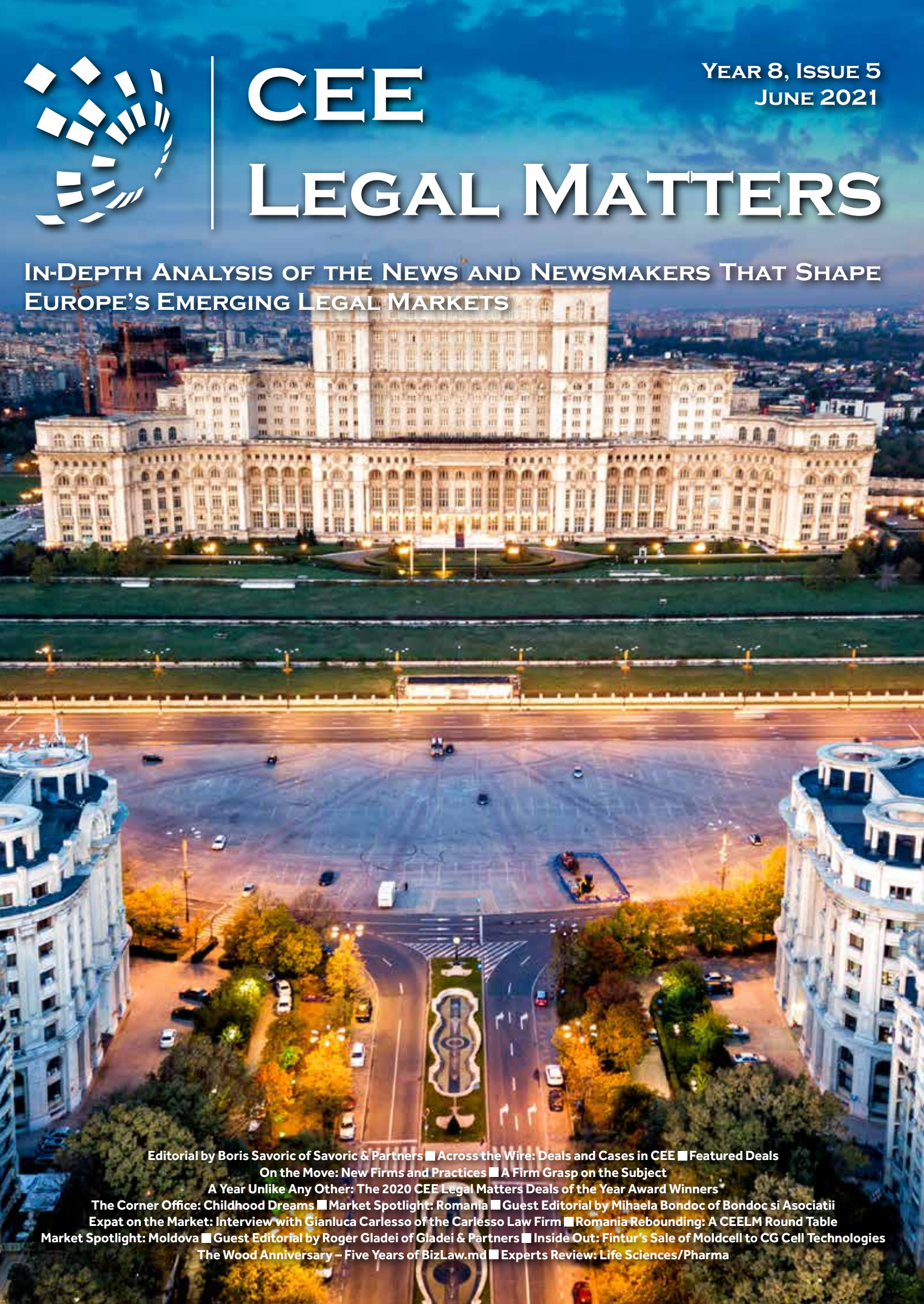
Year 8, Issue 5
June 2021

CEE Legal Matters

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

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EDITORIAL: TIME TO GO

By David Stuckey

With this issue of the CEE Legal Matters magazine I conclude my day-to-day connection to the company I co-founded seven and a half years, some 80 issues of the CEE Legal Matters magazine, untold thousands of articles on the CEELM website, four GC Summits, and so much more ago.

Oh, it's not a complete severance – I'll still be around. I will continue to spearhead the CEE Deals of the Year Awards voting, and I will continue to manage the annual Dealer's Choice International Law Firm Summit held in conjunction with the annual DOTY awards banquet (this year on September 16, 2021, in London!). In addition, I will continue as co-owner of the unique and exciting (and long-in-development) CEE Lawyers online directory, the launch of which is now excruciatingly close.

But my day-to-day connection to the CEE Legal Matters organization, and my responsibilities as both Director and Executive Editor, conclude with this issue.

On my way out the door, however, I need to acknowledge some of the wonderful people I've worked with over these seven and a half years. Among the lawyers, I have genuinely appreciated working with lawyers Christian Blatchford at Energo-Pro, Mykola Stetsenko at Avellum, Bora Kaya at Gama Holding, Alexandra Doytchinova at Schoenherr, and Ron Given at first Wolf Theiss and then Deloitte Legal, and with marketing experts Jelena Bosnjak and Erik Werkman at CMS, Biliana Tzvetkova at Schoenherr, Natalia Blotskaya at Avellum, and Renata Vrzakova at JSK. All of them have engaged, over the years, with patience, enthusiasm, professionalism. And, often, with a consistent good humor. There are of course dozens of others whose assistance and support was also critical and I apologize for not being able to name everyone here.

The staff at CEE Legal Matters has been remarkably strong, and our current team, including Operations Manager Dajana Jajcevic, Staff Writers Andrija Djonovic and Djordje Vesic, and Key Account Managers Zvikomborero Galufu and Emma Oreg are super-strong and effective. I'll miss working with you guys. And although I have only worked with new Editor Radu Neag for a few short weeks, his ready intelligence and enthusiasm makes my departure easier, as I know the editorial reins are in good hands.

Ultimately, of course: Radu. It is perhaps not unprecedented, but it is certainly rare, for two friends to go into business, in such a fraught industry as this, and come out the other side with that friendship not just intact, but – from my perspective, at least – stronger than ever. I know I have thrown challenges at him he could not have expected when we started, including moving first to another country, and then to another continent. In addition, we have radically different working styles and abilities, making the long-term prospects for this venture especially unlikely. Be those different styles turned out to complement each other, happily, and our shared commitment to our common goal allowed us to buck the odds.

Radu will, going forward, take CEE Legal Matters to exciting new places and achieve far greater things than I can even begin to predict. His vision, commitment, relentless work ethic, and simple professionalism are remarkable. My gratitude to him, like my trust in his vision for the future, knows no bounds. All of this from a guy with a wit that makes you groan, even as it makes you laugh. That's the best kind.

So ok. As I said, I'm not completely leaving – I'm still around, in one way or another, and you will continue to see my name on occasional bylines and, probably, emails. If you need me, you can find me. But it's time to move on from this particular part of my adventure. Thanks, everyone.

And thanks, Radu. Kick ass. ■

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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: REFLECTIONS ON THE CHANGING NATURE OF THE PROFESSION IN CROATIA AND CEE

By Boris Savoric, Senior and Managing Partner, Savoric & Partners

"What do you call 10,000 lawyers at the bottom of the sea? A good start." This popular joke underlines the low public perception of lawyers that remains common in today's society. Although distrust toward lawyers has always existed, frivolous lawsuits, rising billing rates, and thrilling reports of lawyers behaving badly in the news do little to improve the public image of attorneys, especially in CEE.

I will turn 50 this year, and I have been practicing law since 1994. A career in law is one of the most-coveted professions, and it certainly can bring many rewards and benefits to those who pursue and love it. However, working as an attorney has some shortcomings as well, especially in Croatia and the CEE region. It is not all exciting billion-euro deals, grateful clients, and telenovela courtroom drama. Becoming a lawyer – or, better to say, a practicing attorney – requires traveling down a long educational road.

Deadlines, billing pressures, deadlines, client demands, long hours, more deadlines, changing practice areas, and other requests combine to made being a practicing attorney one of the most stressful jobs in the world. Today is not so different from when I began my career 26 years ago. Lawyers work longer and harder – 60-plus-hour weeks are not at all uncommon. The competitive environment has forced lawyers to spend time on client satisfaction and business management activities, in addition to billing hours. The lack of work-life balance is a common result (and it should actually be "life-work balance").

In my opinion, today's law students are entering the bleakest economy in decades, and they face one of the bleakest job markets in history. Public universities in Croatia are free of charge, but a large number of jobs have been cut and colleges and law schools are not dialling back on enrollment.

The practice of law is changing drastically, and lawyers no longer have the power and monopoly over the field they did before. From legal document clerks to virtual law offices and self-help legal chats and websites, today's lawyers face competition from many different kinds of non-lawyer sources. Clients will no longer pay expensive lawyers to perform work that can be accomplished more quickly, cheaply, and efficiently by technology or by some other non-lawyer professionals. How did we get from shouting "*Why there is no paper in the fax machine?!*" in the office in the early nineties to artificial intelligence?!

Comparing today's practice to that in the 90s is like night and day. The profession had a much more intimate feel when I started practicing. There was a large degree of fellowship and pride in being an attorney back then, and a much more genteel interconnection. We had limited discovery and paper submissions, and not all lawyers had computers, mobile phones, and other gadgets, so we did not always know what the other side on a deal would do or would present like we do now.

Before, dactylography and touch-typing had a huge part in the legal profession. However, sometimes you could not understand anything in the minutes, because the recording secretary was a bit tipsy, so her fingers were not placed on the "asdf" keys on the keyboard, but instead on "sdfg," so you needed to decode it once you returned to the office.

Of course, technology has changed the entire world – and, in my opinion, in a positive way. Findings are now much more feasible, legal research that previously took days now can be accomplished in a smaller amount of time, often measurable in hours. Before, only the largest firms had funds for some research projects, but now even the smallest firms do.

After 1995, the legal market began to be regulated completely differently, and a market economy, corporate law, competition regulations, and capital markets appeared in Croatia. My generation was the pioneer of that change, as Socialism and state ownership really had their hands on the law before. That change was challenging – but beautiful.

To conclude, being a lawyer still means being a part of the practice that continues to be a great profession with many great people – both ladies and gentlemen, of all races, ages, and colors. It is a way to help so many people in so many ways. ■

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ACROSS THE WIRE: DEALS SUMMARY

Date covered	Firms Involved	Deal/Litigation	Value	Country
23-Apr	Herbst Kinsky	Herbst Kinsky advised Biogena Group Invest AG on its capital increase.	N/A	Austria
29-Apr	Binder Groesswang; Clifford Chance; Linklaters; Schoenherr	Schoenherr and Clifford Chance advised Raiffeisen Bank International as arranger on a true sale securitization of a EUR 538 million portfolio of vehicle leasing receivables by Raiffeisen Leasing Group. Linklaters and Binder Groesswang advised anchor investors, including the European Investment Bank and the European Investment Fund.	EUR 538 million	Austria
10-May	Schoenherr	Schoenherr advised Energie Graz, Energie Steiermark, EVN, Illwerke VKW, Innsbrucker Kommunalbetriebe AG, Kelag, and Linz AG on the foundation of a joint venture in the e-mobility sector.	N/A	Austria
11-May	CMS	CMS advised German investment company Finexx on its acquisition of Volpini Verpackungen GmbH Austria.	N/A	Austria
22-Apr	DLA Piper; Sorainen	Sorainen acted as Belarusian counsel to DLA Piper Norway on its provision of legal services to the Norwegian Seafood Council related to a licensing agreement for the council's "Seafood from Norway" trademark.	N/A	Belarus
4-May	Sorainen	Sorainen helped Hesburger develop its operations in Belarus.	N/A	Belarus
22-Apr	Aleinikov & Partners; DLA Piper; Sorainen	Sorainen advised Data Delivery LLC, the Belarusian developer of a platform for managing the online status and business reputation of RocketData.io, on share acquisitions and additional investment into the company by mapping service 2GIS, which is part of the Sber group. DLA Piper Moscow and Aleinikov & Partners in Minsk advised 2GIS on the deal.	N/A	Belarus; Russia
13-May	BDK Advokati	BDK Advokati, working with lead counsel Allen & Overy, advised the joint lead managers, including Societe Generale, on Republika Srpska's global EUR 300 million Eurobond offering on the London Stock Exchange.	EUR 300 million	Bosnia and Herzegovina
6-May	Bouzeva & Partners; Gide Loyrette Nouel; Kinstellar; Norton Rose Fulbright; Wilkie Farr & Gallagher; Wolf Theiss	Wolf Theiss, working with Gide Loyrette Nouel and Norton Rose Fulbright, advised the EBRD, the Black Sea Trade and Development Bank, the International Finance Corporation, UniCredit S.p.a., UniCredit Bulbank, UniCredit Bank AG, Societe Generale, Kommunalkredit Austria, and DSK Bank on their provision of a EUR 296 million debt package to support the SOF Connect consortium on its successful bid for the concession of the Sofia Airport. Willkie Farr & Gallagher, Kinstellar, and Bouzeva & Partners advised the borrowers on the deal.	EUR 296 million	Bulgaria
10-May	Deloitte Legal (Krehic & Partners); Savoric & Partners	Krehic & Partners in cooperation with Deloitte Legal advised Nipro PharmaPackaging, a supplier of glass primary packaging for the pharmaceutical industry, on the acquisition of Croatian glass pharmaceutical packaging manufacturer Piramida from Blue Sea Capital. Savoric & Partners advised the sellers on the deal.	N/A	Croatia
16-Apr	DLA Piper; Squire Patton Boggs; Van Campen Liem	Van Campen Liem and Squire Patton Boggs advised ARX Equity Partners on its acquisition of Promens Zlin from Berry Global. DLA Piper advised Berry Global.	N/A	Czech Republic

Date covered	Firms Involved	Deal/Litigation	Value	Country
19-Apr	Havel & Partners	Havel & Partners' Partner Frantisek Korbel, acting as a legal representative for the Ceske Radiokomunikace a.s. telecommunications company, successfully appealed a Czech Supreme Court resolution to the Czech Constitutional Court in a dispute over the removal of the Petrov TV translator station from property owned by the defendant.	N/A	Czech Republic
20-Apr	Eversheds Sutherland	Eversheds Sutherland advised Expandia on its acquisition of Industrial Park CK and IPCK II, the owners of an industrial park in the Czech community of Cerveny Kostelec.	N/A	Czech Republic
21-Apr	Eversheds Sutherland	Eversheds Sutherland provided pro bono legal advice to Nadacni Fond Dum Ronalda McDonalda on contractual documentation related to the start of construction of the first Ronald McDonald House in the Czech Republic.	N/A	Czech Republic
21-Apr	Havel & Partners	Havel & Partners advised Hyundai Motor Czech s.r.o. on its entrance into financing agreements with Essox s.r.o. related to the importation and distribution of Hyundai vehicles in the Czech Republic.	N/A	Czech Republic
22-Apr	Staidl Leska Advokati	Staidl Leska Advokati successfully defended Czech translator Pavel Dominik's right to use the Czech version of the title of Oscar Wilde's play "The Importance of Being Earnest," originally translated by J.Z.Novak.	N/A	Czech Republic
4-May	Glatzova & Co	Glatzova & Co. advised the Purpose Ventures SE fund on its investment in Accomango.	EUR 1.54 million	Czech Republic
4-May	Allen & Overy; White & Case	White & Case helped Ceske Drahy secure a loan of up to CZK 2.6 billion from Raiffeisenbank. Allen & Overy advised the lender on the deal.	CZK 2.6 billion	Czech Republic
10-May	CMS; Kocian Solc Balastik; Schoenherr	Schoenherr advised Twisto FinCo s.r.o. and Twisto payments a.s. on its EUR 25 million debt refinancing, including a senior stream provided by J&T Banka of approximately EUR 17.3 million and a mezzanine stream provided jointly by Orbit Capital and Growth Finance of approximately EUR 7.7 million. Kocian Solc Balastik represented J&T Banka and CMS advised Orbit Capital and Growth Finance.	EUR 25 million	Czech Republic
10-May	HKR	HKR, working in cooperation with solo practitioner Adam Zitek, successfully represented the interests of the City of Brno in a dispute over the substantive nature of purpose-built roads on land adjacent to the Luzanky football stadium.	N/A	Czech Republic
11-May	Allen & Overy; White & Case	Allen & Overy advised Cordiant Digital Infrastructure Limited on the acquisition of Ceske Radiokomunikace a.s., a telecommunications, media, and technology infrastructure and services provider in the Czech Republic, from funds managed by Macquarie Asset Management. White & Case advised the sellers on the deal.	N/A	Czech Republic
13-May	Clifford Chance	Clifford Chance advised the Film Servis Festival Karlovy Vary, which organizes the Czech Republic's annual Karlovy Vary International Film Festival, on a strategic investment into the entity by the Rockaway Capital Group.	N/A	Czech Republic
13-May	Havel & Partners	Havel & Partners, acting on behalf of T-Mobile Czech Republic, persuaded the Regional Court in Brno to annul a decision of the Czech Competition Authority regarding T-Mobile Czech Republic's entrance into interconnection agreements with other mobile operators.	N/A	Czech Republic
14-May	Dunovska & Partners; Havel & Partners	Havel & Partners advised shareholders Tomas Rutrle, Martin Lips, Yvona Parmova, Martin Slama, and Libor Malek on their sale of IT company Komix to the Cleverlance Group, a subsidiary of the Aricoma Group. Dunovska & Partners advised the buyers on the deal.	N/A	Czech Republic
14-May	Kirkland & Ellis; Shearman & Sterling; Weinhold Legal	Weinhold Legal, working alongside global counsel Kirkland & Ellis, advised Lionbridge AI on Czech legal aspects of its USD 935 million sale to Canadian telecom company Telus. Shearman & Sterling was global counsel to Telus.	USD 935 million	Czech Republic

Date covered	Firms Involved	Deal/Litigation	Value	Country
14-May	CMS	CMS advised a consortium of Vinci and Meridiam on its public-private partnership contract for the construction of the D4 motorway in the Czech Republic, the country's first road PPP. Vinci and Meridiam each have a 50% stake in the project, and EUR 474 million of financing been obtained.	N/A	Czech Republic
21-Apr	Allen & Overy; Cobalt	Cobalt advised the unidentified founders of Drivitty on its entrance into a strategic partnership with Eurowag. Allen & Overy advised Eurowag on the deal.	N/A	Czech Republic; Lithuania
11-May	Dentons; Schoenherr	Schoenherr advised Ventus LLC and Sky Logistica on the acquisition of Skyport, a cargo operator based in the Czech Republic and Slovakia, from the Czechoslovak Group, a.s. In a parallel transaction, Schoenherr also advised Elite Partners Capital on the acquisition of the Skyport RE cargo property company from the Czechoslovak Group. Dentons advised the Czechoslovak Group on the parallel deals.	N/A	Czech Republic; Slovakia
16-Apr	Lextal	Lextal's Tallinn office advised Alarmo Kapital, the majority shareholder of Arco Vara, on its takeover bid of EUR 1.3 per share for the remaining shares in the company.	N/A	Estonia
19-Apr	Orrick Herrington & Sutcliffe; Sorainen	Sorainen, working with Orrick, helped Veriff attract a USD 69 million Series B investment from Institutional Venture Partners and Accel.	USD 69 million	Estonia
20-Apr	Ellex (Raidla)	Ellex Raidla helped Tera Ventures, one of the longest-running seed-stage funds in the Nordic & Baltic countries, bring its fund size to EUR 43 million with several global investors stepping in as limited partners.	EUR 43 million	Estonia
28-Apr	Ellex (Raidla)	Ellex Raidla helped VideoCV secure a EUR 410,000 investment in a pre-seed round from Zenith Family Office, EstBAN, and several unidentified business angels.	EUR 400,000	Estonia
4-May	Sorainen	Sorainen advised the Estonian Ministry of the Environment on matters related to the management of hazardous substances at sea.	N/A	Estonia
5-May	Ellex (Raidla); Wilson Sonsini Goodrich & Rosati	Ellex Raidla, working with Wilson Sonsini Goodrich & Rosati, advised investment fund Atomico on its participation in the USD 11 million Series A funding round of Estonian artificial intelligence platform startup Pactum.	USD 11 million	Estonia
10-May	PWC Legal	PwC Legal advised Guardtime on its preparation of the VaccineGuard vaccination certificate platform for Estonia's Health and Welfare Information Systems Center.	N/A	Estonia
11-May	Ellex (Raidla)	Ellex Raidla advised Superangel on an investment in ParcelSea, made as part of a EUR 935,000 financing round.	N/A	Estonia
12-May	Cobalt	Cobalt successfully advised Wolt Eesti in proceedings before the Estonian Competition Authority relating to the company's price parity conditions.	N/A	Estonia
30-Apr	Ellex (Klavins); Ellex (Raidla)	Ellex advised Eesti Energia on its entrance into a memorandum of understanding with Orsted for the development of a large-scale offshore wind farm and the movement towards delivering the first offshore wind farm in the Gulf of Riga.	N/A	Estonia; Latvia
26-Apr	Koutalidis	The Koutalidis Law Firm advised Alpha Bank on its demerger by way of a hive-down of its banking sector to a new banking entity.	N/A	Greece
10-May	Norton Rose Fulbright	Norton Rose Fulbright advised PPC Renewables S.A. and its Iliaka Parka Dytikis Makedonias 1 S.A. subsidiary on financing it received for the construction of a 15MW photovoltaic park in Ptolemaida, Greece, from the National Bank of Greece and Eurobank. The European Investment Bank was also provided with the right to participate in the financing.	N/A	Greece
12-May	Bernitsas	Bernitsas Law advised industrial and energy company Mytilineos SA on its issuance of EUR 500 million aggregate principal amount senior notes due 2026, and on the listing of the notes on the Luxembourg Stock Exchange's Euro MTF market.	EUR 500 million	Greece

Date covered	Firms Involved	Deal/Litigation	Value	Country
14-May	Allen & Overy; Kinstellar	Kinstellar advised mandated arranger and facility and security agent Bank of China on an approximately USD 75 million loan to sponsor China National Machinery Import and Export for the construction and operation of a 100 MW photovoltaic power plant in Hungary. Allen & Overy advised the sponsor.	USD 75 million	Hungary
11-May	Ellex (Raidla); Fort; Glimstedt; Walless	Glimstedt and Fort Legal advised real estate company Vastint on the sale of office buildings in Vilnius and Riga to Eastnine. Ellex advised Eastnine.	EUR 35.5 million	Latvia; Lithuania
16-Apr	Motieka & Audzevicius	Motieka & Audzevicius successfully represented Vilniaus Prekyba, UAB, in its claim for EUR 81.25 million in damages from M. Marcinkevicius arising from Marcinkevicius' efforts to pause the acquisition of entities controlling the Akropolis shopping centers in Vilnius, Klaipeda, and Siauliai.	EUR 81.25 million	Lithuania
19-Apr	Ellex (Valiunas); Sorainen	Ellex Valiunas represented AMC Capital IV, advised by Accession Capital Partners (formerly Mezzanine Management), on the acquisition of a minority stake in the Plasta Group. Sorainen advised Plasta Group shareholders Hillary Denmark ApS, It is Future, and Vytas Poderis	N/A	Lithuania
20-Apr	Cobalt	Cobalt advised Prosperus Asset Management on its acquisition of a shopping center in Klaipeda, Lithuania, from Raseiniu Pletra.	N/A	Lithuania
21-Apr	Sorainen	Sorainen successfully represented a Lithuanian company owned by the W. P. Carey fund in its claim that Kesko Senukai Lithuania had wrongly failed to pay it rent for its use of a logistics center in the Kaunas district of Lithuania.	EUR 537,517	Lithuania
22-Apr	TGS Baltic	TGS Baltic advised the Evernord Real Estate Fund III, which is managed by Vilnius-based investment firm Evernord Asset Management, on its acquisition of a 65% stake in Riga's Novira Plaza business center.	EUR 55 million	Lithuania
23-Apr	Sorainen; TGS Baltic	Sorainen advised the shareholders of the Salavijas clinic in Utena on the sale of 100% of their shares in Aksanas and Dilina, companies operating under the Salavijas brand, to InMedica. TGS Baltic advised the buyer.	N/A	Lithuania
28-Apr	TGS Baltic	TGS Baltic advised the unidentified founders of Strive on the EUR 5.4 million sale of the shares in its Strive Platform to Sweden's Betsson Group.	EUR 5.4 million	Lithuania
5-May	Delphi; Sorainen	Sorainen, working alongside Delphi, advised Sweden's Addnode Group on the acquisition of S-Group Solutions, a software company specializing in business-related GIS solutions for municipalities, water, and sewage organizations.	N/A	Lithuania
10-May	Sorainen	Sorainen advised the Council of Europe Development Bank on its provision of funding to Kauno Autobusai for the purchase of 100 new solo hybrid buses.	N/A	Lithuania
11-May	Cobalt	Cobalt advised real estate developer Reefo on its EUR 6 million acquisition of the Nidos Banga hotel in Lithuania.	EUR 6 million	Lithuania
5-May	Cobzac & Partners	Cobzac & Partners successfully represented Latvia's SIA Fertco fertilizer distributor in its attempt to obtain the partial annulment of an arbitral award in Moldova's courts.	EUR 2.4 million	Moldova
16-Apr	Dentons; Domanski Zakrzewski Palinka	Lawyers from the Warsaw and Paris offices of Dentons advised the Ondura Group on its acquisition of CB S.A. Domanski Zakrzewski Palinka advised the sellers on the deal.	N/A	Poland
19-Apr	Mrowiec Fialek & Partners	Mrowiec Fialek and Partners advised Ipopema Securities S.A. on its entrance into investment and offering agreements with Biomed Lublin S.A.	N/A	Poland
20-Apr	WKB Wiercinski Kwiecinski Baehr	WKB advised Gaz-System and Polskie LNG on the former's takeover of the latter.	N/A	Poland
21-Apr	SSW Pragmatic Solutions	SSW Pragmatic Solutions advised the PKN Orlen Group on its purchase of three wind farms with a total capacity of 90 MW from Spanish investment funds.	N/A	Poland
21-Apr	Kwasnicki, Wrobel & Partners	The RKKW law firm helped the Historical Museum of Sanok, in Poland, respond to an offer to sell it a counterfeit version of a painting by Zdzislaw Beksinski from an American auction website.	N/A	Poland

Date covered	Firms Involved	Deal/Litigation	Value	Country
21-Apr	Gessel	Gessel advised Polimex Mostostal S.A. on its PLN 1.22 million acquisition of a 100% stake in Instal-Lublin S.A. from the receiver of PartnerBud in bankruptcy.	PLN 1.22 billion	Poland
22-Apr	DLA Piper; Grant Thornton; KPT Tax Advisors	Grant Thornton advised the shareholders of Atlantic Products Sp. z o.o. on the sale of the business to Maced, a Polish manufacturer of dog treats controlled by Resource Partners. DLA Piper and KPT Tax Advisors advised Resource Partners on the deal.	N/A	Poland
23-Apr	Clifford Chance	Clifford Chance advised the EBRD on its provision of an unspecified loan to Elemental Holding S.A. for the construction of a recycling facility in Poland.	N/A	Poland
23-Apr	DLA Piper; Krzyzagorska Loboda i Partnerzy	DLA Piper advised Resource Partners on its acquisition of the majority of shares in 7Anna. The Krzyzagorska Loboda i Partnerzy law firm advised the seller.	N/A	Poland
26-Apr	Wardynski & Partners	Wardynski & Partners, acting pro bono, successfully represented blogger Lukasz Kasprowicz in a criminal libel case that reached the Supreme Court of Poland.	N/A	Poland
27-Apr	Rymarz Zdort	Rymarz Zdort advised European Logistics Investment on its purchase of land for the development of a modern warehouse complex in the Polish community of Tychy.	N/A	Poland
28-Apr	Domanski Zakrzewski Palinka	Domanski Zakrzewski Palinka helped Polregio sp. z o.o. obtain approval from the European Commission for the over-PLN 6 billion in state aid it received for its restructuring.	PLN 6 billion	Poland
29-Apr	B2RLaw	B2RLaw advised PGNiG Group's corporate venture capital fund on its PLN 2.53 million investment in Enelion, a provider of electro-mobility solutions.	PLN 2.53 million	Poland
29-Apr	DWF; Miller Canfield	DWF advised Aberdeen Standard European Logistics Income on its EUR 28 million acquisition of the Panattoni Lodz City VIII logistics and distribution center from Panattoni. Miller Canfield advised the seller.	EUR 28 million	Poland
29-Apr	Hogan Lovells	Hogan Lovells provided pro bono legal representation to Piotr Wawrzecki in a dispute over the seizure of his decedent father's assets by the Polish State Treasury.	N/A	Poland
30-Apr	Vinge; Wardynski & Partners	Wardynski & Partners provided Polish advice to AddLife AB on its EUR 165 million acquisition of an unspecified number of shares in the Vision Ophthalmology Group and its subsidiary Polymed Polska sp. z o.o from SSCP Vision Parent S.C.A.	EUR 165 million	Poland
3-May	Baker Mckenzie; DWF; Miller Thomson	Baker McKenzie advised People Can Fly on its acquisition of Canada-based Game On Creative, Inc. The transaction provides for a share swap with PCF shares and the reinvestment of Game On's founder in PCF. DWF Poland and Miller Thomson advised Game On Creative.	N/A	Poland
4-May	Vinge; Wardynski & Partners	Wardynski & Partners and Vinge advised the Lagercrantz Group on its acquisition of CW Lundberg, a Poland-based subsidiary of the CWL Group AB.	N/A	Poland
4-May	Olesinski & Wspolnicy; Penteris	Penteris advised Huuuge on its USD 38.9 million acquisition of Traffic Puzzle from Wroclaw-based gaming studio Picadilla Games. Olesinski & Wspolnicy advised Picadilla on the deal.	USD 38.9 million	Poland
4-May	Kochanski & Partners	Kochanski & Partners advised Inovo Venture Partners VC fund on the acquisition of shares in the SunRoof technology company as part of a seed round extension. Other investors participating in the round included SMOK Ventures, LT Capital, EIT InnoEnergy, FD Growth Capital, KnowledgeHub, and other local and international business angels.	N/A	Poland
5-May	Allen & Overy; Squire Patton Boggs	Allen & Overy advised Ghelamco on the sale of the Woloska 24 office building in Warsaw to ZFP Investments, a subsidiary of Slovakia's IAD Investments. Squire Patton Boggs advised ZFP on the deal.	EUR 60 million	Poland
6-May	Greenberg Traurig	Greenberg Traurig advised private equity fund Gilde Healthcare on its acquisition of Acti-Med AG.	N/A	Poland

Date covered	Firms Involved	Deal/Litigation	Value	Country
12-May	Bird & Bird; CMS	Bird & Bird advised Polish Enterprise Fund VI, a private equity fund managed by Enterprise Investors, on the sale of companies from the Wento group to international energy concern Equinor, which was advised by CMS.	EUR 100 million	Poland
16-Apr	Hogan Lovells; White & Case	Hogan Lovells is advising CPI Property Group S.A. and White & Case is advising Aroundtown SA on their joint takeover offer for the entire issued share capital of Globalworth Real Estate Investments Limited.	N/A	Poland; Romania
22-Apr	Asters; Clifford Chance; Ionescu & Sava; Norton Rose Fulbright	Norton Rose Fulbright, Asters, and Ionescu si Sava advised a syndicate of banks on its provision of a PLN 1.5 billon loan to Polish, Russian, Romanian, Ukrainian, and German members of the Cersanit Group. Clifford Chance advised Cersanit on the deal.	PLN 1.5 billion	Poland; Russia; Ukraine
16-Apr	Nestor Nestor Diculescu Kingston Petersen; RTPR	RTPR assisted Rodbun Grup SRL in relation to a syndicated loan in amount of RON 84.5 million from Banca Comerciala Romana, CEC Bank, Raiffeisen Bank, and Banca Romaneasca, which was guaranteed by Eximbank. NNDKP advised the banks.	RON 84.5 million	Romania
19-Apr	Radulescu & Musoi; Tuca Zbarcea & Asociatii	Tuca Zbarcea & Asociatii advised Coca-Cola HBC Romania on its acquisition of 50% of the share capital in the Stockday b2b e-commerce platform from Heineken Romania. Radulescu & Musoi advised the seller.	N/A	Romania
22-Apr	Clifford Chance; Filip & Company; Linklaters	Filip & Company and Linklaters assisted Romania's Ministry of Public Finance in its two-tranche Eurobond issuance, which attracted EUR 3.5 billion from international markets. Clifford Chance advised BNP Paribas, Citigroup Global Markets Europe AG, HSBC Continental Europe, Raiffeisen Bank International AG, Societe Generale, and UniCredit Bank AG on the issuance.	EUR 3.5 billion	Romania
23-Apr	BPV Grigorescu Stefanica; Withers	BPV Grigorescu Stefanica, working with Withers, advised Draper Esprit on its participation in FinTechOS's USD 60 million Series B investment round.	USD 60 million	Romania
28-Apr	Act Legal (Botezatu Estrade); BPV Grigorescu Stefanica; CEE Attorneys; Kinstellar	BPV Grigorescu Stefanica and Kinstellar advised Product Lead on a EUR 600,000 financing round led by Sparking Capital that also included investments from Bulgaria-based Eleven VC and Sweden-based Founders Bridge. CEE Attorneys/ Boanta, Gidei si Asociatii advised Sparking Capital and ACT Legal Romania advised Founders Bridge.	EUR 600,000	Romania
30-Apr	Biris Goran; Schoenherr	Biris Goran helped River Development sell The Light One office building in Bucharest to UNIQA Real Estate GmbH. Schoenherr advised UNIQA on the deal.	N/A	Romania
4-May	Act Legal (Botezatu Estrade)	Act Botezatu Estrade Romania advised OncoChain on its EUR 380,000 seed financing round, which was led by Cleverage Venture Capital and also included an equity crowdfunding round on the Seedblink platform, as well as two angel investors from the Growceanu network.	EUR 380,000	Romania
4-May	DLA Piper	DLA Piper advised Hypo Noe Landesbank on a EUR 16.6 million multi-tranche loan facility granted to the owner and operator of a number of retail shopping centers in Romania.	EUR 16.6 million	Romania
4-May	Zamfirescu Racoti Vasile & Partners	Zamfirescu Racoti Vasile & Partners successfully represented the interests of Romanian bike producer Atelierele Pegas in a trademark dispute with Germany's ZEG Zweirad-Einkaufs-Genossenschaft eG.	N/A	Romania
5-May	Popovici Nitu Stoica & Asociatii	PNSA advised Ameropa Grains on the sale of a former industrial platform in Constanta to Hornbach.	N/A	Romania
11-May	Filip & Company; Tuca Zbarcea & Asociatii	Filip & Company advised investment fund Mozaik Investments on the acquisition of a minority shareholding in the Romanian company operating the Stradale chain of restaurants, the Mitzu coffee shops, and the Flavours catering service providers. Tuca Zbarcea & Asociatii advised the unnamed sellers on the deal.	N/A	Romania
13-May	Nestor Nestor Diculescu Kingston Petersen; Tuca Zbarcea & Asociatii	Tuca Zbarcea & Asociatii advised Brazilian food company BRF, acting through Nutrinvestment BV and Banvit Bandirma Vitaminli Yem Sanayii AS, on the EUR 20.3 million sale of Banvit Foods to Aaylex System Group S.A. Nestor Nestor Diculescu Kingston & Petersen advised the Aaylex Group on the deal.	EUR 20.3 million	Romania

Date covered	Firms Involved	Deal/Litigation	Value	Country
13-May	Buzescu Ca	Buzescu Ca advised Danfoss on the sale of a plant in Cluj, Romania, and land around it to NKS Logistic Business. Korcsog & Carunta Notaries advised the buyers.	N/A	Romania
14-May	Act Legal (Botezatu Estrade); RTPR	RTPR, acting on behalf of the Electrica Group's electricity distribution company, and ACT Legal Romania, acting on behalf of the Delgaz Grid, persuaded Romania's High Court of Cassation and Justice to rule on behalf of their clients and several other distribution companies in a long-running dispute involving claims of anti-competitive behavior brought by Digi Communications, a member of the RCS-RDS group.	N/A	Romania
16-Apr	Egorov Puginsky Afanasiev & Partners	Egorov, Puginsky, Afanasiev & Partners is representing a coalition of Avito, IVI, CIAN, Profi.ru, Tutu.ru, Drom.ru, 2GIS, and Zoon in a abuse-of-dominant-position case against Yandex initiated by the Federal Antimonopoly Service of Russia.	N/A	Russia
16-Apr	Dentons	Dentons acted as counsel to Domodedovo Airport Group on its Rule 144A/ Regulation S issuance of USD 453 million 5.35 percent loan participation notes due 2028; the consent solicitation and tender offer in relation to its loan participation notes maturing in 2021; and the capped tender offer with respect to its loan participation notes maturing in 2023.	USD 453 million	Russia
21-Apr	Dentons	Dentons assisted Oleg Boyko, the founder and Chairman of the Board of Directors of Finstar Financial Group, on Finstar's acquisition of a 99.56% share of St. Petersburg's SIAB Bank PJSC.	N/A	Russia
26-Apr	DLA Piper	DLA Piper advised Safmar Financial Investments, an investment arm of Russia's Safmar Group, on the sale of 100% of shares in the Safmar non-state pension fund to Leningradskoe Adagio, an investment company owned by Russia's Region Group.	N/A	Russia
30-Apr	DLA Piper; Herbert Smith Freehills	DLA Piper advised Russian oil and gas company TAIF on the merger of its petrochemical business with Russian petrochemical company Sibur. Herbert Smith Freehills advised Sibur.	N/A	Russia
6-May	Capital Legal Services	Capital Legal Services advised ABS LLC, a joint venture of Airports of Regions MC and Novaport Holding, on its entrance into a RUB 7 billion concession agreement for the development of the Blagoveschensk airport.	RUB 7 billion	Russia
21-Apr	Jankovic Popovic Mitic; Schoenherr	JPM Jankovic Popovic Mitic advised Pertula Holdings Ltd. and Aleksandar Popovic on the sale of the remaining shares in Grand Production to Grand Slam Group. Moravcevic Vojnovic and Partners in cooperation with Schoenherr advised the buyers.	N/A	Serbia
22-Apr	Harrisons	Harrisons advised EBRD on its provision of a EUR 20 million loan to UniCredit Leasing Serbia.	EUR 20 million	Serbia
29-Apr	Bojovic Draskovic Popovic & Partners	Bojovic Draskovic Popovic & Partners advised AerCap House, and its sister company Flotlease Msn 973, on the lease of an Airbus A330-200 aircraft to Air Serbia.	N/A	Serbia
4-May	Cernejova & Hrbek; MCL; Skubla & Partneri	MCL advised Marek Vaclavik and Petit Press directors Alexej Fulmek and Peter Macinga on their acquisition of a 5.5% stake in Petit Press from Slovakian finance group Penta. Skubla & Partners advised Penta on the deal, which also included the sale of Penta's remaining 34% stake in Petit Press to the Media Development and Investment Fund. Cernejova & Hrbek advised MDIF on the deal.	N/A	Slovakia
10-May	Dentons	Dentons, working pro bono, successfully obtained a favorable ruling from the Constitutional Court of the Slovak Republic on behalf of Jozef Andrej, who had been previously convicted of the manslaughter of his severely disabled son.	N/A	Slovakia
11-May	Dentons	Dentons advised a syndicate of Tatra, Slovenska Sporitena, and UniCredit Bank Czech Republic and Slovakia on a EUR 116 million loan to Eurovea 2, s.r.o.	EUR 116 million	Slovakia

Date covered	Firms Involved	Deal/Litigation	Value	Country
22-Apr	Ciftci Attorney Partnership; Clifford Chance; GKC Partners; White & Case	GKC Partners in association with White & Case advised sole lead manager Commerzbank AG on Alternatif Bank's USD 200 million 10.5% Additional Tier 1 Notes issuance. Ciftci Attorney Partnership in association with Clifford Chance advised the issuer.	USD 200 million	Turkey
30-Apr	Akol Law Firm; Kramer Levin Naftalis & Frankel	Akol Law advised Barclays Investment Bank, Credit Suisse, J.P. Morgan, ING, Nomura, Societe Generale, and Standard Chartered Bank on VakifBank's DPR securitization. Kramer Levin Naftalis & Frankel advised Vakifbank on the deal.	USD 1.75 billion	Turkey
3-May	Dentons (Baseak); Egemenoglu	Egemenoglu advised Turkish beverage company Uludag Beverage on a EUR 15 million financing from the EBRD. The Balcioglu Selcuk Ardiyok Keki Attorney Partnership advised the EBRD on the financing.	EUR 15 million	Turkey
10-May	MC Legal	MC Legal advised ZIraat GYO on its TRY 1.9 billion IPO in Turkey.	1.9 billion	Turkey
12-May	Squire Patton Boggs	Squire Patton Boggs, acting on behalf of the State of Turkmenistan, persuaded the International Centre for Settlement of Investment Disputes to dismiss in full a claim of nearly USD 500 million brought against the country by Turkish construction company Sehil Insaat Endustri ve Ticaret Ltd. Sti., and its majority shareholder, Muhammet Cap.	USD 500 million	Turkey
14-May	Baseak; GKC Partners	GKC Partners in association with White & Case advised Garanti BBVA and the Alternatif Bank on their provision of a TRY 800 million dividend recapitalization loan to Test Tasit Muayene Istasyonlari Yapim Ve Isletme A.S. The Balcioglu Selcuk Ardiyok Keki Attorney Partnership advised the borrower.	TRY 800 million	Turkey
16-Apr	KPD Consulting	KPD Consulting successfully represented the community of the Vozdvyzhenka neighborhood in Kyiv in a dispute with the developer of the Podol Grad Vintage residential complex.	N/A	Ukraine
21-Apr	Ilyashev & Partners	Ilyashev & Partners represented State Enterprise Antonov in negotiations with the Kyiv Watch Factory for a license to use the "Antonov" trademark in the production of Kleynod watches.	N/A	Ukraine
27-Apr	Ilyashev & Partners; PWC Legal	PWC Legal and Ilyashev & Partners advised Latvia's Lu Invest on its sale of 49.99% in Ukrainian agri-holding Golden Sunrise Agro to Cyprus's Unagro Finance Limited, which already owned the remaining 50.01% of the company.	N/A	Ukraine
3-May	Asters	Asters acted as Ukrainian law counsel to the International Finance Corporation in connection with a USD 20 million loan to Nyva Pereyaslavshchyny, Ukraine's second largest pork producer.	USD 20 million	Ukraine
4-May	Sayenko Kharenko	Sayenko Kharenko successfully represented Ascania-Flora in a safeguard investigation initiated by the company related to imports of fresh cut roses notwithstanding country of origin and export.	N/A	Ukraine
4-May	Integrites	Integrites helped Khlibni Investytsii subsidiary Chanta Mount secure a USD 3 million loan from Raiffeisen Bank International for the construction of a new production line.	EUR 3 million	Ukraine
6-May	Marchenko Partners	Marchenko Partners advised Western NIS Enterprise Fund on its provision of loans to Smachni Spravy and Pizza Veterano Kyiv.	N/A	Ukraine
6-May	Latham & Watkins	Latham & Watkins advised joint lead managers and bookrunners BNP Paribas, Deutsche Bank, Goldman Sachs, and JP Morgan on Ukraine's USD 1.25 billion notes issuance.	USD 1.25 billion	Ukraine
7-May	Ilyashev & Partners	Ilyashev & Partners, representing the interests of the Ukrainian Red Cross Society, persuaded the Economic Court of Kyiv to invalidate the trademark of a Ukrainian pharmacy network featuring the image of a red cross.	N/A	Ukraine

ON THE MOVE: NEW HOMES AND FRIENDS

Poland: B2RLaw Establishes Agriculture and Agrifood Practice

By Djordje Vesic

B2RLaw has launched an Agriculture and Agrifood Practice, co-led by Partners Aleksandra Polak and Roman Iwanski.

According to B2RLaw, "in 2019, Poland was the third-largest producer of apples globally; the fourth largest producer of mushrooms after China, Japan, and the US; the second-largest producer of rye after Germany; the seventh-largest producer of sugar beets; and the eighth-largest producer of potatoes." According to the firm, "the surface area of agricultural land in Poland is 15.4 million hectares, which constitutes nearly 50% of the total area of the country."

Thus, the firm reports, "Poland's agriculture sector is vital to the European and global market because it produces a variety of agricultural, horticultural, and animal origin products and the industry will further grow due to policies encouraging a green and digital circular economy."

"Food and agribusiness form a USD 5 trillion global industry that is only getting bigger," said Roman Iwanski. "If current trends continue, by 2050, the industry would grow by between 70-100%. Our Agriculture and Agrifood Practice is able to cater [to] all the demands of the growing industry and we look forward to assisting Polish agribusinesses in their growth, as well as international investors, partners, and technology suppliers in their interaction with the Polish and CEE market." ■

Turkey: Andersen Global Finds New Turkish Partner in MGC Legal

By David Stuckey

Andersen Global has tied up with MGC Legal in Istanbul, giving it a new base of operations in the Turkish capital.

MGC Legal has eight partners – including Managing Partner Mustafa Gunes – and 60 fee-earners. "We are committed to client service and stewardship, which ensures we provide best-in-class services to our clients," Mustafa said. "Our quality solutions are reinforced by our professionals' expertise in all areas of law as well as the working relationships and resources we've built over the years. Collaborating with Andersen Global supports our goal of being a benchmark organization that sets the standard for client service regionally and globally."

Andersen Global Chairman and Andersen CEO Mark Vorsatz added, "MGC Legal's professionals are outstanding. We were very impressed with their operational knowledge, and their culture and values mirror those of our organization. This collaboration is an important addition in the region, and the chemistry we've already developed with this group is a springboard for our collaboration going forward."

Andersen had previously been cooperating with Nazali Tax & Legal in Istanbul – a relationship which began in the summer of 2017 and concluded in January 2020. ■

Ukraine: Asters Launches Nordic and German Desks

By Andrija Djonovic and David Stuckey

Asters has launched dedicated Nordic and German Desks, led by Associate Damien Magrou and Of Counsel Marta Barandiy, respectively.

According to Asters, the new Nordic desk will offer "legal advice in Scandinavian languages, adapted to Nordic business culture, and with an understanding of the Nordic jurisdictions' legal systems." The German desk is "focused on the all-around legal support of both corporate and individual German-speaking clients from Germany, Austria, and Switzerland doing business or otherwise encountering legal issues in Ukraine."

Damien Magrou, a native Norwegian, has an LL.M. from the University of Oslo as well as a Master's degree in law from the University of Bergen. Before joining Asters in September of 2020, he spent two years with Eversheds Sutherland in Saint Petersburg, Russia. According to the firm, he "focuses on cross-border M&A, international contracts, and transactions. He also advises on matters of EU law as applicable in a Ukrainian context, as well as assisting Nordic private individuals with legal matters in Ukraine. He has experience and sector-specific focus within energy, gambling, and IT. "

"Asters has been advising Nordic companies on entering the Ukrainian market since the mid-90s," commented Asters Senior Partner Armen Khachaturyan. "We are members of the Norwegian Ukrainian Chamber of Commerce and have a well-established network with leading Nordic law firms. We see Nordic businesses having increasing importance in the Ukrainian market. To address this, we have structured a highly-motivated team within Asters. The newly established Nordic Desk will serve as a primary point of contact for the firm's Scandinavian clients and will provide a convenient client-specific interface for mutually beneficial cooperation."

Marta Barandiy, who heads Asters' Brussels office, speaks German and earned her PhD in Law from the Saarland University. According to the firm, its experience with clients from German-speaking countries includes advising Allianz AG, Austrian Airlines, Bayer, Beiersdorf AG, Deutsche Bank, Metro Cash & Carry Ukraine, Novartis, Raiffeisenbank Ukraine, and VTG AG, among others.

"Asters has a long track record of assisting clients from the German-speaking countries," said Khachaturyan. "By establishing a German Desk we emphasize our effort to further enhance client care based on our good knowledge and understanding of business and legal culture of the German-speaking jurisdictions and importance of their interaction with Ukraine." ■

Bosnia & Herzegovina, Croatia, Kosovo, North Macedonia, Serbia, Slovenia: Adriatic Firms Form New Rivet:Net Law Firm Alliance

By David Stuckey

A new law firm alliance has appeared in the countries of the former Yugoslavia.

Rivet:net – which its members describes as "a network of leading independent law firms in the Adriatic region, providing comprehensive legal support across the region" – was founded by North Macedonia's Bona Fide law firm, Slovenia's Fatur Menard, Kosovo's Hodaj & Partners, Bosnia & Herzegovina's Milanovic-Lalic and Suljovic, Croatia's Vukmir and Associates, and Serbia's Zivkovic Samardzic (which will also cover Montenegro).

According to a story on the Zivkovic Samardzic website, "the main purpose of Rivet:net is to enhance the regional capabilities of members of the network, and to enable their clients to approach high-quality, uniform, and efficient legal support throughout the entire Adriatic region." ■

Croatia: Anamaria Zuvanic Leaves Glinska & Miskovic to Open Anamaria Zuvanic Law Office in Cooperation with Kovacevic Prpic Simeunovic

By David Stuckey

Former Glinska & Miskovic Partner Anamaria Zuvanic has left the Croatian firm to open her own office, Law Office Anamaria Zuvanic, in cooperation with Kovacevic Prpic Simeunovic.

Zuvanic began her career at Zuric i Partneri, which she left after four years in July 2013 to join Glinska & Miskovic. She specializes in banking & finance, real estate, M&A, corporate governance and compliance, energy, and employment.

According to Zuvanic, "bearing in mind my previous experience, which allowed me to develop specific skills and knowledge, as well as a deep understanding of how the legal industry and the business work, opening my law office seemed as the only logical step. I have learned that it is essential to offer tailor-made, solution-oriented advice to clients, and to do so, understanding clients' needs in the context of their respective industries, is essential to being able to meet their demands. Finding ideal solutions for my clients has been a true privilege to date and I look forward to new challenges." ■

Romania: MPR Partners to Open London Office

By Radu Cotarcea

Romanian MPR Partners has announced that it has opened an office in London, to be headed by Co-Founder and Co-Managing Partner Alina Popescu.

According to the firm, it is now "finalizing the process for the opening of its first London office in the City." The office, due to be launched by the end of spring, is "meant to support clients with operations in the UK and the EU."

"We have been working hard at the beginning of this year and are currently setting up an office in London, which is planned to grow with time," stated Popescu, adding: "We see a wealth of opportunities there and hope to start local hires soon enough. Meanwhile, our vast experience in managing legal teams, our highly proficient existing base, our AI capabilities, and a very extensive network of contacts worldwide will allow us to successfully and cost-effectively handle any mandate. Our international recognition to date and the outstanding reviews from our international clients, many of whom were hoping for us to expand abroad, give us the confidence that the opening

of a London arm is the right move at this stage of our firm's development. London has always been our benchmark in terms of quality of service and competitiveness. With Brexit and the ensuing opportunities, the new office is a natural step forward that will meet our existing clients' demand for law firms with international presence and hopefully help us to tap into new markets."

Gelu Maravela, Co-Founder and Co-Managing Partner of the firm, added: "We are thrilled to be opening an international office in London, a visionary city that boasts unparalleled legal expertise and a huge potential for business. This is to some extent a personal satisfaction, seen my years of study and previous positions in the UK, which has always been like a second home. Personal story left aside, the peculiar context we have been living in for over a year has made us realize the ever-growing importance of innovation, transboundary reach, on-site approach, and accessibility. Though it may seem like an ambitious move at this time, looking back at the numerous achievements of our past years together, MPR Partners has always been a bold firm, to begin with – and we do not plan this to change anytime soon. We are deeply grateful to all our partners for their support in making this happen." ■

Hungary: AegisLegal Opens Doors in Budapest

By Djordje Vesic

Former BekesPartners lawyer Stella Simon and Perger Law attorney Gabor Perger have founded the AegisLegal law firm in Budapest.

Both Simon and Perger specialize in Competition Law, Capital Markets, and Trusts, and have transactional experience.

Stella Simon began her career in 2015 at the Hungarian Competition Authority. She moved to EY Law in 2017, where she spent two and a half years, then spent a year and a half at BekesPartners. She obtained her Juris Doctor and her Master of Laws in Competition Law from the Pazmany Peter Catholic University in 2015 and 2016, respectively.

Gabor Perger spent nearly five years with the Perger Law firm.

"In business life, in the field of transactions, capital markets and trust structures, our clients from time-to-time face complex legal challenges," commented Stella Simon. "It is our intention to offer company owners and executives highly specialized legal services and strategic advisory services in these situations. We are also proud that AegisLegal is currently the only law firm in Hungary that employs three professionals who have work experience at the Hungarian Competition Authority." ■

Poland: Monika Macura Brings Team to Konieczny Wierzbicki

By David Stuckey

Warsaw's Monika Macura and Krakow's Konieczny Wierzbicki law firms have merged, and will operate going forward in both markets under the Konieczny Wierzbicki brand.

According to a Konieczny Wierzbicki press release, the firm is "delighted to welcome on board a six-person team led by Monika Macura. Thus we are announcing that we are strengthening our competencies in the area of TMT and fintech, expanding the scope of our services with new specializations – lendtech, banking law, payment institutions, and lending institutions – and increasing our representation in Warsaw, where the entire team mentioned above is located."

Monika Macura joins Konieczny Wierzbicki as a Partner. She established her eponymous firm in 2012. ■

PARTNER MOVES

Date	Name	Practice(s)	Moving From	Moving To	Country
9-Apr	Ingo Braun	Banking/Finance	Benn-Ibler	bpv Huegel	Austria
9-Apr	Markus Schifferl	Litigation/ Dispute Resolution	Zeiler Floyd Zadkovich	bpv Huegel	Austria
30-Apr	Stefanie Werinos-Sydow	Infrastructure/PPP/Public Procurement	PwC Legal	PPH	Austria
14-Apr	Iva Tokic Culjak	Corporate/M&A	Tokic Ivic Sverak	Ilej & Partners	Croatia
14-Apr	Ivana Sverak	Energy/Natural Resources	Tokic Ivic Sverak	Ilej & Partners	Croatia
28-Apr	Anamaria Zuvanic	Banking/Finance, Real Estate	Glinska & Miskovic	Law Office Anamaria Zuvanic, in cooperation with Kovacevic Prpic Simeunovic	Croatia
14-May	Stella Simon	Competition, Capital Markets	BekesPartners	AegisLegal	Hungary
14-May	Gabor Perger	Competition, Capital Markets	Perger Law	AegisLegal	Hungary
25-Mar	Ilona Fedurek	Banking/Finance	CMS	SSW Pragmatic Solutions	Poland
4-May	Monika Macura	TMT	Macura Kancelaria	Konieczny Wierzbicki	Poland
14-May	Agnieszka Koniewicz	Real Estate	Rymarz Zdort	Penteris	Poland
14-May	Wladek Rzycki	Infrastructure/PPP/Public Procurement	Miller Canfield	CMS	Poland
29-Mar	Stefan Petrovic	Corporate/M&A	Karanovic & Partners	Petrovic Legal	Serbia
19-Apr	Martin Provaznik	Litigation/Dispute Resolution, Insolvency/ Restructuring	BNT	BPV Braun Partners	Slovakia
23-Mar	Ali Bozoglu	Litigation/ Dispute Resolution; TMT/IP	Gun + Partners	Kenaroglu Avukatlik Burosu	Turkey
28-Apr	Taras Tertychnyi	Corporate/M&A, Litigation/ Dispute Resolution	Hillmont Partners	Marushko Law Office	Ukraine

IN-HOUSE MOVES AND APPOINTMENTS

Date	Name	Moving From	Company/Firm	Country
24-Mar	Elona Ganaj	Play	CentralNic	Albania
19-Apr	Lilian Kontou	Air Liquide Hellas	TAE – SOL Group	Greece
18-Mar	Izabela Wisniewska	Private Practice	Euro Net	Poland
4-May	Anna Gorska	Idea Bank	Clifford Chance	Poland
7-Apr	Gozde Kuscuoglu	Alshaya Turkey & Azerbaijan & Georgia	BTS & Partners	Turkey
17-May	Senem Berkem Paflak	Delta Group	Modanisa	Turkey
29-Mar	Yuriy Terentyev	Chairman of Ukrainian Anti-Monopoly Committee	Redcliffe Partners	Ukraine
8-Apr	Ostap Semerak	Ukrainian Parliament	Vasil Kisil & Partners	Ukraine

PARTNER APPOINTMENTS

Date	Name	Practice(s)	Firm	Country
16-Mar	Daniel Reiter	Corporate/M&A; Capital Markets	bpv Huegel	Austria
16-Mar	Nicolas Wolski	Tax	bpv Huegel	Austria
14-Apr	Ludwig Hartenau	Corporate/M&A	Freshfields	Austria
14-Apr	Maria Dreher	Competition	Freshfields	Austria
6-Apr	Balazs Sepsey	Energy/Natural Resources; Corporate/ M&A	Kinstellar	Hungary
15-Apr	Szabolcs Szendro	Competition	CMS	Hungary
4-May	Gabor Hollos	Corporate/M&A	DLA Piper	Hungary
4-May	Zoltan Kozma	TMT/IP	DLA Piper	Hungary
17-Mar	Filip Balcerzak	Litigation/Dispute Resolution	SSW Pragmatic Solutions	Poland
17-Mar	Lukasz Cudny	Litigation/Dispute Resolution	SSW Pragmatic Solutions	Poland
5-Apr	Weronika Magdziak	Litigation/Dispute Resolution	Kochanski & Partners	Poland
5-Apr	Andrzej Palys	Litigation/Dispute Resolution	Kochanski & Partners	Poland
8-Apr	Lukasz Lasek	Litigation/Dispute Resolution	Wardynski & Partners	Poland
8-Apr	Antoni Bolecki	Competition	Wardynski & Partners	Poland
8-Apr	Kinga Ziemnicka	Corporate/M&A	Wardynski & Partners	Poland
8-Apr	Igor Hanas	Energy/Natural Resources	Wardynski & Partners	Poland
8-Apr	Maciej Szewczyk	Corporate/M&A	Wardynski & Partners	Poland
9-Apr	Nikolai Kurmashev	Banking/Finance	Linklaters	Poland
9-Apr	Patryk Figiel	Energy/Natural Resources	Linklaters	Poland
10-May	Karolina Stawicka	Labor	Bird & Bird	Poland
10-May	Maciej Georg	Banking/Finance	Bird & Bird	Poland
31-Mar	Monica Statescu	Corporate/M&A	Filip & Company	Romania
31-Mar	Olga Nita	Corporate/M&A; Capital Markets	Filip & Company	Romania
15-Apr	Mariana Signeanu	Banking/Finance	Biris Goran	Romania
12-Apr	Lucia Raimanova	Litigation/Dispute Resolution	Allen & Overy	Slovakia
31-Mar	Selahattin Kaya	Corporate/M&A	BASEAK	Turkey
31-Mar	Bora Ikiler	Competition	BASEAK	Turkey
1-Apr	Candemir Baltali	Banking/Finance	CCAO	Turkey
1-Apr	Begum Yorukoglu	Corporate/M&A	CCAO	Turkey
12-Apr	Adam Fadian	Insolvency/Restructuring	Allen & Overy	Turkey
14-May	Murat Demir	Tax	Nazali Tax & Legal	Turkey
13-Apr	Serhii Uvarov	Litigation/Dispute Resolution	Integrites	Ukraine
14-May	Dogus Gulpinar	Energy/Natural Resources	Nazali Tax & Legal	Ukraine

On The Move:

- Full information available at: www.ceelegalmatters.com
- Period Covered: March 16, 2021 - May 15, 2021

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

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.

Hungary:

Interview with Gergely Ban of ACT Legal Hungary

By Radu Cotarcea (April 20, 2021)

"A volatile legislative landscape, busy disputes practices, and a rather slow job market are the three main characteristics of the current Hungarian legal market, according to Gergely Ban, Managing Partner of ACT Legal Hungary. All three, he says, can be traced back to the COVID-19 outbreak.

"The buzz word for the better part of the year has been COVID," Ban says. "It has drastically changed the ways we've been working throughout the last 12 months, with it likely having a long-term impact on home office arrangements and, generally, the structure of law offices." This is not just the case for law firms, he says; the biggest challenges for companies in all sectors over the last few months has been "keeping on top of employment law and connected regulations with regular legislative updates," which, in turn, are trying to keep up with the evolution of the pandemic. "We simply don't know if we will have the same legislation tomorrow as we do today," he says, "which makes it very challenging for anyone in the legal services sector to advise their clients."

In terms of client work, M&A transactions are still taking place, Ban reports, with his firm having worked on four large transactions in the last 12 months – two establishments of foreign companies in Hungary and two Hungarian companies being bought by foreign companies. "Despite it all, it does seem that the upward trend of the country's FDI attractiveness has continued this year," he notes.

"Looking at the market as a whole," he reports, "the effects of the pandemic seem to be quite inconsistent. Some large law firms have been hit hard while others have been booming. Besides providing valuable legal insight and high-quality services I can't say there is a secret recipe to success in the current environment. I think mostly it was simply a matter of the nature of the businesses in each firm's client portfolio. In our case none of our big clients had to shut down – in fact, some had even started new projects by the end of last year."

The type of work that has definitely seen a spike, according to Ban, is disputes. "Between three large clients we are working with, there are hundreds of consumer claims that are in the works, and I imagine that is the case for most firms," he says. "Of course, disputes are made all the more tricky these days because of the repeated courts shutdowns last year, and, for most of the year, if the courts were open, we needed to draft documents electronically and submit them to the courts or carry out the actual hearings online, which has led to quite a slowdown of the process."

Against the background of ACT Legal Hungary's rebranding (as reported by CEE Legal Matters on March 18, 2021) and with the firm's good fortune in avoiding most negative consequences of the pandemic, Ban explains that the firm recently looked to hire new lawyers. While it did manage to bring on one senior and two juniors recently, Ban notes that "moves are stagnating in Hungary." According to him, "it might be the realization that, in the current climate, it is simply not a good time to move, or it might be juniors coming into the job market with a different mindset and expectations, or both. Regardless of the cause, we're finding it is a lot more difficult to hire these days with a recruitment cycle taking three months, or even six in the case of seniors. ■

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Romania:

Interview with Grigore Pop of Vertis Legal

By Radu Cotarcea (April 21, 2021)

Two recent ground-breaking court decisions are the main topics of conversation between lawyers in Romania, according to Vertis Legal Partner Grigore Pop – one involving how criminal courts should operate going forward and one involving another lawyer that raises "serious concerns over the legal profession as a whole."

In the first, the Romanian Constitutional Court ruled that it is only legal for a criminal court to convict a person if it provides its reasoning at the same time as the ruling itself. "In Romania, the norm in both the criminal and civil systems used to be that you'd get a full decision, including the justification and reasoning of the court, some months after the initial ruling," Pop explains. That will no longer be the case for criminal courts, and Pop explains that "while it might seem like a simple procedural update, it will change the way courts function and slow up rulings considerably, in the short term."

Pop says that he assumes the court's ruling is based on the fact that there are several procedural challenges that can be made only after a full ruling is provided, so the new rule will minimize the amount of time a defendant is held in jail until that happens, but he says, "ironically, only the ruling itself has been announced for now – the full considerations for the decision have not yet been provided."

The change will "heavily affect how lawyers prepare for a case," Pop says. "Even when it comes to basic elements such as the weight of oral arguments – they will have a different impact if the ruling happens in a matter of days as opposed to it happening five months down the line." He also is concerned that the judicial system is "not digitized enough to be able to efficiently put forward a lengthy court ruling with all the considerations of the court in an expedited manner." Ultimately, he says, "whether the system is ready to cope with such a sudden and drastic change remains to be determined, for it is a challenge for all legal practitioners."

> ***The decision essentially means that a lawyer can be convicted for arguing the position of his client – the very basic role of the profession itself.***

In the second major decisions – a ruling that Pop says "rocked the legal profession" – Romania's Supreme Court has reversed the Brasov Court of Appeal's acquittal of lawyer Robert Rosu of charges that he was part of a criminal group. "Rosu was convicted because of the mere fact that he provided legal opinions and argued in favor of his client," Pop says, which the Supreme Court deemed "a crime in that it associates the lawyer with the crime that his client was convicted for."

"The decision essentially means that a lawyer can be convicted for arguing the position of his client – the very basic role of the profession itself," Pop states. He finds it particularly problematic that the court "referred in its decision to a few elements that are not just common, but also considered best practices." For example, he says, when taking the case on, Rosu's law firm provided a due diligence report in which it considered the potential arguments against his case. According to the Court, Pop says, that report was proof that the lawyers knew what they were doing was illegal. "Such statements call into question the very foundation of the legal profession, causing uncertainties that affect precisely those whose rights should be protected by law."

Rosu is currently serving a five-year sentence, Pop says, while lawyer protests are being organized in every major city. Even the national bar association, "traditionally a conservative, quiet body," is quite vocal over the case and is qualifying it as "a threat to the legal profession." ■

Kosovo:

Interview with Mentor Hajdaraj of RPHS Law

By Radu Cotarcea (April 30, 2021)

Draft legislation, including a draft law to create a Commercial Court and a draft Civil Code, is at the top of the agenda for lawyers in Kosovo, according to Ramaj, Palushi, Hajdari & Salihu Partner Mentor Hajdaraj, who also points to several ongoing foreign investment disputes of significance to the country's overall FDI strategy.

The proposed creation of a Commercial Court has been the hottest topic of conversation among lawyers dealing with commercial issues, Hajdaraj says. This special court would handle commercial disputes that are currently heard by the Department for Commercial Matters. "These have captured everyone's attention in part because of the constant delays in courts," he explains. "If you initiate a lawsuit in the Basic Court of the Department for Commercial Matters you can expect to wait at least three years for a decision, so it's normal to want to expedite the process."

Supporters of the Commercial Court argue that it will help the economy by solving disputes in a faster matter, which is crucial for businesses. "However," Hajdaraj says, "the draft law on Commercial Court seems to have a lot of critics, including some who think that this law is unconstitutional, which means we can even see the draft ending up in the Constitutional court."

The other proposed law of significance is a draft Civil Code. "There are, naturally, several laws regulating various procedures in place," Hajdaraj explains, "but there is no such thing as a Civil Code, per se, that would integrate all the issues and not have overlaps."

The draft law creating the Commercial Court and the draft Civil Code were presented as part of the legislative program of the previous government, Hajdaraj reports, and he notes that, at the moment, it is still unclear if the new government will support them. In fact, he says, "the new government, which has been in place since the end of March, so far seems to have other priorities when it comes to the legislative program." According to him, "the first legislative initiative of new Government is the Draft Law on the Confiscation of Unjustifiable Property – an initiative that is making all the headlines for the time being."

Turning to another issue of significance, Hajdaraj reports that the Central Bank of Kosovo has recently amended and/or adopted various regulations, including, most importantly, the Regulation on Issuance of Electronic Money, which regulates the Central Bank's authorization of non-banking financial institutions to issue electronic money. "It is still a very new sector that many people are not very familiar with," he says. "While traditional banks have not welcomed the update, the CBK seems set to support it and the evolution of the sector will definitely be worth keeping an eye on, with several non-banking financial institutions currently applying for such a license."

"In terms of new deals, when it comes to foreign investments, there is not much going on," says Hajdaraj, adding that many players "are on hold because we are waiting for the new government to present a new plan and to see how it will choose to deal with ongoing issues."

> ***If you initiate a lawsuit in the Basic Court of the Department for Commercial Matters you can expect to wait at least three years for a decision, so it's normal to want to expedite the process.***

In the meantime, he says, a particularly interesting focus of attention are the three open foreign investment disputes currently in international arbitration. "The state is currently in the process of appointing an international law firm to represent Kosovo in these procedures, and these cases have given rise to two main debates: First, to what extent were the past governments right in terminating the relevant agreements – or whatever legal instruments were used; Second, whether the current law designed to attract FDI into Kosovo is too generous." According to him, "the fallout from these cases is definitely something to follow." ■

A FIRM GRASP OF THE SUBJECT

By Djordje Vesic

Annual reports make up a fundamental part of many regional CEE law firms' marketing strategies, providing those firms with an annual opportunity to demonstrate their knowledge and expertise in a particular area, their geographic footprints, and their ownership and facility with the research and technological tools and manpower necessary for the production of such comprehensive projects.

A review of some of more prominent such reports – Wolf Theiss's annual *Corporate Monitor's M&A Spotlight on CEE/SEE*, CMS's *Emerging Europe M&A Report*, Karanovic & Partners' *Focus on Competition*, and Schoenherr's *Roadmap* – reveals some interesting differences in the purposes, target audiences, and foci of each.

Wolf Theiss's Corporate Monitor's M&A Spotlight on CEE/SEE

Wolf Theiss launched its *Corporate Monitor's M&A Spotlight on CEE/SEE* in 2011, covering M&A and private equity trends in the 13 jurisdictions where the firm is present. The publication lists key transactions in the TMT, industrials and chemicals, energy, real estate, financial services, transportation, and agriculture sectors, among others, providing information related to the number of deals, revenue, and annual and regional growth in each country and sector.

The publication, which is prepared in partnership with Mergermarket, the international provider of research and analysis services in the M&A sector, is based on an annual survey sent out to the market. The process is managed by a 30-lawyer editorial team at Wolf Theiss led by Partner **Horst Ebhardt**, with all of the firm's offices contributing to the final product. Both the number of transactions listed and the questions on the survey vary from year to year to reflect changes in the various markets. In its 72-page 2019 publication, a total of 481 deals were recorded by Mergermarket and reflected in the *M&A Spotlight*.

"We prepare and adapt questionnaires according to the current M&A trends in the market, which we then align with Mergermarket," Ebhardt explains. Mergermarket selects the interviewees and contacts around 150 decision-makers at corporations, private equity funds, investment banks, and other relevant organizations present in the region. After those interviews have been completed, Mergermarket's writers prepare the articles with the assistance of Wolf Theiss. The publication also includes interviews with Wolf Theiss partners from across the region. Finally, charts, graphs, and tables are added to the publication to illustrate the findings.

"Apart from the overview of the transactions, we also try to present the overall economic and political situation in Central and Southeastern Europe, and what generally attracts investors to it," says Ebhardt. According to the 2019 report, for instance, 66% of respondents reported that the overall economic conditions in the region had had a positive impact on their most recent deal, and 67% of respondents reported that the political environment had a positive impact. On the other hand, only 44% of respondents believed that the availability of local financing was conducive to making deals in the CEE/SEE regions.

Once the final version of the English-language publication is ready, it is distributed electronically by both Mergermarket and Wolf Theiss to their subscribers. Wolf Theiss also uses LinkedIn and Twitter to reach a wider audience.

The purpose of the report, according to Ebhardt, is straight-forward. "The region is very interesting and diverse and we wanted to showcase it," he says. "As an international firm, we have clients from around the world and we would like to present them with the current outlook on the region and the opportunities it might create for them."

"In a way, the publication is like our M&A business card for the CEE/SEE region and the regional presence of our firm," Ebhardt says. "It shows our deep familiarity with and expe-

rience in the region." The most important takeaway, in his opinion, is "that Wolf Theiss receives positive feedback from our clients and that it conveys to our global clients how the region is evolving and that we are there to assist them."

CMS's Emerging Europe M&A Report

Another valuable source of information about M&A transactions in Central and Eastern Europe comes in the form of CMS's annual *Emerging Europe M&A Report*. Like Wolf Theiss's annual report, CMS's, which is usually published in English (and this year, for the second year in a row, in Korean), analyzes trends and significant transactions in various areas across 15 countries in the CEE and SEE regions. According to **Erik Werkman**, Senior Business Development Manager for the firm's CEE Corporate practice and the editor of the report, CMS launched the publication ten years ago as a means to review market trends beyond purely the legal. The particular practice areas and sectors covered in the report differ from year to year, and the most recent issue, which was published on January 21, 2021, focused on M&A transactions in renewable energy and telecommunications infrastructure and on the growing number of IPOs and dual-track sales processes in the region, among other things. "We try not to focus on all areas each year, but rather the ones that have shown the most remarkable developments that particular year," Werkman says.

Modus Operandi

The *Emerging Europe M&A Report* provides two general types of content – editorial comment and hard data. Werkman, who has been in charge of putting the report together for the last three years, focuses primarily on the articles side of the process, while his colleague, CMS's CEE Business Developer Adela Svachova – who, like Werkman, sits in the firm's Prague office – manages the data-collection process.

To obtain that data, CMS cooperates with London-based research and analytics company EMIS, which helps the firm identify the number and value of deals in the region, chart increases or decreases of transactions in particular sectors relative to previous years, and prepare an overview of the highest value deals per country.

All of the articles, which are prepared by an experienced business journalist who is provided with a briefing on what the topics are and who should be interviewed, also include commentary and analysis by the firm's lawyers, clients, and/or external partners. Articles range from approximately 800 words for interviews up to 3000 for more in-depth coverage of particular trends and statistics, with, usually, between two and five of the firm's lawyers, clients, and sector experts from investment banks and or financial advisory firms interviewed for each article.

Finally, after all the bits and pieces are put together and approved, the publication is ready for distribution. Although the report has traditionally been available in hard copy, Werkman says that "over the years we have been printing fewer and fewer copies and, due to the pandemic, for the first time this year we have limited ourselves to a digital

version and improved web presence." CMS also runs an eight-to-ten-week-long LinkedIn campaign, with weekly posts highlighting particular sector developments covered in the publication.

The Outcome

We monitor how many people download or view our publication on our website, as well as the performance of our LinkedIn posts," Werkman says. He says that the feedback CMS has received is uniformly positive. "The publication is definitely useful when approaching new clients, especially those from outside the region, as it shows that we are well-acquainted with the current trends in the region and that our knowledge goes beyond purely legal developments."

Karanovic & Partners' Focus on Competition

Fourteen years ago, Karanovic & Partners launched an annual publication covering the competition sector in Serbia. The Focus on Competition report grew over time, and it now encompasses overviews of the sector in each of the jurisdictions covered by Karanovic & Partners (whether directly or through cooperating/corresponding offices): Serbia, Montenegro, Bosnia and Herzegovina, Croatia, Slovenia, North Macedonia, and Albania.

According to Senior Partner **Rastko Petakovic**, the process begins with the solicitation by the editorial team, consisting of Petakovic, Partner Bojan Vuckovic, and Senior Associate Bojana Miljanovic, of feedback from the 10 and 15 of the Competition Law-specialized lawyers "cooperating" with Karanovic & Partners in the various jurisdictions on the topics they consider to be most relevant. Based on that feedback, and keeping in mind the firm's broader strategy, the editorial team selects the particular topics for the upcoming issue. "The team takes great care to nominate the most relevant articles, not to rehash topics covered in previous editions, and to assign each topic to the best-placed author," Petakovic says. "Once the table of contents has been outlined, the next step is to figure out who should write each article."

Competition Law specialists in each K&P office are selected to write the articles, and each jurisdiction contributes, on average, one or two articles to each issue, along with a statistical overview of that local market. Where the articles touch upon the interplay between Competition Law and other practices, such as Energy, IP, or Telecoms, Petakovic says, "those articles are jointly prepared by a cross-practice team, though [the subjects] are always analyzed through the lens of Competition Law."

In addition to statistics the publication also features interviews with and opinion pieces by guest contributors, including experts from prominent international law firms, consultancies, corporations, and local regulatory bodies. For instance, contributors to the most recent edition – the 14th – included Stjepo Pranjic, President of the Competition Council of Bosnia and Herzegovina, Joachim Schutze and Dimitri Slobodenjuk of Clifford Chance, Brecht Boone and Gregor Langus from E.CA Economics, and Manuel Bermudez Caballero from Metro AG.

According to Petakovic, before the report is published it undergoes two rounds of editing and proofreading, conducted with the core philosophy that its contents need to be accurate, relevant, and interesting to the reader, and that legalese be avoided wherever possible.

The Final Product

Focus on Competition is distributed in three ways: It is shared with participants at the annual Competition Conference organized and hosted every fall by Karanovic & Partners in Belgrade; it is made available on-demand in PDF format on the Karanovic & Partners' website; and – at least in the pre-COVID era – it was sent in hard copy to some 1000 of the firm's clients and partners, both in the Balkans and abroad. "Of course, last year we held our Competition Conference online and we refrained from sending out hard copies of the publication, for obvious reasons," Petakovic says, "but we sent .pdf copies to the same addresses instead." Either way, despite the challenges raised by the pandemic, he says, Karanovic & Partners still manages to get the publication to its main targets – its clients.

Indeed, although the firm is delighted to hear that potential clients appreciate the publication, Petakovic insists that they are not its primary audience. "Our main goal is to communicate new regional and national trends in the competition sector to our existing clients, as those trends might affect their businesses," he says. "That, in turn, drives us to not only

carefully select topics that we wish to cover, but also to present them in a way that our time-constrained clients will find valuable and easy to understand."

Consequentially, Petakovic says, the publication receives a favorable response from clients each year. "We measure the effects of our publication mainly by communicating with our clients, and around 90% of the feedback we receive is positive," he reports, noting that, as a result, the publication serves as a great brand-building tool for the firm. "Our publication has traditionally been a tool for awareness-building not only about a very sophisticated legal area, but also about the prestige of our firm as one of the pioneers in Competition Law in our region. Furthermore, it is a way for us to build stronger ties with our clients, as well to inform them – especially the ones abroad – about the trends on the local market. Needless to say, after fourteen years and many pages written, we are very proud of this project."

The Focus on Competition was published in both Serbian and English from its initial launch until 2012, but it has been published only in English since – with the exception of 2016, when it also came out in German to mark its tenth anniversary.

Schoenherr's Roadmap

Schoenherr's annual publication, the Roadmap, is slightly different in concept, presenting legal analysis against the backdrop of works of art by renowned artists. It was conceived in 2007 by Partner Guido Kucsko, and according to **Gudrun Stangl**, Partner and Chief Operating Officer at Schoenherr's Vienna headquarters, "the idea was to provide readers with an exclusive printed legal publication highlighting significant legal developments in our various markets, while presenting the content in a special context created in partnership with different artists every year."

The Blueprint of the Roadmap

The selection of topics for each issue happens in an annual brainstorming session of the publication's editorial team, which consists of business professionals from Schoenherr's marketing department. Prior to the final selection, topics are discussed with the various practice coordinators, and all offices and practice groups are encouraged to provide input. Once the topics are sorted out, Schoenherr's lawyers prepare and contribute the articles in each of the selected categories. Common topics include Arbitration, M&A, Real Estate, and Corporate and Reorganizations.

"Once all content is in, the practice coordinators and the Roadmap coordinator decide what content will go to print, and what will go to our online Roadmap," Stangl says. Schoenherr prints out over 5,000 copies for distribution to the firm's clients, with others available by request. "Additionally, every year the Roadmap is distributed as a free supplement to the Austrian legal magazine Ecolex, which has a circulation of 2000 copies," she says. The Roadmap is, of course, also available in a digital format on Schoenherr's website.

The Destination

Both the legal content and the art that the Roadmap contains, Stangl says, are selected to draw the reader in. The goal, she says, is for the readers to "pick the Roadmap up and leaf through it, not once, but often." As a result, she claims, the publication has "a bit more longevity" than a standard legal guide. "Even if a guide is informative, we want people to pick the Roadmap up, if the two are placed side by side – and I am quite sure that is what would happen," she says.

"We usually work with one artist, sometimes more, as was the case with our 'voices' street art-focused edition in 2019 and the 'together' 2020 edition," she adds. "Artists come from around the region, often from Austria, and the choice of whom to work with relates to the theme vis-a-vis their work," she explains. "We do some digging into the current art scene and sometimes find artists by word of mouth."

Ultimately, according to Stangl, the authors are aware of the overarching theme each year and encouraged to think about how it can be interpreted in a legal context. "The artist is aware of the topic too, and we discuss both the legal and artistic slants in an interview," she says. Stangl points out that the publication's theme last year was 'adapt,' a word she describes as both obvious and important when looking back not only on the last year but also to the current situation. She says that it is not only important for the legal world, but also for society as a whole. ■

THE CORNER OFFICE: CHILDHOOD DREAMS

In "The Corner Office" we ask Managing Partners at law firms across Central and Eastern Europe about their backgrounds, strategies, and responsibilities. The question this time: "What did you most want to be when you were little?"

When I was little (between the age of 3-12) I wanted to be a musician – a singing guitar player (like Ed Sheeran nowadays). In the beginning, I pretended that I was playing the guitar, and I sang all the time. I knew all the LPs at home and in kindergarten by heart (including some Greek songs…). When we started school, I formed my first band and we performed during the breaks at school, taking over the teacher's podium. Our songs varied from folk songs to the very modern hit pf the day - "Comment Ça Va" (by the Shorts). Later my grandfather taught me to play the guitar, and in high school I formed a real band ("Fire & Ice") and we had just conquered the Bulgarian charts when I went to law school and most of the other band members went to the army. To this day music is a very essential part of me.

– Kostadin Sirleshtov, Managing Partner, CMS Sofia

I remember myself as being a kid with loads of big dreams – from being an astronaut, to a professional athlete, to the president (yes, that as well…), but none of these was really a permanent aspiration. Whenever I saw a powerful female character, I was always inspired and wanted to follow her lead by being the best at something – although what that something was still needed to be figured out. I was reminded just the other day that I was rather opinionated and sometimes considered bossy. And when I see these traits in my daughter now, I am happy to tell her that I am very proud of her leadership and organizational skills.

– Eva Skufca, Co-Managing Partner, Schoenherr Slovenia

I remember the fascination and vivid dreams I had about becoming an aviator, and instead of playing with planes, being actually able to pilot one from one exotic destination to the next. Ah, and all those buttons, endless skies, fancy uniforms and (back in those days) cheering passengers when smooth landings were done. Just recently I had a chat with my friend and co-founding partner Alina about these childhood dreams and we were amused by recalling them. She, for instance, wanted to be an astronaut and roam the known and unknown universe, soon after having the princess and loving teacher dreams. Turns out, eventually, we both stayed literally down to Earth. And we do not regret it one bit –after all, we all daydream every once in a while, with our heads in the clouds (from either an airplane or a space ship, while wearing a tiara!)

– Gelu Maravela, Managing Partner, MPR Partners

Ever since I started going to elementary school I had a rough idea of what I wanted to be. I knew that I wanted to be involved in law in one way or another. My biggest influence was probably my father, who was a lawyer in communist Yugoslavia, but back then it was not enough to pursuade me to become one myself.

The definitive turning point for me was when we went to London in 1974 on a family trip for the first time. Little did I know that it would change my life. We were wandering along the shore of the Thames when we accidentally stumbled upon a lawyer's conference. My curiosity led me to walk right through the door of the boat on which the summit was being held. Looking at all of them, wearing togas or expensive tuxedos, I had no doubts left in my mind about what I wanted to do. From that point on, I was fully commited to becoming the best lawyer I could possibly be.

– Sasa Vujacic, Managing Partner, Vujacic Law Offices

When I was very little, maybe from three to eight years old, I wanted to become a stewardess. I flew quite a lot with my parents because we lived in Algeria for five years, and we had to change flights between Budapest and Alger twice each time. We mostly flew with Swissair. The young and smiling stewardesses in their splendid uniforms made a big impression on me. In addition, I loved the sweet apple juice that I could drink on the flight and that was not available in communist Hungary (nor in Algeria) at that time at all. After that, I wanted to become a vet for several years because of my love for all kinds of animals (except snakes and insects – typical woman!). But then my parents explained that being a vet was not just about the broken leg of a sweet little dog or cat, but that a vet would sometimes also need to assist at the conception or birth of a calf. So I ultimately chose to become an international lawyer.

– Kinga Hetenyi, Managing Partner, Schoenherr Budapest

Actually, I was born into a family of lawyers. Both my grandfather and my father were lawyers. My father had his own single law firm in Vienna. When he told us stories about his work and clients, my brother Guenther (now a Partner with CMS Vienna) and I were thrilled. When I was a teenager, I thought that being a lawyer was really a very family-friendly job. We used to have breakfast together; my father, whose office was in the center of Vienna, came home for a common lunch every day (we lived in the outskirts of Vienna) and was back in time for a common dinner again. For me, this was totally normal and perhaps also a reason why I was absolutely convinced, since my early childhood, that I would some day become a lawyer. 30 years later, I know that what was normal for me, was simply a luxury of a great childhood, which I am unfortunately not able to offer to my family to the same extent.

– Erwin Hanslik, Managing Partner, Taylor Wessing Czech Republic

As a little child, I wanted to become a prince, as I imagined from stories that came from childhood vinyl. So a prince – not a king or emperor. To this day, *The Little Prince* is one of my dearest novellas. After that, I wanted to be Maradona – I loved football and Maradona was the best, and to me there could be nothing more beautiful, more exciting than being in Maradona's football boots. I only realized that I want to do Law in my final year in high school, as it became clear to me that I liked reading more than solving derivatives and integrals, and that I was much more attracted to social sciences. And so I entered the Faculty of Law in 1991. In 1995, after graduating, I had to choose between being a judge and becoming a lawyer. I chose to become a lawyer, not only because it is the freest and most liberal profession, but because I could do politics. Quite ironically, to this day, I haven't joined any political party.

– Gabriel Zbarcea, Managing Partner, Tuca Zbarcea & Asociatii

I wanted to be a petrol station officer. Every time we filled up our tank I realized that my dad was paying the station officer a huge amount of money. I thought that he must be wealthy enough then. Moreover, I enjoyed the smell of petrol stations very much. Which I still do. But these days you pay at the counters and in most cases by card … so probably my son will not believe any more that a petrol station officer is a rich man.

– Pal Jalsovszky, Owner, Jalsovszky Law Firm

As a child, I used to dream about becoming a fireman. Special excitement would overwhelm all of us, growing up together in the neighborhood, when we would hear the noise of fire trucks rushing by. The echo was everywhere and I was ever so curious of what really went on in the rush of the emergency, when the sirens would scream and the commotion would start. I wished I could join in, at any cost, to save somebody's life or, home. At a time, it seemed like the most important thing in the world. Years later, I went to law school, not thinking that my chosen profession would ever mean that my mission was accomplished and my childhood dream came true. Nevertheless, over the course of my career, I have been challenged many times to "save" important pieces of someone's life, be it business, family, commodity, or honor. In a way, I have gotten my opportunity to extinguish fires, of a slightly different kind, wearing a slightly different suit.

– Nikola Jankovic, Senior Partner, JPM Jankovic Popovic Mitic

A YEAR UNLIKE ANY OTHER: THE 2020 CEE LEGAL MATTERS DEALS OF THE YEAR AWARD WINNERS

Every year is unlike the one that came before it, insofar as the factors affecting a nation's commerce, business, and infrastructure are concerned – a unique combination of political realities and personalities, specific commercial opportunities, economic circumstances, ephemeral expectations about the future, and manifold individual plans and strategies, both within a nation's borders and across the world.

The best law firms in the world – the ones turned to by investors, financiers, state ministries, and others looking for assistance in seizing the moment and turning something good into something better – are skilled at recognizing and adapting to all these changing circumstances, helping clients navigate and achieve their goals in an ever-changing world.

Every year is unique. But last year – the year of Covid, the year of the pandemic – was something different entirely. In 2020, the law firms of Central and Eastern Europe were forced to amend their plans, transform their structures and shapes, and change on the fly to remain effective, remain responsive, and remain successful, in a way they'd never had to do before. Patently, all the firms shortlisted for working on the deals nominated for 2020 Deal of the Year did just that. Excellently.

The Awards themselves will be handed out, and the overall CEE Deal of the Year announced, at the 2021 CEE Deals of the Year Awards Banquet, scheduled for September 16 in London. We hope to see everyone there.

Without further ado, the winners of CEE Legal Matters' 2020 CEE Deals of the Year Awards. Our heartfelt congratulations to all the winners!

Country	Firm(s)*	Deal
Albania	Allen & Overy Dechert (S) Wolf Theiss	Albania Eurobond Issuance
Austria	DLA Piper Eisenberger Herzog Gleiss Lutz Hootz Hirsch PartmbB Hengeler Mueller REN Legal Management Limited Schoenherr (S) Stibbe Avocats Viehbock Breiter Schenk & Nau Weber Rechtsanwalte	Austrian Airlines Financing
Belarus	BDV Legal Borovtsov & Salei (S)	HBOR Financing for Be Cloud
Bosnia and Herzegovina	Miljkovic & Partners (S)	ASA Finance's Takover of Central Osiguranje d.d.
Bulgaria	Allen & Overy CMS (S) Memery Crystal Schoenherr (S) Spasov & Bratanov Wolf Theiss	Enery Acquisition and Refinancing
Croatia	DLA Piper Glinska & Miskovic Latham & Watkins Savoric & Partners (S)	Stillfront Group's Acquisition of Nanobit
Czech Republic	CMS (S) Kinstellar White & Case	PPP Project for the D4 Expressway
Estonia	Allen & Overy Clifford Chance Cobalt (S)	Luminor Bank's Covered Bond Program
Greece	Lambadarios Potamitis Vekris Watson, Farley & Williams (S)	Cubico Sustainable Investment Limited's Acquisition of Greek Wind Farms
Hungary	DLA Piper (S)	Budapest Bank Group, MKB Bank Group and Takarekbank Group's Creation of Hungarian "Superbank"
Latvia	Cobalt Ellex Klavins Eversheds Sutherland (S)	Valmieras Stikla Skiedra Debt Restructuring and Sale of Majority Stake to Duke I S.a.r.l
Lithuania	Ashurst Debevoise & Plimpton Dentons Sorainen TGS Baltic Walless (S)	Ignitis Grupe IPO

Country	Firm(s)*	Deal
Moldova	Gladei & Partners (S) Turcan Cazac	Vetropack's Acquisition of Glass Container Group from Western NIS Fund and Other Shareholders
North Macedonia	Bird & Bird Clifford Chance Karanovic & Partners (S) Mannheimer Swartling	Aricoma Group's Acquisition of Seavus Group
Poland	Clifford Chance (S) Go2Law Schoenherr (S)	UNIQA's Acquisition of AXA Subsidiaries in the Czech Republic, Poland, and Slovakia
Romania	Allen & Overy RTPR (S) Skils Tuca Zbarcea & Asociatii (S)	Macquarie Infrastructure and Real Assets' Acquisition of CEZ Group in Romania
Russia	Dechert White & Case (S)	JV of SIBUR with Sinopec at Amur GCC
Serbia	AP Legal (S) Kalo & Associates Kinstellar (S) ODI Law Prica & Partners (S) Radonjic & Associates Sajic Selih & Partnerji	Nova Ljubljanska Banka Acquisition of Komercijalna Banka
Slovakia	Kinstellar (S) Schoenherr (S)	KBC Group's Acquisition of OTP Banka Slovensko from OTP Bank
Slovenia	Eisenberger & Herzog Milbank RPPP Schoenherr (S)	Sartorius Stedim Biotech's Acquisition of BIA Separations
Turkey	Aksu Caliskan Beygo Attorney Partnership (S) Clifford Chance Durukan + Partners (S) Herguner Bilgen Ozeke Kabine Law Office Kinstellar Milbank Nazim & Co Skadden, Arps, Slate, Meagher & Flom Sorainen Sullivan & Cromwell White & Case	Turkey Wealth Fund's Acquisition of Controlling Shares of Turkcell Iletisim Hizmetleri A.S.
Ukraine	Clyde & Co EY Law Kinstellar (S)	QTerminals WLL Port Concession Project of Black Sea Port of Olvia

*(S) = Submitting Firms

MARKET SPOTLIGHT ROMANIA

GUEST EDITORIAL: ROMANIA – QUO VADIS?

By Mihaela Bondoc, Partner, Bondoc si Asociatii

The COVID-19 pandemic has brought a lot of practical and legislative changes. Still, even if the virus complicated the overall environment (to which other factors contributed, such as elections followed by a change of government), Romania remains a place with significant business opportunities.

Some Recent Numbers. IMF estimates an economic growth of no less than 6% for Romania in 2021. Romania had the most dynamic EU economy in the first quarter of this year, with growth of 2.8% in GDP from the last quarter of last year. Based on 2019 data, showing *per capita* income of USD 12,630, the World Bank classified Romania as a high-income country for the first time, which plays a major role in investment rating decisions.

Some Underlying Advantages to Consider. Romania has a number of advantages that should allow the country to continue to grow at a rate faster than most EU countries, including:

1. *A favorable geographical location*, from many perspectives, which is likely to attract increased interest, especially in the context of expected changes in production and logistical chains worldwide.

2. *A still-relatively cheap labor force compared to many other countries in Europe*. The post-pandemic environment and geopolitical developments should help Romania keep investments and more easily attract new ones.

3. *An increasing interest in financing projects*. Romania was assigned a Secondary Emerging market status in the FTSE Global Equity Index Series semi-annual review in September 2020. The promotion to Emerging Market status is expected to allow the Romanian capital market and economy to absorb new funds in the coming years, while sending a strong signal to privately-owned and state-owned companies that they can significantly grow via the stock market. Large investment funds will be able to invest in Romanian companies listed on the Bucharest Stock Exchange. At the same time, of course, this should increase the visibility of the stock exchange, and of locally listed companies.

4. *Good positioning in terms of energy reserves and potential*. The European Green Deal is putting pressure on the local oil and gas sector, and significant investments in innovation and modern technologies are required for the industry. However, some of the traditional sources, especially gas, are expected overall to develop. In the government's Energy Strategy for 2016-2030, the development of infrastructure and the securing of Romania's oil and gas deposits were identified as strategic areas for intervention. With infrastructure investments and the development of market mechanisms, Romania can become a major European LNG supplier and transport hub.

5. *Good positioning for most strategic areas of interest for the EU in the years to come*, including: (i) an IT&C sector with significant potential, with numerous start-ups and venture capital investment funds targeting this area; (ii) Renewable Energies (the renewable sector has been affected for some years by significant legislative changes to the support schemes, but it is growing again and has seen a plethora of investments lately); and (iii) Bio-Agriculture.

Romania certainly has a number of areas lagging behind, including transportation infrastructure, public administration, and the waste management, energy, and healthcare systems. However, the right reforms and financing should allow for significant efficiencies and synergies in these areas over the next decade.

There are, ultimately, numerous and significant financing opportunities in the years to come, including, perhaps most significantly, additional access to EU funds, as an infusion of almost EUR 80 billion in the Romanian economy is expected in the next (approximately) four to five years in the context of the EU Recovery Plan.

All of this will also naturally involve substantial legislative dynamics, however, this is part of what we do. All in all, there are many reasons to regard the upcoming years with optimism, and we are confident that many of the opportunities above will materialize in significant progress in many sectors and for many investors. ■

ROMANIA REBOUNDING: A CEELM ROUND TABLE

By David Stuckey and Andrija Djonovic

On April 8, 2021, CEE Legal Matters sat with senior partners from four of Romania's leading law firms for a Round Table conversation.

- **Bryan Jardine, Managing Partner, Wolf Theiss Bucharest**
- **Horea Popescu, Managing Partner, CMS Bucharest**
- **Perry Zizzi, Managing Partner, Dentons Bucharest**
- **Razvan Gheorghiu-Testa, Founding Partner, Tuca Zbarcea & Asociatii**

CEELM: Last year ended up being better than expected in terms of GDP and the overall economy in Romania. How are things going right now in the country?

Bryan: It's interesting. *Business Insider* just had an article this morning mentioning that the IMF has improved its forecast for Romania from where they were projecting from last year in October to where they are expecting now. I don't like to use the term "V-shape recovery," because there are still a lot of unknowns on the horizon, but certainly the recovery seems to be going better than one would have predicted a year ago. Even taking it at the micro-level, speaking as the Managing Partner of the office, we were looking at contingency plans at this time last year for significant revenue downturns as a result of a general economic downturn, similar to what we saw in 2008/9. Those fortunately didn't materialize, so we didn't have to implement those contingency plans. Quite the contrary, we had a very good year. Some of it is attributable to cost-savings because we can't travel to various events – or just in general. But on the other hand, the top-line revenues also look pretty good, so I think we are looking now at the macro-picture and, with more vaccine shots in more arms, the economy will start to open up and more people will get out. There is a lot of pent-up demand for consumer products, hospitality, travel, leisure, so I'm hopeful that once people feel safer, we'll see that reflected in more positive macro-numbers being posted for the Romanian economy.

CEELM: In the meantime, investors are still showing interest, you're all staying busy, and there's still work being done?

Bryan: Yes. There were a number of deals from last year that were suspended or were on pause, simple because there was so much uncertainty. We've seen some of these deals re-engage, which is encouraging. I think Romania before the Covid crisis was becoming an increasingly attractive market, and we were seeing a lot of activity, and I think a lot of that interest, which was sort of sidelined or paused during the crisis, did not go away. It was simply waiting to find out how things would shake out. So, I think a lot of the fundamentals that were underlying why Romania was a good destination for investors prior to Covid still remain.

Generally speaking, I think the Romanian government handled [the Covid crisis] well. They locked down quickly – I think they recognized that this was a serious problem.

Horea: For a year, we all expected it to be really bad. In fact, there were some highlights, in terms of M&A especially. We had the largest energy deal in Romania last year (the sale of CEZ assets), we had the largest office real estate deal ever in Romania last year (AFI Europe's acquisition of NEPI Rockcastle's office portfolio), and I think we had one of the largest renewable deals in Romania last year (Hidroelectrica's acquisition of a 108 MW wind farm from STEAG group). I mean, for a year that was so bad, which we all expected to be dramatic, there were some good things happening. That kept us all relatively positive and busy, and that's just kind of an introduction hopefully to what this year will be – even better than last year. There's enough demand waiting at the door, at the borders, to just be allowed to come in without a quaran-

Bryan Jardine, Managing Partner, Wolf Theiss Bucharest

> ***I think that we have to compete against the Hungaries, the Bulgarias, the Serbias, and even the Ukraines in terms of attracting investments. As long as we can leverage those, inherent competitive advantages that Romania enjoys vis a vis our neighbors and not make gung-ho short-term decisions, politically, then I think that Romania has a lot of potential.***

tine, and once that happens our activity will increase even further. We're quite positive about that.

And I just wanted to add to that Romania was lucky, in a way, that the country doesn't have sectors as developed as those in some other countries that were worst hit, like tourism and leisure. I mean, we're always complaining that the tourism sector in Romania is terrible, but for once that really helped, because it's such a small part of the Romanian economy that we did not even notice a lack of foreign tourists – as that's kind of the rule rather than the exception in Romania. So from this point of view, and as we kind of concentrate on those sectors that were less hit, like tech or agriculture, we were more fortunate than other countries.

Perry: I would agree with Horea – certainly tech, agriculture, and green energy [stayed strong]. In some ways, this was certainly the strangest downturn I've ever experienced – and maybe the strangest in hundreds of years. It was a self-inflicted gunshot wound that came all of a sudden, and nobody really knew what was going to happen. We all expected that the year would be challenging – but we also did better in 2020 than we did in 2019. And I think a year ago we thought this year would be problematic, but there are some big winners that nobody really anticipated.

I think tech took off in a big way, particularly with those companies that were able to facilitate working from home. Of course, logistics is another sector that has grown. Logistics and industrial real estate were always the ugly stepchild compared to office and retail, but now it's reversed, and logistics and industrial real estate are the star children.

We've been waiting, also, for a lot of insolvencies to kick in, particularly in some of the companies in tourism and leisure. But it hasn't happened yet, and we're kicking the can down the road just like we did during the Great Recession. Although perhaps this time, maybe because of the expectation of state aid and a dramatic V-shaped recovery, lenders won't need to default quite so many borrowers.

CEELM: Is there a reason some kinds of deals were able to go forward and some were paused? Or is it just that some investors had cold feet and others didn't?

Razvan: As Horea said, the real estate sector is doing well, and the energy sector is as well. Most of the transactions that started before the pandemic, ended up closing last year. From a real estate perspective, there were some deals that were put on hold, but for obvious reasons, as, in the early stages of the

pandemic – in the period between March and summer last year, with all the travel restrictions – people could not move. I mean, doing a virtual legal due diligence is good, but doing the technical due diligence – physically inspecting an asset – was impossible. So many due diligence exercises were put on hold and some transactions were delayed. Also, everything depends on how long the seller is able to wait; in some cases, it is difficult to wait, and you have to divest.

In terms of real estate, the office sector is really challeng- ing. As opposed to last year, nobody is wondering if their offices have to shut down completely – there is less fear of the unknown. Firms have experienced Covid and have come back to work, so it is, more or less, business as usual now. There is a saying in Romanian that does not, maybe, translate that well into English: "It's better to jump in front with one foot than to fall back." So, folks are going forward, buildings are looking for tenants, and there are lease negotiations going on. So, in the long run, for sure, it will come back to normal. Not tomorrow, not next month, but in a few months, people will definitely come back to the office.

Even for us, right now, we are close to 50-60% at our firm with people coming into the office.

Perry: We're at around 60% now – and we've actually been at around 50% since last June.

Horea: In terms of law firms, I think everyone's different. We are at about 30-40% at the office, but we try to be as agile as possible and not force people in the office, to the extent that they have proven that they can work from home. It would appear that a lot of people prefer working from home. And, the signs I'm getting, especially from our meetings with London and regional management in the past few weeks, is that the situation is much better - we're all considering returning to the office relatively soon.

Perry: You know, Horea, it's interesting that you should mention London, as the offices in Dentons' UK region just announced that they will allow people to permanently work from home as long as they are able to get their work done. So, nobody needs to

The fact that there are more listings on the Romanian stock exchange being considered, even now, than in the past five years, is a sign that the people are starting to feel more positive and optimistic. They are starting to look forward, and that is a great sign, overall, for the economy.

Horea Popescu, Managing Partner, CMS Bucharest

come in at all, which is quite a statement! We are not there yet for the Europe region, but there are similar policies. Here, in Bucharest, anybody that wants to come in can come in, and anybody who wants to stay home can stay home. We have complete flexibility, except for obvious cases, like reception or someone who works in the kitchen who needs to be physically here.

Bryan: I look at this as sort of an age division. If you look at Vienna, the old-school guys, they are very much sure that coming in – putting on a suit and tie and coming into the office – is important. They think of home office as sort of an aberration they had to implement for health and safety. But I think that we have recognized that the numbers did not get worse and that, in fact, in some ways, they have even gotten better – there was more efficiency, no lost time in traffic, *etc.* So, we prepared a policy on home office. We did a survey by demographics, age, those that have families with small kids at home. When you break it down you can see that older lawyers, those that have been practicing for 20 years or those in management, they tend to be more traditional. It's a big concession for them to not even be wearing a tie.

But if you look at the way the younger folks are doing it – if you want to be attractive to them, you have to have the ability to offer flexible working hours and conditions, and that is a really important HR consideration, and I think that it will be becoming increasingly so to stay competitive in some of these markets. I don't personally like home office all the time. I may have difficulties managing the team – there is often more discipline with time sheets and daily work at the office – but generally the numbers even out. I really think it's a paradigm shift, I don't think that we will be going back to the old ways.

CEELM: For many years people in Romania have complained about a brain drain, but recent reports suggest that, perhaps, with Brexit and other economic changes in the region, it's starting to reverse a little bit. Do you see any sign of that?

Perry: Yes. Romanians have been returning home. We have interviewed probably half a dozen folks from London. Some of them have dual qualifications – both Romania and UK – and some are just UK. Yes, absolutely we've seen it.

Horea: I think that, since the pandemic hit, a lot of Romanians have returned home. I'm not sure if this trend is going to last long – I'm not sure if it is a returning of the brains or a returning of a workforce that could not find work elsewhere. My gut feeling is that many of the people that have returned will try and go back to where they were – it might take them longer, and if they don't find any new work in those countries they may decide to stay here and open businesses. These are not the cutting-edge people from Romanian society; doctors are still wholeheartedly welcome into France, and many of the people who are very educated will still find better lives elsewhere. And I think life in general –not necessarily salaries.

I think in places like Bucharest or the others larger cities in Romania, even though the average salaries are significantly lower than in the West, probably the quality of life, generally, comes closer. However, as public services are still much worse than in the West, people have difficulty determining whether to leave or not – not to have more money, but to have secure and clean hospitals, have a good education system for their kids, have good infrastructure generally … things that will take longer to improve in Romania. I think that the reason so many people left for the past five to ten years is not to have significantly higher salaries, but to have a future for their kids, and more security when they grow old. Although we haven't built a hospital or a new school in I-don't-know-how-many years, there are some signs that this is changing in Romania.

CEELM: In Romania, transportation infrastructure is famously lacking. Still, recent signs suggest that the EU and local governments are planning to seriously address this in the near future. Are you all optimistic about prospects for the country's infrastructure over the next five or ten years?

Horea: I am definitely more optimistic than I was a couple of years ago. I think we see things moving. For instance, the long-awaited motorway from Pitesti to Sibiu is starting to shape up. They have finally started working on it. The motorway from Pitesti to Craiova that people have talked about for ten years is starting to shape up as well, and some work is being done this year. Additional EU funds are being made available for infrastructure at levels we have never seen before – it's just a question of the Romanian bureaucracy's ability to deliver and put the money into action. You know, personally, I'm more positive about some people in the government right now, in comparison to former governments, especially when we talk about infrastructure and transportation, because we see people that are looking at this with an objective eye, are interested, and are putting their heart and soul into trying to fix things. This is something that I have not seen for the past

ten years, so I'm more upbeat and positive.

Perry: I'm also optimistic, in part because I think we have the right government at the right time, and the people in the government, are people who are just like us – people we can talk to and ask questions to and for guidance for once. We think that there is a great opportunity to advance – probably the best since the revolution, in a lot of respects, not only to build infrastructure but to make other changes to make Romania a more investor-friendly place.

CEELM: In the year before COVID-19, tourism was at an all-time high. Maybe that is a sector that has some real potential as well?

Horea: I think that Romanian tourism was focused on Romanians, because Romanians accept whatever quality is offered. It's starting to change a little bit, with folks having more money than they did ten years ago, but our level of international tourism is, and has always been, three or four times lower than it has been for our friends from the south, in Bulgaria. We have so much to catch up on there. We have fewer than two million tourists a year, while Bulgaria has around ten million – and they are a third of our size in terms of population.

Bryan: I think it's been about the marketing, Romania has been notoriously bad at marketing for tourism. If you go to some of these fairs there would be this one little booth, at an expo or some international conference – there was this clear inability to positively promote Romania as a tourist or a business destination. But what we have seen, as a result of Covid, last year, is small B&Bs in the country exploded, partially because, I believe, Romanians did not want to leave, and they are discovering their own country. There are some really amazing places in Transylvania, for example, where they are not focusing on the high volume, free buffet, one-price all-inclusive model that was predominant some 20 years ago. My wife and I run a small B&B in the Dealu Mare wine region, and it's not just Romanians who come – it's about 40% expats, non-Romanians. And there is a more quality product coming – and these are not the big chain hotels, these are small boutique hotels which can, maybe, accommodate 25 people max, but are really high-end, with good food. There is one in Transylvania where they have a Michelin-starred chef. So, there is a growing

Perry Zizzi, Managing Partner, Dentons Bucharest

appreciation for it all.

A lot of it is marketing, getting the word out, and having the infrastructure to the point where it doesn't take you an entire day – you should be able to get from Bucharest to Banat in some five hours, I'd say, for example. There are practical considerations and barriers that would have to be tackled. Still, you have to balance the remoteness with the unique beauty that it carries with it and that these places still retain.

Razvan: Well, the potential is huge. It's the mentality that's the problem. We actually had to wait for an amazing English chap named Charlie Ottley to come to Romania and make a movie – *Flavours of Romania* (which appeared on Netflix) – about Romania's eight historic regions. The potential is huge, but then it comes to the mentality – our own mentality, to promote ourselves. But it's true what Horea says, from Bucharest to, I don't know, to Cluj, for example, it should not have to be so long. Right now, parts of the motorway are available, but last time I went to Cluj it took *seven* hours.

On the other hand, we were not able to travel for a number of years before 1989, so after 1989, nobody wanted to spend holidays in Romania, and everybody wanted to go abroad – to Bulgaria, Greece, Turkey, or wherever. We were not able – and it is a pity – to attract incoming tourists, get folks from abroad to come on over. The brain drain we have mentioned might be able to help – we have people who have spent their past 10/15 years abroad, working in the hospitality industry, and they came back. They are not opening 200-room hotels, but in terms of what they do – they open B&Bs and the like – there is a terrific potential to grow this.

Perry: I would just add my two cents on the topic. Definitely, most of it is attitude. And also, the success of the government in putting in place a proper strategy for promoting Romania. I always think of this: In Tel Aviv, there is a protected UNESCO world heritage site, Rothschild Boulevard, because of the Art Deco buildings. Bucharest has, easily, *ten times* the number of those buildings. But few people notice them or want to protect them. There is *a lo*t of untapped potential.

Horea: On a slightly positive note, I don't think there is a future in mass tourism – in the kind of tourism that brings millions of people to the country – but we do have a future in targeted tourism: cultural tours, adventure tours, things like that. But this will never bring five million people. It could bring in 500,000, though.

Bryan: The first time I was up in the Dealu Mare region, on my motorcycle, many years ago, exploring the wine route, following very nice new signage, when suddenly the road just stopped. I saw an old farmer and asked him what happened with the road, with the wine route – where it continued. And the old guy just said, "well the problem is that Nastase [the Prime Minister at the time] spent all the money on the signs." A foreigner coming in sees something amazing, possibly reminiscent of Chile, or Napa Valley, or New Zealand, he sees the signs … but there is nothing behind them, there is no infrastructure. This remains, often times, the problem.

CEELM: Before we close, can you each summarize your sense of the last year, and on your optimism or pessimism going forward for Romania?

Perry: I'm very optimistic. I guess I'd say I'm an eternal optimist, but I think this time rightfully so. We have the right government in place; we have, maybe, the Brexit dividend, maybe the dividend of near-shoring from China; and it looks like we are finally going to be able to deploy a lot of EU funding for building infrastructure, which was really holding back a lot of the regional developments. Of course, now, with the ability to work remotely, with folks moving to smaller towns and cities, you see more development in places like, for example, Cluj, or Timisoara. This balances out the overcrowded Bucharest and that's interesting. So, I'm very optimistic. In some ways, I think it's the best that it's ever been in terms of potential in Romania.

CEELM: Do you see that in your work as well?

Perry: Indeed, we were approached a couple of months ago by a client who wants to open a factory and make it the regional headquarters, with a hundred employees. And we're getting a lot of inquiries of this sort – it is not unusual. I really do think, now, Romania is what Poland was in 2005 and we're finally, really, going to catch up – maybe not immediately – to a lot of the developments that we missed out on.

Razvan: It's a fact that we were expecting the worst possible scenario last year – worse than it actually turned out to be. Once this whole pandemic-related anxiety passes, I don't

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Razvan Gheorghiu-Testa, Founding Partner, Tuca Zbarcea & Asociatii

think that we will get better in the short run, but next year or so we will see more people looking to invest in Romania. What we need, in terms of politics – what we have been lacking, and not only recently – is a long-term plan. For a couple of years, not just for a couple of months or the next quarter. With the right plan in place, and with the large amounts of EU funding that is available – primarily for infrastructure, I think that the future cannot be other than great.

Horea: I think our profession usually follows the economy as a whole. I was very pleasantly surprised by the IMF's growth prediction of 6% for this year in Romania, and of 4.4% for next year. This year, we will overtake 2019 by a couple of percentage points. Next year, we'll do significantly better. You can feel that there is a lot of money people have been saving and are now looking to spend – buying houses, buying consumer goods, and so on. There is a lot of optimism in the market because things were not as bad as people thought they would be. Of course, the current health situation is not great, but we are starting to see the light at the end of the tunnel and that is making people more hopeful. The fact that there are more listings on the Romanian stock exchange being considered, even now, than in the past five years, is a sign that the people are starting to feel more positive and optimistic. They are starting to look forward, and that is a great sign, overall, for the economy.

Bryan: I tend to be an optimist as well. I think that Romania can thrive if it makes intelligent choices, because I think we're competing for inbound investments, typically against our neighbors, and if you look what has happened in the way of Covid in Europe, many of these countries adopted restrictions that affect direct investments – how you screen them, and things like that. We've seen this play out recently in a cross-border transaction which we, at the firm, handled in many countries. Interestingly, in Hungary, they moved to block the transaction because of the recent FDI restrictions.

And here is where I think having a solid government is important. Last year, following a very convoluted election cycle, with three rounds of elections, was tough. Now that the dust has settled we can, I hope, look forward to a stable government. Hopefully, this government will realize the benefits of stable legislation. I think that that's going to be an important factor to attract investment and to attract funds and to really battle the corruption and the absorption of EU funds.

Fortunately, it seems that we have weathered this most recent crisis, economically, better than other countries. I agree with what Horea said about pent-up consumer demand, so in my mind the government simply needs to make rational decisions and not do something crazy like using revenue shortfalls as an excuse to hike the income tax rate. The low tax rate is one of the attractive incentives here, at 10% and 16%. The government should leave that be and instead focus on tax collection, not tax increases. I think that we have to compete against the Hungaries, the Bulgarias, the Serbias, and even the Ukraines in terms of attracting investments. As long as we can leverage those, inherent competitive advantages that Romania enjoys vis a vis our neighbors and not make gung-ho short-term decisions, politically, then I think that Romania has a lot of potential.

Perry: And, if I could also just add, the fact that Romania weathered the worst period, when we nearly turned towards the kind of authoritarian system that Hungary has, or that Poland has – and we stayed the course and ended up with a pro-Western, center-right, government. I think that this says a lot about the strength of civil society in Romania. We very easily could have ended up on the wrong track. And that sends a powerful signal to investors as well - we are not going to be going down the road of authoritarianism.

CEELM: Romania has certainly been making different decisions than Poland.

Perry: The mobilization of people in the streets and pressuring the government was impressive. I know that, if you live in a different city, mobs of people in the streets can be perceived as a bad thing, but it really was a good thing! It showed how strong civil society was in the moment it had to be.

Bryan: That's an absolutely valid point: Look what came out of Poland. The last election cycle we had in Romania a warning sign in having an extremist, anti-EU party come out of the woodwork, and have them go above the 5% bar. They are still not that significant, but they are there. I always boasted that Romania, unlike Hungary or Poland, has never really had an extremist candidate. Even the parties on the right generally agree that they want to be part of the EU, they want to be part of NATO, but now – it is a little troubling to have this small party cropping up, especially because of the lockdowns. But I agree with Perry, it is a huge plus for investors – that in Romania we fortunately have Ludovic Orban instead of Viktor Orban (smiles). ■

MARKET SNAPSHOT: ROMANIA

HOW IS ROMANIA PREPARING FOR A NEW WAVE OF INVESTMENT IN THE RENEWABLES SECTOR?

By Varinia Radu, Partner, CMS Romania

Economic, policy, and legislative factors have revived investors' interest in Romania's renewables sector over the last year. As the second-largest market in Central and Eastern Europe, Romania managed to attract about EUR 8 billion in renewables investments in the first wave from 2008-2016 – mainly in solar (over 1.5 GW) and wind (over 3 GW) – benefitting from the green certificate support scheme, although Romania reached its 2020 target for green energy and investments slowed down significantly over the last five years.

As a result of the Green Deal, the Fourth Energy Package – especially EU Directive 2019/944 and EU Regulation 2019/943 – and the setting by the National Integrated Plan for Energy and Climate Change of a new target, of a 30.7% overall share of green energy in total consumption by 2030, the country made some steps in adopting a legal framework to attract the necessary investments to reach its decarbonization goals.

Still, although Romania proposed one of the largest green targets in the region, the European Commission recommended a target for the country of at least 34% to meet the accelerated post-pandemic EU transition goals for 2050. Under Romania's current target, it is estimated that 6.9 GW in wind and solar are needed by 2030 to meet this goal, requiring about EUR 22 billion in overall investments, including some dedicated to grid development and conventional capacities, especially for gas-fired power plants.

Romania took several important steps in this past year towards preparing for this "new wave" of investments. As legislative predictability and clarity is paramount for investor confidence, Romania has recently published the draft of a revised Energy Law, aiming to fully transpose EU Directive 2019/944 and bring important changes to all segments of the electricity chain, most notably by allowing all generators to conclude freely-negotiated bilateral power-purchase agreements, both physical and virtual, so that new investments can be backed up by legal instruments to facilitate financing solutions under merchant-market conditions. This is also important in the context of the announcement last year that Romania intended to implement a new support scheme based on the Contracts for Difference mechanism (CfD) for low carbon technologies (including renewables, nuclear, CCS, and potentially others). This scheme is currently under development by the Ministry of Energy with the support of EBRD, and should be in place starting 2023.

Also, last autumn a draft bill was initiated in the Parliament dedicated to offshore wind power generation, marking the intention of the authorities to open new opportunities for offshore wind development in the Black Sea. The draft law allows generators to obtain concession rights via a support scheme based on the Contract for Difference mechanism, or, more directly, via competitive auctions with a premium allocated for the power price and the balancing cost.

The balancing market has undergone important changes in both primary and secondary legislation as well, as the Romanian Energy Regulator, ANRE, has adjusted the balancing methodology to allow for a single settlement price with an application date correlated with the implementation date of the 15-minute settlement interval. This new method, which came into force in February 2021, is expected to reduce the balancing costs for intermittent generation capacities.

The Ministry of Energy has also announced that it is revising the Renewables Law and is planning a new support scheme for energy efficiency and energy storage facilities. Under the National Recovery and Resilience Plan, green energy and energy efficiency, together, became a pillar for economic rebound, contributing an initial budget of EUR 1.3 billion. A number of other EU funds are available and dedicated to the energy sector as well, such as the Just Transition Fund.

As Romania is phasing out coal and part of the country's nuclear capacity is unavailable while being refurbished, the country needs more generating capacities very soon, as it is now a net importer. The underlying market data seems to demonstrate positive conditions for such new investments. As we are at the forefront of these legislative changes due to our active involvement in the Energy Law transposition and the implementation of the new CfD support scheme, and as we see the effervescence of the M&A market for both operational and ready-to-build projects, we note the signs of a bold investment cycle to come. ■

IMPACT OF BUCHAREST PUZ SUSPENSION ON ONGOING TRANSACTIONS

By Oana Ijdelea, Partner, and Siranus Hahamian, Managing Associate, Ijdelea Mihailescu

Navigating the maze of zoning, planning, and land-use-approval processes can result in significant delays and escalating costs, which may spell the difference between a development project's success and failure. With the economic growth of Romania over the last few years having generated investor interest in developing new real estate projects, particularly in well-established urban areas like the country's capital, the authorities have repeatedly expanded and amended the country's urban planning laws.

With a general urban plan (PUG) dating back to the year 2000 and whose subsequent extended validity is questionable, since 2018 the real estate development of Bucharest has followed the district coordinating urban zoning plans ("Coordinating PUZs"), approved by the General Council of the Bucharest Municipality.

In February 2021, the General Council issued a series of decisions aiming to suspend the Coordinating PUZs for Bucharest's 2nd through 6th districts for a period of 12 months. According to these decisions, procedures already underway shall follow the rules of the Coordinating PUZs, but any new procedures will have to comply with the (old) PUG provisions.

Although the declared purpose of the General Council's decisions is to delay new projects until updated rules are put in place, from a legal perspective, they create unclarity and are subject to various interpretations, mainly because of the significant differences between the PUG and the Coordinating PUZs. Moreover, it remains unclear how a suspension can legally operate when the law does not allow the issuing authority to suspend its own administrative deeds.

In practice, one of the main issues triggered by this suspension involves its effects on ongoing transactions.

In Romania, investors prefer to condition the acquisition of real estate on the seller's ability to obtain the approval of the specific zoning plan (PUZ) for the intended project and/or the construction permit (CP) for it. This way, buyers avoid bureaucratic and time-consuming regulatory process, avoid buying a property which cannot be used for the intended project, and, to a certain extent, ensure the feasibility of the development. In contracts, this materializes in conditions precedent to the close-out of the transaction.

Pursuant to the General Council's decisions, the suspension becomes an issue if the seller commences the regulatory procedure based on a pre-existing agreement which provides a project theme contemplated in line with the Coordinating PUZs (but not observing the provisions of the PUG). Should such impossibility occur, the buyer may find itself in a situation of not being able to develop the envisaged project, so a waiver or an amendment of the conditions precedent would be required. If the parties cannot reach an amicable agreement, the contract will lack a legal cause, which is one of the validity requirements for contracts under Romanian law.

Joint ventures between landowners and constructors could also be affected by the General Council's decisions. In this case, obtaining a PUZ/CP could be an obligation for either party.

Since under an ongoing and effective contract, the inability to obtain the PUZ/CP would practically mean a default, the matter of the most appropriate remedy benefiting the defaulting party should be considered. An option would be to invoke a *force majeure* event. However, it is unclear whether extent enactments having the value of a general legal provision, such as the decisions, would qualify as *force majeure* , in the absence of express contractual provisions on the subject.

A hardship clause, which would enable the parties to renegotiate the terms of the agreement to re-establish the contractual balance, could be another option. However, a hardship clause may be used only if it has not been expressly excluded by the contract.

Finally, a rescission, even if provided under the agreement, could be difficult to implement, as that contractual sanction implies a party's fault, which would not apply in these circumstances.

In all cases, a legal assessment on a case-by-case basis may prove necessary for an investment project to be smoothly implemented. ■

STRICTER RULES FOR THE PROMOTION OF MEDICAL DEVICES IN ROMANIA

By Dan Minoiu, Partner, Musat & Asociatii

In anticipation of the May 26, 2021 entrance into force of EU Medical Devices Regulation 2017/745, the Romanian Ministry of Health published for public consultation a draft Government Decision, setting forth the institutional framework and certain administrative measures for ensuring the MDR's direct application in the country.

Pharmaceutical and medical devices companies should be aware that the Romanian authorities intend to implement strict rules applicable to the promotion of medical devices, similar to the ones already applicable to the promotion of medicines for human use.

According to the Government's draft, the advertising and promotion of medical devices in Romania is defined to include any activity designed to stimulate the use, distribution, sale, or supply of medical devices, such as visits of medical representatives to prescribers, the provision of samples, the sponsorship of promotional events and scientific congresses, and other activities involving the supply of information to healthcare professionals and/or the public.

Promotion of Medical Devices to the Public

Medical devices companies will be able to promote or advertise to the public only those medical devices which can be used without medical intervention.

Advertising materials designed for the public will have to be approved in advance by the National Agency of Medicines and Medical Devices (NAMMD), based on the request of the device's manufacturer, importer, or local distributor. By law, the NAMMD should assess the advertising materials within 30 days of the request. However, in light of the current state of alert in Romania and the significant workload of the regulatory authorities, certain medical-device companies present on the local market have expressed concern that this new requirement could delay the launch and implementation of promotional campaigns.

The new draft states that the advertising materials should not be misleading, should present accurate, verifiable, updated, and complete information for the target audience consistent with the user manual, and that claims regarding the product's intended use and its benefits should be backed up by relevant scientific proof.

Certain prohibitions will impact current market practices. For example, the advertising of medical devices by scientists, healthcare professionals, and/or influencers or other famous people will no longer be permitted. Also, TV spots and advertising materials should observe the new requirements by removing any misleading or inadequate visual representation.

Promotion of Medical Devices to the Healthcare Professionals

Advertising materials intended for healthcare professionals should contain specific information concerning the medical device and should comply with certain new requirements. Such materials should expressly indicate that they are designed exclusively for healthcare professionals and provide a minimum level of information regarding the medical device's name, indications, class, and details regarding proper use.

The NAMMD is empowered to perform compliance checks on material designed for healthcare professionals, even if the company producing that device or material was not required to obtain the NAMMD's authorization before using the material on the Romanian market.

Promotion of Non-Medical Devices

The labelling and promotional materials for borderline products, which are not qualified as medical devices by the manufacturer but can be mistaken as medical devices, should clearly indicate that the product is not a medical device and it is not suitable for medical purposes.

Furthermore, the new enactment underlines the need to differentiate between medical devices and cosmetics or other types of products, when promoting them to the target audience.

Sanctions

The NAMMD may apply various fines and sanctions for the failure to comply with the new law, including having the medical device withdrawn from the market, being prohibited from using the medical device or placing it on the market, and having the authorizations held by the medical-device importers and distributors withdrawn or suspended. ■

ROMANIAN COMPETITION LAW: RESHAPING POLICY TO PROTECT CONSUMER WELL-BEING

By Mihai Radulescu, Senior Partner, Radulescu & Musoi

Some time ago, a merger control case I was working on, involving the gambling sector (among other things), raised an interesting problem regarding the role of competition law.

During a meeting with the competition authority, one of the inspectors focused extensively on whether the transaction being considered would limit consumer access to gambling services. Gambling was on the rise in Romania, then as now.

The inspector's enquiry suggested a discrepancy between two public aims, one of promoting well-being, and the other of ensuring wide access to services. Should competition policy support access to products and services with potentially harmful effects (*e.g.*, addiction) that the state is simultaneously trying to fight? To what extent can the benefits of competition, *e.g.*, low prices and wide access, deepen various social concerns?

As part of the EU, Romania's competition policy is in line with Europe's. In essence, EU competition law seeks to enhance consumer welfare. However, this does not necessarily distinguish between the various types of products and services. For instance, lower prices make even potentially harmful goods more accessible, but wide access to certain goods is not always in the best interests of consumers.

During communism, Romanians faced significant shortages. When the regime fell in 1989, the impoverished population was quickly exposed to an influx of Western goods and services. In the years that followed, the level of education declined. Coming out of communism, many consumers were thus likely less able to discern what was harmful.

When the Romanian competition law was enacted in 1996, it mirrored EU legislation. It is unclear to what extent competition policy was adapted to reflect the consequences of the political change in the country on a social level, particularly regarding Romanian consumers.

Currently, there is a separation between competition law and other regulatory areas. Namely, competition law is foremost concerned with promoting low prices and wide access to goods and services, while the harmful aspects of such goods and services are addressed via separate regulations, including the creation of consumer protection laws, the enforcement of a minimum drinking age, the mandating of graphic pictures on cigarette packs, and the imposition of excise duties on tobacco and spirits.

From a public policy viewpoint, it would be interesting to examine to what extent these regulatory areas could be more interrelated and whether competition law could be reshaped in order to play a more complex role, with a greater focus on consumer protection and actual social issues.

The question is particularly relevant considering that, according to the European institutions, competition law must take into account legal, economic, political, and social context.

Reshaping competition policy involves analyzing such considerations as economic efficiency, the opportunity of state intervention, procedural aspects, and the need to weigh public and private interests.

Currently, according to official data, at least one in four Romanian children suffers from one form of obesity or another, and infant obesity is in fact the consequence of excessive and unqualified consumption. Also, around 100,000 people in the country suffer from an addiction to gambling, and, at least in rural areas, there are about three times more gambling and betting venues than pharmacies.

Thus, the question remains whether Romanian competition policy could play a more active role in promoting consumers' well-being. Is the unconditional focus on the access of end consumers to goods and services, without sufficiently considering the current social and economic context, outdated? Could it in fact even be harmful? I definitely believe that these are questions that need to be addressed without delay. ■

FIVE PANDEMIC-DRIVEN LITIGATION TRENDS

By Sebastian Gutiu, Managing Partner, and Nora Olah, Senior Attorney at Law, Schoenherr Romania

One year into the COVID-19 pandemic, the "new normal" is as fluid and unexpected as ever. The aftermath of the health crisis and its economic impact has not matched the initial expectations for dispute resolution: the Romanian market has not been flooded with insolvencies and commercial disputes.

Instead, several new and pandemic-driven trends are shaping the cases being brought to court in Romania. Below we discuss five hot topics in dispute resolution in this market.

1. Administrative Disputes Rule: Some 45% of all litigation in Romania involves contentious administrative files. Public authorities with control and enforcement attributions (*e.g.*, tax, competition, consumer protection, environment, *etc.*) are very active, and inspections usually result in fines and other measures. Parties being investigated, for their part, generally disagree with these bodies' decisions and file claims to have them annulled.

Last year, the authorities – ever-so reluctant and resistant to technological improvements – faced difficulties in finding ways to conduct their inspections remotely. Still, the remote investigations that *did* occur often resulted in administrative litigation. A frequently-made argument is that due to the lack of technical means to run remote investigations, the authorities failed to properly communicate with investigated parties, thus breaching those parties' right (and limiting their ability) to mount a defense.

2. Public Money Spending in the Spotlight: The pandemic called for expedited solutions for state authorities to acquire the goods and services necessary to properly cope with the health crisis. This meant a great deal of public money was spent on contracts awarded under simplified procedures. Now questions are arising about the legality and transparency of these procurement procedures. The Romanian Court of Accounts (in charge of conducting financial audits of how public resources are spent) is expected to look into how public contracts were awarded during the pandemic. And, in this case, the subject does not stop at administrative or civil litigation, as criminal charges are also a plausible scenario for the actors involved.

3. Contractual Drafting Put to Test: With many disputes during COVID-19 times arising from contractual dealings, the pandemic has tested the effectiveness of contract drafting.

Some "standard" clauses (such as *force majeure*), though always included in contracts, had rarely been put to the test in extraordinary circumstances. But this type of clause proved to be extremely important last year, as, faced with the challenges raised by the pandemic, the parties to commercial contracts often relied on such provisions to resolve their disputes. In many cases, shortfalls in contract drafting made amicable solutions impossible, thus paving the way for commercial litigation.

4. New Types of Employment Relations: Employers had to adapt their workplaces and working conditions to the new reality. Those most impacted on an economic level resorted to various options to keep their businesses running by cutting salaries, reducing work hours, and in some instances, terminating employment contracts. Some of the employees affected by these measures reacted by filing employment claims, resulting in litigation. This includes new types of claims from employees who disagreed with certain changes in the work environment made by their employers to comply with health protection measures.

5. It Was a Close One for Real Estate: Real estate was one of the most heavily-impacted sectors at the outburst of the pandemic. During the lockdown, office and retail spaces located in shopping malls saw their darkest days. This brought landlords and tenants to the negotiating table at a time when their interests couldn't have been more different. The dispute potential was huge as all triggering factors of any classic real estate dispute were present. But the pressure was soon released as the great majority of parties worked together to keep lease agreements going. Amicable solutions were the preferred option, so real estate litigation has not increased, which is fantastic.

Fortunately, overall, the effect of the COVID-19 situation – at least through the perspective of the amount of litigation – is not as dark as it was a decade ago in the aftermath of the financial crisis.

These sure are interesting times for dispute resolution, with parties to litigation and their consultants continuously adapting their strategies to cope with the new realities. Flexibility is key in this area, keeping all actors on their toes even in less stressful circumstances. We look forward to seeing how the causes for litigation might change in the post-pandemic world. ■

NEW PERSPECTIVES, SAME CHALLENGES: A SNAPSHOT OF SOME CONFLICT OF LAW ISSUES IN CROSS-BORDER EMPLOYMENT CONTRACTS

By Anca Atanasiu, Head of Employment, Radu si Asociatii

From an economic and social point of view, throughout Europe, the COVID-19 pandemic period could be summarized in two words: digitalization and flexibility. These words were also key to employment matters, with a tendency for both employers and employees to be more open to establishing cross-border employment relationships, switching to remote work performed from a different EU Member States or, in case of expatriates, returning to their country of origin while continuing to work remotely for the same employer.

Although these cross-border arrangements existed long before COVID-19, as part of the European integration, COVID-19 transformed a relatively sporadic practice, particular to certain types of businesses or activities, into a common one. Unquestionably, cross-border employment arrangements have their advantages for both employees, who can keep their jobs, and for employers, who can secure their valuable workforces by offering mobility and flexibility. But does this have a legal impact? Should companies be concerned about the legal implications arising from such employment structures? Is there a legal framework governing conflict of laws, and are there any rules to be considered in such cases?

The answer to all these questions can only be: *Yes*. Companies that choose to recruit and hire workers from outside their jurisdictions as well as those who decide to encourage or accept remote work performed in foreign countries should consider the implications which may arise in terms of the law applicable to the employment contract.

The conflict of laws that arises in this type of employment relation is settled under Regulation (EC) No 593/2008, also known as "the Rome I Regulation." One of the fundamental principles laid down by the Rome I Regulation is the freedom of contractual parties to choose the law applicable to an employment contract, either explicitly or tacitly. In the absence of this choice, the Rome I Regulation provides a set of criteria for determining the law which should apply to an employment contract. When determining the applicable law, the parties should take into consideration another essential principle applicable in employment contracts – the protection of the employee, who is perceived as the "weaker party" of the contract.

The Rome I Regulation coalesces these two principles by stating that, while in principle the parties are free to choose the applicable law, such choice may not deprive the employee of the protection afforded to him/her by the law that would have been applicable in the absence of choice. This refers to the protection granted by imperative norms (*i.e.*, those legal provisions from which parties cannot deviate by agreement and which protect employees by setting a minimum standard).

To give an example, a Romanian employer having its employees working remotely from different EU Member States should consider the employment laws in those EU Member States, at least in terms of employment termination, minimum annual leave, minimum weekly and daily rest, minimum wage, and minimum bonus for overtime, in order to assess whether these laws are more favorable to the employees than those applicable in Romania.

Also, the fiscal implications of the remote work structure may raise significant issues, both in terms of income tax (*e.g.*, changing tax residency status) and social security (*e.g.*, switching to a different state pension contribution system).

For multinational companies with multiple employees working remotely from different countries around the globe, the legal and fiscal issues generated by the conflict of laws could trigger a complex administrative burden, as each case of remote work needs to be analyzed individually. As a result of the COVID-19 pandemic the increase in the frequency of remote work seems to have outpaced the development of the applicable legal framework.

The Romanian legislator is now considering supporting and simplifying remote work rules by amending the applicable legal provisions to remove the requirement that employment contracts for work performed remotely specify the workplace. Soon we may see other legislative initiatives (including at the European level) meant to accommodate the new reality and help businesses retain their workforce by adding this valuable benefit. ■

POST-PANDEMIC REBOUND – BOARDS TAKING THE LEAD IN FINANCIAL RESTRUCTURING

By Ana Radnev, Partner, CMS Romania

We are now one year on from the first lockdown, and although many worried in the early days of the pandemic that Romania's court system might not be able to cope with the large number of insolvencies that were expected, in fact the highly-anticipated wave of restructurings is yet to happen, as the debt moratorium which was enacted and then extended and the availability of the state aid package as well as the generally supportive approach of the lenders have helped companies manage their debt service and need for liquidity. While there is no shortage of funding, the uncertainty of the lockdown period and its impact on future developments have resulted in more amend-and-increase or amend-and-extend transactions, with borrowers adding to their existing lender groups rather than seeking a full refinancing.

Most of the restructuring activity that did exist in Romania took place in the more-affected sectors – such as travel and hospitality and those affected by supply chain issues – just as in the Western markets, albeit at a smaller scale. With very few exceptions, all these were out-of-court processes.

As the outlook seems to be more positive – and, more importantly, with vaccination and other measures taking affect – more settled, and perhaps more predictable, we anticipate that the focus of boards will now change from considerations of survival and maintenance to preparations of thorough analysis of capital structures and needs for rebound. We believe this will fuel future restructuring opportunities, either as M&A opportunities through the divestment of non-core assets or businesses or as additional investment and financing, all of which would – more often than not – require the cooperation of all stakeholders, lenders included.

A successful restructuring requires a deep understanding of the issues and a strategy for dealing with them, as well as an understanding of the stakeholders and how they should be managed most effectively. As they prepare restructuring plans, it is crucial that directors be aware of their duties and how these shift in a distress scenario, and that all stakeholders are cognisant of the directors' duties and liabilities. Specifically, the duties of directors may be a key factor in determining the time available for stakeholders to agree on the terms of a financial restructuring and what the company may and may not do in the interim. With their conduct under increased scrutiny across the globe, directors should take practical steps to discharge their duties and mitigate their risk of liability by ensuring their information is up to date, holding regular meetings (and keeping detailed minutes of those meetings), proactively managing cash and credit, and, most importantly, engaging with key stakeholders early.

Directors should also have a contingency plan if a consensual arrangement cannot be reached. Boards should look to take the lead in engaging in restructuring talks and identify which stakeholders are key to the delivery of a plan and what is required to obtain their support. This is particularly important in Romania, perhaps, as many companies in Romania have a disparate and diverse creditors group, with bilateral credit lines (often extended on a rolling short-term basis), finance leases and suppliers, and key stakeholders with an interest in keeping the business going, especially key off-takers/clients with an interest in managing their supply chain risk.

To succeed, any restructuring plan must be based on a credible commercial and financial proposition. Boards must ensure that the financial reporting of the company is sufficiently detailed and includes the metrics expected by finance providers and investors. Good-quality financial information and good governance are critical.

Boards must also be mindful of ESG factors and take these into consideration when planning for the future of the business. With ESG compliance now moving from a largely voluntary basis to legal disclosure obligations, both lenders and investors are interested in focusing their resources towards sustainable businesses which look to incorporate, adopt, and measure ESG KPIs. A solid ESG strategy with clearly identified KPIs can unlock additional liquidity and could be vital for restructuring plans, as distressed debt and distressed-situation investors are increasingly incorporating ESG in their due diligence and are bound by disclosure requirements to regulators, the market, and their investors. A successful restructuring plan will need to be for a sustainable business with clear and measurable KPIs. ■

STOCK OPTION PLANS: A MODERN RETENTION TOOL ENCOURAGED BY LAW

By Alexandru Matei Basarab, Partner, and Adina Ionescu, Attorney at Law, Vertis Legal

The modern mentality concerning the relationship between employers and employees has led to the creation of mechanisms aimed at increasing the loyalty of the latter. One such mechanism that has become very popular in recent years is the Stock Option Plan.

An SOP, according to the Romanian Tax Code, is a program initiated within a company through which its employees, administrators, directors, and/or affiliated legal entities are granted the right to purchase a certain number of the company's shares at a preferential price or even free of charge. SOPs are popular in joint stock companies, and they can be implemented through either capital increase or share buybacks. Either way, they must be approved by the General Assembly of the company.

Until recently, when the pandemic changed the labor market paradigm we were all used to, this mechanism was used mainly by technology companies. Now, as employers are starting to rethink their employee-retention strategies, SOPs are becoming more and more mainstream, which is why the applicable tax regime is a topic of great interest. In Romania, the Tax Code encourages such operations.

General Aspects Regarding the Tax Regime

In addition to the definition provided above, the Romanian Tax Code states that, to qualify as an SOP, a program must include a minimum period of one year between the granting of the right by the company and its exercise (more precisely, when the employee/administrator/director/legal affiliate purchases the shareholdings).

Therefore, regardless of whether the transfer of the shares is free of charge or comes at a preferential price, the one-year period is an imperative condition in order for the preferential tax regime to be applicable.

Tax Benefits

According to Romania's Tax Code, benefits granted in the form of stock option plans are not subject to income tax either at the time they are granted or at the time of their exercise. Thus, the benefits obtained from SOPs are taxed only when beneficiaries choose to sell their shareholdings. Similarly, the benefits are not subject to the obligation to pay the social security contribution at the time of grant or exercise.

Moreover, according to the same legal act, in transactions with shares acquired free of charge or at a preferential price, the gain is calculated as the difference between the sale price and their tax value represented by the preferential purchase price, including costs related to the transaction. For those shares acquired free of charge, the tax value is considered equal to zero.

When the beneficiaries sell shareholdings received under the SOP program, they will owe income tax (currently, at 10%) for the profit made (*i.e.*, sale price less purchase cost; if received free of charge, the cost of purchase is zero). Depending on their personal situations, beneficiaries may also owe an additional social health insurance contribution if their estimated annual income obtained from investments (*e.g.*, dividends, interest, and capital gains), and from other categories expressly mentioned by law, exceeds the level of 12 minimum gross wages.

One important aspect that needs to be taken into consideration when analyzing the tax regime applicable to employees is when they are residents of a foreign state. In such cases, it's common for double taxation conventions concluded by Romania and that foreign state to apply, which can lead to the application of rules other than those set out above.

Lastly, the Tax Code expressly stipulates that expenses related to the implementation of the SOP are non-deductible for the employer. However, when the beneficiary sells the shares, they will be subject to taxation. ■

SHAREHOLDERS AGREEMENTS – IMPORTANT POINTS TO BE CONSIDERED FROM AN INVESTOR PERSPECTIVE

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

Definition and Purpose

A shareholders' agreement, also referred to as a stockholders' agreement, is, as indicated in its title, an agreement concluded by and between the shareholders and, often, the company itself.

In Romania, while articles of incorporation – the basic constitutional document for all Romanian companies – is mandatory and must be registered with the Trade Registry (under Companies Law no. 31/1990), the SHA is neither expressly required by law nor mandatory for the incorporation and operation of the company and, consequently, it need not be publicly registered to be effective.

However, especially as it is flexible to fit the specific needs of shareholders – a function of the lack of specific legal provisions regulating its content – and due to its private nature, which allows shareholders to address sensitive and/or confidential internal matters, many business partners choose to define their partnership by means of a SHA.

Primarily, the purpose of the SHA is to supplement – and supersede – the articles of incorporation in order to stipulate binding rules for the shareholders to preempt any potential disputes during the operation of the company, in order to protect both the shareholders and the company. SHAs traditionally address aspects such as, but not limited to, the scope of business and business strategy, shareholders' rights and obligations, management, ownership and transfer of shares, financing, and exit strategies.

Ideal Moment to Conclude a Shareholders Agreement

Even though a SHA may be entered into anytime, it should ideally be created either at the incorporation of the company, or, in case of investors entering a company, simultaneously with the financing and acquisition of shares in order to regulate the specific rights and obligations of the shareholders pursuant to such financing.

One should assimilate the SHA with a business prenup to clarify as many potential disagreements as possible before proceeding with the investment of all the resources required in order to build and operate the company.

Important Aspects to be Addressed from an Investor Perspective

In particular, regardless whether financing a start-up or a more mature company, investors should take care to address the following issues:

Scope of Business and Strategy. Shareholders should take the necessary time to clarify and agree upon their overall business objective and the strategy they intend to employ to reach it. If major disagreements arise between them on such subjects down the road, they will either enter a blockage or, depending on the shareholding structure, the shareholder(s) holding the majority will implement its/their strategy.

Restrictions on Shares Transfer. Such provisions are mainly transfer mechanisms meant to control who may or may not acquire company shares and are therefore a useful tool for both business partners deciding to start a company based in part on a private relationship and for an investor entering a start-up or existing company based at least in part on the know-how or other particular characteristics of the founding parties. The most common versions of this mechanism are: i) *right of first refusal* – priority granted to the non-transferring shareholders to purchase the shares offered for sale by any shareholder, pro-rata to their quota of shares; ii) *tag-along rights* – allowing non-transferring shareholders to participate in the sale of the shares with the observance of the same terms agreed upon between the assignor shareholder and the proposed assignee, pro-rata to their quota; and iii) *drag-along rights* – allowing a majority shareholder to require the minority shareholders to participate in the sale of the company shares.

Distribution of Revenues. Shareholders may agree that payments of all costs related to the operation of the business shall be made with priority, and, when appropriate, that repayment of investor loan shall be made prior to dividends payment.

Mention should be made that shareholders must periodically review and asses if any changes should be implemented in the SHA in order to further serve their purposes. ■

ROMANIAN BUSINESSES AND THE GDPR – HAS COVID-19 CHANGED THE RULES OF THE GAME?

By Adoriana Azoitei-Frumosu, Head of Data Protection, Hategan Attorneys

Needless to say, the COVID-19 pandemic has been extremely challenging for organizations worldwide, both experienced and start-ups. The new reality has also compelled a vast majority of entrepreneurs in Romania to quickly adapt to a new economic context – significantly impacting the data protection domain.

Three years have passed since the 25th of May, 2018, the momentous date on which the GDPR's provisions became mandatory for companies that process personal data in their activity. The first two years were a real challenge for Romanian controllers and processors. Last year, as the dynamics of data protection were rapidly changing during the pandemic, we noticed a substantial interest among businesses in adapting their operations to the new reality formed by the GDPR. In other words, the pandemic may have been the push they needed to make them act.

1. The New Challenges Brought to GDPR Implementation by COVID-19

During the first year of the GDPR's application, Romanian companies were reluctant to allocate financial resources to their security and legal departments to align their policies with the standards imposed by the GDPR. In the second year, we noticed an increased interest and greater awareness in the data protection field. Then, in the third year, the pandemic struck. The new rules imposed by the legislature for fighting the COVID-19 pandemic caused a large majority of entrepreneurs to re-adapt their new policies to another reality – one with remote work, online meetings, and other digital measures. Challenges and threats arising from the use of new technologies in remote work became numerous and more complex, since companies had to consider, in addition to data protection provisions, new strategies for cybersecurity preparedness and safe teleworking.

2. The Active Role of the Romanian Supervisory Authority During the COVID-19 Crisis

The Romanian Supervisory Authority continues to play an active role in GDPR compliance. In 2020, as a result of intimations received and security breaches it was notified of by the data controllers, nine fines (totalling EUR 139,000), nine reprimands, and eighteen corrective measures were imposed, compared with 2019, when only eleven fines (totalling EUR 445,000), fourteen reprimands, and thirteen corrective measures were imposed. Even if the total amount of fines was lower in 2020, the number of investigations remained constant. This brings us to the conclusion that data protection has been taken more seriously by companies during the pandemic.

3. The Positive Effects of the GDPR During the Pandemic

One of the most unexpected indirect effects of the GDPR is that Romanian citizens are more aware of their rights. The GDPR enhances transparency and gives individuals enforceable rights, such as the right of access, rectification, erasure, the right to object, and the right to data portability. The GDPR has empowered individuals to play a more active role in what is happening with their data in the digital age. In this regard, the Report of the Romanian Supervisory Authority states that in the first two years, about 10,000 complaints were submitted, referring, primarily, to: (i) the disclosure of personal data without the subject's consent; (ii) the receiving of unsolicited commercial messages; (iii) the processing of images through the video surveillance systems, (iv) reporting data to the Credit Office.

Companies went the extra mile to meet the needs of more aware and more demanding customers and employees. Consequently, privacy has become an added value for employees and a competitive aspect that customers increasingly have in mind when choosing services.

Conclusion

The GDPR remains a significant concern for Romanian organizations. Given the new worldwide trend of digitalization at almost every business level, we expect Romanian companies to continue to comply with the GDPR's provisions, and the Supervisory Authority to play an active role in guiding and monitoring GDPR compliance. In addition, data subjects have a greater level of awareness regarding their rights related to the processing of personal data. The general principles of effectiveness, necessity, and proportionality must continue to guide any measures adopted by both companies and public authorities. ■

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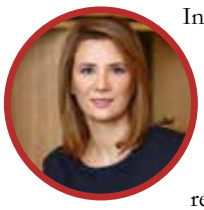
ROMANIAN COMPANY LAW RESTRICTIONS FOR INTRA-GROUP GUARANTEES OR INTRA-GROUP LENDING

By Gabriela Anton, Partner, Tuca Zbarcea & Asociatii



Intra-group loans and guarantees are frequently encountered in the activity of group companies, especially when centralized capital and liquidity management systems are in place. Intra-group loans are often used as tools to maximize liquidity at the group level while reducing the cost of funds, while the guarantees provide group companies with better access to external financing or high-value commercial contracts.

Romanian law does not expressly prohibit granting loans to or guaranteeing the obligations of affiliated companies, but there are certain restrictions and limitations provided under Companies Law No. 31/1990 which should be observed. These mainly relate to: (i) justifying the commercial benefits of the transaction; and (ii) managing conflict-of-interest situations.

Under Romanian law, the purpose of any company is the performance of profit generating activities. To this end, operations must justify a corporate interest, including in the case of intra-group transactions. The concept of corporate interest has not been expressly defined in law, but is instead a doctrine created by Romanian scholars, requiring that any action taken must aim at generating profit as an effective gain, at avoiding or reducing the risk of loss, or at satisfying an economic interest.

In case of group companies, the corporate interest of the company is joined by the group's interest. The relationship between companies within the group should not be overlooked, but identifying a group interest (*e.g.*, when a loan is used for funding the development of the group business activities through new acquisitions) is not enough to justify the commercial benefit of the group company.

A commercial benefit can be the revenues directly generated by the transaction (*i.e.*, the interest on the loan or a fee for issuing the guarantee), but it can be also an indirect benefit. Downstream guarantees from the parent company can be often easily justified by such indirect economic benefits. Similarly, the creation of security in the interest of the group company could be commercially justified even where a security grantor does not receive a fee, but still enjoys indirect benefits (such as better access to funds at lower costs).

In addition, these transactions should be scrutinized to identify if they have the potential to adversely affect the solvency or liquidity of individual entities within the group so that such risks can be effectively managed and mitigated. Difficulties may arise, especially when there is a discrepancy between the corporate interest and the group interest, for example when the loans or guarantees are extended in distressed cases. Such discrepancies may also raise additional concerns, as the directors have obligations of loyalty and to act in the best interest of the company.

As a specific restriction, Romanian law prohibits a company from granting loans or guarantees to a company which has the same director or in which the director holds, either directly or indirectly, a participation in excess of 20%. Agreements concluded in breach of this prohibition would likely be sanctioned with absolute nullity. Such restrictions are in principle applicable to joint stock companies, but not to other types of companies, such as limited liability companies.

Shareholder having an interest contrary to the company's should abstain from voting on transactions that require the approvals of the shareholders. This conflict of interest could arise when the subsidiary decides to create a security for the obligations of its direct shareholder. The shareholder failing to abstain may be held liable for damages caused to the company. In addition, there is a risk that the resolution (and of the underlying transaction) could be annulled if the court considers that the transaction was contrary to the company's interests and the approval represents an abuse of power by the majority shareholder.

From the perspective of the requirements of the Romanian Company Law, best practices would be to: (i) identify the commercial benefit for the transaction and address this specifically in corporate resolutions, (ii) confirm that there are no prohibitions against concluding the transaction, and (iii) clear potential conflict-of-interest situations. ■

EXPAT ON THE MARKET: INTERVIEW WITH GIANLUCA CARLESSO OF THE CARLESSO LAW FIRM

By David Stuckey

CEELM: Run us through your background, and how you ended up the Managing Partner of a law firm in Romania.

Gianluca: After ten years of professional activities in the commercial, corporate, M&A, and aviation law fields in Italy – Rome and Milan – in 2006 I was appointed Managing Director of the Tirana branch of Tonucci & Partners (at that time in alliance with Mayer Brown), where we mostly advised foreign and Italian companies investing in Albania, as well as banks and international institutions. In 2009, I had the opportunity to become Country Manager in the firm's Bucharest office, which primarily worked in corporate matters, banking/finance, M&A, energy, and aviation fields.

CEELM: Tell us a bit about the Carlesso Law Firm. When was it founded, how many lawyers do you have, and what areas of law do you specialize in?

Gianluca: In 2017, with 20 years of professional experience in Italy and abroad, I finally decided to start my own business, focusing on advising both foreign and local clients such as commercial companies, banks, and insurance companies. Our team is composed of seven lawyers (three on staff and four of-counsel based in Rome, Milan, Florence, and Verona). We are also in alliance with Sherman Nigretti, Accountants and Auditors, managed by Mr. Gianmauro Nigretti and based in Milan, and we collaborate in Romania with a top audit & tax firm, UHY Romania, managed by Mrs. Camelia Dobre. We specialize in commercial and corporate law, banking/finance, real estate, oil-gas and energy, and aviation. In addition, we assist clients in commercial and corporate litigation.

CEELM: Was it always your goal to work outside of Italy?

Gianluca: Indeed, as lawyer, I always looked forward to building an international profile and gaining experience in foreign markets – especially since 2003, when I joined a prominent Italian law firm, Cannata-Pierallini, which has offices in Rome and Milan, and which at that time was part of Coudert Brothers New York. Anyway, I am connected with the Italian legal market, as I am double-qualified, and licensed by both Rome and Bucharest Bar Associations. In this regard, I also currently have offices in Rome and Milan through our partnership with Sherman Nigretti.

CEELM: How would clients describe your style?

Gianluca: In short: professional, updated, efficient, and delivering attentive and dutiful services.

CEELM: Are there any significant differences between the Italian and Romanian judicial systems and legal markets? Which stand out the most?

Gianluca: Certainly. I mean, the Italian system is particularly complex and proceedings are, in general, long and slow; in addition, we have so much influence from massive legislation and jurisprudence, which often does not help to solve legal matters. On the other hand, in Romania the judicial system – referring to civil and corporate matters – is quite fast and understandable, so in litigation we can predict the timing of the process to our clients. Regarding the legal market – again, referring the commercial and corporate fields – in Italy you have plenty of lawyers around the entire country, whereas in Romania, the top range is in Bucharest, which is really the center of the economy and business for the country, and the challenge for every international lawyer who aspires to run the market.

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

Gianluca: Romania is a young country in term of population, democracy, and the development of corporate and commercial enterprises, with a large number of international investors. It represents an opportunity for both investors and professionals because it is also open to innovation and

modernization. Here it is so helpful to work in English as most of the people speak the language. Italy, despite its long history and tradition even in the legal field, sometimes suffers from the complex juridical system I described earlier, which impacts businesses and makes it difficult to improve and innovate in developing business opportunities.

CEELM: Do you have any plans to move back to Italy?

Gianluca: I am currently still working and dealing with the Italian market, since most of our Italian clients have business investments in Romania through commercial companies established under Romanian Law. Please let me say that the meaning of *move back* is too strict for international lawyers, because we prefer embracing our experience in legal markets without boundaries, and we always look forward to potential development.

CEELM: Outside of Romania, which CEE country do you enjoy visiting the most, and why?

Gianluca: I must say that, in this regard, my interests come together with the business opportunity. in fact, I enjoy visiting Hungary and Serbia, because of our relationships with clients from those markets who invest in Romania. Plus, referring to the Balkan area, I know Albania quite well, from my previous professional experience there, and Greece as well, again from our business relation with clients investing in Romania.

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

Gianluca: Bucharest is a vibrant and modern city. But I also encourage visitors to spend time in Brasov, Sinaia, the Danube delta, and the seaside, for their beautiful scenery, nature, and interesting traditions. ■

MARKET SPOTLIGHT MOLDOVA

GUEST EDITORIAL: BONDING OVER MOLDOVAN PIES

By Roger Gladei, Managing Partner, Gladei & Partners

My Indian guru, a *sine-qua-non* vegetarian, adores the Moldovan pies (*placinte poale-n brau*) made by my mom. When back home in India he will definitely once again become a chapati devotee, but for now he is in Chisinau, enjoying the taste and flavor of my mom's baking.

Recently I realized that our firm has more "best friend" law firms than corporate clients. Built on trust rather than formal arrangements, this kind of relationship seems to be a win-win-win, bringing benefits to the client, who feel safe in unknown territories; to our peer law firm, who may thus provide added value to the client; and to ourselves. And it's a veritable knowledge-sharing and technology-spillover engine, as the legal know-how is not patentable and each new client can enjoy the benefits of our work for previous outstanding law firms or clients.

It was not always like that. In the mid-90s the big law firms, including those in the Magic Circle who had already conquered other Eastern territories out of the bricks from the Berlin Wall, attempted to put their best foot forward in a Moldovan *blitzkrieg*. The first crisis, in 1998, put a damper on that enthusiasm, and the 2008 financial crisis put a final shape to the landscape of Moldova's legal market. Foreign law firms with a local presence are now few and far between, and the model of exclusive relationship, with a foreign law firm getting married to a Moldovan partner, is dead.

I'd summarize the lessons learned from more-than-a-decade of best-friends agreements with various foreign – mostly EU and US – law firms, thus:

1. We speak the same language. No, I'm not referring to English, even if now professional English is a must. I'm referring to the way we think and act. In a recent kick-off call for a new capital markets project I counted more than 50 attendees from around the globe, and you may not have more than a couple of minutes to articulate your Moldovan law view, so be ready!

2. There is no small and big; it's merit-based. Never, in all these years, have I ever felt an arrogant or *big brother* approach from DC, London, or Moscow. It seems that the rules of politics are out of work in the legal brotherhood.

3. *Guanxi* is out of the picture. It may be nice to socialize a bit, or a bit more, before embarking onto a new cross-border project, but in practice it's more often that you'll get an email late at night (well, it's just mid-day in DC) asking for a prompt reply. Guys, haven't you heard about time zones? No, you hold your tongue and burn the midnight oil to deliver on time, then you can turn back to shaping your "work smart, don't work hard" model.

4. Trust works better than formal arrangements. If you make an error, your best friend will most probably come to your rescue, but if you insist on failing, don't blame the mirror. Clients don't rely on marketing slogans as much as references. It's a kind of a reputation-spillover: the client trusts the home counsel, and the latter trusts you, so you don't need to provide credentials and long lists of previous projects to the clients. It's all in.

5. Partnerships are the future. The world is becoming less proprietary, and brand loyalty is fading away. In Moldova, at least, the client's choice is not driven by years of service and aristocratic pictures on marble background, but by word of mouth. If you've advised on all three of the three M&A deals shortlisted for the 2020 Deal of the Year Award for Moldova (it may not sound too modest, but it's true), then why would a Magic or Silver Circle firm looking for local assistance not turn to you, if it wants to serve its client best?

My mom's pies will remain sought after, I am confident. I might turn up my nose at them, looking for a pizza, but my guru feels in his bones what's healthy. ■

THE WOOD ANNIVERSARY: FIVE YEARS OF BIZLAW.MD

By Radu Cotarcea

BizLaw.md, a Romanian-language portal dedicated to business law in the Republic of Moldova, is celebrating its fifth anniversary. We spoke with its founder, Efrim Rosca & Asociatii Managing Partner Oleg Efrim, to learn more about the project and his plans going forward.

CEELM: What's BizLaw.md?

Oleg: BizLaw is a media platform about business and business law. I wanted to support the emergence of a media resource that professionally addresses the business field and offers specialists a place where they can discuss professional issues. BizLaw is one of the first appearances of the specialized niche press, speaking simply about complicated issues. This is where business people with their daily problems can find solutions from specialized lawyers. Both business people and specialists in law can find out about important initiatives of the Government and other decision-makers, and about changes in business regulations, right from the stage of their initiation.

CEELM: When did you initiate this project and what was the thinking behind it?

Oleg: I started this project at the beginning of 2016. I am a loyal consumer of specialized law portals in the region from Romania, Ukraine, and Russia. I have always been jealous of colleagues in these countries for having access to such information. And at a certain moment, I decided to start a similar project in Moldova. I did this out of a desire to have a quality media product about business and business law, and a desire both to stimulate professionals to train and contribute to the training of their colleagues and to make my own contribution to the promotion of a legal culture in our country.

CEELM: And how did the Moldovan legal market react to it?

Oleg: In less than no time, BizLaw became a reference name on the market. In its debut year, BizLaw was named Trademark of the Year in the Republic of Moldova. Public reactions highlighted the need for specialized information resources.

CEELM: What about the potential for a conflict of interest or a possible bias towards the law firm that you manage? How do you deal with concerns on that front?

Oleg: Indeed, fellow lawyers are reluctant about the fact that the partners of a law firm are also the owners of the BizLaw portal. But we are not involved at all in Bizlaw's editorial policies, which are decided by journalists. Bizlaw's equidistant policy is followed daily by our news consumers.

Moreover, any company or law firm that is ready to share the costs with us can become our partner in the project. The invitation is public. In its first year, BizLaw offered free partnerships to the largest law firms in the Republic of Moldova. This meant that the site was available for any professional – not just from the field of law – to appear on BizLaw in video or written formats. All expenses in this regard were borne by BizLaw.

CEELM: How large is the editorial team today and how has the focus of the publication evolved over time?

Oleg: The BizLaw team consists of four journalists working full time for the portal. The whole team has extensive practical experience, and, in their professional past, they have all interacted with the regulatory process. It is a wonderful team, which does its job every day and doesn't get tired of generating new ideas, which maintains the public's interest in Bizlaw.

CEELM: What was the most-read story over the last five years – and, in your opinion, why was it so popular?

Oleg: Experience shows that the most-read stories are those that refer to the regulations in labor law, those related to social insurance, and those that highlight all kinds of curiosities in the legal world. The most-read news of all time is an

article entitled "*Stupid Questions of Lawyers During Trials. Real Examples*," which registered over 236,000 unique visitors. An article about the entry into force of sanctions for non-compliance with anti-Covid measures gathered over 115,000 unique views. News about the law itself and legislative amendments gather fewer views, as that is of interest exclusively to professionals.

In general, the figures recorded by BizLaw in terms of views – even if it is a niche site, with a specific audience – could easily compete with those recorded by other generalist news sites. This proves that BizLaw has captured the attention not only of business and legal professionals, but also of the general public.

CEELM: Looking back, what is it about the project that you are proudest of?

Oleg: I am proud to say that in the five years since its launch, BizLaw has occupied a well-deserved place in the media market. We are one of the main providers of business news in the Republic of Moldova and about business law. The biggest media outlets trust and quote our news. The video tips recorded by BizLaw are shown on TV channels. One of the BizLaw projects – *Martorii lui Justinian* (Justinian's Witnesses) – is a tool for promoting the new Moldovan Civil Code and a source of training for lawyers interested in civil law.

And Bizlaw's success has also been noticed abroad. In 2019, the Romanian Society of Legal Sciences offered me a Diploma of Appreciation for outstanding contributions to the popularization of legal information in the business environment.

Even if the project is not profitable (yet), I like what BizLaw does and what it looks like every day.

CEELM: What would you like to do that you have not gotten around to yet?

Oleg: My business partner and I expect to stop spending money on the maintenance of this project. We expect that in the foreseeable future the project will bring in enough money to cover our expenses and continue to delight readers with quality news and interesting projects.

CEELM: Where do you see the project five years down the line? How are you looking to develop it?

Oleg: I would like BizLaw to be one of the many specialized news portals in five years, and to continue to provide quality content. We will continue to develop new products to ensure our sustainability. ■

> ***I am a loyal consumer of specialized law portals in the region from Romania, Ukraine, and Russia. I have always been jealous of colleagues in these countries for having access to such information. And at a certain moment, I decided to start a similar project in Moldova.***

INSIDE OUT: FINTUR'S SALE OF MOLDCELL TO CG CELL TECHNOLOGIES

By David Stuckey

On March 5, 2020, CEE Legal Matters reported that Schoenherr had advised Fintur Holdings B.V. on its USD 31.5 million sale of its 100% holding of Moldcell S.A., to CG Cell Technologies DAC. Gladei & Partners advised CG Cell Technologies. We spoke to Vladimir Iurkovski at Schoenherr and Roger Gladei at Gladei & Partners for more information about the deal.

CEELM: Vladimir, let's start with you. How did you and Schoenherr become involved in this matter?

Vladimir: This was a mandate which has been ongoing for quite some time. As you know, Moldcell was disposed of as part of the Telia Group's strategy to exit from the Eurasian region (Azerbaijan, Georgia, Kazakhstan, and Moldova). Everything started back in May 2015, when the Telia Group – which included Fintur Holdings – approached us through its English-law counsel (at that time Davis Polk & Wardwell, London) requesting legal assistance under Moldovan law in preparing the seller's legal due diligence of Moldcell, and consultancy on the Moldovan leg of the possible sales transaction. At that time, Schoenherr already had a serious local portfolio in telecom transactions (including assisting a Swedish investor on the possible purchase of the fourth Moldovan GSM operator, which ultimately went bankrupt resulting in the transaction not taking place, and advising Orange on its purchase of Sun Communications).

Although smaller telecoms transactions have taken place in Moldova over the years, the sale of Moldcell (as one of the biggest GSM operators in the country) was the first of this size to take place here.

Over time this mandate involved numerous steps (including updating the reports, addressing the risks, considerations related to structuring of the transaction, dealing with merger clearance, and transacting with Turkcell for the Telia Group to obtain sole control over Fintur Holdings) which ultimately led to its completion in spring 2020.

CEELM: Roger, how did you and your firm get involved in this matter?

Roger: it started quite ordinarily, back in November 2019, with an RfP, tender, and scrutiny by the potential buyer. Then a pause. Late in December someone pulled the trigger and it went full thrust: the data room opened on January 1st, a record-time due diligence, forget about Old Christmas holidays, get snowed under the work, contemplate the snow only through the office window.

CEELM: What, exactly, were your mandates at the very beginning when you were first retained for this project?

Vladimir: Initially we were retained to perform a legal due diligence of Moldcell, to be presented on a non-reliance or reliance basis to bidders. The due diligence had to cover all fields of activity of Moldcell, with a focus on title to shares and historical transactions with shares, the regulatory field (including the possibility to prolong the core licenses held by Moldcell), the corporate structure and its compliance with Moldovan legislation, competition law implications, a review of material agreements, an analysis of labor arrangements, and a review of material disputes. Immediately thereafter we were solicited to advise on the possibility of effecting the transfer of shares in Moldcell and post-completion filings. Also, we were requested to provide advice on addressing certain issues addressed in our report and to conduct the legal review of Moldcell's immovable property (*i.e.*, real estate).

Roger: Target companies' legal due diligence, including reviewing the vendor LDD Report.

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

Vladimir: I led the Schoenherr team advising Fintur Holdings (Telia Group) on this mandate in relation to the Moldovan

law aspects of the transaction. When the transaction with CG Cell Technologies occurred, the seller's counsel, Sullivan & Cromwell LLP, advised on English law. Throughout the mandate, I was supported by my Senior Associate Andrian Guzun and my Associate Denis Lefter (both from our Moldovan office). While I was in charge of direct contact with the client and the English-law counsel, and of negotiating with the other party, Andrian and Denis (and other colleagues from the office) supported me with all aspects of the transaction including the seller's due diligence, drafting required transaction documents, merger clearance for the prior transaction with Turkcell, completion steps, and so on.

Roger: Dan Nicoara was the project leader, coordinating the due diligence and contract matters. Most of our associates were involved in the LDD exercise, with Irina Sugoneaco coordinating the financing transactions side.

CEELM: Please describe the deal in as much detail as possible, including your (and your firms') roles in making it happen.

Roger: It was an extraordinary transaction from day one. Not only cross-border, but a truly multicultural deal, with Turkish leasing counsel and an Indian project manager, with Nepalese background experience. That's on our side. There were strict and sober Swedish gentlemen and two international law firms on the other side. There were rounds and rounds of phone conversations, burning the midnight oil in reviewing and revising contractual documentation, and legal arm-wrestling on the key issues – we felt like we were playing in the Super League, but an infinite game.

It was our first deal with this client, so there was no previous chemistry, as we had never seen their faces before. But we spoke the same language: the language of dedication to make it through. The client was determined and contaminated our team with that. We repaid them by deploying all our resources and expertise, and my younger fellows demonstrated a terrific resilience and desire to see it done.

You see, there are not so many large-scale M&A transactions in Moldova. Quite often the foreign clients drop the deal because of internal or, more often, external constraints. Moldova is still perceived as a country with an unstable economy and unpredictable laws, and reputable investors are yet to put it on their maps.

This deal was different from this perspective too: a Nepalese businessman cannot become afraid of Moldovan uncertainty. Before pitching, I googled Chaudhary family and got really

Vladimir Iurkovski, Partner, Schoenherr

Roger Gladei, Partner, Gladei & Partners

impressed: Binod Chaudhary is a self-made man, coming from a simple family and becoming the best-known and most acclaimed Nepalese investor in the whole world. CG Corp Global has over a hundred companies under its umbrella and an investment outlay of over USD 1 billion. You can imagine my emotions when back in March 2020, when the project manager texted me: Mr. Chaudhary will visit Chisinau and wants to see you.

He turned to be a very nice person: tough and agile in negotiations, while gentle and kind in personal conversations. Once talks in our office were completed, and points made, Mr. Chaudhary turning his eyes over the books on my shelf: "I know this guy, we had tea together." Gosh, "this guy" is Sri Swami Rama, his book *Living with Himalayan Masters* had just landed on my shelf from Amazon. It turned out that Mr. Chaudhary and me share many passions.

After the deal was signed, Mr. Chaudhary took me to his company, for the first meeting with the people. You need to see how he knew to ignite people's optimism and desire to succeed. And not because it was Valentine's Day or the eve of my birthday.

Vladimir: The mandate commenced back in spring 2015 with the preparation of the seller's due diligence (which was updated at least four times until 2020), as well as other legal preparatory steps. This was followed by a lengthy process of identification of the purchaser, discussions, and meetings with and explanations to bidders. Before the transaction with CG Cell Technologies, in the beginning of 2019 the Telia Group obtained sole control over Fintur Holdings following a transaction with Turkcell. This part included obtaining merger clearance from the Moldovan Competition Council within a relatively short period of time. Negotiations with CG Cell Technologies commenced in the second half of 2019, including various topics, including findings from the due diligence, the necessity for merger clearance in Moldova, negotiations of the framework agreement, mechanics of the local transfer of shares, completion, and post-completion steps. The framework agreement was signed on February 14, 2020, while the completion happening shortly thereafter.

CEELM: What's is the current status of the deal?

Roger: It closed in March 2020.

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

Roger: Definitely, the post-signing part. Early in March 2020, the Covid pandemic had reached Moldova and the authorities decreed a state of emergency, with an immediate shut-down of most public offices and insistent recommendations to stay home. We closed the deal with masks on the faces, literally. I clearly recall the closing day of March 24, as guerrilla partisans – the seller's counsels and us – divided into two groups, with one driving to the notary and the other to the share registrar's office. The deal was complex, and the different structures of Moldovan targets required different completion steps, but we managed it as a legal blitzkrieg. One after another, all the bureaucratic redoubts fell and we passed through with flying colors.

Vladimir: There were two challenging situations during this transaction. The first was when the Moldovan authorities unexpectedly wanted to scrutinize the transaction in more detail, as the parties to the transaction were preparing to complete it. This was indeed challenging and unexpected. In my opinion this happened due to the size of the transaction and the importance of Moldcell to the Moldovan economy. In the end, all went well, and the parties continued with the transaction.

The second was that we had to conclude the transaction (including preparing the pre-completion steps, *etc.*) during the state of emergency that was declared in Moldova due to the COVID-19 pandemic. Until the last moment, it was unclear whether the register authorities and other entities (such as the notary, for instance) would be legally allowed to fulfil their duties and allow the transaction to be completed. The parties had to provide corresponding reasoning and succeeded in accomplishing the goal.

CEELM: Was there any part of the process that was unusually or unexpectedly smooth/easy?

Roger: That was not the case. In fact, we managed to close in the last minute, and even one or two days of delay would have thrown the completion out to the unknown future, as the pandemic was on the rise.

Vladimir: In my opinion, the completion date. On the agreed-upon time and date, and in different locations, involving different registrars, and representatives from each side, it all went incredibly smoothly. On the same date, we managed to conclude the local transfer instruments, obtain the notary formalities, and pass the target shares to CG Cell Technologies.

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

Vladimir: Yes, it changed over time, since the sale of Moldcell was protracted, involving numerous negotiations with different parties, adjustments to the initial plan, preparatory steps (such as the acquisition by the Telia Group of sole controls over Fintur Holdings from Turkcell), and involved lengthy negotiations with CG Cell Technologies.

Roger: The mandate remained the same, and we fully completed it. After closing though, the company has retained us for various legal – including post-completion – matters. The chemistry has emerged.

CEELM: Vladimir, what specific individuals at Fintur Holdings instructed you, and how did you interact with them?

Vladimir: Since the transaction was subject to English law, we received instructions from Telia's M&A Division and from colleagues from Sullivan & Cromwell, the English-law counsel to the Telia Group. Colleagues from Sullivan & Cromwell were involved in the negotiations throughout the transaction.

CEELM: And Roger, what specific individuals at CG Cell Technologies instructed you, and how did you interact with them?

Roger: Amit Jhunjhunwala – a dedicated and sharp-minded professional, who was very pleasant and positive in communications. It was my first experience doing business with Indian people after my return from a Himalayan retreat. I saw many Indians there, but now had the chance to do business with them. Later on, I had the chance to interact with Nirvana Chaudhary – a respectable while humble person, loving his family and his job.

CEELM: How would you describe the working relationship with Gladei & Partners on the deal, Vladimir?

Vladimir: I would call the working relationship and environment during the transaction as professional. Working with Gladei & Partners was occasionally difficult, but overall everything went well and resulted in a beautiful transaction. Most of the work was done via phone conferencing and e-mail. The parties signed the transaction agreement at our office in Chisinau in February 2020, and the completion took place in Chisinau too, with the parties being represented by the lawyers from Schoenherr (on the seller's side) and Gladei & Partners (on purchaser's side). Indeed, the final phase of the transaction was carried out during the pandemic, which inevitably brought a certain degree of uncertainty, but in the end the expectations of both parties were met.

CEELM: And Roger, how would you describe the working relationship with Schoenherr?

Roger: They had a strong team. Being on the different sides of the barricade, we each bent over backwards to defend our client's interests. Always constructive and solution-driven though, and standing shoulder to shoulder when talking to the third parties, *e.g.*, when visiting the capital market regulator to clear up uncertainties. There was one irreconcilable thing though: Vlad from Schoenherr was wearing black medical gloves upon executing the closing documents in the registrar's office, while I was wearing white ones.

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

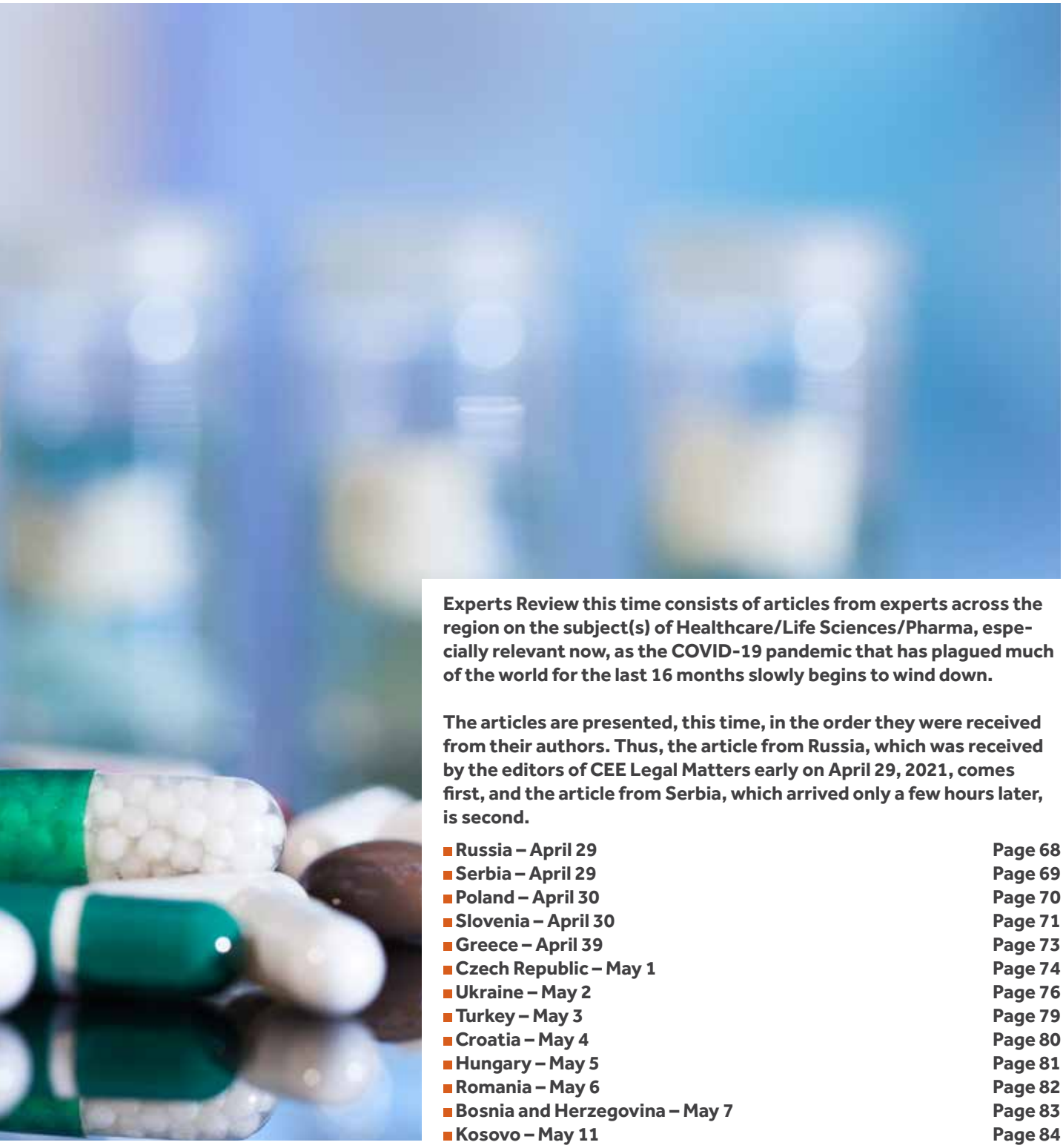
Vladimir: The Moldovan economy is relatively small compared to neighboring countries, and the frequency of bigger transactions is lower. This deal is significant, as it is the first transaction in the history of the country in which full control over one of the biggest GSM operators of the country was passed on to the purchaser. It is to be noted that the transaction was carried out from a foreign shareholder to a [new] foreign shareholder.

For lawyers, this is a unique opportunity to prove their knowledge in a sector, show their skill in M&A transactions and the ability to properly approach everything from the perspective of Moldovan law. After all, a happy client makes its lawyer happy, too.

I look forward to more transactions of this kind in the country.

Roger: It was most significant for the people in Moldcell, probably. A bit tired from several years of shareholder uncertainty, when all they worked at extra speed to keep it up, the people inside have received a burst of energy. "*The lazy competition on the telecom market is over*," as an industry public official put it upon completion. And our later interactions with the company have proved this – Moldcell's business has gained momentum. ■

EXPERTS REVIEW: HEALTHCARE/LIFE SCIENCES/PHARMA



Experts Review this time consists of articles from experts across the region on the subject(s) of Healthcare/Life Sciences/Pharma, especially relevant now, as the COVID-19 pandemic that has plagued much of the world for the last 16 months slowly begins to wind down.

The articles are presented, this time, in the order they were received from their authors. Thus, the article from Russia, which was received by the editors of CEE Legal Matters early on April 29, 2021, comes first, and the article from Serbia, which arrived only a few hours later, is second.

RUSSIA: LEGAL PROTECTION OF PHARMACEUTICAL PRODUCTS IN RUSSIA

By Anna Zabrotskaya, Specialist Partner, and Vera Zotova, Associate, Borenius Russia

The mechanism of patent protection is most in demand in the Pharmaceuticals industry, and a review of judicial practice in Russia demonstrates how zealously pharmaceutical companies protect their exclusive rights to gain a market advantage.

In the Russian Federation, a drug formula can be protected as an invention by the Russian state authority Rospatent. The term of the exclusive right to a patented solution is twenty years from the date of application, and, for pharmaceutical inventions, this can be extended for an additional five years.

After the expiry of patents for pharmaceutical inventions, some manufacturers start producing generics based on these solutions (for example, British company AstraZeneca's Iressa antitumor agent, the patent for which expired in 2019, is now the basis for the generic product Gefitinib-nativ, made by Russian company Nativa). Their actions are legal and owners of expired patents cannot prohibit them.

Within the term of the patent's validity, however, the owner of an exclusive right can have the use of its invention by third parties suspended. In particular, the owner should prove that the infringer's product contains every feature (or method), or its equivalent, of the invention set forth in an independent clause of the patented formula. According to Russian law, the storage or introduction into civil commerce of a drug in which the invention is used or obtained by a patented method will be considered an infringement.

The following actions with patented inventions committed without the owner's consent do not constitute an infringement: (i) carrying out scientific research on a medicinal product in which the invention is used; (ii) using the invention under extraordinary circumstances (natural disasters, catastrophes, or accidents) with notification; (iii) the use of the invention to satisfy personal, family, household, or other needs not connected with entrepreneurial activity, if the purpose of such use is not to gain profit or income; (iv) the single production of drugs with the use of the invention in pharmacies on a medical prescription.

In the event of a violation of the exclusive right to an invention the author or other right owner has the right to demand, instead of the reimbursement of his losses: (a) an award of up to RUB 5 million (approximately USD 66,000), determined by the court based on the nature of the violation; or (b) double the value of the right to use the invention, determined based on the price that, under comparable circumstances, is usually charged for the lawful use of the invention in the manner used by the infringer.

The owner of the right can also apply for the liability measures stipulated by antimonopoly legislation, in particular in cases where the violation of the exclusive right is recognized as unfair competition in accordance with the established procedure.

As an example of the exclusive rights protection, Russia's Nizhpharm (which, since 2004, has been part of the German Stada group of companies) won a dispute against Russia's Altpharm for its unlawful use of one of Nizpharm's patented inventions in its "Uroprost" product for prostatitis medication (Nizhpharm's original product was called "Vitaprost").

In another case, Switzerland's Bristol-Myers Squibb Holdings Ireland Unlimited Company, which used a patented invention in its "Spraysel" product for treating chronic myeloleukemia, persuaded the court to prohibit Russia's Mamont Pharm and Nativa companies from using that patented invention in its competing "Dazatinib-Nativ" product.

To conclude, the legal protection of exclusive rights to patented pharmaceutical solutions is the basis for the unhindered commercialization of such drugs. Legal tools prescribed by Russian laws allow pharmaceutical companies to successfully combat unfair and infringing behavior of other market players. ■

SERBIA: CONFIDENTIALITY IN MANAGED ENTRY AGREEMENTS UNDER SERBIAN LAW

By Srdjan Jankovic, Head of Competition and TMC, Petrikic & Partneri AOD in cooperation with CMS Reich-Rohrwig Hainz

Managed Entry Agreements consist of various forms of confidential arrangements between pharmaceutical companies and paying healthcare systems that aim to facilitate access to new technologies in public healthcare systems. MEAs make innovative and costly medicines or medical technologies affordable to patients by providing conditional access to a reimbursement system for a limited period and on balanced terms.

In Serbia, the first MEAs emerged in 2016, two years after they were introduced in the Rulebook on Conditions, Criteria, Method, and Procedure for Including Medicines on the List of Medicines Financed by the National Healthcare Fund. The Rulebook mentions four types of MEAs. Cap agreements enable manufacturers to contribute to the cost of the medicines by limiting the number of patients whose healthcare costs are reimbursed by the NHF (volume-cap) or by setting overall budget caps (value-cap). Beside the financial agreements, the Rulebook provides for performance-based "risk-sharing" arrangements or other agreements allowed under the national competition rules.

In practice, however, the NHF relies mainly upon financial agreements. A bonus agreement provides discounts for public purchasers in the form of additional quantities that are delivered free of charge and cross-subsidization, where the price of one medicine is funded from the price of another. From 2016 to 2018 the NHF signed just 28 MEAs, predominantly for List C medicines, which include the most costly and innovative medicines for treating serious diseases.

Very little information is currently shared or published about MEAs in Serbia, since the entire process, including the procurement phase, is kept confidential under non-disclosure provisions in the MEAs. The confidentiality leaves sufficient room for the parties to agree on better reimbursement prices without the threat of external reference-pricing being triggered in other countries.

MEAs are subject to Serbia's Freedom of Information Act, but the FIA contains several exemptions that allow public entities to withhold requested information, and MEAs appear to qualify. For instance, disclosing business secrets would be likely to prejudice an interest protected under the law, such that the interest in keeping the information confidential would outweigh the public interest in disclosing the information. The concept of a business secret is defined broadly – according to the relevant rules, a business secret is any undisclosed information that has commercial value because it is not generally known or accessible to third parties who could generate financial benefit by using or disclosing it – so many types of commercial information could potentially be treated as exempt from FIA disclosure.

In addition, in some cases disclosing certain information could prejudice the government's ability to manage national economic processes or significantly impede the achievement of justified economic interests.

The Information Commissioner (*Poverenik za Informacije od Javnog Znacaja*) in Serbia usually suggests a narrow interpretation of the exemption. That makes it difficult for public authorities to prove that the public's interest would be damaged by disclosure. However, we believe that MEAs – at least their financial details, if not their existence – could qualify as exempted information. There are numerous arguments in favor of the benefits generated through MEAs, especially when the NHF is struggling with healthcare budget constraints and needs to use resources efficiently. In situations like this, it seems reasonable to conclude that the public interest in withholding the financial details outweighs the public interest in disclosing them.

However, there is room for a balanced approach that would make the existence of MEAs public while keeping the financial information confidential. For instance, a registry of MEAs that does not reveal the pricing details, or at least making MEA templates transparent, could enable an external evaluation of the entry arrangements and validate that a specific model is beneficial to the healthcare system.

Naturally, MEAs may, at some point, intersect with competition rules, so it is important that they do not inhibit competition from upcoming products. For example, although the three-year duration of MEAs is relatively short, their prolongation could, over time, jeopardize generic entries. Hence, when deciding on extensions of an MEA, especially if a generic entry is imminent, the paying entity should design the commitments under the MEA to make generic competition possible. ■

POLAND: POLISH HEALTHCARE LANDSCAPE DOMINATED BY PANDEMIC

By Anna Mirek, Head of Life Sciences and IP, Noerr Poland

The COVID-19 pandemic has taken its toll on Poland, as it has on other European countries. In April, Poland recorded by far the biggest number of COVID-19 fatalities since the onset of the pandemic in March of last year. Consequently, most of the government's plans to reform healthcare/pharmaceutical legislation have been either frozen or postponed. Most recent legislation has been aimed at legalizing the lockdown or enacting other pandemic measures, such as social distancing and mask-wearing in public spaces, as well as speeding up the vaccination rollout across the country. However, these new laws were essentially technical adjustments to the current framework, rather than revolutionary changes.

New Legislation

As a result of recent updates to the Act of September 6, 2001 on Infectious Diseases and Infections, pharmacists (and a few other healthcare professions, including laboratory diagnostics specialists and medical students) are allowed to train for and administer COVID-19 vaccinations. Strikingly, the Polish government has decided not to add vaccinations against COVID-19 to the statutory list of recommended vaccinations, despite the ongoing public vaccination program. This decision has many practical and legal implications for businesses in different sectors.

Lack of Detailed Regulations on COVID-19 Vaccinations

The Polish Act of September 6, 2001 on Infectious Diseases and Infections provides for both compulsory and recommended vaccinations against various diseases. Citizens are required to be vaccinated against certain diseases; other vaccinations financed by the state are simply recommended, but are not mandatory. The third group of vaccinations consists of those which are neither compulsory nor recommended, and as such are not financed by the state. The fourth group of vaccinations consists of those required for workers exposed to biological pathogens. These vaccinations are carried out and required for the performance of professional activities as defined in a special regulation referred to in Article 20 of this statute and are financed by employers.

Nevertheless, vaccinations against COVID-19 were not included in any of the compulsory vaccination lists, although they are funded by the public budget. This has led to a situation where doctors and chefs are required to be vaccinated against hepatitis, but they are not obliged to be vaccinated against COVID-19 – in the middle of the pandemic. At the same time, refusal of compulsory vaccinations constitutes a petty offense, which is penalized by fines of up to EUR 320, and the fine may be imposed several times.

Legal Implications for Businesses and the Healthcare Sector

Therefore, under current law, employers cannot order their employees to be vaccinated against COVID-19, ask them to provide any information about whether they have been vaccinated against COVID-19, or inform employees who have had professional interaction with the infected employee about their illness (if they voluntarily inform the employer about their illness and consent to other employees being informed).

Violations of these rules (just like, for example, refusing to enter into an employment contract with an unvaccinated person) may expose an employer to liability for damages under anti-discrimination or personal data protection laws. This may have severe consequences for both employers and employees, especially in businesses where the employees' daily responsibilities involve frequent social interaction. On the other hand, employers are obliged to ensure that employees have a safe and healthy work environment and to inform employees about the preventive health and safety measures in place. In the event that an employer's failure to do so would result in damage to an employee's health as a result of contracting an infectious disease, including SARS-CoV-2, this could make the employer liable for damages suffered by the employee.

In recent weeks, the government has rolled out a national program for employers which allows them to organize vaccinations against COVID-19 in workplaces. However, the program is voluntary for both employers and employees. Apart from organizing vaccinations financed by the state in the selected workplace or public clinic, it does not give employers any additional leverage. ■

SLOVENIA: THE IMPLICATIONS OF THE MDR TO SLOVENIA'S MEDTECH COMMUNITY

By Ales Lunder, Partner, and Sasa Sodja, Attorney-at-Law, CMS Slovenia

On May 26, 2021, the EU's new Medical Device Regulation came into force, significantly changing the applicable regime, including – of particular interest to the dynamic Slovenian MedTech start-up community – by providing a new definition of software applications that need to be certified as medical devices.

Previously, software as a medical device (so-called "SaMD") has usually been classified as a class I product (categorized according to risk, contact duration, and invasiveness). Under the MDR, most SaMDs will be classified in higher risk classes. This means that manufacturers will have to fulfil more requirements to receive the CE mark (signifying that products sold in the European Economic Area have been assessed to meet high safety, health, and environmental protection requirements). Instead of allowing manufacturers to make a self-assessment, the notified body (an accredited organization designated by a member state for this purpose) will assess the device's conformity and approve the CE mark based on an audit of the manufacturer's technological workflow and an evaluation of the technical and scientific documentation supporting the device's performance and safety claims.

What is the MDR?

This new regulation will, together with the In Vitro Diagnostic Medical Device Regulation that comes into force next year, gradually replace the Medical Device Directive and the Directive on In Vitro Diagnostic Medical Devices and reshape the framework for access to the medical technology market through a mandatory conformity report for all medical devices from a notified body.

Although we want to focus more on the market access aspect in this article, it is important to note that the MDR reflects a life-cycle approach. Manufacturers will now have to follow the general obligations that require them to establish, document, and implement a quality system that remains effective throughout a device's entire life-cycle. The MDR now covers many more products than before and requires the implementation of a unique device identification device to track devices throughout the supply chain.

The modified framework will affect the notified bodies as well. They will now have to comply with the new rules on designation and continuous assessment of their work. Some countries have even reported that due to the new requirements, many previously-certified bodies have lost that status and closed their doors. Luckily, this has not yet happened in Slovenia.

How the MDR Will Affect Innovative Companies

We could discuss how the MDR was adopted in 2017, how long the transition period was, and how there was plenty of time to prepare. And there is a lot of guidance and support available, and the information has been delivered in a user-friendly way. But …

Although the new MedTech companies will benefit from the transitional period during which medical devices registered under the old rules are recertified (hopefully this will eliminate bottlenecks at the level of the notified bodies), most start-ups and other companies in the Slovenian medical technology industry we are in touch with estimate an additional ten to twelve months of work will now be required before a device obtains the required certificate and is ready for market. Twelve months is a long time for innovative products and solutions; for businesses to gain momentum before other businesses come racing in with upgrades or twists, time is of the essence. The costs associated will not be negligible either, especially for smaller companies. The majority of companies we have contacted estimate that compliance with the new regulations will cost more than five percent of the revenue the relevant software is expected to generate.

This extended certification process, combined with the failure of the Ministry of Health to deliver the regulations it promised to bridge the gaps at the local level (the draft had not yet been published at the time this article was written), makes it clear that the new system will disrupt Slovenia's medical technology industry.

The good news for innovators is, of course, that everyone is in the same boat – a boat that needs to keep floating for a year longer than anticipated. And that is what is most concerning. A business with ideas on how to improve patients' lives is still a business, and these twelve months may make a difference to whether a company decides to go ahead and develop an idea, kick it into the long grass, or … relocate. ■

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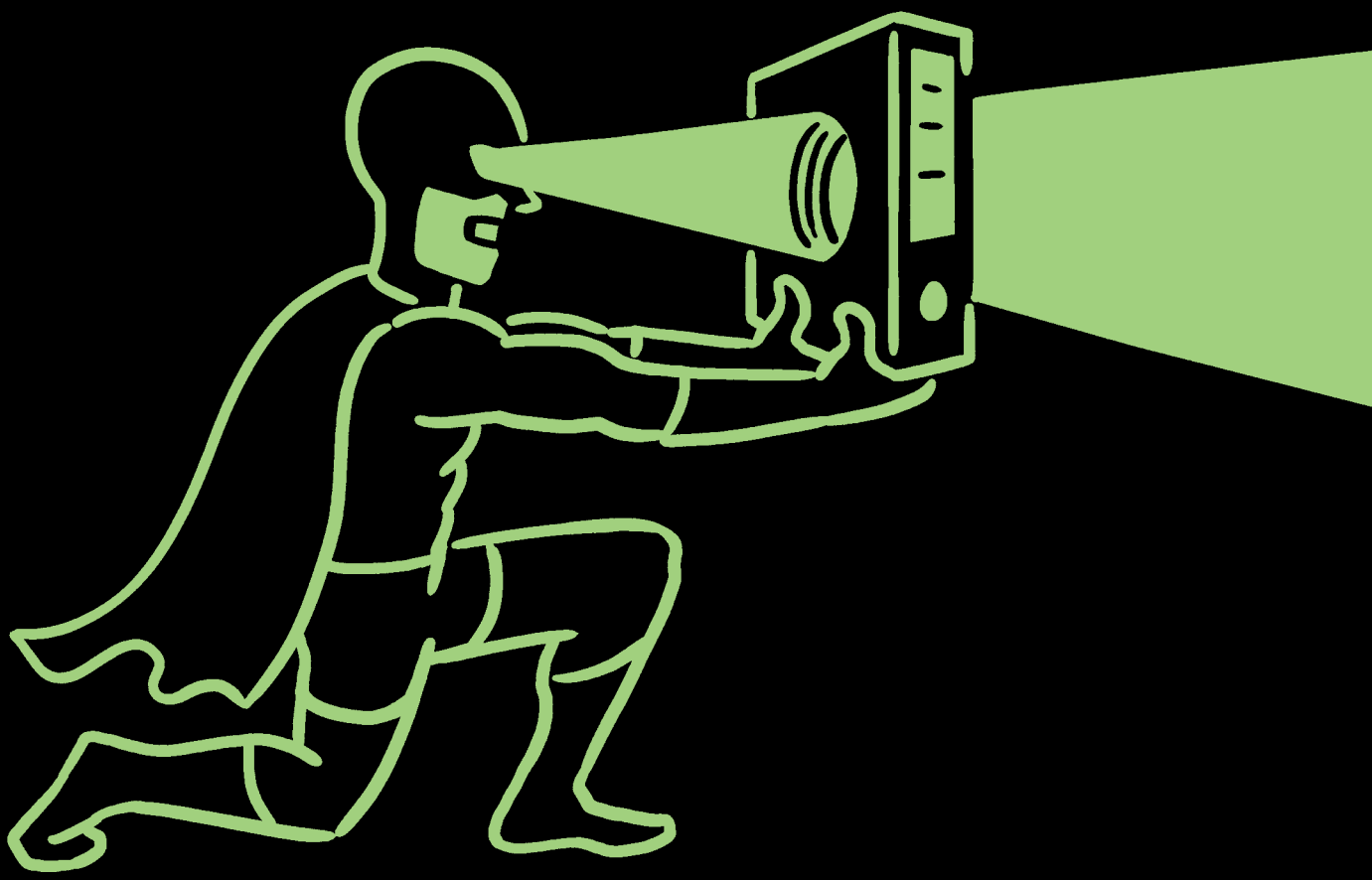

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GREECE: LEGAL AND REGULATORY ASPECTS OF GREEK PHARMACEUTICAL CO-PROMOTION AND CO-MARKETING AGREEMENTS

By Ioannis Manousakis, Managing Partner, and Maritina Michailidou, Junior Associate, ALG Manousakis

For at least the last 15 years, co-promotion and co-marketing agreements between pharmaceutical companies have been valuable instruments for cost-effective marketing of pharmaceutical products. Both types of agreement are used both locally and globally to effectively allocate the skills and expertise of marketing teams based on product type, therapeutic category, and product maturity.

The main difference between the two is that co-marketing agreements include the sale of a product by the Marketing Authorization Holder (or owner of the right to sell the product, or its local representative) to the cooperating pharmaceutical company, while in co-promotion agreements the MAH is the seller and the cooperating company is limited to promotional activities.

In Greek practice, co-marketing agreements are generally concluded for pharmaceutical products that have been marketed for years and are close to losing or have lost market exclusivity (or patent protection, as the case may be). These agreements enable a pharmaceutical company with a mature product to disengage staff from an activity which is usually not similar to its main activities and to assign that activity to a company with experience in marketing mature or generic products. Co-marketing agreements are regulated by Joint Ministerial Decision DYG3(a)/50510/2014. Article 3 of this Ministerial Decision provides that co-marketing agreements are subject to the approval of the Greek National Organization for Medicines (the EOF). The EOF's control is preemptive, since before making any sale of a product under a co-marketing agreement the MAH has to submit a statement which contains the essential elements set out in Article 3. This legal provision requires that the contracting parties clarify that the pharmacovigilance and medical information responsibilities as well as liability from the product remain with the MAH. Also, they need to include provisions on allocating responsibility for promotional materials and medical information and a statement that the sale price to hospitals and wholesalers will be in accordance with the current legislation regulating such prices. Finally, they are supposed to include a provision on the sale price from one company to another (although this obligation, in our opinion, may not be followed, as information about inter-company pricing is confidential business information, falling outside the regulatory scope of the provision).

Co-promotion agreements, on the other hand, allow a pharmaceutical company to outsource its promotional activities to another company, either at an earlier or later stage of a product cycle. These common agreements are regulated by Joint Ministerial Decision DYG3(a)/32221/2013, which transposed EU Directive 2001/83 into Greek legislation. The Directive leaves Member States the leeway to regulate co-promotion by providing adequate and effective monitoring, which may be based on a system of prior vetting. Unfortunately, paragraph 3 of Article 130 of the Ministerial Decision is ambiguous in its wording, although the interpretation by the EOF is clear. The legislative provision requires that co-promotion agreements be notified to the EOF along with the contract, and states that the notification "may be accepted." In essence this is not a notification, but a petition, which may be accepted by the EOF. In actuality, the EOF provides written approval of the notification and only rarely asks for amendments. Contracting parties are also required to include provisions in their agreements clarifying that pharmacovigilance and medical information responsibilities as well as liability from the product remain with the MAH.

From a practical perspective, pharmaceutical companies considering co-promotion or co-marketing agreements need to review the relevant provisions of law and ensure that their agreements align with the requirements, which are not extremely burdensome, although it is worth noting that the EOF examines such agreements carefully. Another practical aspect is that a redacted version of either type of agreement, not containing the commercial terms of the business deal, may be filed with the EOF. Finally, the party assuming the marketing and/or promotional responsibility from the MAH needs to be aware that under both legal provisions it is considered jointly and severally responsible with the MAH for breaches of any relevant provisions of the pharmaceutical legislation. ■

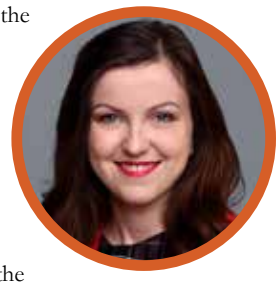
CZECH REPUBLIC: DATA PRIVACY IN CLINICAL TRIALS

By Monika Maskova, Partner, and Ivana Rosenzweigova, Attorney, PRK Partners

The COVID-19 pandemic has accelerated the digital evolution of clinical trials. Introducing new technologies and ways of working with clinical data, improving clinical data access, review, and monitoring processes, and making better use of the data for further scientific research are trends that are here to stay. Side by side with these developments come legal questions about personal data protection. The aim of this article is to shed light on the core legal issue in data processing within clinical trials: its legal basis.

Clinical trials involve the processing of an extensive amount of personal data, including health data and other special categories of personal data regulated under EU General Data Protection Regulation no. 2016/679. The particularity of this processing activity deserves special attention by controllers and their data protection officers. The appropriate legal basis for processing trial participants' personal data and determining whether explicit consent is necessary under the GDPR has been a hot topic of debate. But Opinion no. 3/2019 of the European Data Protection Board confirms that explicit consent is merely one of the possible legal grounds for processing personal data in clinical trials, and that several others may be appropriate, in specific situations, and should be considered by the controllers. The Czech Data Protection Authority has expressed a similar view, stating that informed consent to participate in a clinical trial should not be confused with the explicit consent required by the GDPR. In addition, guidelines issued by the Czech Institute for Drug Control recommend that the written request for informed consent regarding participation in a clinical trial and the privacy notice (or written request for consent to data processing, if applicable) required by the GDPR be provided to trial participants as two separate documents.

According to the EDPB's Opinion, the legal grounds for processing should be determined on a case-by-case basis, taking into consideration the purpose for which the data will be processed in the course of a clinical trial. Therefore, the appropriate legal basis should be determined separately for processing operations that relate to protecting the patient's health and safety, on one hand, and processing performed purely for research, on the other. Alternative legal bases for research-processing activities may be the legitimate interests of the trial sponsor or a task carried out in the public interest, and health data may be processed based on public interest in the area of public health or scientific research purposes. Processing activities related to protection of patient health and safety may be based on the legal obligations of the trial sponsor, while processing of health data may be based on public interest in the area of public health.



Controllers should also separately assess the appropriate legal basis for a secondary use of personal data collected in the course of clinical trials for scientific research purposes, as it may differ from the primary use. In this context, it is worth mentioning that Czech law on data processing provides certain derogations from the GDPR and additional safeguards for the processing of data for scientific research purposes. In particular, Czech law imposes additional obligations on controllers performing scientific research, including the obligation to appoint a data protection officer and adopt specific technical and organizational measures.

The position of the EDPB related to the personal data processing for scientific research purposes was further clarified in the context of the COVID-19 outbreak. The EDPB adopted Guidelines no. 03/2020, which reiterated that explicit consent may be an appropriate legal basis, but depending on the context of the processing, other alternative legal bases should be considered as well. When consent is relied upon, it must be freely given, active, specific, informed, and unambiguous. Controllers should also take into account that data subjects have the right to withdraw their consent. Upon withdrawal of consent, controllers may have to delete the personal data concerned, unless further retention is justified on other lawful bases.

To conclude, controllers should take the time to properly identify the data processing purposes of clinical trials, and carefully assess the applicable legal basis for each processing activity. Explicit consent may be the first one that comes in mind, but other alternatives may be more appropriate, depending on the specific context. ■

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UKRAINE: LAWFUL OPTIONS FOR PROMOTING RX PHARMACEUTICALS IN THE UKRAINIAN MARKET

By Mykola Stetsenko, Managing Partner, and Bogdana Parkhomchuk, Associate, Avellum

The fundamental goal of each company is to increase sales. For this purpose, players that operate in the Ukrainian pharma market utilize a wide range of promotional activities. However, Ukrainian laws on health protection allow very few of them when it comes to prescription (or "Rx") pharmaceuticals.

Currently, advertising Rx pharmaceuticals, sponsoring events that are open to the general public, and ordering the preferred sheltering of such products in places accessible to customers is prohibited. As a result, Ukrainian pharma companies tend to promote new Rx pharmaceutical products using alternative methods – which very often lack clear legal regulation.

The key allowed promotional activities for Rx pharmaceuticals are: (1) Sponsoring scientific events for qualified healthcare professionals (HCPs) as speakers/moderators or participants; (2) Sponsoring publications in specialized periodicals; (3) Dispatching samples and promotional materials among HCPs; and (4) Creating or donating to hospital- and patient-organizations charities.

All such activities must serve a scientific purpose or create a positive image for the company. Pharmaceutical companies are prohibited from demanding that HCPs increase the number of prescriptions of Rx pharmaceuticals following such activities.

Moreover, pharma companies must be careful when engaging state officials, public servants, chief doctors, senior medical assistants of public healthcare institutions (together, "Officials") in their promotional activities as these individuals are subject to anti-corruption legislation.

If an Official participates in a scientific event as a speaker or moderator, he/she may receive a reasonable reward. In addition, pharma companies may also provide Officials with gifts or signs of hospitality. The value of such benefits cannot exceed the established threshold (currently around USD 79 for one-time gift and USD 157 for all gifts received during one year from a single source).

Violations of anti-corruption legislation may lead to administrative or criminal liability.

Officials may bear administrative liability for accepting excessive gifts or signs of hospitality, performing actions influenced by an actual conflict of interest, or failing to take appropriate measures to reveal a corruption offence. Administrative liability may be imposed in confiscating the gift or a fine amounting to up to USD 245.

At the same time, both representatives of pharmaceutical companies and Officials may be subject to criminal liability for the following offenses: (1) Accepting unlawful benefits; (2) Proposing and giving an unlawful benefit; (3) Bribing an officer of a privately-owned legal entity, regardless of the organizational and legal form; and (4) Bribing an employee of a legal entity.

The sanctions for these crimes vary, and may take the form of a fine of up to USD 2400, arrest, imprisonment, and/or prohibition from holding certain positions and engaging in certain activities. Under the most aggravating circumstances, crimes may result in up-to ten years of imprisonment for proposing and/or giving an unlawful benefit, being prohibited from holding certain positions and engaging in certain activities for up to three years, and having property confiscated.

Pharma companies also use sampling and dispatching promotional materials to promote their Rx pharmaceuticals. Under Ukrainian law, HCPs may receive samples only for personal use and clinical trials, but not for their professional activities. Moreover, the distribution of samples directly to patients is prohibited. Pharma companies may distribute promotional materials only to duly-qualified HCPs. Samples and promotional materials are also treated as gifts. Thus, if a pharma company provides an HCP with samples and/or promotional materials with a value exceeding the threshold established for gifts, administrative or criminal liability will apply.

Participating in charitable activities is also a well-known practice that may help pharma companies create a positive image and raise loyalty to their brand. Still, to comply with Ukrainian anti-corruption laws, the key goal of such activities must be the creation of an actual charity. This means that pharma companies must not link their charity budgets to increasing the sales of their products.

Therefore, based on legislative restrictions, pharma companies must promote their new Rx pharmaceuticals with due diligence. Apart from following legislative requirements, companies are encouraged to have an anti-corruption program, to regulate interaction with HCPs, and, particularly, with Officials. In addition, pharma companies may want to apply a stress-check program to ensure compliance with anti-corruption law when launching each promotional and marketing activity with regard to Rx pharmaceuticals. ■

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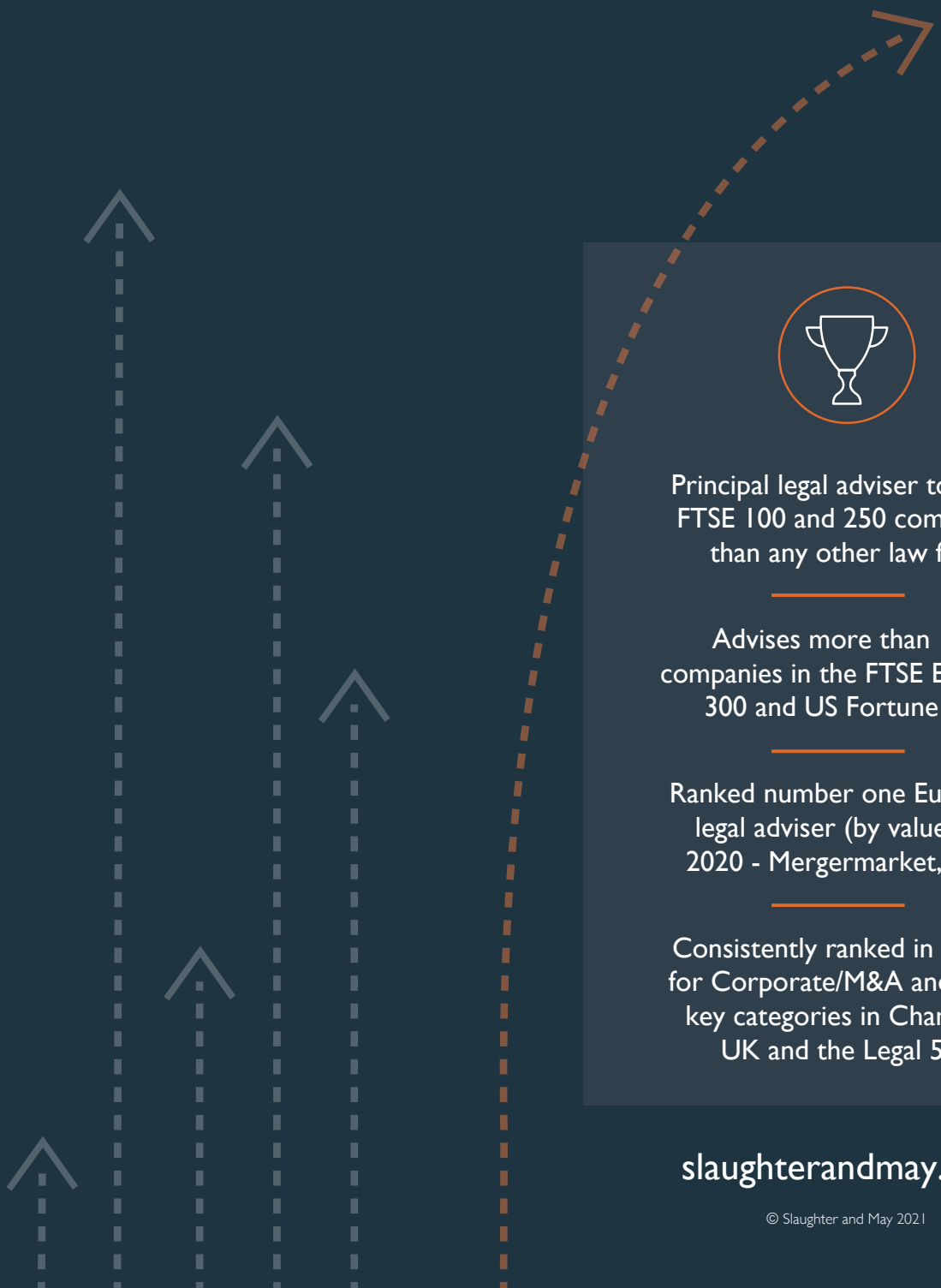

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TURKEY: LIFE SCIENCES AND WASTE MANAGEMENT IN TURKEY IN THE PANDEMIC ERA

By Done Yalcin, Managing Partner, CMS Turkey

As a large country with a population of over 82 million and a comprehensive public and private healthcare system designed to provide an accessible and equitable medical service to each and every person living in Turkey, the potential for every life science-related sector in the country could easily be deemed as advanced.

The COVID-19 pandemic has caused an unexpected transformation of the Turkish and global life sciences sector – particularly in the methods employed to tackle waste management. The domestic production of medicine and medical equipment, personal protective equipment (PPE), and medical and hazardous waste has rocketed over the past year. In Turkey, even though the more settled life sciences sub-sectors such as the one related to the production of medicine and medical equipment have easily adapted to this new era, the management of medical and hazardous waste has faced challenges. Health-related concerns have taken precedence over environmental issues, and waste management has taken a back seat.

The amount of hazardous waste generated by infected persons, the extensive use of medical equipment for tests, vaccinations, treatments, *etc.*, and the excessive use of PPE are significant challenges for the waste management sector. As the COVID-19 pandemic has boosted not only the volume of medical waste but also the amount of hazardous household and plastic waste, proper and efficient waste disposal and waste-management legislation has become crucial for maintaining global sustainability.

As a country which is still attempting to eliminate the irregular management of waste, Turkey faces a considerable threat. The Turkish government has not implemented any structural changes regarding the waste management system during the pandemic, yet, but instead has taken several steps with regard to the micro-management of COVID-related waste. The Ministry of Health published several informative posters, checklists, and brochures emphasizing the importance of separating waste at the source in order to raise awareness and (especially) to ease the handling of waste in waste collection centers.

In April, 2020, the Ministry of Environment and Urbanization, General Directorate of Environmental Management published a "COVID-19 Measures on the Management of Personal Hygiene Waste such as Single Use Masks and Gloves" communiqué, emphasizing that the increased amount of personal hygiene waste must be managed in a more appropriate manner, with instructions given to institutions, establishments and entities, all citizens, municipalities, waste collectors, waste transporters, and waste depos, among others.

Accordingly, all institutions, establishments, and businesses are now obliged, among other things, to: place collection bins at entrances and exits of closed areas to separate waste at the source and collect such waste efficiently; not open the waste bags and/or mix the bags of waste with other waste bags; and ensure that waste bags are delivered to municipalities after they are kept in temporary storage areas for at least 72 hours. Every person who uses masks, gloves, tissues, *etc.*, is instructed to place them, once used, inside untearable plastic bags, tie the bags, and put the bag in *another* plastic bag as a precaution against tearing.

Unfortunately, in the absence of more structural changes, the limited steps mentioned above are not expected to relieve the existing and potentially large-scale threats. Thus, possible enhancements to the waste management policies and potential investments which would improve the current status could be the main tools for a leap forward in Turkey.

The COVID-19 pandemic, in addition to posing a substantial danger to personal health, is a severe threat to the efforts made to establish an enhanced waste management system in Turkey. With sustainability and transitioning to a low-carbon economy firmly on the political agenda, developing countries could fall behind the waste management performance level they achieved pre-pandemic, particularly in the Life Sciences sector. The significantly increasing daily consumption of plastic and single-use equipment in developed countries is also a threat to accumulated efforts regarding the environment, unless such waste is managed in line with optimal standards. All major actors must take this aspect of the pandemic into consideration and establish a waste management structure with enhanced adaptability for any future health and environmental emergencies. ■

CROATIA: AD-HOC REPARATIONS IN CROATIA'S HEALTHCARE SYSTEM: WHAT IS PACTA SUNT SERVANDA?

By Marija Gregoric, Partner, and Ivona Vidovic, Senior Associate, Babic & Partners

A freely-accessible public healthcare system has always been considered one of the pillars of the modern welfare state. However, the dearth of adequate managerial skills and advance planning within the healthcare framework has often led to systemic problems, like issues with financing for a system that is regarded as a public service by users and a private business by service suppliers. This problem has once again resurfaced in the Croatian health sector, with debts accumulated by public hospitals and pharmacies standing in the way of a regular supply of medicinal products and medical devices by manufacturers, wholesalers, and pharmacies.

Delays in payments by both public hospitals and the Croatian Health Insurance Fund (CHIF) for delivered medicinal products are nothing new in the Croatian healthcare system – state actors have a long-established practice of missing contractual payment deadlines. Although the maximum payment deadline of 60 days is prescribed by law, hospitals and CHIF fall behind on their payments for an average of 360 days. Notwithstanding the government's previous *ad-hoc* interventions, the debt owed to medicinal product wholesalers rose to HRK 6.5 billion (about EUR 860 million) at the end of March 2021, corresponding to a whopping 4% of the state budget. And it does not stop there – the debt is growing by a monthly margin of HRK 220 million to HRK 250 million (about EUR 29 million to EUR 33 million), thus representing the latest chain of illiquidity in the state (after the one leading to fall of the agri-food giant, Agrokor). This situation has put the wholesalers of medicinal products in Croatia in an unenviable position: on the one hand, they have a general legal obligation to ensure the appropriate and uninterrupted supply of medicinal products to the market, but on the other hand, by being forced to accept these extremely long payment terms they have effectively been put in the position of indirectly financing the healthcare system.

It is worth noting that, due to the applicable legal framework, wholesalers of medicinal products do not have control over the price formation process for medicinal products. The maximum wholesale prices for medicinal products are set by the Croatian Agency for Medicinal Products and Medical Devices (based on, *inter alia*, a comparative analysis of prices in certain other EU countries). Furthermore, where medicinal products are included on the list of products partially financed by the CHIF (which partially reimburses the wholesaler for the price of those products), the upper limit of the price is actually set by the CHIF. Consequently, although they are obliged to provide medicinal products at prices mostly dictated by other market participants, wholesalers are denied the ability to collect timely payments for their services, while at the same time being obliged to promptly meet their tax and social duties to the state and obligations to their own business partners. Such market dysfunctionalities endanger the entire supply chain, as they put a strain on both medicinal product wholesalers and manufacturers by impeding their production, distribution, further growth, and investment into new products.

As the situation once again escalated to a Gordian knot between the medicinal product wholesalers and the healthcare institutions, in March this year wholesalers activated a safety mechanism under which they continue to provide medicinal products only in the value corresponding to the amount actually paid by the health institutions, using the received funds to discharge previous claims. Due to the threatened shortage of medicinal products, the government had to intervene by promising monthly injections of HRK 600 million (about EUR 80 million) toward hospital debt and HRK 300 million (about EUR 40 million) toward pharmacy debt until June 2021, when a revision of the state budget is expected to provide funds required to further shorten the payment terms. While this measure may have provided short-term relief, the underlying problem remains and requires a more profound reform of the healthcare system, which will hopefully bring Croatian healthcare institutions closer to the *pacta sunt servanda* principle and the rule of law. ■

HUNGARY: HEALTHCARE/PHARMA/LIFE SCIENCES IN HUNGARY

By Richard Lock, Partner, and Csilla Bertha, Life Sciences Lawyer, Lakatos, Koves & Partners

During the COVID-19 pandemic, the Healthcare/Pharma/Life Sciences sector has, not surprisingly, come into focus, with the production licencing and supply of vaccines and the ability of hospitals and healthcare facilities to operate and the production of healthcare products all attracting attention.

COVID-19 Vaccines. Time will tell whether Hungary's use of Chinese and Russian vaccines not following European Medical Agency (EMA) guidelines will turn out to be wise. On the supply side, manufacturers of medicines and equipment are adapting their capacities to the rising demand for vaccine ingredients and packaging both within international supply chains and in the context of the political interest in some level of national self-sufficiency. The Hungarian Government has communicated its interest in establishing a national vaccine manufacture capacity. On the consumer side, it remains to be seen whether people receiving non-EMA-approved vaccines will be restricted in their freedom to travel and work within the EU, while domestically greater freedoms will be given to those who can show a "vaccine certificate."

Hungary in Global Supply Chains. Hungary has long had a role in international supply chains and has a strong position in pharmaceutical and medical equipment and supplies, with both home-grown companies (some, such as Richter Gedeon, internationally recognized), and local operations of multinationals such as Teva. Sanofi-Aventis, Egis-Servier, and GSK. As supply chains are subject to restructuring, this currently results in the development of local capacity in areas such as vaccines and in foreign – *e.g.*, Asian and American – companies establishing or acquiring operations in Hungary.

Private Healthcare Developments. For many years frustration with the services offered by the Hungarian State health system has been a major factor contributing to the demand for private healthcare facilities. The situation has been exacerbated during the pandemic, as non-emergency surgeries have been delayed and public healthcare capacities have been exhausted by emergency operations and COVID-19-related tasks. Unsurprisingly, this has resulted in the increased use of the private healthcare system by those who can afford it – the workload of private hospitals has reportedly increased by about 20% since Covid appeared in Hungary. For lawyers this has given rise to Real Estate and M&A work.

Pharmacies. A recent trend has been for pharmacies in Hungary, which traditionally operated as small independent businesses and are legally required to be at least 50%-owned by qualified pharmacists, to move to new operating structures, such as franchise arrangements, which are currently not restricted by any regulation or official decision of Hungarian authorities. The advantages of this form of cooperation include a sounder financial background, the centralized procurement of a wide range of products, and more sophisticated marketing. The Hungarian Competition Office has recently taken interest in the wholesale drug system by examining whether this form of cooperation between pharmacies could result in prohibited concentrations on the market. The result of this examination will be interesting, as the new style of operation in a cooperative framework will be assessed through the lenses of regulations designed for more traditional structures. These steps provide work for M&A, regulatory, and antitrust lawyers.

Data Protection and Employment Issues. Vaccination is, in Hungary, voluntary. Employers in all areas have to consider whether they can require employees to be vaccinated, keeping in mind both necessity and proportionality, as the individual's freedom to choose and the employer's general obligation to ensure safe and healthy working conditions, including by ensuring protection against infection, conflict. The Hungarian National Authority for Data Protection and Freedom of Information recently published guidelines stating that employers shall generally be entitled to request nothing further from employees than to present their vaccination certificates. As the costs of private healthcare are frequently borne by health insurance, it is becoming increasingly common for employment packages to include healthcare insurance as a benefit, changing long-standing practice in Hungary.

At the time of writing, Hungary had among the highest number of deaths per million in Europe. Notwithstanding the country's disastrous performance during the pandemic – or maybe because of it –the healthcare and life science sectors will continue to be active and generate work for lawyers. ■

ROMANIA: ENACTING TELEMEDICINE IN ROMANIA

By Gelu Maravela, Managing Partner, Mihaela Nyerges, Managing Associate, and Flavia Stefura, Senior Associate, Maravela, Popescu & Asociatii

Not all the impacts of the COVID-19 crisis on Romanian society are negative. The crisis also led to the much-overdue regulation of telemedicine in Romania.

What started out as a temporary solution to the pandemic became permanent when telemedicine was incorporated into Romanian Health Law through Government Emergency Ordinance no. 196/2020, amending and supplementing Health Law no. 95/2006, which came into force on November 19, 2020. GEO no. 196/2020 only regulates telemedicine in broad terms, and the adoption of implementation norms by Government Decision remains necessary. Although the norms were supposed to be adopted within 45 days of the enforcement of GEO no. 196/2020, no such norms have been yet adopted.

Telemedicine Rules in Romania

Telemedicine is defined as all medical services provided remotely, without the simultaneous physical presence of medical staff and the patient, for such purposes as making a diagnosis, indicating treatment, monitoring disease, and/or indicating the methods of disease prevention, securely, through information technology and electronic means of communication. GEO no. 196/2020 sets out the types of services that may be provided through telemedicine, as well as the general rules that are to be observed in delivering them. Telemedicine may be offered by all medical service providers, irrespective of whether they are in contractual relations with a health insurance house.

Telemedicine services consist of: (i) tele-consultations, where medical personnel discuss diagnosis, treatment or prevention methods with patients; (ii) tele-expertise, where medical professionals exchange opinions for confirming a diagnosis based on patient documents, without the patient being present; (iii) tele-assistance, where a medic provides remote assistance to another practitioner on a medical or surgical act; (iv) tele-radiology, where radiologic images are transmitted through digital means to remote specialists for interpretation purposes; (v) tele-pathology, where microscopic images and data are transmitted through digital means to remote specialists for interpretation purposes; and (vi) tele-monitoring, where a remote specialist medic monitors and interprets a patient's medical data sent by the patient or specific devices.

Medical service providers must ensure that patients' rights are observed when performing tele-medical acts, just as when performing in-person medical services. Additionally, patients must be informed of the types and limits of available tele-medical services and may refuse such services in favor of in-person medicine.

Also, the confidentiality and security of remotely transmitted data must be ensured.

Opportunities and Challenges

Regulating telemedicine brings certain advantages both for the patients and for medical practitioners. Patients will, at least theoretically, benefit from faster access to medical care. In practice, the efficiency of the telemedicine system will depend on how providers choose to implement remote services. Moreover, patients from rural communities will see reductions both in their costs and the amount of time necessary to obtain medical services, which are mostly located in urban areas.

From the perspective of the practitioners, telemedicine gives more flexibility and allows them to keep a closer relationship with patients, along with helping them organize and manage their workloads.

However, telemedicine also poses some challenges. Medical service providers will have to ensure data confidentiality and security within both their information systems and the space where the medical act is carried out.

From an infrastructure standpoint, investments should focus on software applications that are both compatible with the sometimes-outdated systems of the National Health Insurance House (to enable practitioners to access electronic patient files stored on such systems), and that embed state-of-the-art security (in order to minimize any liability arising from potential breaches of patient data).

Conclusions

Some forms of telemedicine, such as accessing laboratory analysis results remotely, were practised by medical service providers even before the general-scale regulation of telemedicine. However, GEO no. 196/2020 paves the way for a digital revolution in the provision of medical services in Romania. Nevertheless, regulating telemedicine is just the foundation and more important steps should follow, such as creating appropriate infrastructure and organizing the activity so that patients are convinced that telemedicine is a viable alternative to in-person medicine. Regulating telemedicine is only one step in the optimization of the Romanian medical system, which is in dire need of improvement. ■

BOSNIA AND HERZEGOVINA: PHARMACEUTICAL ADVERTISING GUIDE IN BOSNIA AND HERZEGOVINA

By Anisa Tomic and Bojana Bosnjak-London, Partners, Maric & Co

The Law on Medication and Medical Devices (Official Gazette no. 58/08) and the *Rulebook on Manner of Marketing of Medicines and Medical Devices* (Official Gazette no. 40/10) regulate the advertising of medicines and medical devices in Bosnia & Herzegovina.

Bosnian & Herzegovinian law defines advertising of medicines/medical devices as providing information about medicines/medical devices to the general and professional public in order to encourage their prescription, supply, sale, and/or consumption in written, pictorial, audio, oral, electronic, or any other form.

Advertising medicines/medical devices without a marketing authorization or asserting claims or conclusions about the effectiveness of medicines/medical devices that are subject of ongoing clinical trials is strictly prohibited.

The advertising must provide true and scientifically-proven information about the medicines/medical device, respecting ethical criteria, and with the aim of ensuring their proper and rational use, without misleading consumers. Directly addressing children in the advertising of medicines/medical devices is prohibited.

Advertising to the general public is only permitted for over-the-counter medicine/medical devices, and under the condition that the medicine/medical device has a marketing authorization issued by the state regulatory agency. Advertising a medicinal product to the general public by attributing properties to it that do not exist, exaggerating its positive effect, sensationally and inappropriately describing it, or misleading the user in any other way, is prohibited.

Advertising of medicines/medical devices to health care professionals may be done verbally or in written, pictorial, sound, electronic, or any other form. All information contained in promotional materials that are part of the advertising of the medicine/medical device must be accurate, current, verifiable, and sufficient to enable the healthcare professional to form his or her own opinion about the therapeutic value.

When marketing medicines/medical devices, marketing authorization holders are not allowed to encourage healthcare professionals to prescribe, issue, procure, recommend, or purchase medicines or medical devices by offering or providing cash remuneration, gifts, material benefits, or other benefits or rewards. Health care professionals are also prohibited from receiving such encouragements. The only gifts which may be given to health care professionals are gifts of symbolical value that are strictly related to the medical/pharmaceutical practice – *e.g.*, pens, notepads, calendars, and other similar items of small value.

Promotional gatherings must be scientifically-based and educational, always be limited to the basic purpose of the meeting, and involve only the professional public. The contents of the mentioned meetings must not be for promotional purposes only.

It is worth mentioning that comparative advertising is not allowed – on the contrary, it is strictly forbidden, when advertising medicines/medical devices to the general public, to suggest that a particular medicine/medical device is undoubtedly better than other medicines/medical devices. Advertisers are also not allowed to indicate that the recommended medicine/medical device may be replaced by a different medicine/medical device.

Advertisements to healthcare professionals may not encourage the healthcare professionals that one medicine/medical device can be replaced with another from the same therapeutic group in the absence of clear medical indications. Furthermore, diminishing the therapeutic value of another medicine/ medical device that is authorized to be placed on the market or in any other way encouraging doubt in the value of another medicine/medical device is strictly prohibited.

When advertising a medicine/medical device that is dispensed without a prescription, the following message must be included: "*Read the package leaflet carefully before use. For information on indications, precautions and adverse reactions to the medicine/medical device, consult a doctor or pharmacist.*" In printed media, this warning has to be highlighted and take up at least 1/10th of the ad, and must be written in the appropriate font size so that it can be read without difficulty. In the case of television advertisements, this warning has to be visible on the screen for at least one quarter of the advertisement and be clearly readable. In the case of online advertising (on the Internet or social media), the warning has to be an integral part the main page of the ad, not its link.

Fines for non-compliance of between EUR 10,000 and EUR 25,000 for a legal entity, and EUR 1,500 to EUR 5,000 for its authorized representative, may be imposed. ■

KOSOVO: TRANSFORMATION AND REFORM OF THE PHARMACEUTICAL INDUSTRY IN KOSOVO

By Visar Ramaj, Partner, and Metin Qestaj, Associate, RPHS Law

The pharmaceutical sector in Kosovo is undergoing three major policy and legal reforms to increase its competitiveness and transparency. These reforms are part of a national project to improve the underdeveloped and under-regulated pharmaceutical market which would, in turn, encourage increased spending in the healthcare and pharmaceutical sector.

These reforms include regulating the pricing of pharmaceutical products, mandating health insurance and functionalizing the health insurance fund, and completing and functionalizing a comprehensive health information system.

The first reform relates to regulating the price of pharmaceutical products, as a precondition of implementing the health insurance fund, and as a control mechanism for the tendering procedures for the purchase of pharmaceutical products in light of increased public funding.

The proposed legal framework calls for minimal intervention and mandates a comparison between the price proposals of the holders of marketing authorizations, and a comparison of those price proposals with the average prices in Montenegro, Albania, North Macedonia, and Croatia (known collectively as the "Basket of Reference Countries").

The final price would be determined on the basis of the lowest internal proposal or that offered in the Basket of Reference Countries. It is hoped that this reform will bring transparency and increase competitiveness, based on an expected increase in demand and a fairly under-regulated market.

The second reform relates to the functionalization and implementation of the health insurance fund to establish universal access by citizens and residents to quality basic healthcare services. Kosovo is one of the few countries without a mandatory health insurance scheme, with marginal enrollment in private health insurance, and with the public healthcare sector and purchase of medicinal products directly supported by the state budget.

The creation of a health insurance fund which will collect premiums based on level of income (reaching up to 7% of gross salary (paid jointly by an individual and his/her employer, at 3.5% each)). Once the health insurance fund is made functional, it is expected that spending on healthcare services and medicinal and medical products will increase. This will open the road to new companies investing in Kosovo.

The third reform will consist of implementing health information systems, to facilitate a shift to data-based decision-making in the healthcare and pharmaceutical sectors.

The main objective here is to develop a health information software platform, which, as a nation-wide platform, can be used for such things as clinical registries, medical decision support, public health statistics, and so on. However, this reform is facing delays due to its complexity.

To conclude, these three reforms will have a great impact on the pharmaceutical and healthcare sector in Kosovo. First, the regulation of pricing of pharmaceutical products in Kosovo will increase transparency and competition and open the market to new foreign companies. Second, the implementation of the health insurance law will significantly increase investment in the healthcare and pharmaceutical industry. Third, the implementation of the health information system will transform the industry by providing real-time insights and data-based decision making. ■

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