCCI), but by the application of another institutional arbitration forum, the ICC.

The problem is that institutional arbitrations in general use their own set of procedural rules (or, less often, they manage *ad hoc* arbitration under the party-determined/*ad hoc* arbitration rules), but they don't administer cases under another institutional arbitration's rules. The reason for this is simple: they do not have the necessary means and knowledge to do so.

What made this case even more problematic was that, according to the relevant clause, the arbitration was to be settled under ICC rules, which are by far the most strictly regulated and administered arbitrations (and therefore the most expensive). The administering ICC institution also plays a key role in the procedure and even has certain special features like the *scrutiny* procedure at the end of the arbitration.

Arbitrations before the HCCI on the other hand are more loosely administered. The HCCI plays more of a perfunctory *gatekeeper* role, in that it registers the case and the submission and leaves everything else to the tribunal and to the parties.

We attempted to challenge the validity of the arbitration clause which, unfortunately, proved fruitless. The tribunal gave a very wide interpretation of the party's freedom to derogate from the HCCI's procedural rules and establish their own set of procedural rules that, in fact, closely resembled the ICC rules but dismissed any that would be impossible for the HCCI or the tribunal to perform (like the *scrutiny* procedure).

Sadly, the answer to whether hybrid arbitration clauses actually work remains to be seen. In the end, the parties settled their dispute out of court. In many ways, we were disappointed not to see the outcome of a potential *quasi-ICC* procedure.

Cases certainly exist where parties have managed to conduct such hybrid arbitrations, which shows that it is possible and lawful to do so. It's important to note, however, that in all of these cases, what the arbitral institution and the tribunal agreed to administer and conduct was in fact a *real* ICC arbitration, under the full set of ICC rules, and not under certain, selected provisions of the ICC rules. ■

# ROMANIA: THE NEED FOR A CLEAR SET OF RULES FOR ARBITRATION FUNDING

By Alexandru Oana, Co-Head of Dispute Resolution, Bancila Diaconu si Asociatii

As the main arbitration body in Romania sees an increase in disputes caused by the long-lasting effects of the COVID-19 pandemic and the recent financial crisis, claimants and respondents who file arbitration claims/counterclaims may need to turn to third-party funding for the disputes to cover the arbitral expenses.

## Background of Arbitration in Romania

Romania does not have UNCITRAL Model Law-based legislation nor a separate arbitration act. All the relevant provisions governing arbitration and international arbitration are set forth in the *Romanian Civil Procedure Code* (RCPC), in *Book IV* (*national arbitration proceedings*), and in *Book VII, Title IV, international arbitration proceedings*.

In practice, parties rarely turn to the general provisions laid down in the RCPC and, usually, apply the arbitration rules of the Court of International Commercial Arbitration attached to the Chamber of Commerce and Industry of Romania (CICA). The arbitration rules of the CICA (Arbitration Rules) are largely based on the ICC Arbitration Rules and on the general provisions of Romanian civil procedural law. Moreover, the CICA is the most popular arbitration body in Romania, seeing an increase in caseload after the recent enactment of *Government Decision no. 1/2018*, by which it was named the *de facto* arbitration body for disputes related to public works contracts.

Third-party funding is not expressly regulated either by the RCPC or by the Arbitration Rules, however, both contain several provisions which may act as roadblocks to third-party funding.

## Possible Roadblocks for Third-Party Funding

The biggest three roadblocks to third-party funding of arbitration proceedings in Romania are (1) confidentiality of the case documents, (2) the independence restrictions for arbitrators, and (3) limited chances of granting a party the third-party funding costs as arbitration costs.

First, the confidentiality of the case documents might prove to be a roadblock in the due diligence phase, before the third-party funding agreement is concluded. Most arbitrations administered by the CICA are based on disputes related to public works contracts concluded within public tender proceedings, in which either the claimant or the respondent is a state authority.

Thus, some of the documents related to a public works contract or public tender may be deemed confidential. Disclosure of confidential documents is generally permitted to courts and arbitration bodies, as well as to the law firm representing the claimant or respondent or any other participant in the proceeding (expert, witness, etc.). The confidentiality rules and limitations applicable to lawyers and law firms in Romania and to other participants in the arbitral proceeding are not applicable to the funder, given that its position is regulated by neither the RCPC, nor the Arbitration Rules, nor by any other Romanian legislation. To avoid breaching the confidentiality of case documents, the funder should always conclude a non-disclosure agreement and the party seeking funding should disclose the identity of the funder once the proceedings have begun.

Second, there is no general obligation for the party seeking funding to disclose the identity of the funder in the arbitral proceedings. However, both the RCPC and the Arbitration Rules set forth strict independence restrictions for arbitrators, who may be deemed incompatible if they cooperated or have had work relationships with the parties in the past.

The independence restrictions for arbitrators should extend to the relationship with the funder, not only to the party seeking funding. To avoid any issues regarding the independence of the arbitrator, the party seeking funding should disclose the identity of the funder before the appointment of the arbitrator/s.

Third, while in common law jurisdictions, there is the possibility to award third-party funding costs as arbitration costs, in Romania, arbitration costs include the registration fee, the arbitration fees (administrative fees and fees of the arbitrator/s), costs related to evidence production (including translations), lawyers' fees, experts' and advisors' fees, travel expenses for all involved parties, and other costs related to the arbitration proceedings. In our opinion, third-party funding costs fall out of the scope of other costs related to arbitration proceedings and, if requested by a party, the arbitral tribunal will most likely write them off.

Although there is still a gap between Romania and jurisdictions in Northern and Western Europe, we expect that the CICA will play catch-up sooner rather than later. In this context, third-party funding should become commonplace in arbitrations seated in Romania. To avoid unnecessary roadblocks along the way, both the CICA, in its' Arbitration Rules, and the Romanian legislator, in general, should look at amending arbitration rules to make place for third-party funding as a means for parties to take full advantage of all the benefits of arbitration proceedings. ■

# BULGARIA: SUPREME COURT PROVIDES CLARITY ON LAYOFF LABOR REGULATION

**Dafinka Stoycheva, Senior Partner, and Tsvetina Stefanova, Senior Associate, Gugushev & Partners**

On October 26, 2021, the General Assembly of the Supreme Court of Cassation issued *Interpretative Judgment No. 5/2019*, clarifying what procedure employers must follow with respect to employee layoffs on the grounds of "closure of part of the enterprise," which at present is frequently utilized in the context of companies' mergers and acquisitions.

The *Bulgarian Labor Code* provides limited options for employee layoffs, that should be strictly followed by the employer for a dismissal to be lawful. Due to the lack of clarity in the effective law – specifically in terms of the "closure of part of the enterprise" ground – for layoffs and the immense discrepancy in court practices on this matter, the adoption of an Interpretative Judgment was crucial for streamlining its lawful application.

Because of inconsistencies in court practice on the matter, an opening of a so-called "Proposal for an Interpretative Judgment," which would kick off the procedure, was highly anticipated by the business world. At the end of 2019, the Supreme Bar Council submitted its proposal, which was admitted by one of the judge panels of the Supreme Court of Cassation, and *Interpretative Case No 5/2019* was opened by the Chairman of the Supreme Court of Cassation trying to answer two main questions: What is the legal definition of a "closure of a part of the enterprise?" What obligations or discretions does the employer have when performing selection?

First, all relevant authorities, along with representatives of the academic world, were requested to submit statements on the matter that would have to be taken into account in the Supreme Court's subsequent general assembly discussion.

In the adopted interpretative judgment, the Supreme Court stated that the grounds of "closure of part of the enterprise" require the cumulative presence of two prerequisites:

(1) a certain organizationally separate unit to be removed from the structure of the enterprise, and

(2) the activity of this unit to have been terminated. In an internal reorganization, on the other hand, structural changes in the enterprise are carried out in which some units are changed by merging, separation, division, etc., but their activity is *preserved* and, therefore, an internal reorganization is *not* a valid ground for lawful termination of employment contracts of employees, who have previously worked in the reorganized unit.

The Supreme Court further interpreted whether the employer is required to perform the selection when closing a part of the enterprise. It specified that, in this case, given the abovementioned requirements are met, the employer has the right but *not* the obligation to perform a selection. In this instance, then, the performance of the selection is at the employer's discretion.

The employer may exercise its right of selection when there are workers or employees in positions with the same, or with insignificantly different work functions, as the ones in the closed unit in the remaining organizationally separate units of the enterprise within the same district.

The interpretative practices of the Bulgarian Supreme Court are mandatorily applied by all court instances and are crucial to the development of consistent case law and legislation. ■

# SERBIA: CRIMINAL ACTS AND ARBITRATION PROCEEDINGS – A CHALLENGE TO ARBITRATION OR NOT

**Nedeljko Velisavljevic, CEE Partner and Head of Dispute Resolution, and Nenad Kovacevic, Senior Attorney, Petrikic & Partneri AOD in cooperation with CMS Reich-Rohrwig Hainz**

Commercial disputes, especially complex commercial cases, are increasingly present in modern regional and Serbian arbitration practices. There are more and more international and local business contracts in which the contracting parties fully trust international and domestic arbitrations to resolve all disputes arising from such contracts.

Often, the parties to a dispute, through their lawyers, use various arguments and interpretations of evidence with the aim of making the arbitration award as favorable as possible. The arsenal of legal means to fight is diverse.

If in arbitration disputes the parties emphasize assertions claiming that a criminal offense was committed within the scope of the business that is the subject of the dispute, the question arises whether such assertions represent a challenge to arbitration, as well as whether arbitrations within their jurisdiction can deal with such assertions, especially bearing in mind that the parties have, by the arbitration agreement or clause concluded, entrusted all disputed issues from their contractual relationship to the jurisdiction of the specific arbitration.

In practice, before Serbian arbitration institutions (but also Serbian courts) or in cases where Serbian companies appear before foreign courts and arbitration institutions, the most likely are assertions of claims about the alleged existence of a criminal offense within a dispute (regardless of whether such an offense has taken place in Serbia or abroad). One example is when a party to the dispute only indicates that a certain business activity that is subject to arbitration constitutes a criminal offense. Another example is when a party to the dispute points out that an investigative or criminal proceeding is being conducted by a certain competent authority regarding a certain business activity that is subject to arbitration, against either the parties to the arbitration dispute or their current or former employees or representatives and, for that reason, asks for the suspension of the arbitral proceedings in order for the arbitration to take into consideration the outcome or certain details of such criminal or investigative proceedings.

What should be the response to such claims? Are these challenges to arbitration? Can it be interpreted that, since the parties entrusted all disputed issues from one contractual relationship to arbitration, they have also entrusted the arbitration to check the existence of a criminal offense within the arbitration procedure – whether a certain act or omission constitutes a criminal offense?

First of all, arbitration is not a court, but it represents a legally permitted out-of-court method for resolving certain types of disputes. These can only be disputes that are eligible to be settled before arbitration (i.e., objective arbitrability).

The legislation of every country (and Serbia is no exception by any means) regulates which types of disputes the contracting parties can entrust to arbitration. Without going into details here, we can summarize that these are commercial or business disputes, except for the disputes for which the courts have exclusive jurisdiction. Hence, when the contracting parties conclude an arbitration agreement or an arbitration clause, they must be aware that they refer to the disputed commercial or business relations which are eligible to be resolved by arbitration, and which do not fall within the exclusive jurisdiction of the court.

This already makes it clear that the arbitration can never be competent to undertake any type of criminal prosecution, and it does not deal with the criminal law analysis of whether a specific action meets all the criminal law elements required to qualify such an action as a criminal offense. On the contrary, all this is in the exclusive competence of the authorities that are competent for criminal prosecution (e.g., the public prosecutor) and of the courts that are exclusively competent for deciding in criminal proceedings.

To summarize, arbitration proceedings (whether conducted before local Serbian or foreign institutions) are simply not the forum for any type of criminal prosecution nor is it the forum for any type of criminal law analysis.

The analysis in the arbitration award will refer to all issues that are within the competence of arbitration, namely, all disputed issues that are suitable for decision by arbitration. Therefore, asserting the existence of a criminal offense does not or should not constitute an additional challenge to arbitration or a condition for rendering its award.

The efficiency of resolving disputes through arbitration is an important feature that parties often consider when contracting arbitration, and the above-mentioned assertions do not essentially limit the actions of arbitrators, within their jurisdiction. ■

# POLAND: LIMITING POST-M&A DISPUTES – THE SPA ADVISORS' VIEWPOINT

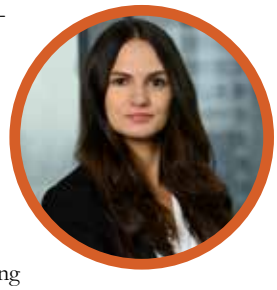
By John Wilkinson, Partner/CEE Dispute Advisory Leader, and Katarzyna Rudiak, Senior Manager, EY

Diligent planning and proper execution of an acquisition is a significant step leading to a successful completion of an M&A transaction. This is especially true when an acquisition takes place in uncertain economic times. The current dynamic situation in Poland, including rising inflation and spiraling interest rates largely driven by post-pandemic demand and the war in Ukraine, means that investors need to react quickly, yet very carefully when structuring a deal.

We observe these new challenges have a significant impact on current transactions in the Polish market. Transaction timelines are tightening, with pressure on early risk identification and rushed negotiations of the purchase price. Due to the decreased availability of financing in Poland, business valuations may go down. In practice, it means that certain transaction completions will be jeopardized, and those that do close may end up in a dispute. Although challenging economic factors may seem hard to manage, certain protective measures can be sought by investors which will require careful consideration and attention to detail to minimize the risk of post-M&A disputes. Here are some examples.

**Avoidance of Complex Purchase Price Structures.** Uncertain times trigger a tendency to incorporate sophisticated pricing mechanisms. In theory, these are supposed to protect transacting parties from changing circumstances. Yet, complex price constructs that contain, for example, loosely defined contingent payments or complex formulae for adjustments to the price components are a recipe for post-M&A disagreements. Whilst deferred payment mechanisms, such as earn-outs, lure parties with their flexibility to adjust prices based on changing circumstances, they remain difficult to draft in the SPA and accurately reflect the intent of the parties. How would one interpret normalization, exceptional, or one-off items? How should consistency be applied in the approach to judgmental areas? How should new cost allocations that were not considered in the past be treated? The earn-out mechanism should be free from ambiguous definitions and methodology towards its calculation to minimize the risk of different interpretations between the parties.

**Careful Negotiation of Accounting Policies with Greater Efforts over Smaller Details.** The accounting standards and policies applied in the SPA can be the key trigger for the calculation of certain purchase price components. Whilst GAAP, which in many cases provides only broad guidance, is often selected by default, in our opinion, more emphasis should instead be placed on specific accounting policies to ensure the calculation of purchase price reflects both key risks and the commercial intention of the parties. Avoidance of vague and generic language with extra focus on drafting the policies that drive the calculation of the areas of management judgment specific to the business being acquired will help reduce the likelihood of a disagreement following completion. An example computation for all post-closing mechanisms should also be considered for the avoidance of any doubt.



**Enhanced ABAC Due Diligence and Focus on Additional Warranties.** The vision of the current and upcoming economic headwinds, and the additional regulatory focus on the hot topics of sanctions and ESG, should increase the pressure on buyers in particular to protect their interests through enhanced due diligence (DD) and, potentially, additional warranties over key risk areas. Even more than before, buyers should focus on developing a deeper understanding of the integrity of the Polish targets and a risk assessment of their supply chain. This enhanced diligence should target issues that could jeopardize new business owners' reputations, limit their trade through unexpected supply chain disruptions or pose additional financial exposure. Although warranties should not be used as a substitute for a carefully planned DD, investors may seek additional warranty protection directed at the breach of sanctions-related trading, the conduct of business, and the reliability of financial information.

**Material Adverse Change Clause.** Material Adverse Change (MAC) clauses are typically used by the buyers to address the risk of the unpredictability of the transaction if certain sudden adverse events occur. It is not surprising then that MAC clauses are commonly used during uncertain times.

However, to avoid any potential disputes, such clauses, including the catalog of exact circumstances that trigger a MAC, need to be very well defined to be able to determine whether MAC has indeed occurred. This is especially important if the buyer wishes to include specific events that are considered out of the seller's control.

Current market conditions should trigger additional investment in time and greater effort spent on pre-close SPA considerations to help avoid costly and time-consuming post-close disputes. Hence, buyers and their advisors should be focusing on smart and careful approaches to M&A transactions to achieve maximum clarity in uncertain times. ■

# CROATIA: THE SUPREME COURT IMPLEMENTS EX OFFICIO CONTROL OF UNFAIR CONTRACT TERMS

By Sandra Lisac, Partner, and Vedrana Vuckovic, Associate, CMS

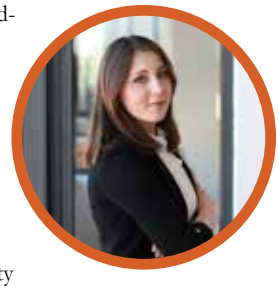
The position of consumers has been strengthened by a recent Supreme Court resolution by which the courts are obligated, within enforcement proceedings initiated against consumers, to examine, of their own motion (*ex officio*) whether an enforceable title contains unfair provisions. The resolution only relates to enforceable titles that have not been previously reviewed by a court, primarily agreements concluded in the form of directly enforceable notarial deeds.

The resolution of the Supreme Court represents a further step in the protection of consumers with regard to unfair clauses as regulated by *Council Directive 93/13/EEC on unfair terms in consumer contracts* (UCTD). It is in line with the *Guidance on the interpretation and application of the UCTD* and the respective decisions of the Court of Justice of the European Union (CJEU).

In general, within enforcement proceedings, courts are not allowed to examine underlying contracts. Enforcement is considered to represent the final stage in exercising one's rights, which occurs after all relevant factual issues and legal questions have already been sufficiently discussed within a litigation proceeding.

However, many loan and mortgage agreements with banks were concluded in the form of a directly enforceable notarial deed. This form allowed the creditor to obtain an enforceable title when conditions defined in the agreement were fulfilled, without having to initiate and conduct lengthy court proceedings. Notaries were required to check the form and the content of such agreements and to explain it to the parties. In the case of default, usually on the consumer´s side, the creditor would submit to the notary the agreed evidence that their claim had not been settled, upon which the notary would issue a certificate of enforceability and the private agreement entered into between the debtor and the creditor would become an enforceable title, having the same legal effect as a court decision. Thus, neither the amount of the outstanding debt nor any other terms and conditions of such agreements were subject to court examination before becoming enforceable.

The issue of numerous existing enforceable agreements containing possibly unfair clauses was partially reflected in the last changes to the *Enforcement Act* in 2020, which provided for the possibility that the debtor requests a delay of the enforcement, if the enforceable title derives from an agreement concluded by a consumer and, depending on the available evidence, there is a likelihood that one or more contractual provisions are null and void. The enforcement court is not supposed to decide on nullity – the consumer is required to file a respective lawsuit before the competent court.



We expect that the provisions in question will be further amended to reflect the recent position of the Supreme Court. In this new resolution, even though the Supreme Court does not define the kind of decision the enforcement court should bring if the enforceable title does contain unfair provisions and respective legal remedies, we assume that the courts will instruct consumers to initiate respective lawsuits and decide to delay the enforcement.

Furthermore, there is another related recent decision of the Supreme Court, from January 2022, by which the Supreme Court allowed an extraordinary remedy – a review of the possibility of invoking unfair clauses within an appeal against an enforcement decision. Although the decision on this possibility is still pending, in the explanation of their permission of said remedy, the Supreme Court quoted the *Guidance on the interpretation and application of the UCTD* and the respective decisions of the CJEU, which indicate the direction of their future decision.

It is expected that the Supreme Court will confirm the possibility of discussing unfair clauses even at this stage of proceedings, in accordance with the position of the CJEU that procedures that give creditors the possibility of more expedient enforcement of their claims based on titles other than judgments and which entail no or only limited substantive checks by national courts, must not deprive consumers of their right to proper protection against unfair contract terms.

Encouraged by EU case law, Croatian courts are transferring the burden of consumer protection from consumers to the courts. As this topic is gaining more traction, it is likely that the legislator will follow suit and amend the *Enforcement Act* to reflect the foundation laid by the courts. ■

# KOSOVO: THE JUDICIARY AND THE PROMISE OF THE NEW COMMERCIAL COURT

By Ahmet Hasolli, Managing Partner, and Vjollca Hiseni, Associate, Kalo & Associates

Kosovo's legal order is based on the principle of *separation of powers*, whereby the judiciary is governed by the Kosovo Judicial Council. Kosovo's legal system is based on the continental law tradition, whereby court decisions are generally not considered precedents, although lower courts tend to follow the opinions and rulings of higher courts.

Kosovo's court system is comprised of the Basic Courts, the Courts of Appeal, and the Supreme Court. The function and systematization of the courts is regulated by *Law No. 06/L-054 on Courts*, enacted on December 18, 2018.

A Basic Court is comprised of five departments, namely: the Department for Commercial Matters, the Department for Administrative Issues, the Department for Serious Crimes, the General Department, and the Department for Minors.

The Commercial Department deals with cases concerning commercial disputes between domestic and foreign businesses. Moreover, it also deals with matters related to bankruptcy and liquidation of legal entities, disputes regarding the infringement of competition, intellectual property, and other matters provided by law.

The Administrative Department adjudicates administrative conflicts, the Serious Crimes Department treats cases related to various criminal offenses (such as aggravated murder, kidnapping, etc.), the General Department mainly deals with minor offenses and various civil cases in the first instance, which have not been specifically assigned to other departments. Minor offenses such as sanitary standards, as well as violations of traffic safety laws and public order rules also fall under the competence of the Basic Courts' General Department.

The Courts of Appeal are second instance courts, which deal with complaints lodged against the decisions of the first instance courts. The Supreme Court consists of two departments, namely: a) The Appeals Panel of the Kosovo Property Agency and b) the Special Chamber of the Supreme Court.

Civil proceedings in Kosovo are governed by the *Law on Contested Procedure*, enacted on June 30, 2008. The litigation process begins with the filing of a statement of claim by the claimant. Prior to the commencement of the main hearing, the courts are required to hold a preparatory hearing, to be scheduled at the latest 30 days after the receipt of the statement of defense from the respondent.

Court expenses in Kosovo are rather low, which results in a very high number of litigation cases. However, the inefficiency of courts in the country appears to be very high. Specifically, the *Strategy on the Rule of Law 2021-2026*, published by the Kosovo Ministry of Justice, identifies four main problems in the functioning of the judiciary, namely: 1) delays in the judicial and prosecutorial system; 2) the need for increased professionalism and competency; 3) insufficient accountability; and 4) vulnerability to external stakeholders.

The length of proceedings remains one of the most critical and complex issues faced by the judiciary. It directly impacts the *right to a trial within a reasonable time*, as defined by the Constitution and the ECHR. In terms of the current backlog, civil and administrative cases are particularly problematic, with several factors believed to be the main cause. First, it is argued that there is an improper allocation of human resources in relation to the workload in the courts. Second, there seem to be some shortcomings in terms of internal procedures, which leads to the very common practice of cases being returned for retrial by the higher courts. Moreover, despite the existing legal framework for arbitration and mediation, parties are hesitant on submitting their disputes to any of such alternatives.

Taking into consideration the current situation, the establishment of a Commercial Court is deemed an essential change toward increasing the efficiency of the judiciary. The constitution of this court, being the main request from businesses and foreign investors, is expected to unblock unresolved cases of this nature and eliminate the conflict of competencies over commercial and administrative disputes – since all administrative conflicts initiated by business organizations will fall under the jurisdiction of the Commercial Court – leaving all administrative disputes initiated by individuals under the jurisdiction of the department for Administrative Matters. Thus, through *Law No. 08/L-015 on the Commercial Court*, the court will have the necessary resources, specialized judges, and case management procedures, thus leading to a faster and more professional case resolution.

As the Basic Court of Pristina carries the main burden of cases in all spheres, the Commercial Court is intended to decrease the backlog of cases in this court, as well as use a different approach in its transparency policies and specialized training. ■

# THE CONFIDENT COUNSEL:
# THE PATH OF LEAST PERSISTENCE (PART 1)

**By Aaron Muhly**

Lawyers know that business development requires a handful of sales skills, a pinch of luck, and a boatload of persistence. Freaking BD persistence… it's a serious problem for all of us. We didn't go to law school to do sales.

Why is BD so annoying for us? And, how can law firms be smarter about managing our persistence struggles? Read on to find out.

### Pessimism: The Persistence Killer

Once upon a time, a US life insurance company (Metropolitan Life) had a major problem – their salesmen sucked. The company's CEO discovered that the company was burning tens of millions of dollars because it was hiring the wrong people (50% of new sales staff quit in the first year). So, the CEO did the smart thing and called Professor Martin Seligman.

Seligman is a leading researcher in positive psychology. He investigates the link between a person's mindset and personal and professional success. The CEO challenged Seligman to set up a psychological test for hiring successful salespeople. In response, Seligman delivered a test that positioned job candidates on a scale from super-optimistic to super-pessimistic. He predicted that higher levels of optimism would lead to greater sales success.

He was right. When salesmen tested in the more optimistic half of the class, they were 50% less likely to quit in the first year. They also outsold the less optimistic half of the class by 20% (and the top quarter outsold the bottom quarter by 50%).

To understand the "why" behind these results, just imagine that you sell life insurance. Your job is to call people and ask "Hey, have you thought about dying recently?" As you can imagine, almost everyone is going to hang up on you. That's a lot of rejection, and you need the right mindset to survive it. If you are a pessimist, you will likely explain this rejection by blaming yourself (e.g., I am just not good at this crap). Once you have collected a sufficient amount of self-blame, you are going to give up and quit. But, if you are an optimist, you will probably react to such rejection in a more positive manner (e.g., they were just in a bad mood). As a result, you will find it much easier to shrug off the rejection and keep selling (i.e., stay persistent).

### Optimistic Lawyers: Are you Kidding?

Unfortunately, you are probably destined to struggle with BD (i.e., high-rejection sales) because it's unlikely that you are an optimist. According to Seligman, most top lawyers fall into the pessimist category. He backs up this belief with a cool study that he ran with Jason Satterfield and John Monahan at the University of Virginia's law school. Based on this study, pessimists are much more successful in law school – they get better grades, and they get better job offers.

But we don't need Seligman to tell us this. Every lawyer knows in their heart that our industry is filled with pessimists. Think about our job – we need to spend most of our days focusing on the dark side of life – legal risks, issues, and mistakes. This is not a land for super-optimists.

If BD needs optimists and lawyers are mostly pessimists, I don't think law firms are managing BD in a smart manner. We can't just pretend that BD is a normal part of a lawyer's job. We definitely shouldn't live in the fantasy that making lawyers fill out BD plans and calendars is going to suddenly fix our persistence issues.

### Stay Tuned

In *Part 2*, I will discuss how law firms can improve their BD by directly addressing this pessimism dilemma. ■

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

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