



CEE

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# LEGAL MATTERS

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

Guest Editorial by Charles Vernon of Vernon | David: Dracula looks at 40 ■ Across the Wire: Deals and Cases in CEE ■ The Buzz Exploring the Ramifications of the Hungarian "Anti-LGBTQ+ Law" on Businesses ■ The Corner Office: How Do You Disconnect? Market Spotlight: Russia ■ Guest Editorial by Scott Senecal of Cleary Gottlieb Steen & Hamilton: The State of the Russian Market in 2021 For the Group and Beyond: A Closer Look at Gazpromneft Expert Solutions ■ Including Rankings as a Tender Requirement – a Russian Case Russia Offers Generous Tax Incentives to Tech Companies Amidst Tightening Control Over the Industry Business Separation in Russia ■ A-Z of English Law Framework Agreements on Russian Cross-Border Transactions Inside Out: AliExpress Russia's Investment in KazanExpress ■ Expat on the Market: An Interview with Jean-François Marquaire of CMS Market Spotlight: Czech Republic ■ Guest Editorial by Sasha Stepanova of KSB: From Suitcase Telephones and Polyester Suits to AI and ESG The Czech Logistics Sector – Strong Growth in the Face of Adversity ■ Havel & Partners Marks 20 Years: An Interview with Robert Nespurek The Unexpected Hat: A Talk with Vice Mayor Roman Pecenka ■ Real Estate in the Czech Republic ■ Data Protection In The Czech Republic The Great Amendment To Corporate Law In The Czech Republic ■ Expat on the Market: An Interview with Tristan O'Connor of CMS Experts Review: Energy / Oil & Gas

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# EDITORIAL: MOVING INTO A NEW HOUSE

By Radu Neag

Hello, everyone!

Radu 2.0 here. I'm a new Editor with CEE Legal Matters. Any errors you spot in this issue of the magazine are a direct result of my oversight.

Please allow me to introduce myself. I usually go by Radu Neag when not actively trying to make my Managing Editor feel inadequate. I have a background in sociology, communications, and data analysis. I'm a former debater, as Radu Prime told you when introducing me a couple of issues ago. I can confirm I'm also a bit of a nerd. I'm married and have an awesome three-year-old son. We have two cats and two dogs and live in the forest.

I joined CEE Legal Matters back in May and found the experience not too dissimilar to moving into a new house – although fewer moving vans were involved.

I first had to pick the one (job or house) that was right for me, and that would still be right for me maybe ten years down the line. So there was a lot of sorting and unpacking of priorities involved. A significant number of pros/cons lists were drafted. A (much smaller) number of close advisors were consulted during the decision-making process.

After making my choice – you'll always know when you find the right one, with the lists and advisors only there to confirm your gut feeling – I prepared as best I could for a hopefully short and painless move. I got excited. I selected, categorized, and packed my actual belongings. I sorted out the paperwork. I figured out the best time to make the move – financially and from a workload/time-management standpoint. I got some

friends to help out. And then I took the plunge.

Waking up every morning eager to start the day is a great feeling to have. I've had that ever since May. It was in no way a painless transition, as Radu will no doubt attest. There was a lot of stuff to unpack upon arrival. Much agonizing over the tiniest decisions, over what goes where and why. There is some paperwork that still needs sorting out, down at city hall. I still find boxes to unpack to this day, some tucked under the stairs, some neatly stored in a cupboard, some I have filed away myself and forgot about already. But that feeling of excitement has not abated.

I have a number of people to thank for making this move much easier and more enjoyable: David, for showing me how the sausage is made; Dajana, for showing me the quirks of the new place and what goes where; Radu, for his patience while I got settled in and his cringe-inducing funnies when that patience would start running out; Andrija and Djordje, for helping me move and unpack the boxes; Zviko and Teona, for being great new neighbors and helping out when I needed a cup of flour; and all the people I've worked with since May, for welcoming me to the neighborhood.

Thank you.

I hope to be around for a (good) long while and have the privilege of meeting all of you in person. ■



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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](mailto:press@ceelm.com)

## GUEST EDITORIAL: DRACULA LOOKS AT 40

By Charles Vernon, Managing Partner, Vernon | David



In the late Summer of 1984, while hanging out in Bucharest one evening, a university friend and I decided (with the help of some local red wine) to go “look for Dracula.” Full of adventure and certainly educational, the experience was not a positive one. Due to the harsh policies of the Ceausescu regime at the time, Romania was a dark place (there were literally few if any lights during the evenings), with little food to eat (even for foreigners like us), and a local population who would rarely, if ever, talk to us

(unbeknownst to us at the time, the Romanian secret police, the *Securitate*, required anyone who had contact with a foreigner to report the interaction – needless to say, this was not conducive to long and meaningful conversations).

Almost 40 years later, I think of that trip whenever I am asked about my experiences in Eastern Europe. How should I explain such vast societal and economic changes? One way to do this is to think of the scene from the *Wizard of Oz* when Dorothy steps out of her black and white life and finds herself in the colorful world of Oz. Wow.

The changes are nothing short of a miracle. Too often, particularly for lawyers, it is easy to get caught up in the glass-half-empty negatives (such as corruption, anti-democratic behaviors, or poor policies and governmental mismanagement). There is no question that if I had a magic wand, there are a plethora of issues I would love to address.

But that is not what I think about when reflecting on my years here. Instead, it is the immense array of colors and progress that I see.

To demonstrate, let’s talk numbers. Using Romania as an example, per the World Bank, annual GDP per capita grew from around USD 1,680 in 1990 to almost USD 12,900 in

2020 – that’s a growth of 7.5 times within 30 years. Per capita Purchasing Power Parity (PPP) in Romania saw growth of over 600% during the same period. Romanians are also getting happier it seems, rising up the ranks in the World Happiness Index from 90 in 2013 to 46 in 2021.

As a lawyer, the sheer range of experiences I have had and the deals I have worked on are something I have thoroughly enjoyed. The chance to work on financing a large shopping mall one day, selling a hydro-power plant the next, and then helping to buy the country’s largest brewery the following week (requiring us to *taste* the product, only as a matter of doing *proper* due diligence, of course!), was viewed as normal back in the day.

But talking to my law colleagues from the US and UK about their careers, it is clear that my *normal* was actually a unique experience arising out of me being in this place, at this time. Sitting around the bar telling war stories, it quickly becomes evident that I have lived a fascinating professional life – unusual in its scope and adventure. I certainly would not blame them if they believed only half my stories. In fact, I am not sure I believe half of what I have seen.

And the people. So much fun and so much flavor. Any developing and rapidly changing place attracts a certain type of person, to be sure. From the pirates, bootleggers, and chancers to the humanitarians, charities, and serious long-term investors, the vast variety of people have made my experiences so much richer.

Seeing local entrepreneurs and professionals rise and succeed is part of the miracle I have been discussing. They have opportunities that their parents (or grandparents) could not have dreamed of, and they are taking full advantage of them, as they should. But emigration is one of the downsides and I do wish more would stay or return to the region, as their drive, energy, and skills would make a huge difference locally.

And so, I end where I begin, with me reflecting on the region today with a perspective of close to 40 years. It’s been a crazy ride... and I would do it all over again in a heartbeat, even if I haven’t met Dracula (yet!). ■

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# ACROSS THE WIRE: DEALS AND CASES

Date Covered	Firms Involved	Deal/Litigation	Value	Country
20-Jul	Eisenberger & Herzog	E+H successfully represented Austrian Airlines before the General Court of the European Union in a state aid-related proceeding.	N/A	Austria
22-Jul	Cerha Hempel; Gowling WLG	Cerha Hempel, working with Gowling WLG as German counsel, advised the SAN Group on the acquisition of Germany-based AniCon Labor GmbH and Campus Grundstücks GmbH.	N/A	Austria
22-Jul	Brandl Talos; Herbst Kinsky; Schoenherr	Herbst Kinsky advised Berlin-based VC firm Project A and Munich-based Senovo Capital and Schoenherr advised Digital+ Partners on the USD 20 million financing round of Anyline. Brandl Talos advised Anyline on the deal.	USD 20 million	Austria
26-Jul	Binder Groesswang	Binder Groesswang advised Anadi Bank on the framework for offering banking services within Austria's tobacco shops.	N/A	Austria
26-Jul	Binder Groesswang; DLA Piper	Binder Groesswang advised Blockpit GmbH on its USD 10 million Series A financing round. DLA Piper advised lead investor MiddleGame Ventures.	USD 10 million	Austria
30-Jul	DLA Piper	DLA Piper advised Cooperative Rabobank U.A., Landesbank Baden-Württemberg, and Norddeutsche Landesbank Girozentrale on their financing for two Highfield Solar Limited solar projects in Ireland with a total capacity of 282 megawatts.	N/A	Austria
4-Aug	Bar & Karrer; Brandl Talos; Davis Polk & Wardwell	Brandl Talos, working with Bar & Karrer, advised AC Immune on the acquisition of Vienna-based Affiris AG's portfolio of therapeutics targeting alpha-synuclein, a clinically-validated active vaccine candidate for the treatment of Parkinson's disease. Davis Polk & Wardwell acted as AC Immune's U.S. legal counsel.	USD 58.7 million	Austria
5-Aug	Chiomenti; Latham & Watkins; Orrick Herrington & Sutcliffe; Schoenherr; Wolf Theiss	Schoenherr, working with Latham & Watkins and Orrick Herrington & Sutcliffe, advised French diagnostic center group Cerba HealthCare on the acquisition of the Lifebrain Group from Investindustrial. Chiomenti and Wolf Theiss advised Investindustrial on the deal.	N/A	Austria
10-Aug	Binder Groesswang; FWP	Binder Groesswang advised BNP Paribas on the sale of Austria's largest online broker Hello Bank! to Bawag P.S.K. Fellner Wratzfeld & Partner advised the buyer.	N/A	Austria
22-Jul	DLA Piper	DLA Piper advised Gazprom Export on the acquisition of Centrex Europe & Energy Gas AG from Gazprombank.	N/A	Austria; Hungary; Russia; Serbia
26-Jul	Bird & Bird; Cerha Hempel; Dorda; Wardynski & Partners	Cerha Hempel and Wardynski & Partners have advised Worthington Industries International on the sale of its shareholding in Poland's Stako to Westport Fuel Systems Italia. Bird & Bird advised Westport on Polish law with Dorda acting as the buyer's Austrian advisor.	N/A	Austria; Poland
20-Jul	CMS; Havel & Partners	Havel & Partners advised Panara a.s. on an unspecified investment from Alpla Werke Alwin Lehner GmbH & Co KG. CMS reportedly advised Alpla on the deal.	N/A	Austria; Slovakia

Date Covered	Firms Involved	Deal/Litigation	Value	Country
2-Aug	CMS	CMS advised UniCredit Bulbank on the refinancing of Solarian Holdings' 21-megawatt operational photovoltaic portfolio in Bulgaria.	EUR 36 million	Bulgaria
5-Aug	Boyanov&Co; Djingov, Gouginski, Kyutchukov & Velichkov; White & Case	Boyanov & Co, working with the London office of White & Case, advised the initially mandated lead arranger J.P. Morgan AG, general security agent BNY Mellon Corporate Trustee Services Limited, and Bulgarian security agent DSK Bank AD on a EUR 360 million facility to Eastern European Electric Company B.V., financing the acquisition of a group of seven targets in Bulgaria, including the electricity distribution utility companies in North-West Bulgaria from CEZ. Djingov, Gouginski, Kyutchukov & Velichkov also advised agent and lender Metric Capital Partners LLP on a mezzanine facility provided to Eastern European Electric Company to partially fund the acquisition of CEZ.	EUR 360 million	Bulgaria
16-Jul	Divjak Topic Bahtijarevic & Krka; Madirazza & Partners	Divjak, Topic, Bahtijarevic & Krka advised the United Group on the acquisition of a majority stake in Optima Telekom from Hrvatski Telekom and Zagrebacka Banka. Madirazza and Partners advised Hrvatski Telekom and Zagrebacka Banka.	N/A	Croatia
22-Jul	Divjak Topic Bahtijarevic & Krka	Divjak, Topic, Bahtijarevic & Krka advised the IFC on its EUR 75 million investment in bonds issued by the Erste & Steiermarkische Bank.	EUR 75 million	Croatia
5-Aug	Vukmir & Associates	Vukmir & Associates advised Erste & Steiermarkische Bank and Zagrebacka banka on their provision of a EUR 24 million club loan to the Arena Hospitality Group.	EUR 24 million	Croatia
16-Jul	Dentons; Havel & Partners	Havel & Partners advised Masonite Czech Republic managers Pavel Satny, Lubomir Brousek, and David Krubner on their acquisition of 100% of shares in the Czech entity from Masonite International. Dentons advised the seller.	N/A	Czech Republic
20-Jul	BNT Attorneys; BPV Braun Partners	BPV Braun Partners advised Mint Rezidencni Fond Sicav on the acquisition of the first stage of the Vysocansky Mlyn project in Prague from Metrostav Development. BNT Attorneys-at-Law advised Metrostav Development on the deal.	N/A	Czech Republic
22-Jul	JSK	JSK advised Cresco&Finance a.s. on the sale of Krnovska Skrobarna spol. s r.o. and Krnovsky Lihovar spol. s r.o. to Reticulum Holding.	N/A	Czech Republic
22-Jul	Bowmans; Dentons	Dentons advised Draslovka on the acquisition of the sodium cyanide business from South African petrochemicals company Sasol. Bowmans advised Sasol on the deal.	N/A	Czech Republic
28-Jul	CMS; Jicha & Holman	CMS advised Patria on the acquisition of two retail parks from Czech development group KPD. Jicha & Holman represented KPD on the deal.	N/A	Czech Republic
4-Aug	Kocian Solc Balastik; Oswaldova & Partners	KSB advised Solitea on its acquisition of Mainstream Technologies. Oswaldova & Partners reportedly advised the seller.	N/A	Czech Republic
6-Aug	Havel & Partners; KPMG Legal	Havel & Partners advised the Heluz family business on the acquisition of insulating glass manufacturer Izos. KPMG Legal reportedly advised the seller, Petr Aschenbrenner.	N/A	Czech Republic
9-Aug	Glatzova & Co	Glatzova & Co. advised venture capital fund Reflex Capital on its investment in Czech event platform Happenee.	N/A	Czech Republic
10-Aug	Kocian Solc Balastik	Kocian Solc Balastik advised J&T IB and Capital Markets on the arranging of 3M Fund MSI's issuance of senior bonds with a value of CZK 1 billion.	CZK 1 billion	Czech Republic
23-Jul	Havel & Partners; Sorainen; Sparring	Havel & Partners and Sorainen have advised PriceHubble on its acquisition of Realtify. Sparring advised Realtify on the transaction.	N/A	Czech Republic; Lithuania; Slovakia
4-Aug	Baker Mckenzie; Corp.	Baker McKenzie advised Lesjofors on its acquisition of the Alcomex Group from Nordian Capital. Dutch law firm Corp. reportedly advised the seller.	N/A	Czech Republic; Poland

Date Covered	Firms Involved	Deal/Litigation	Value	Country
28-Jul	Clifford Chance; Kocian Solc Balastik; Wilsons	Kocian Solc Balastik advised the Arete Group on securing a EUR 30 million loan from Raiffeisenbank. The Prague office of Clifford Chance advised the lender. Wilsons Slovakia advised Arete on Slovak aspects of the deal.	EUR 30 million	Czech Republic; Slovakia
20-Jul	Nove; Sorainen	Sorainen advised Forus Grupp on the acquisition of Tulika Takso from Tulika Grupp. Nove advised the seller.	N/A	Estonia
22-Jul	Cobalt	Cobalt advised Elektrum Eesti on its acquisition of Imatra Elekter's electricity retail business.	N/A	Estonia
22-Jul	TGS Baltic	TGS Baltic's Tallinn office advised Noo Lihatoostus on the repurchase of its 29% holding from the Maag Group.	N/A	Estonia
22-Jul	Ellex (Raidla)	Ellex Raidla advised Superangel on investing in Estonian startup FleetGuru.	N/A	Estonia
23-Jul	Cobalt; Ellex (Raidla)	Ellex Raidla advised HHL Group on the acquisition of 4 million shares of Ekspress Grupp from KJK Fund SICAV-SIF. Cobalt reportedly advised KJK on the deal.	N/A	Estonia
5-Aug	Sorainen	Sorainen advised Tallinn-based Temnikova & Kasela art gallery on a non-fungible token project.	N/A	Estonia
6-Aug	TGS Baltic	TGS Baltic advised Estonian construction company Merko Ehitus Eesti AS on its acquisition of a 35% holding in Connecto Eesti.	N/A	Estonia
10-Aug	Sorainen	Sorainen represented Lux Express and other bus operators in a public service obligation dispute with the Estonian state.	N/A	Estonia
12-Aug	Sorainen	Sorainen advised and represented Elering in two procurement disputes concerning the reconstruction of a 330 kilovolt overhead transmission line in the Viru 330 kilovolt substation and Tartu 330/110 kilovolt substation.	N/A	Estonia
4-Aug	Cobalt; Sorainen	Sorainen advised Finnish Technopolis UMA Holding on the sale of its Estonian and Lithuanian UMA Workspace business to Workland. Cobalt advised Workland on the deal.	N/A	Estonia; Lithuania
20-Jul	Kyriakides Georgopoulos	Kyriakides Georgopoulos advised Alpha Bank on a PPP project refinancing for the Attica Schools project.	N/A	Greece
27-Jul	Zepos & Yannopoulos	Zepos & Yannopoulos advised PPC S.A. on its international offering of EUR 500 million 3.375% sustainability-linked senior notes due 2028.	EUR 500 million	Greece
6-Aug	Bernitsas; Shearman & Sterling; Zepos & Yannopoulos	Zepos & Yannopoulos advised global coordinator and joint bookrunner Citigroup Global Markets Europe on Motor Oil Corinth Refineries' EUR 400 million 2.125% unsecured senior note issuance due 2026. Bernitsas Law advised the issuer. Shearman & Sterling advised initial purchasers Citigroup Global Markets Europe, as well as Alpha Bank, Eurobank, Goldman Sachs Bank Europe, HSBC Continental Europe, ING Bank, J.P. Morgan, National Bank of Greece, Nomura Financial Products Europe, Optima Bank, and Piraeus Bank.	EUR 400 million	Greece
16-Jul	CMS; Szecsenyi & Partners	Szecsenyi & Partners advised M7 CEREF II on its acquisition of the Terrapark Office complex near Budapest. CMS advised the seller.	N/A	Hungary
22-Jul	Baker Mckenzie; DLA Piper	Baker McKenzie advised Swiss Post on its acquisition of a majority stake in Tresorit. DLA Piper advised Tresorit on the deal.	N/A	Hungary
28-Jul	Sorainen	Sorainen advised Domenikss owner Benita Danilenko on the sale of the company to Veho.	N/A	Latvia
12-Aug	Sorainen	Sorainen advised Cardinal Health on the sale of Cordis to Hellman & Friedman.	N/A	Latvia
22-Jul	Motieka & Audzevicius	Motieka & Audzevicius helped the Pharnasanta Group obtain competition clearance for the acquisition of the Vilniaus Metrologijos Centras metrology company.	N/A	Lithuania
22-Jul	Cobalt	Cobalt advised the BaltCap Infrastructure Fund on the sale of Energia Verde to Gren.	N/A	Lithuania



Date Covered	Firms Involved	Deal/Litigation	Value	Country
22-Jul	TGS Baltic	TGS Baltic advised Konstantinas Karosas, Western Petroleum Limited, and UAB MB Valdymas on obtaining approval from the European Central Bank for the acquisition of the qualifying shareholding and voting rights in UAB Medicinos Bankas.	N/A	Lithuania
23-Jul	TGS Baltic; Walless	TGS Baltic advised Greituolis on the sale of 67% of the shares of its online grocery retail platform LastMile to Iki. Walless advised the buyer on the deal.	N/A	Lithuania
13-Aug	TGS Baltic	TGS Baltic represented Lithuanian Orion Asset Management in a case concerning a EUR 40,000 fine imposed by the Supervisory Authority of the Bank of Lithuania.	EUR 40,000	Lithuania
6-Aug	CMS	CMS advised Partner in Pet Food on its acquisition of Polish pet food producer Mispol S.A. from Lithuania-based NDX.	N/A	Lithuania; Poland
30-Jul	Brodsky Uskov Looper Reed & Partners; Turcan Cazac	Turcan Cazac advised Gedeon Richter Plc. on the sale of its Moldovan subsidiaries Gedeon Richter-Retea Farmaceutica SRL and Rihpangalfarma SRL to the Felicia Group. Brodsky Uskov Looper Reed & Partners advised the buyer.	N/A	Moldova
5-Aug	Baker Mckenzie; Gladei & Partners; Sayenko Kharenko; Turcan Cazac	Sayenko Kharenko and Turcan Cazac advised joint bookrunners Citigroup, ING, and Renaissance Capital on the tap issue of USD 50 million 8.45% secured notes due 2026 by Trans-Oil Group. Baker McKenzie and Gladei & Partners advised Trans-Oil Group.	USD 50 million	Moldova; Ukraine
19-Jul	CMS	CMS advised PKN Orlen on the Olefins III petrochemical complex construction agreement with Korean contractor Hyundai Engineering Co. and Spanish contractor Tecnicas Reunidas.	N/A	Poland
20-Jul	Linklaters; Norton Rose Fulbright	Norton Rose Fulbright advised a consortium of financial institutions including the European Investment Bank and underwriters BNP Paribas, ING Bank, Societe Generale, and Santander Bank Polska on senior secured facilities for a new joint venture of Orange Polska and an investor controlled by APG. Linklaters reportedly advised Orange Polska on the deal.	EUR 690 million	Poland
20-Jul	CMS	CMS advised co-organizers and dealers Bank Polska Kasa Opieki and BNP Paribas Bank Polska, securities dealer ING Bank Slaski, and securities administrator mBank on a bond issue program for InPost at a total maximum nominal value of PLN 1 billion, as well as the first issue of bonds.	PLN 1 billion	Poland
22-Jul	Greenberg Traurig	Greenberg Traurig advised Onde S.A. on its IPO and shares admission to trading on the regulated market operated by the Warsaw Stock Exchange.	PLN 444.5 million	Poland
22-Jul	Wardynski & Partners	Wardynski & Partners advised Konami Digital Entertainment on a partnership with Polish game developer Bloober Team.	N/A	Poland
22-Jul	Gorg; Wardynski & Partners	Wardynski & Partners, working alongside German law firm Gorg, advised the Herbstreith & Fox Group on the acquisition of the Naturex pectin manufacturing business from Swiss-based Givaudan SA group.	N/A	Poland
22-Jul	DWF	DWF advised Elektrownia Ostroleka and CCGT Ostroleka on an EPC contract for a 745 megawatt CCGT power plant in Ostroleka and a long-term service agreement with companies from the General Electric group.	N/A	Poland
22-Jul	Rymarz Zdort	Rymarz Zdort advised Griffin Real Estate on a joint venture agreement with Madison International Realty for the development of two build-to-suit properties in Germany.	EUR 80 million	Poland
22-Jul	Act Legal (BSWW); GWW Legal	ACT Legal Poland advised MA Investment sp. z o.o. on the acquisition of 100% of shares in Baltic Wave sp. z o.o. GWW Legal advised the shareholders of Baltic Wave on the sale.	N/A	Poland
23-Jul	Ellisons Solicitors; Eversheds Sutherland; Wolozanski & Partners	Alliott Global Alliance members Wolozanski & Partners and Ellisons Solicitors have advised Web Shield on the sale of its shares in the Web Shield Group to Swedish ZignSec AB. Eversheds Sutherland advised the buyer.	EUR 28 million	Poland

Date Covered	Firms Involved	Deal/Litigation	Value	Country
23-Jul	Allen & Overy	Allen & Overy advised M7 on its acquisition of two warehouse buildings in Mogilenska Street, Poznan.	N/A	Poland
23-Jul	BWHS Wojciechowski Springer i Wspolnicy	BWHS Wojciechowski Springer i Wspolnicy successfully represented Magna Polonia S.A. in an eight-year competition court dispute with Emitel S.A.	EUR 57,6 million	Poland
26-Jul	Rymarz Zdort	Rymarz Zdort advised PGE Energia Ciepła on the last phase of the consolidation of its assets.	N/A	Poland
26-Jul	Greenberg Traurig	Greenberg Traurig advised Benefit Systems on its PLN 94.4 million sale of 118,053 treasury shares in an accelerated book-building process.	PLN 94.4 million	Poland
26-Jul	JDP	JDP Drapala & Partners advised Poland's Inter Metal on the construction of a galvanizing plant in Inowroclaw.	N/A	Poland
27-Jul	DLA Piper; Moskwa Jarmul Haladyj i Wspolnicy	MJH advised Shoper S.A. and its selling shareholders on the company's IPO. DLA Piper advised the financial institutions involved – Biuro Maklerskie PKO BP, mBank, and WOOD & Co.	PLN 363 million	Poland
29-Jul	Eversheds Sutherland; GN Law Gorzelnik Nowicka	Eversheds Sutherland advised Airbridge Equity Partners on the acquisition of a minority stake in Survicate. GN Law Gorzelnik Nowicka advised Survicate on the deal.	N/A	Poland
30-Jul	Dentons	The Warsaw office of Dentons advised the EBRD, DNB Bank Polska, mBank, Bank Pekao, and PZU on their provision of financing to Potegowo Mashav for the expansion of the Potegowo wind farm.	N/A	Poland
30-Jul	Greenberg Traurig; White & Case	White & Case advised Celon Pharma S.A. on its second public offering of 6 million series D shares. Greenberg Traurig advised global coordinators and joint book-runners Dom Maklerski Banku Handlowego, Citigroup Global Markets Europe, Erste Group Bank AG, and Erste Securities Polska, joint book-runners Jefferies GmbH and Jefferies International Limited, and co-lead manager Trigon Dom Maklerski.	PLN 216 million	Poland
4-Aug	Linklaters; Nikiel Wojcik Noworyta	Linklaters advised industrial and warehouse developer Panattoni on its lease of logistics spaces to DHL Supply Chain and MidOcean. Nikiel Wojcik Noworyta advised MidOcean on the deal.	N/A	Poland
5-Aug	Chabasiewicz Kowalska & Partners; Pillsbury Winthrop Shaw Pittman; Soltysinski Kawecki & Szlezak; Winston & Strawn	Soltysinski, Kawecki & Szlezak, working with Winston & Strawn, advised Los Angeles-based investment firm Diversis Capital on the acquisition of image recognition platform developer Shelfwise. Chabasiewicz Kowalska, working with Pillsbury Winthrop Shaw Pittman, represented the sellers on the deal.	N/A	Poland
5-Aug	Dentons; Linklaters	Linklaters advised Bain Capital Credit on a strategic joint venture with White Star Group. The joint venture will invest in logistics projects in Poland and the CEE. Dentons advised White Star Group on the deal.	N/A	Poland
6-Aug	DWF	DWF successfully represented the interests of Multikino S.A. in proceedings over lease agreements.	N/A	Poland
6-Aug	Act Legal (BSWW)	Act BSWW advised Cordia Polska on the PLN 68.8 million issuance of three-year A-series bonds.	PLN 68.8 million	Poland
10-Aug	Balicki Czekanski Gryglewski Lewczuk; Gide Loyrette Nouel	Gide Loyrette Nouel advised the Haitong Bank and mBank on arranging Cognor's PLN 200 million bond issuance. BCGL Balicki Czekanski Gryglewski Lewczuk advised the issuer.	PLN 200 million	Poland
10-Aug	Kwasnicki, Wrobel & Partners	RKKW-Kwasnicki, Wrobel & Partners successfully protected the intellectual property rights of the Historical Museum in Sanok by blocking the sale of almost ten thousand illegal digital reproductions of works by Zdzislaw Beksinski.	N/A	Poland

Date Covered	Firms Involved	Deal/Litigation	Value	Country
11-Aug	BSJP; Russell Bedford Poland	BSJP advised French group Alliando on the acquisition of Polish joint-stock company Bayleg from shareholders Andrzej Woznica, Aleksandra Koprak-Woznica, Marta Woznica, and Krzysztof Iwan. Russell Bedford Poland advised the sellers on the deal.	N/A	Poland
11-Aug	Deloitte Legal; Norton Rose Fulbright	Norton Rose Fulbright advised a club of Polish banks including BNP Paribas Bank Polska and Santander Bank Polska on their PLN 242 million financing for R. Power. Deloitte Legal advised the borrower on the deal.	PLN 242 million	Poland
12-Aug	Act Legal (BSWW); Cherka	Act BSWW advised Strabag Real Estate on the sale of a real estate asset on Canaletta Street in Warsaw to Puro Hotels. Cherka advised Puro Hotels on the deal.	N/A	Poland
13-Aug	Gide Loyrette Nouel	Gide Loyrette Nouel advised Okam Capital on the acquisition of a 62-hectare plot located in Warsaw's Zeran suburb.	N/A	Poland
20-Jul	BPV Grigorescu Stefanica	BPV Grigorescu Stefanica advised Hornbach on the acquisition and development of a DIY Store in Cluj-Napoca, Romania.	N/A	Romania
20-Jul	Filip & Company; Linklaters	Filip & Company, working with Linklaters, advised the Ministry of Public Finance of Romania on a two-tranche Eurobond issue that drew over EUR 3.5 billion from the international markets.	EUR 3.5 billion	Romania
22-Jul	Allen & Overy; CMS; Dentons	Dentons advised the NEPI Rockcastle Group on two loans from the IFC and a bank syndicate led by BRD-Groupe Societe Generale and the Garanti Bank. Allen & Overy London reportedly advised the IFC and CMS Bucharest advised the banks.	N/A	Romania
26-Jul	Suciu Popa	Suciu Popa successfully represented Romanian railway freight carrier Grup Feroviar Roman SA in a commercial dispute against a debt collection company.	N/A	Romania
28-Jul	Kinstellar	Kinstellar advised FirstFarms A/S on the DKK 104 million sale and divestment of its operations in North-Western Romania.	DKK 104 million	Romania
29-Jul	Kinstellar	Kinstellar, working with Linklaters, advised the United Petfood Group on securing approximately EUR 526 million in syndicated term and revolving facilities. BNP Paribas, J.P. Morgan, Rabobank, and ING Bank were the mandated lead arrangers and bookrunners, with ING Bank also acting as agent.	EUR 526 million	Romania
4-Aug	Filip & Company	Filip & Company advised RCS & RDS and several of its subsidiaries on securing two medium-term loans amounting to approximately EUR 232 million.	EUR 232 million	Romania
5-Aug	Nestor Nestor Diculescu Kingston Petersen	NNDKP successfully represented companies that are part of the Efacec Group before the Court of International Commercial Arbitration attached to the Chamber of Commerce and Industry of Romania against local administrative authority Braila County.	N/A	Romania
6-Aug	Act Legal (Botezatu Estrade); CEE Attorneys; DLA Piper; Shoosmiths	Act Botezatu Estrade Partners advised French VC fund Axeleo Capital on its seed round investment into Bright Spaces. DLA Piper advised Bright Spaces. Shoosmiths reportedly also advised Bright Spaces, while CEE Attorneys reportedly advised Romania's Sparking Capital, another investor in the round.	EUR 1.5 million	Romania
9-Aug	PeliPartners	PeliPartners advised Polish developer Scallier on the acquisition of a retail project in Timisoara from the Oasis group.	N/A	Romania
19-Jul	Debevoise	Debevoise & Plimpton advised Russian Norilsk Nickel on a buyback of up to 3.4% of its issued outstanding shares for a total amount of approximately USD 2 billion.	USD 2 billion	Russia
20-Jul	Latham & Watkins	Latham & Watkins advised Russian investment company Sistema on VTB Capital's RUB 7 billion minority investment in Binnopharm.	N/A	Russia

Date Covered	Firms Involved	Deal/Litigation	Value	Country
21-Jul	Debevoise	Debevoise & Plimpton advised the Ultra Group on the establishment of a joint venture with Sredneuralsk Copper Smelter to form and operate an ammonium sulfate production plant.	N/A	Russia
21-Jul	Bryan Cave Leighton Paisner	Bryan Cave Leighton Paisner advised the MTT Group on the sale of MTT to Mobile TeleSystems PJSC for RUB 5 billion.	RUB 5 billion	Russia
22-Jul	Egorov Puginsky Afanasiev & Partners	Egorov Puginsky Afanasiev & Partners advised 3M on Russian legal aspects of personal data processing and website cookies.	N/A	Russia
23-Jul	Dentons; Linklaters	Dentons advised the EuroChem Group on project financing for the construction of an ammonia plant in Kingisepp, Russia, from a bank syndicate consisting of VEB.RF, Sberbank, VTB Bank, Gazprombank, and Otkritie FC Bank. Linklaters Moscow advised the banks.	RUB 123.5 billion	Russia
26-Jul	Liniya Prava; White & Case	White & Case advised the underwriters on the USD 500 million IPO of United Medical Group CY PLC. Liniya Prava advised the company.	USD 500 million	Russia
26-Jul	Egorov Puginsky Afanasiev & Partners	Egorov Puginsky Afanasiev & Partners successfully represented insurance company Rosgosstrakh in a case in which Russia's Federal Antimonopoly Service considered an agreement between the company and another undisclosed insurance company as anti-competitive.	N/A	Russia
28-Jul	Cleary Gottlieb Steen & Hamilton; DLA Piper	DLA Piper advised BestDoctor on securing a USD 26 million Series B investment from Winter Capital Partners, VNV Global, and UNIQA Ventures. Cleary Gottlieb reportedly advised the investors.	USD 26 million	Russia
30-Jul	Egorov Puginsky Afanasiev & Partners	Egorov Puginsky Afanasiev & Partners advised the US-based tool manufacturer Milltronics Manufacturing Company on its entrance into a distribution agreement with an undisclosed Russian counterparty.	N/A	Russia
4-Aug	Bryan Cave Leighton Paisner; White & Case	Bryan Cave Leighton Paisner advised Sberbank Investments and the Russia-China Investment Fund on a RUB 1.6 billion investment structured as a syndicated venture loan in Eruditor Group holding. White & Case advised the Eruditor group on the deal.	RUB 1.6 billion	Russia
4-Aug	Bryan Cave Leighton Paisner; Egorov Puginsky Afanasiev & Partners; Kosta Legal; Legate	Bryan Cave Leighton Paisner, working with Uzbekistan-based co-counsel Kosta Legal, advised Sberbank on its sale of 84.2% of the shares in JSC Akhangarancement. Legate and, reportedly, EPAM advised the unidentified buyer.	N/A	Russia
5-Aug	Alrud	Alrud represented French automobile educational association GNFA in a corporate dispute with a former minority shareholder, an unidentified Russian company.	N/A	Russia
6-Aug	Bryan Cave Leighton Paisner; Rybalkin, Gortsunyan & Partners	Bryan Cave Leighton Paisner advised Russia's Sberbank on its sale of debt and equity in the Eurocement Group to the Mikhaylovsky Construction Materials Plant for an aggregate consideration of RUB 161 billion. According to BCLP, Schellenberg Wittmer advised the seller on Swiss law while Patrikios Pavlou & Associates and Chryssafinis & Polyviou advised on Cypriot law. Rybalkin Gortsunyan & Partners advised the buyer on the deal.	RUB 161 billion	Russia
6-Aug	Bryan Cave Leighton Paisner; Herbert Smith Freehills	Bryan Cave Leighton Paisner advised GetCourse founder and CEO Sergey Mikhaylov on a USD 50 million private equity deal with Goldman Sachs, Winter Capital Partners, and Baring Vostok Capital Partners. Herbert Smith Freehills advised the funds on the deal.	USD 50 million	Russia
6-Aug	BDK Advokati; Holman Fenwick; Jankovic Popovic Mitic; Markovic Vukotic Jovkovic; Sidley Austin	BDK Advokati, working with Sidley Austin, advised Archer Daniels Midland on the acquisition of Sojaprotein from MK Group, Apsara Limited, Mr. Milija Babovic, and Sliderule Trading Limited. Holman Fenwick Willan advised the sellers on the deal, with Jankovic Popovic Mitic advising Sliderule and Markovic Vukotic Jovkovic advising MK Group, Apsara Limited, and Milija Babovic.	N/A	Serbia

Date Covered	Firms Involved	Deal/Litigation	Value	Country
12-Aug	Vulic Law	Vulic Law advised the International Finance Corporation on the restructuring procedure of Vino Zupa.	N/A	Serbia
27-Jul	Baker Mckenzie (Esin Attorney Partnership); Karanovic & Partners; Prica & Partners	Karanovic & Partners advised Founders Jasmina Knezevic and Milan Knezevic on the sale of a 70% share in Bel Medic to Acibadem Healthcare Group. Prica & Partners and Esin Attorney Partnership advised Acibadem on the deal.	N/A	Serbia; Turkey
22-Jul	Z/C/H Legal	Z/C/H Legal advised ZDR Investments on its acquisition from an undisclosed seller of a Tesco hypermarket and a logistics park in the Slovak cities of Presov and Senec, respectively.	N/A	Slovakia
2-Aug	Cechova & Partners; MCL; PRK Partners	MCL advised Bistro.sk founder and minority shareholder Milan Dubec on the sale of the company to Dutch Just Eat Takeaway.com for EUR 50 million. PRK Partners advised Ringier Axel Springer as the other selling shareholder. Cechova & Partners advised the buyer.	EUR 50 million	Slovakia
11-Aug	Deloitte Legal; Dentons; MCL	MCL advised Pavol Jakubec on the acquisition of the remaining 50% of shares in I.D.C. Holding from Kassay Invest. Dentons advised Slovenska Sporitelna on financing the deal. Deloitte Legal advised both on German law.	N/A	Slovakia
21-Jul	Havel & Partners; Ozderin	Havel & Partners advised Compass Europe on forming a joint venture with Fipol Deniz Araclari ve Turizm Plastik Sanayi Ticaret AS. The Ozderin Law Firm reportedly advised Fipol on the deal.	N/A	Slovakia; Turkey
19-Jul	Egemenoglu; Herguner Bilgen Ozeke	Egemenoglu advised the sole shareholder of Esitas Elektrik San. Ve Tic. A.S. on the sale of the entire share capital of Esitas Elektrik to Artech Instrument Transformers S.L. Herguner Bilgen Ozeke reportedly advised the buyer.	N/A	Turkey
26-Jul	Cetinkaya Taktak Semiz Baltali Yorukoglu; Paksoy; SZA Schilling, Zutt & Anschutz	Paksoy and SZA Schilling, Zutt & Anschutz have advised Germany's DZ Bank AG on providing EUR 20 million in financing to Galata Wind Enerji for the development of the Taspinar Wind Energy Power Plant. Cetinkaya Taktak Semiz Baltali Yorukoglu advised the borrower.	EUR 20 million	Turkey
30-Jul	Egemenoglu	Egemenoglu advised Escar Turizm Tasimacilik Ticaret A.S. on the TRY 165 million initial public offering of its shares on Borsa Istanbul.	TRY 165 million	Turkey
11-Aug	White & Case (GKC Partners)	GKC Partners advised joint bookrunners Citi, Goldman Sachs, and JP Morgan on Aydem Renewables' USD 750 million inaugural issuance of senior secured green bonds.	USD 750 million	Turkey
11-Aug	BTS & Partners	BTS & Partners advised 500 Startups and Qnbeyond Ventures on investment in Ango AI. Solo practitioner Furkan Karacam advised the founders of Ango AI on the deal.	USD 720,000	Turkey
16-Jul	EY Law; Vasil Kisil & Partners	Vasil Kisil & Partners advised the Avrora Group on the sale of a minority stake to Horizon Capital private equity fund. EY Law advised Horizon Capital on the deal.	N/A	Ukraine
20-Jul	LCF Law Group	LCF Law Group advised Scatec Solar on the launch of a 148-megawatt solar power plant located in the Mykolaiv region.	N/A	Ukraine
22-Jul	CMS	CMS Kyiv helped Stakelogic obtain a B2B supplier license from the Commission for the Regulation of Gambling and Lotteries in Ukraine.	N/A	Ukraine
4-Aug	Sayenko Kharenko	Sayenko Kharenko acted as Ukrainian legal counsel to the EBRD on its provision of a Hryvnia currency loan equivalent to EUR 25 million to Ukgasbank.	EUR 25 million	Ukraine
10-Aug	Golaw	Golaw successfully defended the interests of Canadian investor TIU Canada over a solar power plant disconnection.	N/A	Ukraine

# THE BUZZ

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

## Croatia:

### Interview with Marko Porobija of Porobija & Spoljaric

By Andrija Djonovic (August 20, 2021)



With the summer months comfortably set in, Croatia is experiencing a most favorable tourism season which impacts all areas of business, according to Porobija & Spoljaric Partner Marko Porobija.

“Things have been very quiet on the political front,” Porobija says, mentioning that the Croatian parliament is in summer recess and that things have slowed down legislatively as a result.

“The tourism sector, on the other hand, that’s what it’s all about right now,” Porobija continues. “The season has, so far, shattered all expectations – some tourism hotspots are doing even better than in 2019, mostly high-end locations in Istria and around Split.” With most tourists avoiding large, crowded hospitality centers like hotels, 2020 has been less than stellar for Croatia, but 2021 has turned a corner. “It would appear that the sector has not only survived but is thriving right now,” Porobija says.

“This positive trend in hospitality proves that it is a robust and stable sector, with no bankruptcies and insolvency situations among hotel chains on the seaside – Vila Dubrovnik even had an IPO!” He says that several other tourism sector IPOs are in the works for the end of the year and that things are moving

along nicely, with no indications that the season will be halted due to the COVID-19 pandemic like it was last year.

The IT sector in Croatia is another “winner of the Covid era,” according to Porobija, with big equity investments in companies such as Microblink, Photomath, or Infobip, and the sale of Nanobit happening in the last 12 months. “This is another industry where we can expect many pleasant surprises, come fall and winter,” he accentuates.

Further, Porobija says that this fall might see some legislative updates and overhauls that could impact businesses. “The digital transformation of the justice system is the hot topic here, with an e-communication system, which is already widely used in commercial and municipal courts, finally set to be implemented into administrative courts,” he says. “The justice system should be almost fully e-operational by the end of the year, with courts’ internal operations not lagging far behind.”

Continuing, Porobija says that the issue of work being prohibited on Sundays is another interesting topic in Croatia right now. “It has been attempted to pass this into law several times – only for the retail sector – and the Constitutional Court has shot it down every time, but here it is again, rearing its head.” He believes that it will die away again. Additionally, Porobija says that “certain reforms to the court system could be in the works, as well as potential changes to the company law framework – which was last updated two years ago.” He also mentions expectations for the legislator to address the matter of individual bankruptcy.

Finally, Porobija mentions a piece of EU legislation he considers to be of the utmost importance for the Croatian legal framework and that of the entire Union. “The newly announced Market in Crypto-Assets Regulation (MiCA) has seen its first draft released recently and, while some aspects would require further work, it is a step forward in regulating relevant crypto-market issues and providing a framework for it,” he says. He feels that this is going to be a “hot topic in the future and that Croatia should prepare for it well in advance.” ■



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Ukraine:

Interview with Maksym Maksymenko of Avellum

By Djordje Vesic (August 23, 2021)



According to Avellum Partner Maksym Maksymenko, the key developments in the country’s economy revolve around infrastructure projects, agricultural land regime liberalization, and large-scale privatization of certain state-owned companies.

Maksymenko also reports several updates in legislation, primarily in the areas of zoning and city planning, and capital markets.

“One of the main promises of the current government was the Big construction program,” Maksymenko says. “Under the program, until the end of this year, the government plans to reconstruct more than 6,500 kilometers of roads, as well as many hospitals, schools, and kindergartens,” he explains. “The current state of Ukraine’s road infrastructure is fairly poor, so this program will be beneficial to the whole nation,” he notes. He also points out that the Kyiv ring road is to be built as a part of the program, which is expected to alleviate the traffic issues in Ukraine’s capital. According to Maksymenko, Ukravtodor, the Ukrainian state agency that manages public road infrastructure, is in charge of the program. “The program will be financed by Ukravtodor’s recent USD 700 million bond issuance,” he says (as reported by CEE Legal Matters on July 14, 2021).

In addition, according to Maksymenko, the number of PPP deals has increased in recent times. He points to Ukraine’s 2018 overhaul of the PPP legislation, which brought it in line with EU practices and laws, as the main reason behind the rise. “The process has been made simpler and more transparent and last year Ukraine signed concession agreements for the Olvia and Kherson seaports under these regulations.”

Another important event in Ukraine’s economy was the lifting of the moratorium on agricultural land acquisition. “Around 70% of the country is agricultural land and its sale had been prohibited for 20 years.” Under the new law, Maksymenko explains, Ukrainian citizens and Ukrainian-owned companies are allowed to purchase land and even change its designated use. He reports that, since the law’s entry into force on July 1, 2021, there have been more than 8,000 registered acquisitions.



*One of the main promises of the current government was the Big construction program. Under the program, until the end of this year, the government plans to reconstruct more than 6,500 kilometers of roads, as well as many hospitals, schools, and kindergartens.*

Privatization seems to be the next big thing, according to Maksymenko, with the government looking into selling various state-owned companies. “The tender for the privatization of the world’s biggest titanium and zirconium producer, United Mining Chemical Company, will be held on August 31, 2021,” he says and adds that the starting price has been set at USD 136 million. “The Ukrainian State Property Fund also plans to sell the Kyiv Machine Building plant for a starting price of USD 52 million,” he says and notes that the plant covers around 35 hectares of prime real estate in Kyiv.

Moving on to legislation matters, Maksymenko reports that the zoning and city planning law underwent a significant reform, which has simplified procedures related to land allotment and change of its designated use, among other things. Finally, he also notes that on July 1, 2021, an amendment to the law on capital markets has been adopted, which was designed to give impetus to the development of financial technology in the country. ■



## Bosnia & Herzegovina: Interview with Emina Saracevic of Saracevic & Gazibegovic Lawyers

By Andrija Djonovic (August 24, 2021)



A significant number of updates, changes, and amendments to the legal framework of Bosnia & Herzegovina spells out a very strong positive direction that the country is moving in, according to Saracevic & Gazibegovic Lawyers Partner Emina Saracevic.

“There are two main things that have ushered in an air of hope and sense of betterment, when it comes to the political situation in the country,” Saracevic begins. “First, the recent amendments to the criminal code of BiH have created a stricter framework regarding the denial, support, or downplaying of genocidal crimes, crimes against humanity, or war crimes.” The second, she says, is the arrival of the new High Commissioner, Christian Schmidt, that is poised to “work on strengthening of progressive streams in the country and the EU path it finds itself on.”

These two events are key, Saracevic says, to “curbing regressive ideologies that are hampering social prosperity and are dragging down the socio-economic and business climate.” She hopes that this will encourage young professionals to stay in BiH and work on improving the status of the local economy.

Furthermore, Saracevic says that this recent political enthusiasm has also contributed to an improved tourism season. “Recent data indicates that June of this year saw an uptick of 231.7% when compared to the same period of last year. The tourism sector has benefited greatly from the proper usage of national parks, historical monuments – most of which are UNESCO protected – and cheaper prices than those in the EU.”

Also, Saracevic says that, in addition to staple sectors such as the wood industry, there have been other positive movements

of note. “The IT sector has seen a staggering growth when it comes to exports, increase in income, and the number of workers, all the while being relatively low-maintenance in terms of investing and developing,” she says.

“A new Bankruptcy Act has been ushered in as well,” Saracevic says “which has introduced numerous changes seeking to improve the legal framework in this area.” According to her, restructuring has been introduced with these recent changes, and the “Financial Information Agency is authorized to commence it, should a legal entity face over-indebtedness.”

Additionally, Saracevic says that a new Accounting and Auditing Act has passed. “The new act seeks to improve this area, improve the certification procedure for professionals, and further streamline the legal framework.” However, she says that the act has not dealt properly with the issue of outsourcing of accounting services outside of the country, “which has caused concern among a number of subsidiaries of international corporations present on the market.”

***The tourism sector has benefited greatly from the proper usage of national parks, historical monuments – most of which are UNESCO protected – and cheaper prices than those in the EU.***

Saracevic attributes a lack of major transactions to the ongoing global pandemic of COVID-19. “Still, it is worth noting that the German retail chain Lidl has entered the market and that H&M has expanded its business as well,” she says. “Additionally, starting from October, Wizz Air Abu Dhabi will expand its air flight network to Sarajevo as well and the Optima Group has asked for regulatory approval to enter the market.”

Finally, talking about infrastructure projects, Saracevic mentions Corridor 5C, the pan-European transport project that goes through BiH. “The EBRD has authorized a EUR 12.6 million grant for a portion of the project, at the beginning of August,” she says. “Also, it is very important to note that the Securities Commission has finally been changed and that the commission will resume its work at last. After two years, some 400 businesses waiting for important decisions on corporate matters, and BAM hundreds of millions locked up in capital – the deadlock is set to end,” Saracevic says, adding that all it takes now is for the Parliament to make this decision final. ■

## Czech Republic:

### Interview with Barbara Kusak of Noerr

By Djordje Vesic (August 30, 2021)



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*It is difficult to make predictions, but I think that a major topic of the elections will be the country's poor epidemiological situation and response, which heavily impacted the budget.*

According to Barbara Kusak, Partner at Noerr in Prague, the Czech Republic is currently preparing for its upcoming general elections. She also notes that the Czech economy shows no signs of contraction, despite the country's abysmal COVID-19 infection rates, and that the infrastructure, IT, and e-commerce sectors are on the rise.

“We are expecting general elections in October, so we are in the typical pre-election mood,” Kusak says with a smile. “It is difficult to make predictions, but I think that a major topic of the elections will be the country's poor epidemiological situation and response, which heavily impacted the budget,” she says and notes that the country amassed a USD 20 billion deficit in the wake of the pandemic. Kusak also notes that the government keeps busy with the Czech Republic's upcoming presidency of the Council of Europe.

As for the economy, Kusak reports that, overall, it still seems unfazed by the pandemic. However, she admits that certain negative effects are tangible. “The inflation is growing and our need for workforce remains,” she says and explains that the country lost potential investors due to not having enough manpower for certain projects.

Looking at individual industries, Kusak notes that e-commerce is doing very well. “We recently had a substantial investment in online grocery delivery platform Rohlík,” she says (as reported by CEE Legal Matters on March 9, 2021). Unsurprisingly, the IT sector is also booming, according to Kusak. She lists NortonLifeLock's landmark Merger with Avast as one of the key transactions in the sector (as reported on August 23, 2021). In addition, Kusak reports that there has been no shortage of infrastructure projects. She points to the D4 motorway extension as one of the most recent examples (as reported on May 14, 2021). However, she notes that infrastructure projects aren't really the primary drivers of the economy, with the Czech Republic already being quite developed.

Furthermore, according to Kusak, the automotive industry is getting back on track, after it was forced into shutdown by the pandemic, as well as the shortage of parts and materials. Also, Kusak says that the logistics sector is currently hot and has been for a couple of years. However, she explains that most of the deals are related to acquisitions, rather than the development of logistics centers, as there isn't enough room and people “are complaining about having warehouses in their backyard.”

Finally, Kusak reports that there has not been much legislative activity in the last few months. However, she notes that the new FDI regulation, which imposes restrictions on foreign investments in strategic sectors, has been implemented in May 2021. ■

According to Konstantin Mikhel, Managing Partner at Vlasova Mikhel & Partners, sanctions-burdened Belarus is slowly preparing for the change of its constitution. In addition, Mikhel reports that two sets of “pertinent amendments” have been passed recently – one to Company Law and the other to Advocacy Law.

“The tension in society was recognized by both the government and the people,” Mikhel says and reports that Belarus is on its way to a new constitution. He explains that there are several versions of the supreme law, yet none of them are official. “One draft, published by the opposition, plans to make Belarus a parliamentary republic with a mostly ceremonial president, like in Germany, Poland, or Lithuania, and would see some other presidential prerogatives abolished,” says Mikhel and explains that such a solution would be quite different to the status quo.

Another draft was announced by the Presidential Constitutional Commission, according to Mikhel. “This unofficial and, most likely, not final version keeps the presidential republic with broad presidential power, but, at the same time, unlike in the current constitution, it would make an act issued by parliament stronger than a presidential decree,” Mikhel details. “The draft also entails the creation of a new state body, the Belarusian People’s Council, which would have authority over both the parliament and the president,” he says and adds that such a body is reminiscent of the Soviet or Chinese system, which speaks volumes of its credibility. According to Mikhel, the president also announced that he will be presenting his draft in the autumn of 2021, with the referendum planned for no later than February 2022. “It’s unlikely that the opposition’s draft will be presented at the referendum together with the government’s draft,” Mikhel reports.

The political instability brought international sanctions upon Belarus, and Mikhel acknowledges that, as a result, foreign investors have grown reluctant to invest in the country. The M&A sector suffered as a result. However, despite the lack of FDI, some parts of the economy are doing quite well, according to Mikhel. “We increased exports of food, wood, and oil products,” he says. There are a number of real estate projects planned for implementation, Mikhel reports, and points to a USD 4 billion hotel, office, and residential project that a UAE investor plans to develop in Minsk.

Moving on to the matter of legislation, Mikhel reports that two sets of amendments have been passed recently. The first one introduced an “option program” in the Company Law, under which a company may issue shares to its management and employees as a part of their remuneration, Mikhel details. The second set of amendments pertains to the Advocacy Law. According to Mikhel, the amendments liquidated the once independent Advocacy Bureau and determined that advocacy activities may only be performed as a legal consultancy within the Bar Association. In addition, the law still retains the distinction between advocates and licensed lawyers, with only the former being able to represent clients in courts, while lawyers can only practice on business matters. ■

## Belarus:

### Interview with Konstantin Mikhel of Vlasova Mikhel & Partners

By Djordje Vesic (August 31, 2021)



*This unofficial and, most likely, not final version keeps the presidential republic with broad presidential power, but, at the same time, unlike in the current constitution, it would make an act issued by parliament stronger than a presidential decree.*

## Hungary:

### Interview with Kinga Hetenyi of Schoenherr

By Andrija Djonovic (September 03, 2021)



Even with the summer holidays firmly established in Hungary, the country is seeing activity across the board and a couple of interesting legislative updates stand to improve the landscape even further, according to Schoenherr Managing Partner Kinga Hetenyi.

“It’s the middle of summer holidays, almost everybody is on vacation,” Hetenyi begins. “The Parliament is not in session until September and the courts are closed until August 20 – it’s a veritable relaxation period after a very busy Q2, with a huge number of M&A transactions running in parallel.” Still, despite the holidays, she reports interesting legislative updates of late.

“A major piece of new legislation that got all the lawyers excited is the new act on the registration of legal persons and the registration procedure,” Hetenyi continues. The new act, she says, is a comprehensive reform of the system which resulted in the creation of one single electronic register for all legal entities in Hungary. “Everything will now be joined in one register, it’s a major step forward! Companies, NGOs, associations, foundations, investment funds, and finally even law firms will be there.”

This, according to Hetenyi, tries to solve the existing problem of a “fragmented registration” reality for legal entities in Hungary, with often varying practices, even within the same type of register, depending on the location or the relevant judge or official actually doing the registration. “The new Act aims at standardizing and simplifying the rules, and it even introduces automatic decision-making.” She explains that “this procedure means that the documents submitted will not be examined by the registering body for their legality, but the responsibility will be shared between the registering body and the legal

representative, who will have to file a declaration confirming that the documents are adequate and suitable for registration.” Hetenyi says that the new law will come into effect in July 2023, which “indicates how important and wide this reform is, if the lawmaker considered two years a necessary period for adjusting.”

Also, Hetenyi reports that a new land registry procedure is now in place in the country. “Most parts of the new law covering land registries will enter into force at the start of 2023,” she says. “This was one of the last areas in Hungary where things were mostly paper-based and will be digitalized now – everything from buying properties, all the way up to registering mortgages.” Hetenyi feels that this update will speed things up significantly and make it easier for businesses, especially in the real estate sector.

And, speaking of the real estate sector, Hetenyi reports that, in addition to the general M&A market, real estate is also booming again. “The construction market has been on quite of a rise, there are a lot of new projects everywhere, as well as planned renovations,” she says. Also, Hetenyi mentions that the banking sector is set to experience a shake-up. “There are a lot of consolidations going on right now and some interesting acquisitions and mergers are expected – the result of which could be a bank that would be a true competitor to OTP,” she says. Additionally, she mentions that Commerzbank Hungary is up for sale and it remains to be seen who will buy it.

All of this, Hetenyi says, points to a booming economy of the country. “Hungary is a front runner in terms of vaccinations in Europe and, with almost all the Covid-related restrictions being lifted, the country can only go up from here,” she says.

There are still some hurdles ahead, however, with the fact that tourism hasn’t reverted to pre-pandemic levels, Hetenyi says. But regardless of that, domestic and international financial institutions predict an uptick in Hungary’s GDP. “There is generally not a high degree of fear for a fourth wave of the pandemic, which spells out why there is such faith in a bounce-back for our economy,” she concludes. ■

### Bulgaria:

## Interview with Richard Clegg of Wolf Theiss

By Andrija Djonovic (September 06, 2021)

With the interim government firmly in charge until the upcoming elections take place, Bulgaria is experiencing strong economic wind in its sails, according to Wolf Theiss Partner Richard Clegg.

“Politically, Bulgaria is going through a change right now,” Clegg begins. “An interim government is in place and a third set of elections are expected before the end of the year.” But, even with that said, the country has been experiencing positive movement. “Bulgaria, maybe due to its positioning, has seen investments coming from all over the globe over the last 18 months, particularly from the US – more so than before – and it has been really positive,” Clegg continues. The US is currently a major source of capital investments. “Institutional capital from the US into technology and manufacturing companies brings with it know-how, expertise, and access to international markets. Also, it brings a certain stability to the business climate in the country and connects Bulgaria to the rest of the world, on a macro level,” he says.

Clegg says that, over the last several years, Bulgaria has established itself as prime real estate for startups and that it is now reaping the rewards. “We see that there are now a sufficient number of startups reaching Series B or Series C investment stage, which has generated more interest from other venture capital funds and, of course, a lot of legal work as well,” he says.

Additionally, Clegg reports an uptick in the number of corporate transactions. “We see investments coming in a variety of different sectors – building up production facilities and entire teams. The capital that’s being committed to the country in this cycle seems to be longer-term capital, which is benefiting the economy across all sectors, including the legal market, as there is additional higher-value ongoing work in areas such as employment and IP.”

Finally, Clegg says that all of this is showing through significant projects. “The concession project for the Sofia airport recently saw a strong consortium of commercial and IFIs, including the EBRD and the EIF – a sign that interest in financing strategic infrastructure is generally strong,” he says. “Also, financial services are booming – not just in traditional funding, but also in terms of fintech – market players are preparing for the future and the number of transactions is rising.”

Clegg underlines, in conclusion, that the Bulgarian economy seems to be on the up and up. “In many areas the economy is advancing from being only a low-cost option, and is building things from the ground up,” he says. “R&D, engineering... people are building value in many sectors, far more and beyond basic outsourcing work – which is a very positive sign.” ■



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*Bulgaria, maybe due to its positioning, has seen investments coming from all over the globe over the last 18 months, particularly from the US – more so than before – and it has been really positive.*

# EXPLORING THE RAMIFICATIONS OF THE HUNGARIAN “ANTI-LGBTQ+ LAW” ON BUSINESSES

By Radu Neag



On June 15, 2021, Hungary passed legislation that bans the dissemination of content in schools deemed to promote homosexuality and gender change. Dubbed by many as simply the “Anti-LGBTQ+ Law,” it has wide-ranging implications – even leaving social issues / social impact aside. CEE Legal Matters spoke with several Hungarian lawyers to discuss the law’s business implications and the impact it had on law firms’ work.

## From Original Intentions to Vague End Result

“In its original form, the law was meant to help prevent instances of pedophilia more effectively,” says Szecskay Attorneys at Law Partner and Head of Competition Aniko Keller, noting that, “for example, it introduced new measures such as registering offenders and the like.” During the legislative process, “several amendments were proposed to the original

draft, which made it into the bill that was finally adopted. Based on these, new restrictions on advertising and commercial communications have been introduced and need to be taken into account by media outlets and content providers.” Baker McKenzie Counsel and Head of Intellectual Property Zsofia Lendvai explains that the law is a lot like “salad legislation,” in that it deals with and amends a lot of different laws. “The pedophilia section is amending criminal law. In addition,

the legislation amends the Media Act and the Child Protection Act as well. And through the Media Act, advertising law has also changed.”

Wolf Theiss Partner Janos Toth agrees that “the new law is causing some amount of turbulence for media and content owners, in particular, and generally for quite a number of other businesses”. He says that, while the Government’s formal position is that the law isn’t against something – but rather in the interest of protecting minors and supporting parents’ rights on how children are educated on sexual orientation – it would be a fair assessment that “official communication on the law and the law’s actual effects on business decisions and private life day-to-day decisions are not aligned.”

“The most interesting yet problematic issue is interpreting the law,” says Ivan Solyom, Partner with Lakatos, Kovacs & Partners, pointing out that “it has a broad and generic wording, so it would be difficult for someone trying to comply to understand exactly how to do that.” The law’s ambiguities stem from the fact that it was not written with a view on implementation, he adds: “it was not drafted in a way that is ready to apply. So the media authority and the courts will have the difficult task of filling in the blanks and creating case law.” Lendvai agrees that “the law will be clarified through it being enforced. So it’s still up in the air. We still don’t know how the competent authorities and, in case of judicial review, the courts will interpret the concepts of ‘content’, ‘display’ and ‘promotion.’”

Keller points to another aspect that is unclear at the moment: “the legislation sets forth that when classifying programs, the only problematic content is that where portrayals of deviations from the gender at birth, gender transitioning, or homosexuality are ‘significant’ to the content, but it is really difficult to tell what is ‘significant’ to the content.” This aspect, in particular, has led to a lot of public debate over how this new legislation is to be applied and “a clarification should definitely be provided by the regulator.”

While Toth agrees that “the law itself does not include all the detailed rules and expectations of the Government, and subsequent implementation regulations were expected to set out those details,” he notes that the first implementation regulation was painfully lagging behind the law, and that the Government came up with that on August 6, 2021 (almost two months after the law was passed). According to Lendvai, some of the clarifications provided in the form of implementation guidelines published in a Governmental Decree



Aniko Keller,  
Partner and Head of Competition,  
Szecskay Attorneys at Law

included, for instance, an obligation to wrap books, magazines, or newspapers so they are not opened by children (if said materials included content deemed problematic under the law).

“Those more detailed implementation rules are still not sufficient, according to market players, to guide them on how to behave going forward. There are still a lot of questions around the practical workings of the law,” says Toth, adding that publishers are “still puzzled on how to identify artistic elements that may be contrary to the law,” and noting that even the Bible could fall under the law’s purview. It would in effect mean that Bibles would have to be sold with 18+ markings and in closed packaging (not to be opened in the bookstore), but that would be under an extreme reading of the law. He mentions other less extreme examples, like the more recent inclusive and diverse children’s books or those with an educational focus – general children’s tales books that have elements that could be considered contrary to this law. Toth says it would even be difficult to draw the line on, for example, whether some of Andersen’s famous tales would be allowed. “Art is about free and novel forms of expression – but a lot of art pieces could be brought under the scope of the law.”

According to Lendvai, one particularly interesting case to look out for will be the test of Elle magazine’s three covers for the September issue (each featuring either a male couple, a female couple, or a heterosexual couple). According to her,

the way the magazine will be available at newsstands (or not) will serve as an interesting case study on the law's application going forward.

There is still a wait-and-see approach at this point, with Toth unsure "if the Government is prepared to have further amendments on the law itself, which the market seems to demand." He also points out some other issues the law has indirectly raised: discussions on the national educational agenda in Hungary – mandatory readings (according to level or grade) that contain Hungarian books, some of which would not fit the spirit or the letter of the law. He raises the question: "How would the Government go forward – change the educational agenda to be in full compliance by removing those mandatory readings?" He adds that the Government not taking these corrective steps itself "creates a feeling that the law targets certain content owners or publisher groups, while schools still have books or art with similarly problematic content that is required teaching for children."

### Content and Advertising Considerations

According to Keller, the new restrictions "basically mean that it is now prohibited to put forward to people under the age of 18 content that depicts sexuality for its own purposes, or content that depicts or promotes deviations from the gender at birth, gender transitioning, and/or homosexuality." At the same time, according to her, when the above elements are significant to the content, said content needs to be classified appropriately – as 'not recommended for people under 18'. Solyom says that "media companies are probably having difficulty categorizing their programs and movies. Anything depicting homosexuality or promoting sex change should be Category 5 and only shown after 11 p.m. But deciding exactly which content falls into that category – that's what's likely giving the media companies, and their legal departments, headaches."

Lendvai notes that the law's provisions relating to homosexuality are short and can be summarized as: "It is not allowed to display LGBTQ+ content or content that promotes LGBTQ+ values to children." She says her firm's clients were specifically interested in understanding "the interpretation of 'LGBTQ+ content.' What that content includes, what it would mean to promote homosexuality and sexual orientation. Is it specific content dealing with LGBTQ+ issues – or would the interpretation be broader and go further?"







Ivan Solyom,  
Partner,  
Lakatos, Kovacs & Partners

She also points to a new “big challenge to media content providers – advertisements must be age-rated as well – while they were explicitly exempted from age-rating before.” Keller explains that the same procedure on classifying content is to be applied to classifying adverts. “What is not particularly clear at this point is if every single advert needs to be classified, within a block, or the block as a whole does.” She says that, for now, the safe approach is the latter. “This is why, if you see a simple advert for a dishwasher classified as content for persons 18 and above, you might wonder why it’s marked as such – it’s because the block as a whole is.” Toth agrees on that strategy: the most immediate effect is that before each commercial block during the day broadcasters elect to deliver the message that commercials might not be suitable for children under the age of 12. “And then one finds out that those commercials would be harmless ones that have no content relevant under the law. But out of cautiousness the media groups will not want to run the risk. They will just slap the banner on the screen as a precautionary defense mechanism.” Unfortunately, “at the moment, there are no official guidelines from the National Media and Infocommunications Authority (NMHH) on how to do these classifications in practice,” Keller concludes.

### The Work Generated

So how has this impacted the actual pipeline of lawyers and law firms in Hungary? “There has absolutely been a spike in

work as a result of this legislation,” Keller says off the bat. Lendvai echoes this: “We have had a lot of work coming from this. We have been advising many global media and content providers. We’re having daily conversations at this point.” In particular, she says they had to advise clients on “what the law actually means and on what the implications are for the services and content they are providing and products they are selling in Hungary.” On the other hand, Solyom says he didn’t necessarily notice an increased workload connected to the new law, as his clients are active in the general TMT sector, and he is not assisting any media companies on a day-to-day basis.

In terms of who’s been knocking on their door, Keller first mentions the most obvious types of organizations impacted – traditional media service providers. Toth too points to a US media conglomerate that requested help in interpreting how they are supposed to change their local practices. On media outlets, Lendvai mentions that “The important distinction would be whether the media provider is established in Hungary or not. Those that are, have to comply with Hungarian media law. But if they are based outside Hungary, they would, according to the country-of-origin principle, have to comply with the law of their place of establishment. In principle, Hungary could try to enforce the law on the outside media entity, but it would have to demonstrate to EU institutions that the media company’s conduct runs contrary to public order laws.”

While Keller notes that traditional media service providers are especially afraid of this piece of legislation and what it means, she also points to platforms with user-generated content, where the liability of the video-sharing platform was brought into question. In these instances, she explains that the burden of categorizing content to protect minors applies, similarly to what was done for other restrictions in the past. Solyom mentions that, in general terms, the law would not apply to on-demand or streaming services and would only affect linear service providers (like television stations). But he agrees that certain restrictions also apply to social media and online content and notes that here “we’ve seen examples of people/providers being overly cautious and already introducing new filters.”

But other types of agents had their concerns as well, with “this law having much deeper effects on a wide spectrum of business and everyday life,” according to Toth, who mentions effects on bookstores, broadcasters, advertisers, mobile



Janos Toth,  
Partner,  
Wolf Theiss

communications, and even education. One such example is that of educational software providers, according to him: “Hungary has been at the forefront of this sector and we’ve had quite a few success stories of Hungarian start-ups going international in the field – and that was all before the pandemic, which further accelerated their growth. They now face a situation where their standard products, successfully sold throughout the world, might not really fit with the local requirements in their home country.”

And this has been relevant beyond a digital space, with Toth also giving the example of a major designer fashion brand which, he explains, “tends to be aligned with the LGBTQ+ community. They are quite worried about how to carefully interpret what the law expects from them – even in terms of using various prints and various cuts in their design.”

Perhaps even less expected, ESG considerations started coming up. For example, Toth explains that “shared service centers are also affected by this law, because they tend to focus on attracting a very diverse international community in terms of employees. Governmental officials have been voicing their satisfaction with how well Hungary has been doing in terms of attracting shared service centers.” According to him, the problem is that, by virtue of their very nature and their need to have a wide set of language skills sourced internationally, these employers have always focused on nurturing an image of an inclusive and diverse working environment. “Take a simple ride in the metro and see the adverts that they

are using. A lot of HR questions came up as a result of this new law, as to whether their approach of communicating that they are a colorful, inclusive, and diverse environment is still compliant. And this is not only industry-specific – the reality is that the local HR departments of most multinational companies operating in Hungary face similar questions.”

And this does not stop at a corporate level, with Lendvai giving the example of a pro-bono client – a foundation running a child-in-difficulty helpline. The question for them was whether hosting helpful information published for children on their website, some of it relating to homosexuality or LGBTQ+ issues, might raise concern and if that information should be removed. She says her firm’s advice to the foundation “was that the display of that information is a core part of their service, namely advising children in need, and therefore it should not be removed voluntarily.”

### Business Implications

In terms of the law’s business implications, the natural first element that comes up is that of liability and fines. Keller explains that the onus falls on the media outlet: “you might first be warned by the national media authority, NMHH, but there are also fines involved that might reach HUF tens of millions – so there is the potential for some serious material fines to be imposed.” She adds that “the competent consumer protection authority may also impose a fine against the advertisers, the publisher of advertisements, and the advertisement service providers, the maximum of which is 5% of the net sales revenue of the company, or HUF 500 million (approximately EUR 1.4 million).”

Solyom goes further on business considerations: “If you have to recategorize whatever programming you’ve already bought – if you have to move it after 11 p.m. from your primetime slot – your advertising revenue will be severely reduced. As the licenses are acquired in advance, the economic calculation would change, and media companies might incur losses. It’s not clear how they would address that issue.” Ultimately, he says, media companies could address different forums for compensation. “If the losses incurred are high enough that litigation makes sense, that could be the case going forward.”

Taking an even wider view, Lendvai mentions that “for global companies there’s a question of what compliance actually means. The method of compliance will be a statement on their side, presenting their interpretation.” On what that corporate statement could be, Toth points out that “ESG

has been the top discussion topic in any credible financial publication recently, with funding activity carefully observing it to a growing extent. This law runs contrary to that global trend and fund managers will have to seriously consider this Hungarian law when making their decisions. Simply put, their investment policies might not allow them to include investments in companies that operate in a territory where they must obey these kinds of laws, so they won't. And I'm confident that this trend is already observable."

On how to best comply with the new law, within the current level of ambiguity, Keller says that the most important thing is to "play it safe – compliance is always very important." She adds that, if a service provider has a system in place to assess its content in line with past regulations, this should just be another aspect to be inspected, rather than having to set up a whole new process.

According to Solyom, there would be two approaches to complying with this piece of legislation. "One, as there are rules for the protection of minors that companies are already in compliance with, if you take a narrow view on interpreting the newly prohibited depictions, you might not change anything and see about the future interpretations that come up. For the other approach, if you interpret these depictions more broadly, you might have to move almost everything

after 11 p.m. But that might move too much of content and leave gaps in the programming. Ultimately, as there is currently no case law, from a commercial and practical standpoint, the wait-and-see approach could be more common. Either hoping that this will go away, or adapting after the fact, if and when cases start providing content for the law."

### Uncertainty On Enforcement and Law Itself

According to Lendvai, "the main question is how the law will actually be enforced, how the new concepts of the law will be interpreted." At the time of our talk, she says she knows of no enforcement decision after the law had entered into force in July, but that the Consumer Protection Authority did impose a fine on a book shop, based on a consumer claim – some days *before* the law came into force. This was for selling the book *What a family!* (*Micsoda család!*) because the distributor of the book had not indicated that in the book children "may see patterns of behavior other than traditional gender roles."

And, to further add to the uncertainty, there are some challenges to the law. "We'll also have to see if the law will stand in its current form," Solyom says. "Several civil organizations, represented by the Hungarian Civil Liberties Union, have turned to the Commissioner for Fundamental Rights regarding the law. And while this process might not pan out, EU institutions are also looking into the law." Toth agrees on both counts, noting that the EU Commission launched infringement procedures against Hungary because of the law, related to the equality and the protection of fundamental rights, and that a number of human rights groups also announced that they would be prepared to appeal to the relevant fora against this law. Lendvai confirms EU proceedings were launched in the form of an investigation into the law, but she mentions that the process takes a long time, with Toth adding that it would be interesting to keep an eye out for "how the Commission will receive answers to its initial queries on the law from the Government and if, based on them, it will decide to continue with its infringement proceedings against Hungary and ultimately take this matter to the Court of Justice."

Looking further ahead, Toth says that "everyone is curious to see if the law will be clarified or even amended further, to really drive its focus back to where it started from. It would certainly be a good signal for many if it did. But that won't, in itself, solve all the headaches the law has already brought up, from investment restrictions to media restrictions, to HR issues." ■



Zsafia Lendvai,  
Counsel and Head of Intellectual Property,  
Baker McKenzie

# THE CORNER OFFICE: HOW DO YOU DISCONNECT?

In “The Corner Office” we ask Managing Partners at law firms across Central and Eastern Europe about their backgrounds, strategies, and responsibilities. With summer having just passed, the question this time: **What is your one favorite yearly activity to disconnect?**



I have been learning French for six years now. Every day I realize that, at the age of 50, my mind does not work the same way as 30 years ago (when I started to study a new language the last time) but I am still hanging on. On the other hand, this is a thrill to discover a new world: France with its immense literature, colorful culture, and adventurous history. Each year I devote one week of my life to attend the hyper-intensive course of one of the French language schools and, at the same time, enjoy the niceties of student life. I usually live with a host family together with other students and take a bike to get to school every morning. A bit different than a lawyer’s life ... *Mais je l’adore!*

– Pal Jalsovszky, Managing Partner, Jalsovszky Law Firm



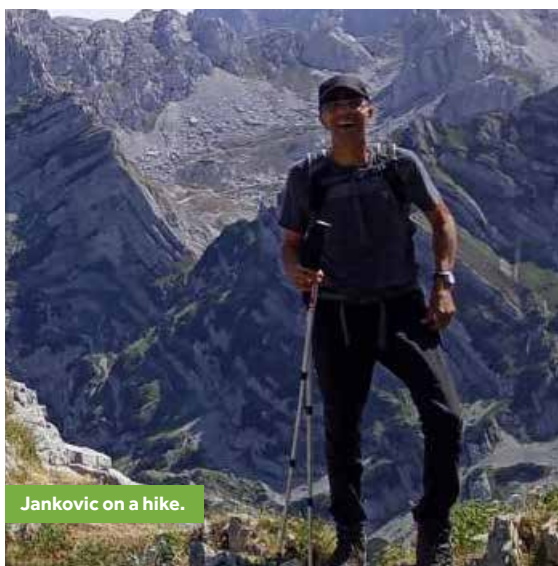
Indeed, I have an annual favorable activity to disconnect, and it is reading. It has almost turned into a ritual: the selection of books starts early autumn, the anticipation grows through October and November, and so does the number of books. I typically read between three and seven books from the middle of December to the beginning of January. These are usually a mixture of (1) general fiction in English: my 2020/21 favorite in this category was *Troubled Blood* by JK Rowling-Robert Galbraith; (2) legal fiction in English: my 2020/21 pick was *A Time for Mercy* – not the greatest John Grisham novel; (3) Bulgarian fiction in Bulgarian: my 2020/21 favorite was Theodora Dimova’s *The Ones, Who Were Hit*; and (4) biographies in Bulgarian and English: my 2020/21 favorite was *Angel Kuyumdjiski – A Life of Peaks and Falls*.

– Kostadin Sirlishtov, Managing Partner, CMS Bulgaria



Since managing activities (no matter the profession and there is no secret there) is quite demanding and resource-consuming, a replenishing recharge is more than welcome. Whilst I enjoy and feel better after listening to some jazz, bowling, or horseback riding sessions, there is one place that fills my batteries back up flawlessly and that is our very own Danube Delta. Just being in this paradise (either in a small motorboat roaming the canals, fishing at the break of dawn, admiring the unique flora and fauna) makes me feel deeply relaxed, content, and thankful. Of course, I enjoy visiting new places and countries, but my “place-to-disconnect” was, is, and will be the Danube Delta and all related activities therein.

– Gelu Maravela, Managing Partner, MPR Partners



Jankovic on a hike.



Hiking is like medicine for my soul! It may seem like a piece of cake, being surrounded by nature, calmness with every step you take, taking deep breaths, enjoying the path. But it actually heals. Even if your backpacking experience does not exist at all, it is always an adventure to just go out there and do it. I have been hiking since youth, my favorite destinations being the Durmitor and Prokletije mountains, with breath-taking views and everything up close and real – no filters, just nature. Hiking makes me stronger and happier. Balancing on uneven surfaces, navigating around rocks, chill mountain streams, and fallen trees really engages my core. It may take hours or days. The closer I get to the mountaintop, the more I think of the real reasons for why I am doing it. The healing part starts with the challenge and the conquering – not of nature, but of myself. Reaching the top. It is the part when physical limits are overcome and when I get such a clear sense of accomplishment that cannot be easily compared. Until the next long, vigorous walk.

– Nikola Jankovic, Senior Partner, JPM Jankovic Popovic Mitic



I must admit that I haven't developed well the ability to rest and disconnect. I truly envy my peers who can do that well. In the dynamic world that we're living in, unfortunately, I stay connected all the time and don't even bother to set up the "out of office responder" while on vacations, since I'd respond anyway, which sometimes makes my family furious. That doesn't mean I don't like traveling. On the contrary, the Covid lockdown was extremely difficult for me, cause my trips were suspended for many months. I've recently realized that what I need most to recharge my batteries is the sun, in the perfect world accompanied by good cuisine and wine. Rather than disappearing for a few weeks once a year, I enjoy regular few days' trips every second or third month. As a father of two small kids, that requires a lot of logistical work. Whereas in the summer we usually spend some time on the Mediterranean coast, my favorite destinations in colder months are the Canary Islands and Italy.

– **Michal Pawlowski, Country Managing Partner (Poland), DWF**



When running a law firm, unfortunately, one cannot switch off for a week or two. So, the trick is to take a day, or even a couple of hours, during a week or a month and charge your battery. This need not be a trip to a foreign country, nor a glamorous dinner or a party. Sometimes the best charger is a walk with your dog in a forest. Without your phone.

– **Martin Simovart, Partner, Member of the Board, Cobalt Estonia**



I like motorboating Latvian lakes and rivers. It gives the opportunity to discover secluded spots and look at well-known places from a different perspective. Speed, wind, and other forces of nature.

– **Dace Silava-Tomsone, Managing Partner, Cobalt Latvia**



I am an enthusiastic traveler, with a deep love for hiking, skiing, and discovering remote corners of the world. Mountains give me the opportunity to experience peace of mind and an energy boost for those hectic periods in the office. Moreover, all such experiences help me look at day-to-day life and challenges from a different perspective.

So far, I have climbed several high mountains such as Kilimanjaro, Mont Blanc, Aconcagua, Rwenzori, and Elbrus. I have also reached the 7,546-meter summit of Muztagh Ata, having been one of the first Romanians to reach the peak on skis. Besides many of the Carpathian peaks, I have also made it to the Toubkal Peak in the Atlas Mountains, Mytikas Peak on Mount Olympus in Greece, Musala Peak in Bulgaria, and, more recently, to the top of Mount Ararat in Turkey. If you ask me what the most memorable moments from my trips have been, I would choose the images of icebergs approaching the shore in Greenland, a fantastic sunset on the edge of the volcanic crater Ngorongoro in Tanzania, the Gulf of Rio de Janeiro by helicopter, and Everest at sunrise from the Rongbuk monastery in Tibet.

– **Horea Popescu, Managing Partner, CMS Romania**



I believe that you need to recharge much more frequently than just once a year. Of course, at least one longer vacation each year is absolutely necessary in order to recharge. My annual vacation is always something different – this year I was hiking in the Transylvanian mountains. But there is always one program item on my agenda every year: swimming across lake Balaton! A lot of people find it boring to swim for 2 or 3 hours, which an average person takes for swimming 5.2 kilometers. But for me, an absolute amateur swimmer, this is going almost up to my limits of physical performance. Runners usually say that they can switch off their brain during running, but for me this works only with either long-distance swimming or dancing. For the latter, you need a party – and those are usually best if not planned in advance.

– **Kinga Hetenyi, Managing Partner, Schoenherr Hungary**



My activity is the trip that I take separately with each of my two children (twins). I count this as one activity because it is the same activity replicated for each child. They choose the destination (within reason!), plan flights, hotel, itinerary, and we spend three to four pretty intense days together, disconnected from the rest of the world.

– **Perry Zizzi, Managing Partner, Dentons Romania**



Popescu on Mount Ararat, July 2021.

# MARKET SPOTLIGHT: RUSSIA



# GUEST EDITORIAL: THE STATE OF THE RUSSIAN MARKET IN 2021

By Scott Senecal, Partner, Cleary Gottlieb Steen & Hamilton



Halfway through the third quarter, 2021 is proving to be a good year for the Russian market, both in terms of M&A activity and a frothy IPO market. This uptick in part reflects unleashing the demand pent up over the COVID-19 recession (although Russia continues to struggle with the pandemic), as well as the upturn in global energy prices (given the oil & gas sector continues to lubricate the Russian economy).

Of cheer for practitioners over the medium-term, this reflects:

First, in the wake of the USD 1.2 billion IPO of Ozon (“the Russian Amazon”) in November 2020, good news from the Russian tech sector continued: recruitment platform Headhunter’s follow-on USD 191 million NASDAQ offering; a SPAC transaction whereby Kismet bought into the mobile games creator Nexters at a USD 1.9 billion enterprise value; and a funding round of USD 250 million to support the Ivi streaming service; as well as announced efforts by Russian telecoms to monetize assets by selling their towers.

Second, there is room in the Russian economy for consolidation and economies of scale. The food retail sector has been nicely illustrating this in recent months, in Magnit’s RUB 87.6 billion (USD 1.18 billion) acquisition of the DIXY retail chain and in Lenta’s EUR 215 million acquisition of Billa’s Russian supermarkets business.

Third, some foreign investors, especially Middle Eastern, continue to be attracted to Russia, as recently borne out by Mubala’s investments into EN+ and Nexters.

But the cheer is not boundless. Any IPO prospectus will spin out a lot of pages of risk factors, but these four (intertwined) issues especially restrain the Russian economy:

First, sanctions. More important than the sanctions that have been inflicted is the chilling effect of the prospect of new sanctions striking unexpectedly. Given that US sanctions have been enshrined in legislation, and the Russian caucus in the US Congress remains minuscule, US sanctions against Russia may endure endlessly, as they have against Cuba. In contrast, EU sanctions need to be renewed every six months – you

might think one goal of Russian foreign policy would be to do enough to stop the next renewal, which would help spur EU investment into Russia, as well as have the political benefit of driving a wedge in the Atlantic alliance.

Second, the apparent misrule of law, as illustrated by the arrest and long pre-trial detention of Michael Calvey, the founder of one of the largest Russian PE funds, and his colleagues. As the FT headlined this week, *Trial of US investor is emblematic of country’s reputation as treacherous place to do business* (and as I write this today, Calvey has been handed a five-and-a-half-year suspended sentence). As Boris Titov, President Putin’s commissioner for entrepreneurs’ rights, has repeatedly pointed out, Calvey’s fate has been shared many times over, but with less publicity, by Russian entrepreneurs.

Third, the dearth of western investment into Russia, in part due to the above, but also driven by the almost uniformly bleak media image of the country in Western media, overlooking countering narratives that help explain this year’s market uptick. With an eye on Calvey, the behemoth US and EU PE players shy away from investment.

And last, an economy skewed towards state-ownership and carbon, in which state-owned titans (representing more than 30% of GDP) tend to occupy the commanding heights, including the colossi of oil & gas (where the agility of the likes of Novatek and Sibur make for an interesting contrast), in a world turning green. It’s an economy shy of creative destruction.

According to the social historians, plagues have a way of concentrating the collective mind: so much suffering and death should somehow be redressed by an improved social order, a more equitable society. At the intersection of business and politics, Joe Biden is doubling down on American infrastructure (both in its bipartisan *Bridges & Tunnels* version and its expansive *50-Democrat* version). Chairman Xi is doubling down on the Communist Party, going strong on its 100th birthday, recently reminding the tech wunderkinds to kowtow (wiping off billions of market cap). The question for President Putin, in his 22nd year of leadership, is how he sees leading Russia, whose people believe they have a unique historic mission, into a better future – thus maintaining the legitimacy of his rule, should he choose (as cannot be ruled out) to seek re-election in a free, and fair, election scheduled for 2024. ■

# FOR THE GROUP AND BEYOND: A CLOSER LOOK AT GAZPROMNEFT EXPERT SOLUTIONS

By Radu Cotarcea

In his recent Guest Editorial EY's Georgy Kovalenko spoke of a rising trend of large companies building up their in-house legal functions to the point where they will not only compete with law firms in terms of catering to their internal clients but will also slowly branch out into offering their services to other companies.

CEE Legal Matters spoke with **Eugenia Volkoskaya**, General Manager of **Gazpromneft Expert Solutions** – an enterprise that, while not there just yet, seems poised to do exactly what Kovalenko was foreseeing.





**CEELM:** What is Gazpromneft Expert Solutions and how does it work?

**Volkoskaya:** In brief, Gazpromneft Expert Solutions is a business entity within the Gazprom Neft Group that provides advice in various fields. As of now, only lawyers are represented in the team of experts, but we plan to soon bring in specialists from other departments as well.

Legal support is based on the one-stop-shop principle: a client may easily access any sort of expertise represented within the expert staff pool. The company currently has five centers of legal expertise: IP; Procurement and Real Estate; Commerce; Corporate monitoring and compliance; Public Regulation and Litigation.

**CEELM:** What was the thinking behind setting it up, how is it different from a typical group in-house function?

**Volkoskaya:** The Gazprom Neft Group is quite a large structure consisting of a number of various businesses, all of which had their own legal department. We decided to take a step further in corporate legal support by organizing a separate company with a general idea of uniting professionals by their areas of expertise. As opposed to a classic in-house model, our concept allows us to focus better on requests generated by the businesses, while the vast geography of our offices ensures prompt response and secures better availability of legal professionals when and where necessary. It also allows us to collaborate, share experiences, and develop our experts.

**CEELM:** Do you still have GC/Heads of Legal departments within the companies of the group? If so, to whom do they report?

**Volkoskaya:** We still have legal business partners within the companies of the group. They ensure collaboration and networking between their companies and Gazpromneft Expert Solutions and are eventually responsible for the quality of legal service provided to their companies and for risk management as well. They possess all the information on the strategy, specifics of the business, key projects of a certain company and make decisions regarding the need for legal support in relevant practice areas. They manage project teams for legal support projects. In addition, business partners are responsible for the identification and assessment of risks that may affect their companies' activity, and it is their job to participate



**Eugenia Volkoskaya,**  
General Manager,  
Gazpromneft Expert Solutions

“When the economy is not doing great and budgets for external advisors shrink, it is natural for legal directors to create strong in-house legal departments, able to cover the majority of their enterprises’ needs. Especially when there are good candidates on the market. Large businesses are thus increasingly creating self-sufficient in-house legal departments, which engage law firms only when a need arises for either international work or assistance with very complex projects. If you talk to partners at law firms, you will hear that their major competitors are now in-house legal departments.

After creating large in-house teams, chief legal officers face the challenge of making those teams efficient and retaining key people who hate routine tasks, while at the same time dealing with increased regulatory requirements and more complex assignments. Indeed, we at EY Law regularly consult clients on legal function optimization. We analyze and improve internal processes (including by way of outsourcing or insourcing), change individual and department KPIs, and propose automation solutions.

A complex review of the legal function sometimes reveals the capability to work not only for internal but also for external clients. Legal departments can be converted from cost centers to profit-generating units. This is possible because the legal profession is not as regulated in Russia as it is in other Western countries. There is no requirement for a law firm to be owned by bar-admitted lawyers or be licensed in any other manner. Thus, Sberbank, Russia’s leading bank, has created Sber Legal, a law firm that works with retail clients. MTS (a leading mobile operator) has launched Norma, a solution that helps small and medium businesses create legal documents and resolve other legal tasks. Another client of ours, a major oil company, is creating a unit that uses its sector knowledge to advise small companies on regulatory matters and other legal aspects of exploring and producing oil and gas. Corporate law firms still do not view these non-conventional players as direct competitors, but small high street firms and in-house lawyers should be concerned about their future.”

**Excerpt from “Trends in the Russian Legal Market” (CEELM Issue 7.11) by Georgy Kovalenko, Partner, Head of EY Law in Russia and CIS**

in all important business decision-making processes.

**CEELM:** How large is the team and how is it structured?

**Volkoskaya:** The whole team includes approximately 340 legal professionals. It took us half a year to bring them all together.

As mentioned above, we have five centers of expertise. Each center is divided into practice areas. For example, the Center of Public Regulation and Litigation includes four practice areas: (1) General litigation, for high-value disputes and/or cases of precedential value; (2) Financial Law and Antitrust Law; (3) Environmental Law and Law on Subsoil Use; and (4) Industrial Safety and Occupational Health & Safety.

Other centers are organized in a similar way so that there are teams focused on certain practice areas. In addition, in order to ensure prompt service, we have four major hubs located in Saint Petersburg, Moscow, Omsk, and Tyumen, and a few smaller offices in a number of regions. The geographical location is not directly connected to the practice area or center to which a certain lawyer is assigned, as our experts are represented in almost every region where the group operates, or at least are close enough to the production and other key assets.

**CEELM:** What are the main KPIs you are looking at to decide if the Gazpromneft Expert Solutions (for lack of a better word for now) “initiative” is a success?

**Volkoskaya:** Legal support and legal risk management within the company have always been among our top priorities. But now our expertise is even easier to access, and we are closer to the business. We will assume that we are successful when the business approves our efforts and is pleased with our legal service. However, success would also be defined by our business clients recommending us to their partners. We are not only focused on KPIs but also on our NPS (net promoter score). That’s why we have developed certain quality standards for us to follow. Our clients will, taking into consideration the view of business partners, evaluate the results not only annually, but quarterly as well.

**CEELM:** Our understanding is that, at this point, Gazpromneft Expert Solutions caters to “internal” clients only within the group. Is that accurate? Is there a likelihood that it may change? If taking on “external” clients is a reality now or will be in the future, how will elements like conflicts of interest be handled?

**Volkoskaya:** It is certainly safe to say that Gazpromneft Expert Solutions started as an “internal initiative” for “internal” clients. However, we definitely don’t rule out “external” clients and are ready to cooperate. We have brought together legal experts with unique competencies that are rare on the market. We don’t think that conflicts of interest could be an issue for us – a conflict check is a standard procedure for any consulting company – so we are ready to follow best applicable practices, especially given that we have a number of lawyers with extensive experience in Russian and international law firms.

**CEELM:** What’s on the horizon? How do you see Gazpromneft Expert Solutions evolving over the next five years?

**Volkoskaya:** There are a number of vectors for our development, and we see potential to develop in all of them. To name a few, we can talk about the development of our legal teams focused on IP, real estate, commerce, procurement, and other “traditional” practice areas. All of them have strong professionals and a few rising stars. In addition, our Public Regulation and Litigation center has a number of practice areas (e.g.

Industrial Safety and OHS) that are either rare or unique on the legal market and could be of great interest not only to the oil & gas sector but to other industries as well.

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***It is certainly safe to say that Gazpromneft Expert Solutions started as an “internal initiative” for “internal” clients. However, we definitely don’t rule out “external” clients and are ready to cooperate. We have brought together legal experts with unique competencies that are rare on the market.***

We can eventually either become a trend-setting leader in terms of “internal consulting” for oil & gas and other industries or evolve into a more classic consulting services company. We are ready to offer our expertise not only to our internal clients but to other companies as well. ■

Istanbul

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# NAZALI

Tax & Legal

## INCLUDING RANKINGS AS A TENDER REQUIREMENT – A RUSSIAN CASE

By Djordje Vesic

**On February 24, 2021, CEE Legal Matters reported that Russia’s Intellectual Capital law firm had persuaded the Moscow Arbitrazh Court that a requirement that participants in a Rosatom tender for legal counsel be ranked in Legal 500 and Chambers and Partners was illegal and violated Russian competition law. CEELM spoke with several lawyers in the market to learn more about the matter.**

The USSR has had a long history of research in the field of nuclear physics, dating all the way back to 1921 and the establishment of the Radium Laboratory. Following the collapse of the Soviet Union, The Russian Federation continued a significant portion of the former country’s nuclear program. Russia’s civil nuclear infrastructure fell, at first, under the purview of the Federal Agency on Atomic Energy, the successor to the Soviet Ministry of Medium Machine-Building.

However, the agency was replaced on December 1, 2007, by the newly formed State Atomic Energy Corporation Rosatom, or Rosatom for short. Shortly after its establishment, Rosatom began the consolidation process of all the nuclear enterprises and industry institutes into a single mechanism. As of 2019, the corporation operates 36 nuclear power plants with an installed capacity of 30.3 gigawatts across the Russian Federation and it produces around 19% of the country’s electricity. According to Rosatom, “by the end of 2019, intergovernmental agreements had been concluded with 74 countries, including agreements on the construction of nuclear facilities in 20 countries,” and the corporation’s “overseas business portfolio includes 36 power units in 12 countries, with 25 power units in nine countries currently at the active stage of implementation.”

Rosatom’s international activity has not been limited to nuclear power plant construction only. In fact, the corporation has been very active in protecting its intellectual property abroad. For instance, the corporation obtained 443, 417, and 439 foreign patents in 2017, 2018, and 2019, respectively.

In the summer of 2020, Rosatom turned to Russian law firms



Elizaveta Nasrtdinova,  
Advocate,  
Kniazev & Partners

for help with international patent registration. The corporation organized a public tender but opted to include one specific criterion. Namely, in order for law firms to participate, the criterion required them to be simultaneously ranked by both the Legal 500 and Chambers and Partners directories in their respective Intellectual Property sections for Russia. According to Irina Pokatovich, Head of Antimonopoly at Moscow-based law firm Intellectual Capital, a total of three firms took part in the tender – DLA Piper, Gowling WLG, and her own. She explains that only Gowling WLG met the restrictive criterion, while the other two applicants were not admitted to the competition.



**Irina Pokatovich,**  
Head of the Antimonopoly Practice,  
Intellectual Capital

Intellectual Capital considered the requirement to be wrong and unfair. According to Pokatovich, Intellectual Capital argued that a firm does not have to possess experience in obtaining international patents in order to be ranked in the aforementioned legal directories. In other words, Pokatovich says, “being ranked does not in any way confirm qualifications in this particular area.” What’s more, she says that Rosatom paid no attention to the technical documentation submitted by her firm that actually proved the firm’s qualifications.

Pokatovich admits that the controversial condition can be a part of the evaluation process during the tender itself, but she stresses that the criterion should not preclude law firms from participating altogether. Moreover, she explains that the negative practice of introducing requirements of this kind in legal services procurement procedures has been on the rise lately in Russia and that the trend could be detrimental to many local law firms, as their applications are automatically rejected because they are not ranked in international legal directories. “According to statistics compiled by Russian legal website *Pravo.ru*, out of 100,000 law firms existing in the Russian Federation, only less than 1% are simultaneously present in the ratings of both Legal 500 and Chambers and Partners in Russia, with the overwhelming majority of them being foreign law firms,” she says. “Thus, the remaining 99% of the market will not be able to participate in procurement procedures,” she adds. Pokatovich further explains that, with Rosatom being a state corporation, the procurement process was organized in the interest of the Russian Federation.

“According to the *Government Decree No. 925* of September 16, 2016, goods of Russian origin, as well as work or services performed by Russian persons should have priority over goods, work, or services of foreign persons during procurement procedures held by Russian state-owned companies,” she says. “However, it is unlikely that Russian law firms would be able to take part in procurement procedures under such controversial requirements, as only large foreign-owned law firms are able to meet them,” she notes.

Her views are contrasted by those of Sergey Ermolenko, Partner at FBK Legal. “When assessing the legitimacy of using international ratings in the selection of suppliers, I would start with the fact that any procurement procedure inevitably restricts competition to some extent,” he says. According to him, limiting the competition is the very purpose of the procurement, as it “allows you to cut off market participants whose qualifications do not meet the customer’s requirements.” Ermolenko ponders whether the supplier’s qualifications correlate to its position in the rankings, but concludes that the use of said rankings can be acceptable if they maintain the competition between the “top” suppliers represented in them. Still, he notes that the rankings are used much more often as additional criteria, than as an “entry ticket” and he deems the first approach to be fairer. While he believes that the requirements Rosatom set in the disputed tender are legitimate – albeit not flexible – he expresses doubt that this approach will become widespread in the future.

**...out of 100,000 law firms existing in the Russian Federation, only less than 1% are simultaneously present in the ratings of both Legal 500 and Chambers and Partners in Russia, with the overwhelming majority of them being foreign law firms.**

On the other side, Kniazev & Partners Advocate Elizaveta Nasrtdinova comments that it is “impossible to objectively say who is right in the dispute between Rosatom and Intellectual Capital, from my point of view.” She explains that, on one hand, she understands the motives of Rosatom. On the other, she fully supports the position of her colleagues on the illegality of including the disputed requirements, which, she says, “was also confirmed at two levels – by the Federal Antimonopoly Service and the Moscow Arbitration Court.”



**Sergey Ermolenko,**  
Partner,  
FBK Legal

Nevertheless, Intellectual Capital decided to contest Rosatom’s decision, so the firm filed a complaint with the Federal Antimonopoly Service of Russia on September 7, 2020, in the case number 077/07/00-14863/2020. “We insisted that Rosatom held a non-competitive tender, violating the *Federal Procurement Law 223-FZ*,” Pokatovich says. In its decision on October 9, 2020, the FAS agreed with Intellectual Capital’s stance. “The FAS deemed the complaint as justified and ordered Rosatom to reconsider the tender applications without taking into account the controversial criterion,” Pokatovich explains.

***We insisted that Rosatom held a non-competitive tender, violating the Federal Procurement Law 223-FZ. The FAS deemed the complaint as justified and ordered Rosatom to reconsider the tender applications without taking into account the controversial criterion.*** ”

However, Rosatom was not overly eager to abide by the decision, so the corporation brought the case before the Moscow Arbitration Court and requested that the previous decision of the FAS be annulled. The court reached its decision on December 4, 2020, in which it confirmed the legality of FAS’s decision and rejected Rosatom’s claim. As a result, Rosatom had to reassess Intellectual Capital’s application and, this time

around, the firm won the tender. Soon after, according to Pokatovich, her firm and Rosatom signed an Agreement on the Provision of Legal Services on January 11, 2021, but not without the latter trying to further obstruct their cooperation. According to her, Rosatom was adamant about not working with Intellectual Capital so, despite the agreement, it filed an appeal with the Ninth Arbitration Court of Appeal.

Oddly enough, according to Pokatovich, the court found the previous decisions of the FAS and the Moscow Arbitration Court illegal and ruled in favor of Rosatom on April 14, 2021. Two and a half months later, on July 1, Intellectual Capital received notification of unilateral termination of their agreement from Rosatom. During the time the agreement was in force, Rosatom continuously refused to delegate work to the firm and Pokatovich attests that “from the moment of signing the agreement until the moment of its termination, the State Atomic Energy Corporation Rosatom did not entrust Intellectual Capital with tasks on the subject of the agreement.”

The battle will not stop here, though, as Pokatovich explains that her firm plans to take further action. “We plan to apply to the Moscow Arbitration Court for the recognition of the agreement as valid,” she says. She invokes Clause 14 of the *Ruling number 54* of the Plenum of the Supreme Court of the Russian Federation on November 22, 2016, which states that “*when a party exercises its right to unilaterally change the terms and conditions of an obligation or to unilaterally refuse to perform it, it shall act reasonably and in good faith, taking into account the rights and lawful interests of the other party.*” Pokatovich explains that her firm did not shy away from fulfilling its obligations under the contract, while Rosatom failed to fulfill its part of the deal. Intellectual Capital also plans to file a Cassation Appeal with the Supreme Court of the Russian Federation.

Finally, according to Pokatovich, Rosatom’s need for legal services has not ceased, so the corporation announced a new tender under the same requirements and for the same scope of work as in the previous one. Pokatovich says that her firm also filed a complaint with the FAS concerning the latest tender procedure, which was again deemed as justified.

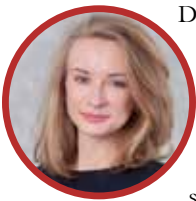
The resolution of this case remains to be seen. ■

**At the time of publishing, Rosatom did not reply to CEELM’s inquiries on the matter.**

## MARKET SNAPSHOT: RUSSIA

### RUSSIA OFFERS GENEROUS TAX INCENTIVES TO TECH COMPANIES AMIDST TIGHTENING CONTROL OVER THE INDUSTRY

By **Olga Odintsova, Tax Counsel and Head of New Business and Product Development, CMS Russia**



Despite the severe damage inflicted by COVID-19 on the Russian economy, the government and businesses have agreed that the local IT sector needs state incentives and support. Calls for accelerated development and state support for the local IT sector were among the main messages of several state agencies when the Russian president and government announced a series of tax benefits for the IT industry.

Large-scale tax benefits for Russian IT companies were introduced on January 1, 2021, to create conditions for the development of domestic high-tech companies and increase the attractiveness of the Russian jurisdiction for international IT companies. First, these measures imply the provision of income tax benefits to two categories of companies working in the IT industry: Russian IT firms that develop and implement software, provide services for modification, adaptation, installation, testing, and maintenance of software and databases, as well as IT companies, which design and develop electronic component database products and electronic products. For such companies, the income tax rate was reduced from 20% to 3%. Similarly, social contributions were also reduced from 14% to 7.6%, an incentive aimed at easing the fiscal burden of wages on IT companies. These benefits are available to both Russian IT companies and local subsidiaries of foreign international or multinational businesses operating in the country.

As a tradeoff for these incentives, there is a limitation of the VAT exemption on the provision of exclusive rights and software licenses. Now, the exemption applies only to software that is included in the so-called *Register of the Russian Software*. Along with Russian businesses, the exemption is also available to local subsidiaries of foreign companies, but the latter's shares in such local businesses should be less than 50%, while their revenues from licensing the software abroad should not be more than 30%. Companies that specialize in R&D operations are waiting for the expansion of the reduced income tax rate to their revenues, as the Russian IP Agency had recently expressed its intention to facilitate the provision of these tax incentives to all companies

that generate income from their intellectual properties.

Together with the existing tax incentives for start-ups through the Skolkovo Innovation Center, the Russian IT sector is fully equipped with substantial fiscal stimulus, which makes it a prospective sector for investment.

This snapshot would not be complete without a review of international taxation practices, as Russia plans to be on par with global trends. Since Russia is striving to establish the most advanced tax practices, there are ongoing discussions and plans for it to join the OECD's new taxation standards for digital businesses, thus adopting a single supranational minimum income tax rate. A final decision has not been taken on this issue and how it will work with the above incentives has yet to be defined. Russia has also consistently called on international IT companies to comply with its local data protection rules. As a step to strengthen its ability to monitor the localization of Russian users' data, the government has adopted a law that requires foreign online companies with significant local users (defined as 500,000 or more Russian users per day) to have a physical presence in the country, effective from January 1, 2022. The law affects social networks, messengers, gaming services, search engines, online shops, hosting providers, advertising platforms, e-mail services, and several others.

Liability measures have been established for companies that do not have local official representative offices in Russia. Some of these measures are, comparatively, less stringent, such as informing the users of those companies' resources about a violation of the Russian legislation by foreign entities. Other measures, on the other hand, prescribe quite severe penalties, for example, a complete blockage of the foreign entities' resources in Russia.

Accordingly, companies that meet these conditions should be allowed to operate or be represented in Russia. In addition, an electronic form should be created on such companies' official corporate websites to receive requests from Russian users. Moreover, such companies should register a personal account on the official website of the Russian agency responsible for Internet control, in order to receive requests/appeals from Russian state agencies. ■

## BUSINESS SEPARATION IN RUSSIA

By Ekaterina Sharapova, Senior Associate, and Torsten Syrbe, Partner, Clifford Chance



A carve-out of a business unit or a product portfolio may be required to optimize internal business processes or as part of a transaction on the sale of a business.

The first key task of business separation planning, irrespective of jurisdiction, is establishing the deal perimeter. Depending on

the specific assets to be separated, several legal options can be considered in Russia to implement such a carve-out.

**Corporate Spin-off:** Corporate reorganization in the form of a spin-off is a highly Russia-specific legal scenario for the separation of a business. Although relatively formalistic, the procedure envisages universal succession – it allows almost all types of assets and liabilities to be transferred.

That being said, regulatory approvals (licenses, product certificates, etc.) cannot be transferred as part of a corporate spin-off. Given that in the process of a corporate spin-off a separate entity is established on the same date that the business is transferred to it, the new entity will have a licensable business from the date of incorporation, but it will not hold a license to run it for about four to six months. Therefore, the transfer of a licensable business or regulated products requires more careful planning, to avoid business interruption upon completion of the corporate spin-off.

A key advantage of corporate spin-offs is that, in most cases, no counterparty consent is required for the transfer of contracts or the transfer of employees.

It should be noted that the procedure of corporate reorganization was not historically designed for the sale of a business and accordingly it is more suitable for internal restructurings. The key documents of a corporate spin-off are corporate resolutions and a transfer certificate – there is no sale-and-purchase or business transfer agreement, and no purchase price is paid for the assets that are being transferred. But that can be managed by introducing more steps to the deal structure in the case of third-party transactions.

The timing of a corporate reorganization is driven by statutory requirements. In practice, they tend to take at least five to six months, but, in the case of complex restructurings, the process may last 10 to 12 months.

**Asset Sale:** An asset sale is often used as an alternative to corporate reorganization when a regulated business needs to be carved

out. Under an asset sale, the regulated business can either be transferred to an existing company that holds the necessary license or a new entity can be incorporated as the future separated holder of the business – and a license in the name of the new entity is applied for before the transfer of the business.



Unlike under corporate reorganization, the transfer of contracts as part of an asset sale generally requires counterparty consent. Therefore, in addition to the master asset sale agreement, bilateral or tripartite assignment agreements with counterparties may be required. Employees' consents to the transfer are also needed.

The timeline of an asset sale is more flexible than in the case of a corporate reorganization. The duration of the process is mainly dependent on the number and types of assets. However, in the case of third-party transactions, merger control approval may also be required, which generally takes around six months to obtain.

**Contribution of Business:** Under Russian law, a limited number of assets can be contributed to a Russian company's share capital or assets. No contracts apart from IP license agreements can be contributed. Contribution to a company's share capital requires special attention if the net assets of the recipient entity are low. Unlike in the case of corporate spin-offs and asset sales, it is necessary to procure an external valuation of the assets to be transferred as part of the business contribution. A contribution to assets requires no consideration. Contribution to share capital is made in exchange for equity.

**Sale of Enterprise:** The transfer of a business as a going concern is often discussed at the stage of transaction planning but is not used in practice due to an inherent lack of flexibility. It is regulated as the sale of an enterprise under Russian law. The enterprise is deemed to include immovable property, equipment, materials, finished products, accounts receivable, accounts payable, and IP. The enterprise must be registered as an item of real estate to be transferred.

Russian carve-outs are often more time-consuming and formalistic than in Western Europe. Global templates can hardly ever be used without substantial adjustments. However, all procedures are manageable and can be handled smoothly if the Russian specifics are closely taken into account from the outset. ■



## A-Z OF ENGLISH LAW FRAMEWORK AGREEMENTS ON RUSSIAN CROSS-BORDER TRANSACTIONS

Andrew Robinson, Counsel, and Torsten Syrbe, Partner, Clifford Chance



Framework Agreements (FAs) are like swimmers on a mixed medley relay. Each one does something different and it can be hard to understand what is going on. They are nevertheless used in many cross-border transactions in Russia, so here is an A-to-Z checklist to consider when negotiating FAs.

- **Arbitration.** Refer disputes to private arbitration, rather than English courts, for better global enforcement rights (including in Russia).
- **Bilingual.** They don't need to be bilingual, usually. If they are bilingual, state that the English language version prevails.
- **Coordination.** Coordinate the sequencing and timing of transaction steps carefully and accurately, while leaving some room for error and delays, in particular if Russian administrative procedures are involved.
- **Default.** Consider what termination rights for cross-defaults in other project agreements are appropriate, what remediation processes are fair, and what impact this might have on third-party relations, in particular if Russian public procurement is concerned.
- **Entire Agreement.** Ensure that the parties should not be able to sue each other based on marketing speak.
- **Force Majeure.** Provide that the parties cannot face liability for failure to perform based on issues arising from pandemics, Russia-related sanctions, and other *force majeure* events.
- **Guarantees.** Consider what security for counterparty obligations you require and which parent or beneficial owners can best provide them.
- **Hierarchy.** If there is any inconsistency between the terms of an FA and another project agreement, consider which should prevail, in particular if local arrangements are mandatorily governed by Russian law.
- **Indemnification.** What key risks do you want to make the other side responsible for? Can they be enforced in Russia?
- **Joint Steering Committee.** Consider what committee(s) should run the project and what powers they should have (not the power to amend contracts, usually).
- **Know-how.** Think about who will own and/or receive licenses for all know-how and other IP rights for new technology, and how such rights will be protected or registered in Russia.
- **Limits on Liability.** What limits on aggregate liability are appropriate for the parties?
- **Materiality.** Arbitrating disputes and then enforcing arbitral awards in Russia is expensive and time-consuming. FAs are more appropriate for high-value projects.
- **Non-Compete Clauses.** Do you need these to protect know-how and trade secrets? Russian law limits the use of non-compete arrangements.
- **Out of Court Resolution.** Do you want to build in an escalation process before disputes can be initiated? Sometimes these hinder enforcement.
- **Payments.** USD, EUR, RUB, Bitcoin? Cross-border or local Russian bank transfer? Alternatives if exchange controls or Russian sanctions are implemented? Who takes any tax gross-up risks?
- **Qualification.** If training and technology transfer is required, who pays for it, how many people hours are required, and who determines whether it was completed? How does this interact with Russian state inspections and licensing requirements?
- **Restructuring.** English law FAs can be useful tools for implementing restructurings of debts owed by or to Russian groups. Debt write-downs and equity swaps, waivers, amendments, settlements, and standstills are common.
- **Subrogation.** Should the subrogation rights of guarantors to recover amounts paid on behalf of other parties be included?
- **Termination.** Under what circumstances does termination occur and what do the parties need to do upon termination? Would the Russian authorities need to be notified of the termination?
- **Un-Winding.** How and under what circumstances is the transaction unwound? What happens if completion has partially occurred and some assets have already been transferred over? Will the Russian registration authorities require to re-transfer any registered property or rights back to the original owner?
- **Variation.** There is always a risk that oral discussions or email exchanges will have the effect of varying a contract, but the parties can try to reduce this risk by inserting express wording to the contrary.
- **Warranties.** Warranty claims won't always lead to full compensation (both under English or Russian law), but they can prompt disclosure.
- **Execution.** Execution as a deed is often advisable – not all parties may be giving consideration. Ensure all Russian corporate approvals are obtained – the transaction can be invalidated if not. If any Russian individuals are signing in their own capacity, certain additional checks are advisable.
- **Yield.** Pay careful attention to financial formulae and expressions. Mistakes may be punished. Don't get lost in translation.
- **Zip Codes.** The same applies to notices provisions. Don't hand out get-out-of-jail-free cards to the other side. Consider the practicalities of cross-border mail services to Russia and the relative convenience of email. ■

# INSIDE OUT: ALIEXPRESS RUSSIA'S INVESTMENT IN KAZANEXPRESS

By Radu Neag

On March 24, 2021, CEE Legal Matters reported that Alrud had advised Sino-Russian joint venture **AliExpress Russia** on its investment in **KazanExpress**. We reached out to **Alrud** Partner and Head of Corporate/M&A **Alexander Zharskiy** for more information about the deal.



**CEELM:** Let's start at the very beginning. How did the firm first get involved in this deal? At what stage were you brought in and what was your mandate?

**Zharskiy:** AliExpress is one of our long-standing clients. We had previously advised them on a range of other issues, including regulatory, compliance, and financial matters, but this was the first corporate deal we have worked on together. Our team was involved from the very beginning, as the exclusive legal counsel to AliExpress for this deal. As such we oversaw and prepared all the transaction documentation enabling the client's expansion of its presence on the Russian market.

**CEELM:** Please give our readers a bit of context. What do you believe was the rationale behind the deal? Why did it make sense for your client to buy the 30% stake?

**Zharskiy:** In my view as external legal counsel, KazanExpress as a target company was a prospective and dynamic start-up, attractive for investment from market players. KazanExpress has a strong presence in Tatarstan and the surrounding regions in Russia. The deal would allow for KazanExpress suppliers to be brought onto the AliExpress platform. I believe the investment would contribute to our client's strategy

of achieving a leading position among electronic platforms.

**CEELM:** AliExpress Russia, your client, is a joint venture between China's Alibaba Group and Russia's MegaFon, Mail.ru Group, and the Russian Direct Investment Fund. Do you find advising a JV is different from advising a straightforward company? Without going into details, were there differences of opinion between the JV partners and, if so, how were they overcome?

**Zharskiy:** We only worked with the management of the JV company so there were no differences of opinion to be overcome. I'm not sure of the extent to which the JV partners were involved in the deal.

**CEELM:** According to KazanExpress' counsel, "the investment will help the company expand its logistics platform, supporting its active expansion from 33 to 127 cities in the European part of Russia." In light of that expansion drive, what were your particular focuses on, as advisors on the deal? Were you merely focused on maximizing capital, or were there other terms your client found critical to settle on, that facilitated this mission?

**Zharskiy:** The deal was not as simple as you would imagine.

## RUSSIA

As the target company has a development strategy which requires a lot of investment, special attention was paid to the structuring of shareholder relations and to reflecting different potential outcomes in the transaction documentation.

**CEELM:** What aspects did you find to be most challenging in this deal?

**Zharskiy:** Due to the very dynamic nature of the market, we were always in a rush to catch up to and include the most recent developments. The business side frequently ran ahead of negotiations, documentation, and final agreements.

Overall, the deal should have been completed within a short time frame, and the advisors' goal was to not be late with the documentation. It was not possible to put either business on pause, so we had to run to keep up to speed.

**CEELM:** On the flip side, what went rather smoothly relative to expectations?

**Zharskiy:** Working together with the many parties involved was surprisingly smooth. I believe this was very important. We do have experience with multiple types of clients on M&A, but I appreciate and would highly endorse the AliExpress in-house team. The client-side decision-making process on key issues – important because of the tight timeline and changes in the target company – was fantastic. They were able to run, process, and negotiate issues, all the while making reasonable business judgments on the transaction. And it was the same on the sell side, a reasonable approach by all categories of shareholders – founders, management, investors – despite a mixture of differing interests.

**CEELM:** If you had to point to one, what would you say was the single most important factor contributing to the success of the deal?

**Zharskiy:** Timing was the main factor for success – it couldn't be wasted, and it was important for the parties to close the deal quickly with the help of their advisors. It was crucial since, if the target company would not obtain financing at the appropriate times, its business could be disrupted. Thus, it was important for both sides to set up clear rules and answer some difficult questions.

**CEELM:** In your view, what is the significance of this deal for the Russian market?

**Zharskiy:** The deal supports the development of the e-commerce sector in Russia. ■



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*Overall, the deal should have been completed within a short time frame, and the advisors' goal was to not be late with the documentation. It was not possible to put either business on pause, so we had to run to keep up to speed.*

# EXPAT ON THE MARKET: AN INTERVIEW WITH JEAN-FRANCOIS MARQUAIRE OF CMS

By Radu Neag

**CEELM:** Run us through your background, and how you ended up in Russia.

**Marquaire:** I graduated – I can hardly pronounce these numbers – in 1980 from the University of Paris II and then continued my education in Business Law and International Law at the University of Aix-Marseille III. My career path then brought me to INSEAD’s Finance for Executives Program and HEC School of Management’s CESA Executive Human Resources Program.

I have worked in France, Europe, Africa, and North America until finally finding the best place on Earth, and I have been working and living in Russia ever since. It’s already been 15 years.

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

**Marquaire:** I was – and hope I still am – a venturesome man, a cosmopolitan who is open to the world, unlike what many might think of French people. My work as a General Counsel and Executive Officer in various businesses gave me the opportunity to travel a lot and to visit the far corners of the globe. Thus, I have worked for years overseas (Africa, USA, Latin America, etc.) and this probably impacted my DNA, since my kids inherited this love for different cultures and all of them now live outside of France.

**CEELM:** How would clients describe your working style? What about management style? How do you think it varies from the “common” Russian one, if at all?

**Marquaire:** That is a tricky question, indeed. It is better to ask them. I can only assume that if I have known and worked for some clients in Russia for 20 years by now, that would indirectly support that they like working with me and CMS.

**CEELM:** Are there any significant differences between the

French and Russian judicial systems and legal markets? Which stand out the most?

**Marquaire:** The range of sources of civil law in France (and other continental law countries, like Germany) is much wider than in Russia. Among the sources of civil law of these legal systems, civil codes, and laws containing civil law, form a common ground for the system. Current trends include significant expansion and increasing complexity of the Russian civil law system of sources and its convergence with the so-called Romano-German legal system.

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

**Marquaire:** After so many years of living in Russia, I feel that I have become more Russian inside and will be biased but there are differences for sure. Some of them can sometimes represent an obstacle in doing business either in France or Russia.

For example, Russians tend to seek a quick return on investment and are very agile in catching opportunities for more money, while the French are rather conservative and averse to radical change.

Yet both Russian and French people are on the same page when it comes to culture, food, music, family, and education.

**CEELM:** Do you have any plans to move back to France?

**Marquaire:** For the moment I am perfectly happy where I am. France remains my home, but it is unlikely that I will settle there in the near future, as my country changes a lot and unfortunately not always for the better...

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

**Marquaire:** I was lucky indeed to have had a chance to visit all the countries in the CEE region and it is not an easy task to choose the most beautiful among them.

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

**Marquaire:** Moscow is for sure the place everyone needs to visit at least once in their life. It has its own energy and vibe. When we had an international meeting of 100+ CMS Tax Partners in Moscow, in 2019, we saw how all the international colleagues were amazed by the city and its caliber, its manifold character, and its openness. Besides the classic spots (Bolshoi, Red Square, Moscow center, and parks) I would also recommend visiting the Ruski restaurant, on the 86th floor of the highest skyscraper in Moscow, to enjoy the marvelous city views and traditional Russian cuisine in a modern interpretation. ■



# MARKET SPOTLIGHT: CZECH REPUBLIC



# GUEST EDITORIAL: FROM SUITCASE TELEPHONES AND POLYESTER SUITS TO AI AND ESG

By Sasha Stepanova, Lawyer, Kocian Solc Balastik

Thinking about my journey and experiences as an expat lawyer in the Czech Republic, I vividly recall one of the early client meetings I had fresh off the boat in the mid-1990s. A CEE client came to the office with a “suitcase” telephone ... an old school plastic telephone with a rotary dial and a long antenna, encased in an MDF “custom telecommunications suitcase” which he proudly lugged onto the desk ... (He was also wearing one of those plum-colored shiny polyester suits so beloved by *New Europe Entrepreneurs* in the 90s). Note to incredulous young lawyers reading this: in those days there were no mobile phones (The horror!).

Those were truly “emerging economy” days but when I look around now, the pace of modernization in the legal and business environment has been remarkable. Virtual data rooms have long since replaced rooms in a company HQ filled with folders of yellowing documents. We now use sophisticated legal AI tools for high-speed due diligence review, a real game-changer. The potential for AI applications in legal practice is very exciting, not just for due diligence, but for contractual drafting, case management, and contract lifecycle management for clients. Legal practice is and will be revolutionized, whether you are in CEE or anywhere in the globalized world. Harnessing the soft skills and emotional intelligence of a seasoned lawyer to interpret the high-level application of legal tech will bring great benefits and value to clients. Is legal tech too alienating or removed from the *traditions* of the profession? I think people tend to resist change rather than tech itself. I do not fear lawyers being *replaced* by tech, but I do think that lawyers who are fluent in tech will replace those lawyers who are not.

As an English common law trained lawyer, I have often acted as a bridge for foreign investors making their first forays into CEE, and for some investors from far away, even their first investment foray into Europe. Seeing both sides has often made me feel like a cross business cultural *consigliere*. One of the fascinating results of the major Czech private law recodification in 2014 for me was the introduction of a parallel concept of the common law trust mechanism into the Czech legal system. The full application of the multifaceted trusts

tool is still evolving, but I’m proud to see how my colleagues have been at the forefront in establishing some of the Czech Republic’s leading private philanthropy foundations and trusts, as generational change after three decades of capitalism creates new opportunities for private wealth legacy.



The evolution of legal practice in the Czech Republic and CEE is not only influenced by legislative updates or technology waves. I sense the drivers for certain conceptual changes in Czech and CEE law may come not just from domestic reboots but in response to global trends already affecting business and law firms worldwide, such as the ESG phenomenon. Law firms in CEE will need to find their bearings and evaluate how to meet and respond to clients’ needs and goals in an area that some lawyers may initially dismiss as faddish or not substantive law. Yet already some global clients are raising these matters and requesting a tangible response from their local lawyers.

ESG has the potential to be a major business opportunity for law firms in advising clients on their policies, implementation, and compliance. Yet in this new landscape, clients, business partners, and future law trainees will also expect law firms to be demonstrating their own ESG compliance and will easily see through limp attempts at greenwashing. I’d wager that few law firms are ready to immediately wave goodbye to our carbon-emitting energy clients on moral grounds. Yet the Law Gazette in the UK recently reports that law students at Yale have ranked 100 law firms from A to F according to their climate performance and invited firms to take a “climate pledge” under which they will “not take on work to support the fossil fuel industry, now and into the future.” How will this play out in our small CEE jurisdictions? ESG issues are complex, however, I feel law firms, even in CEE, will underestimate these at their own peril if they wish to stay relevant to the concerns of more *woke* clients and the upcoming generation of law graduates. A considered and authentic response, taking into account regional and cultural differences, is required. ■

# THE CZECH LOGISTICS SECTOR – STRONG GROWTH IN THE FACE OF ADVERSITY

By Andrija Djonovic

CEE Legal Matters has been reporting on an increased number of deals in the Czech Republic’s logistics sector. We reached out to several Czech real estate lawyers to discuss both the drivers behind the spike in work in the sector and the challenges it faces in the country.



## Geography, Timing, and Investors

“We witnessed a strong reawakening of the industrial and logistics real estate sector at the end of 2020,” comments Allen & Overy Partner Prokop Verner, adding: “we see a sharp rise in industrial and logistics property investments indicating that the upward trend continues throughout 2021.”

BPV Braun Partners Partner Jiri Barta attributes the high level of activity in the country’s logistics sector to its strategic position. “The Czech Republic and the whole region profits from the geographic location in the center of Europe. Slowly but surely the system of highways has been improved not only in the Czech Republic but in Poland and Slovakia, too,” he says. “That makes the whole logistics sector work faster and more effectively.”

While geography might have helped, PRK Partners Partner Roman Pecenka points to the COVID-19 outbreak as the main driver for the sector as it led to an “unprecedented expansion of e-commerce.” Barta echoes him: “obviously with the whole COVID-19 situation, when many shopping malls were closed due to the lockdown and on-line shops and home deliveries increased massively,” it was logical that logistics went on a rise.

“Other long-term drivers, such as the effort to move goods in the supply chain closer to the customer (thereby improving client service) and the effort to reduce dependency on the Chinese market, have also pushed the growth of the industrial and logistics real estate sector,” adds Verner.

And investors see the promise that the sector holds. Kinstellar Partner Klara Stepankova explains that “in the Czech



## CZECH REPUBLIC

Republic, the sector is not only driven by the increased demand from occupiers prompted by the further penetration of e-commerce but also by the increased interest in this sector from institutional investors.” She adds that their office has “been working for many experienced players in the sector on the development and investment side for years, but recently we have seen a lot of newcomers to logistics. These are typically investors who previously focused their attention on traditional asset classes, such as offices and retail, and moved their investment strategy to logistics not only because of the current lack of available suitable products but more importantly because of uncertainty surrounding the future of offices and retail assets.”

It’s not just the pull factor of the logistics sector but also the push factor of other potential investment targets, with Emil Holub, Partner and Head of Real Estate with Clifford Chance Prague, believing that this interest from investors is also due to a gap in investing in other sectors. “The logistics sector has become very dynamic mainly due to the lack of other investment opportunities in other sectors – retail was complicated even before 2020 and with the COVID-19 impact the retail sector is on a break,” he says. “The office sector is impacted by Covid-related uncertainty and also by the lack of quality products (i.e. the office offering) in Prague, which makes up the vast majority of the office investment market.” He also feels that the hospitality market is not yet in the distress “which was anticipated after COVID-19 and that other alternative assets (such as student or elderly housing, data centers) are not yet really developed in the Czech Republic.” As a result, Jakub Adam, Partner at Taylor Wessing, sees investing in logistics as logical and predictable. “Unlike other sectors, logistics has not been negatively impacted by the Covid-related restrictions. It is generally considered a safe investment, banks consider it safe harbor,” he says. “Besides banks, logistic developments also have multiple other sources of funding, including IPOs and bonds.”

### Show Me the Money

When it comes to the sources of investment, Pecenka says that “the most important recent deals were driven by established foreign funds, which confirms their continuing interest in investments in Czech assets.” Holub adds that “around half of the investments come from sovereign funds originating in Singapore, the Gulf, China, and Norway. And the remaining investments are coming from all over the world – the UK, the US, or Australia.”

And strategic investors play a big part as well with Barta saying that the automotive sector is still a dominant driver, followed by light industrial production, and that “we must not forget about the retail sector, the players keep expanding and improving their regional hubs.” Glatzova & Co Partner Erik Kolan points to a “high demand for car parts and machinery, and an associated demand for logistics facilities.” He adds that the transition to electro-mobility also increased the demand for new facilities (with existing contracts for supply with Skoda and Volkswagen) tailored for e-car manufacturing. According to Kolan: “The car industry is big in the Czech Republic. Although it was hit hard by COVID-19, as it usually is in any crisis, it is recovering and is a driving force for the logis-



Emil Holub,  
Partner,  
Clifford Chance



Erik Kolan,  
Partner,  
Glatzova & Co



Jakub Adam,  
Partner,  
Taylor Wessing



Jiri Barta,  
Partner,  
BPV Braun Partners



**Klara Stepankova,**  
Partner,  
Kinstellar



**Prokop Verner,**  
Partner,  
Allen & Overy



**Roman Pecenka,**  
Partner,  
PRK Partners

tics sector.” Echoing Barta’s second point, Kolan talks about “a giant logistics center for Tchibo, which they’ve already enlarged twice, in the town of Cheb, in Bohemia, very close to the German border,” as well as an Amazon distribution center near the Prague Airport – both servicing the whole region, not just the Czech market.

Ultimately, when it comes to investment sources, Holub notes that they vary a lot. “Some of the investments are financed domestically, some by bonds and equity issued on stock exchanges,” he explains, with Adam adding that “some developers opted for an IPO (as CTP did recently), some generate funds from bond solutions (such as Accolade), and some developments are debt-funded (as banks generally consider logistics projects a safe investment).”

### Room to Grow if You Have Strong Nerves

“The market is far from being saturated, the very low vacancy levels for logistics parks and the increasing rents are a good testimony to that,” Stepankova says. “One of the logistics sector’s segments that we see as having potential for further growth is last-mile logistics projects. As retail will have to completely reinvent itself into new ways of functioning, there might be opportunities for the conversion of parts of certain retail schemes into other uses, including logistics. There is definitely room for new projects,” she concludes. Holub adds: “Judging from the plans of our clients in this sector, each of them has an appetite to grow and build new logistics centers. There are also new concepts such as ‘last-mile’ or ‘flexi spaces.’ Lastly, looking at Western Europe where new trends usually appear earlier than in the Czech Republic, we may also see the conversion of badly performing shopping centers, especially at the outskirts of large cities, into logistics centers.”

Verner notes that “demand in the sector has long outstripped supply and, as long as this remains the case, there will still be room for new projects,” but that a simple hunger for more space might not be enough. “The developers are eager in expansion but there are so many obstacles that the entire process requires strong nerves and a lot of patience,” Pecenka notes. There are several factors at play here.

First, “over the years the logistics assets have become very consolidated and are held by a relatively small number of real estate players,” Holub says. “Moreover, most of these players in the logistics sector are ultimately held by sovereign funds who are not ready to sell and are prepared to hold these assets for a long time.” He adds that the other dominant developers “generally do not sell to the outside market and keep the assets for themselves. This makes the remaining logistics assets developed by small independent developers very desirable and the resulting pricing is exceptionally high.”

Second, Pecenka says that “even good locations are facing increasing resistance from local municipalities and inhabitants. Due to the Czech tax system, they do not have many positives from this kind of investments but have to face all the negatives.” Kolan explains: “Ten or fifteen years ago if you were a logistics

investor going to a municipality, they would welcome you. But now, because the unemployment rate is very low, they have less of an incentive to welcome a logistics center and the perceived disruption associated with it, like heavy traffic and an influx of foreign workers. So from a political standpoint, local authorities and voters are shifting against these facilities, as they no longer need new jobs for the locals and do not want to deal with the potential disruption.” He mentions an instance in Northern Bohemia, the region with the weakest economy: “In an area designated for logistics development an investor bought land and invested a lot of money, fully in line with the zoning plan. Yet the relevant municipality as well as a neighboring one are trying to change the zoning and impose construction bans. For a year now we’ve been fighting them to respect the existing zoning project and permits.”

As a result, Pecenka describes the logistics sector in the Czech Republic as “a total landlord’s market. And it is unlikely this will change anytime soon, due to steadily increasing prices of land, of construction works & materials, and the disastrous length of permitting process.”

### Is the Czech Government Helping?

“I don’t think the growth in this sector is really government-driven,” says Kolan, with Adam too stating that “the impact of government activity on logistics’ growth is neglectable if any at all.”

While Verner notes that the Czech Government did provide minimal support to the sector through the Smart Parks for the Future program, he says “it is obvious that private capital is and will remain the primary driver in the logistics sector.” Holub echoes this by saying: “From experience, the less governments interfere with business, the better. On the other hand, we see that councils of the Czech regions and mainly municipalities have been actively building barriers to future logistics developments, with strong support from local communities, as those communities do not favor logistics centers near to their homes.”

Holub adds that “permitting of new projects has thus become even more complicated,” with Adam noting that a “critical issue is the length of permitting procedures, which the Government is attempting to tackle by way of the new Construction Act. But the outcome is uncertain and will only be recognizable mid-term.” Kolan is not too optimistic on the act’s timeline: “There is a wish to shorten the permitting timespan. A central building authority will be set up, taking

that responsibility away from local municipalities. The hope is it will help to professionalize and speed up the process, reducing the number of binding opinions that need to be obtained from different authorities. So, there is a chance the new code will help. But it will only start running in 2023 and the process will take time. It will probably take several more years before things settle down and become easier.” Pecenka is not holding his breath either, saying he does “not believe it might have an imminent positive impact on the permitting process. It is more likely it will create additional burdens and uncertainties.” The feeling is echoed, on a slightly more optimistic note, by Verner: “Due to the complex remodeling of the public administration structure anticipated by the new Construction Act, we expect that it may initially cause a certain disruption in the permitting procedures. However, in the long run, we trust that the new act will meet its goals and will serve to accelerate and simplify real estate development in the Czech Republic.”

Ultimately, “if you were building a factory for lithium batteries, the Government would step in and help you,” Kolan says. “But they see pure logistics projects as adding less value, and the classical incentives available since the 90s are more or less gone. They are now focusing on research centers, e-mobility, and other projects with high added value.”

### Looking Forward

Despite several challenges faced in the market, most are optimistic about the sector’s future, even if certain drivers will change. Pecenka says he expects the uptick in logistical work to continue. And so does Verner: “I expect that the established trend of growth in the industrial and logistics real estate sector will continue further, even after the pandemic. The pandemic has, among other changes, accelerated the development of some industrial sectors and shifted the focus of customers to e-commerce. I believe these new consumer preferences will last and continue to benefit the industrial and logistics real estate sector in the long run.” Kolan agrees as well: “all the main drivers for the logistics sector will continue – it’s inevitable.”

“Though the pandemic’s end may bring customers back to the shopping centers and employees back to offices, it will never be the same as before – new habits were established and the world will not be the same again,” Holub adds. “I expect that there will be an even higher demand for last-mile logistics and also that some of the production done elsewhere will be moving closer to the customers.” ■

# HAVEL & PARTNERS MARKS 20 YEARS: AN INTERVIEW WITH ROBERT NESPUREK

By Andrija Djonovic

With **Havel & Partners** celebrating 20 years of existence this year, CEE Legal Matters spoke with **Robert Nespurek**, one of the firm's founding Partners, to look back at the past two decades and the firm's plans for the future.



**CEELM:** Congratulations on the anniversary! How are you planning to celebrate it?

**Nespurek:** With a big party! We are planning on throwing a get-together for the whole office at the start of September, in Prague. I'm hoping that hundreds of our colleagues will be there!

We have as many as 500 people, 250 of them lawyers and tax advisors, in our group, and everybody is invited!

**CEELM:** How did the firm first come to be? Who were the initial founders and how large was the team, at the beginning?

**Nespurek:** There were five founders back in 2001. Four of us worked in the Prague office of Linklaters, which is where I started in 1998. A year later another founder, Marek Vojacek, joined and yet another year later Jaroslav Havel, from another firm. Ondrej Petr, the fourth founder, was already at Linklaters when I joined them. The fifth founding partner was Jan Holasek, who came from Kocian Solc Balastik. Three of those founders are still with the firm, so the majority is still represented after all these years!

We started as a law firm cooperating with Deloitte and joined their then-forming legal network. This gave us a unique dimension to the business, cooperating extensively with the

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*On the one hand, it was the feeling of freeing ourselves from a larger organization. It was a big motivation moment for us, to take everything into our own hands and do things in the way that we really thought would work. It was a liberating feeling.*

*On the other hand, it was a lot of hard work. Everything we had done until that point, connected with Deloitte, required a lot of hard work to be replaced with other business.*



large consultancy firm. That cooperation remained in place until 2005 when we went fully independent. We had already grown to some 30 or 40 lawyers at the time and had started on our way to where we are now.

The fact that we stopped being a member of the Deloitte group meant that we could become even more entrepreneurial and were able to better manage the business – especially in the hard times of the 2008/2009 financial crisis. To be able to stick it out and turn our business into a large, full-service operation during those years – that was a major moment for us. And in the following years we became the largest law firm in the Czech Republic!

*For me, it was the private equity deal when I represented KBC Private Equity on their acquisition of Novaservis, in 2005, and then assisted them on their successful exit, in 2007. This was something that definitely moved my career path closer to private equity and also venture capital work.*

**CEELM:** What do you recall from year one after 2005? What were the highlights that stuck with you over the years?

**Nespurek:** On the one hand, it was the feeling of freeing ourselves from a larger organization. It was a big motivation moment for us, to take everything into our own hands and do things in the way that we really thought would work. It was a liberating feeling.

On the other hand, it was a lot of hard work. Everything we had done until that point, connected with Deloitte, required a lot of hard work to be replaced with other business.

The path we then embarked on was our international strategy. That led us to become one of the law firms handling the largest number of M&A transactions in the market, by 2007. A lot of that was thanks to us nurturing international cooperation with major law firms, mainly from the US, the UK, and Germany. This lasted until the financial crash when a lot of the M&A work dried up. After that, we really passed the stress test by quickly restructuring and diversifying into what we are today.

**CEELM:** Looking back at your 20 years of operations, what would you identify as the most important transactions for the firm?

**Nespurek:** One was, definitely, representing the Italian insurance conglomerate Generali on their combination with Ceska pojistovna from the PPF group, in 2008. From the perspective of strategic investment advisory, this was a shining moment for us.

The other one that comes to mind is the sale of the major food company Hame, which also took place in early 2008.

Both of these happened during the formative years of the firm and, looking back, both were landmark transactions. Such transactions transformed our corporate practice into a major force in the market and led to other major deals in our second decade.

**CEELM:** Similarly, what are the deals you are most proud of having worked on?

**Nespurek:** For me, it was the private equity deal when I represented KBC Private Equity on their acquisition of Novaservis, in 2005, and then assisted them on their successful exit, in 2007. This was something that definitely moved my career path closer to private equity and also venture capital work.

We continued with assisting some of the early private equity and VC funds in the Czech Republic on their transactions. A lot of those were technology-driven and that fueled my interest in the tech sector and technology law. I continued, especially after 2010/2011, setting up a dedicated IP/IT/Media group in the law firm, which was another turning point in my career with the firm.

Subsequently, we built one of the largest teams in the region for technology and IP, comprising some 40 lawyers nowadays, in the Czech Republic and Slovakia. We promoted three other Partners within the team and made it one of the largest business units in our firm, which just goes to show how serious the work we do is.

**CEELM:** Have you ever considered expanding to new markets, geographically?

**Nespurek:** We have become quite international in our outlook after 2005 and we continued down this path, especially after we turned into a full-service firm following the 2008/2009 crisis. We diversified from M&A into all other practice areas and have some of the largest teams in all of them.

We stick to the strategy of being the preferred independent firm for international transactions, utilizing our six offices in the Czech Republic and Slovakia. Also, as our clientele grew,

our outbound international work has significantly increased – we have assisted clients in some 110 countries all over the globe. Nowadays, the amount of outbound and inbound international work we do is roughly balanced. We cover cases in a dozen languages and have no problems with handling multi-jurisdictional client work – about 70% of all our work has an international element to it!

So we chose to focus on quality in our home in the Czech and Slovak jurisdictions, rather than setting up foreign offices. And we are certain that, thanks to our size and business network, we can achieve maximum results for our clients in private as well as public sector work. And the extensive international network we have carefully built over the last 15 years makes sure we can achieve the same for our clients abroad, thanks to our great partners.

**CEELM:** What about the team? How has it evolved over the years, and how do you imagine it will continue to do so?

**Nespurek:** When we were a small law firm, by being ambitious, by growing, by having an international strategy, we managed to attract a lot of talented lawyers to our firm – especially from international law offices in Prague. Later on, we also attracted some great colleagues from the state administrative sector and various regulatory bodies. This proved to be a great foundation for future growth, in the first decade of the firm.

*Also, as our clientele grew, our outbound international work has significantly increased – we have assisted clients in some 110 countries all over the globe. Nowadays, the amount of outbound and inbound international work we do is roughly balanced. We cover cases in a dozen languages and have no problems with handling multi-jurisdictional client work – about 70% of all our work has an international element to it!*

Today, we have established partnerships and career paths for our team members. We rely more on hiring young lawyers and shaping their careers, aiding them in their progression, all the way up to senior levels. We take great pride in our in-house growth and development, while, of course, continuously focusing on great lateral hires for senior positions. We believe that we still have opportunities to grow so we actually need more Partners for the future.

**CEELM:** What is it about the past 20 years that you look back at with the most fondness?

**Nespurek:** I think that one of the great things is that we still have (at least most of) our original founders and many other lawyers who joined early on still working in the firm, staying close friends and business partners. I think that is unique and also very enjoyable.

The second thing is that our business is still about people. What we rate very highly is that the firm is what it is because of the firm's culture. How positive the atmosphere in the firm is, and how we manage to maintain an informal approach to doing things within the firm, and combine that with a strong determination to do good, solid, professional work.

**CEELM:** On the flip side, what is one thing you regret not yet having a chance to do?

**Nespurek:** I can't speak of any large thing that we should have done by now. I regret none of the big decisions we made – even if some of them may have seemed risky and with uncertain outcomes in the past.

One thing that comes to mind is that, at times, we could have made some decisions faster, particularly related to things like working with the right people and, perhaps, saying goodbye to some who turned out not to be the right fit for the firm. But this is probably key in any business that relies on people, and one always learns about the best way of doing it as time passes.

**CEELM:** Where do you imagine the firm 20 years from now?

**Nespurek:** The firm has a pretty good foundation and stands a great chance to both maintain its position and grow further. I think that we had a great quality of service when we set up the firm that we improved and built upon. I believe that the firm will continue following this trend, going forward. What we wish to achieve is to stand up to the challenge of continuing to be a reliable, strategic partner to our clients, be the best service provider. In those qualities, becoming something like the magic circle firms in London are. That is what our ambition is and that is what we are striving to achieve.

What we would also like to accomplish is that this becomes a lasting business that isn't contingent on existing Partners. So that even in the future, the firm exists and thrives, even after the founders retire. ■

# THE UNEXPECTED HAT: A TALK WITH VICE MAYOR ROMAN PECENKA

By Djordje Vesic

**Most of our readers might be familiar with Roman Pecenka as a Partner at PRK Partners. For years though, he has also been serving as the Vice Mayor of Podolanka. CEE Legal Matters spoke with him to learn more about his life in elected office.**

In the flatlands, some 30 kilometers away from the center of Prague, lies the tranquil little village of Podolanka. Its narrow, quiet roads and alleys, dotted with old tiny houses, stand in stark contrast to the bustling streets of the City of a Hundred Spires. Perhaps it was that apparent tranquility and endless greenery that attracted then-young and aspiring lawyer Roman Pecenka to leave his hometown for a life in the countryside.

The move was driven, he explains, by his wife and his life-long desire to live in a house surrounded by a large garden. Once they found their future home, nestled near one of the village's ponds, they packed their things without hesitation. "We moved to the village 16 years ago," Pecenka says. "There hadn't been any developments in the village prior to our arrival, so there were many well-preserved old family houses."

Yet, not all was as idyllic in the countryside. The village, which is inhabited by only about 600 people, was in dire need of not only repair but also financing. "From my point of view, the village was dying," Pecenka admits. "There was only one active association – the Volunteer Firefighter Organization, there was only one grocery shop and only one pub, there was no school, the roads were in poor condition, and it didn't have a sewer," he explains. Nevertheless, Pecenka decided to become a part of the village community. "I went to visit the mayor of the village and introduce myself," he says. "The mayor was an old man and was not very happy to see a new face in the village," Pecenka adds with a smile. "I guess he was nervous about whether we would be a good addition to the community." However, shortly after, the vice mayor, who had learned that he was a lawyer, reached out and asked for legal assistance. "He asked me if I would like to help the village, provide some legal advice, check some documents, things of that nature."

Over the next few years, Pecenka provided legal assistance to

the village authorities. Soon enough, though, his commitment was recognized, and he was invited by the locals to run for a spot on the village council.

"In the Czech Republic we have around 6,500 towns and villages and every four years elections for the municipal councils are held," Pecenka explains, adding that each council must consist of a minimum of five members while some, such as in Prague, count several dozen members. Podolanka's council, however, was fairly small and thus more agile and easier to organize. Pecenka ran for the council twice. He was elected as one of the deputies 11 years ago. And during his second election seven years ago, he was appointed vice mayor of the village. "The role of the mayor is to be the official representative of the village and the vice mayor is their right hand," Pecenka explains. "The mayor meets with the people and discusses their needs, while the vice mayor is the person in the background that is doing the preparatory work for those needs to be met, a sort of project manager."

Due to the size of the village, most decisions are made together, and the village's denizens are encouraged to actively participate in the decision-making process as much as possible. And indeed, many decisions had to be made. According to Pecenka, the village was in dire need of repair and construction of some of the basic infrastructure, such as a school and the sewage system. "One of our goals was to try and bring our village into the 21st century," he says. "To that end, we had two major tasks: to bring the village to life and to invest in its infrastructure." One of the first moves was to settle the ongoing feud between the volunteer firefighters – "there was a long-standing dispute among the firefighters and many of them didn't speak to each other." The village council helped reconcile the embattled sides and it also invested in firefighting equipment which further bolstered the morale of





Roman Pecenka,  
Vice Mayor,  
Podolanka

the fire brigade. “The firefighters are now getting along quite well,” Pecenka says with a smile. In addition, the council started organizing concerts and other events aimed at bringing the villagers together.

The next step was to get the village’s infrastructure back in order. “I am a real estate lawyer and I have worked on many construction projects,” Pecenka says. He explains that one perk of his profession is being familiar with developers, engineers, and other service providers. So, he invested his experience, expertise, and connections in completing the much-needed sewer system. “The sewers were in the plans for the last 20 years, but the village simply couldn’t afford to build them. The cost of the construction was estimated at CZK 75 million, which Podolanka’s mere CZK 5 million annual budget just couldn’t cover,” he adds. This time around, though, the village managed to secure financing for the project. “We managed to successfully apply for a grant for EU funds that covered 65% of the cost, and another 10% was covered by a subvention from the regional authorities.”

Difficult as it was, the sewer project did not discourage Podolankans from taking on new projects. Pecenka reports that, about July 2021, the new water supply network was completed. Furthermore, three streets were renovated with new roads and sidewalks. He also proudly notes that the groundwork for the construction of an elementary school had been laid. “The school development is a project we are undertaking jointly with two neighboring villages,” and, once constructed, the school will be attended by up to 600 students. Finally, the village authorities have taken strides to attract new people to the village, according to Pecenka. “We have entered into an agreement with two developers for the construction of around ten family houses annually, which are planned to be sold to Prague people looking to relocate from the city.”

Despite all the accomplishments under his belt, Pecenka looks towards the future with the same fervor. “I have a lot of ongoing projects and I would like to continue with their implementation,” he says cheerfully. With many more projects he plans to start, one question remains – how does he cope with being both a successful lawyer and a hands-on vice mayor? Does he feel burdened by the never-ending tasks and responsibilities? According to Pecenka, it’s quite the opposite. “I like doing this,” he shrugs the question off. “To work on something and see it grow in your hands, there is no greater satisfaction.” ■

# MARKET SNAPSHOT: CZECH REPUBLIC

## REAL ESTATE IN THE CZECH REPUBLIC

By Martin Kubanek, Office Managing Partner, Schoenherr Czech Republic



The pandemic has transformed the Czech real estate market. While the residential and logistics real estate markets strengthened, the retail, tourism, and hotel sectors are among the worst affected. However, interest in investing in real estate has not waned as, in uncertain times, the purchase of real estate represents a safe place to park one's funds and watch them appreciate. There has been no significant decline

in property prices, even in the case of commercial real estate, as some investors had anticipated. The Czech market still lacks enough quality investment opportunities. The clear winner of this situation is the logistics segment. Our Prague office assisted in several transactions in the logistics segment, the largest being the purchase of 130 hectares of land intended for warehouse development, at one of the exits of the western D5 motorway. According to some real estate players, we can also expect increased interest in the industrial segment soon, including sale & leaseback transactions.

### New Building Act

The new Building Act, approved by the Czech Parliament in July 2021, will enter into force on July 1, 2023. This is the most fundamental change to Czech construction law and construction management in the last 30 years and can significantly affect the real estate market and the speed of construction in the Czech Republic. Here are five key changes that the new Building Act will bring:

First, the new Building Act introduces a unified system of state building authorities, headed by the supreme building authority. This is a systemic change that resolves the fundamental problem of systemic bias, specifically the risk of local governments interfering in decisions on building permits. The emergence of a unified system of state authorities can prevent these cases. Another potential advantage is the uniform and predictable interpretation of building regulations.

Second, the new Building Act introduces a single joint building

permit procedure, instead of the current zoning and building procedure, which can be described as *one office, one procedure, one stamp*. This is also related to the integration of some previously separate permits and opinions into a single decisive building permit. However, the decisions of the state monument care authority in the protection zone of a cultural monument and monument zone, the opinions of the fire brigade, and some others remain independent. The board of appeal will not be entitled to revoke and return a decision issued at first instance but will always have to make a final decision.

Third, spatial planning documentation at all levels will be acquired in a uniformly regulated process and must be prepared electronically. The largest cities – Prague, Brno, and Ostrava – will have the opportunity to issue their own building regulations.

Fourth, the new Building Act contains a detailed regulation of planning contracts, which provides municipalities and investors with greater legal certainty about their mutual obligations in the area of future land use, especially in the construction of public infrastructure. The municipality may stipulate the conclusion of such a contract in the zoning plan as a condition for the implementation of a certain construction plan. In the contract, the municipality may agree to take steps to change the zoning plan or, conversely, not to change it for a certain period of time. Investors may be required, for example, to participate in the construction of public infrastructure or other structures related to their intention, or to assume the costs of such construction, or to provide monetary or material benefits for land valuation by issuing spatial planning documentation.

Fifth, the new Building Act further tightens the conditions for the additional permit issued to buildings built without a building permit, or contrary to its terms. Besides meeting all other legal conditions, such a construction may be permitted only if the builder acted in good faith, *i.e.* they did not knowingly violate the law. Milder conditions will also apply if the construction has been legally permitted by law, but the permit has subsequently been revoked. In these circumstances, the building authority will approve the construction by a new decision, if it is proven in repeated proceedings that all legal conditions have been met. ■

# DATA PROTECTION IN THE CZECH REPUBLIC

By Michal Matejka, Partner, and Bohdan Zubac, Attorney, PRK Partners



On May 25, 2018, the personal data protection rules in the Czech Republic were substantially changed. Regulation (EU) 2016/679 of the European Parliament and of the Council – the General Data Protection Regulation, or GDPR – became directly applicable law

in all EU Member States, after a two-year transition period. Thus, the principles of personal data protection in the Czech Republic, the rights, duties, and processing requirements are regulated primarily by the GDPR.

In order to adapt the legal system of the Czech Republic to the GDPR, the new *Act No. 110/2019 on Personal Data Processing* (PDPA) was passed and finally came into effect on April 24, 2019. The PDPA fully replaced the older Personal Data Protection Act (*No. 101/2000*, as amended). The PDPA contains provisions that functionally complement the GDPR. It also regulates the jurisdiction of the Office for Personal Data Protection and personal data processing for safeguarding the defense and national security of the Czech Republic.

Since the GDPR became effective, the Register of Data Controllers maintained by the Office for Personal Data Protection had been terminated. Thus, any registrations or notifications to the Office for Personal Data Protection towards processing personal data in the Czech Republic are no longer required.

A significant derogation from the GDPR, related to the limitation of certain rights and obligations, is stipulated in Section 11 of the PDPA. Articles 12 through 22, on rights of the data subject, and, as far as relevant, also Article 5, on principles relating to the processing of personal data, of the GDPR shall apply, *mutatis mutandis*. However, compliance with the controller's or processor's obligations and exercise of the data subject's rights, laid down in those articles, could be postponed – if this is necessary and reasonable in terms of scope, to safeguard a protected interest. These include (a) the defense or security interests of the Czech Republic, (b) public policy and national security, prevention, investigation, or detection of criminal offenses, (c) prevention,

investigation, detection, and prosecution of breaches of ethics for regulated professions, (d) protection of rights and freedoms of persons, (e) enforcement of civil law claims, among others. If the controller or processor limits the rights or obligations in that way, it must notify the Office for Personal Data Protection of any such limitations without undue delay.



Besides the GDPR and the PDPA, there are also some other statutes which are relevant in the data protection context, in particular *Act No. 480/2004 on Certain Information Society Services*, as amended, *Act No. 127/2005 on Electronic Communications*, as amended, and *Act No. 181/2014 on Cyber Security*, as amended.

The Act on Certain Information Society Services includes rules regarding spam and other unsolicited commercial communications. Any commercial communications may only be sent if a clearly identified recipient has given valid consent in advance, prior to the receipt of said communication. Recipients shall have the option to withdraw their consent in each commercial communication addressed to them, usually reflected in the unsubscribe line found at the end of an e-mail. Alternatively, the sender may rely on the soft opt-in exemption, which presumes the customer's consent. Thus, the controller may send commercial communications to its current customers, about its own similar products or services, provided that the customer may easily prevent the sending of such commercial communications, using either the unsubscribe line at the end of an e-mail or other opt-out versions.

The Office for Personal Data Protection is the central administrative authority in the field of personal data protection which, *inter alia*, provides consultations and informs the public of the risks, rules, safeguards, and rights in relation to personal data processing. The Office for Personal Data Protection also adopts statements, summary materials, and recommendations. Most recently, the Office for Personal Data Protection published, *inter alia*, the Summary Material related to the verification of identity and processing of personal data, the Statement on a Digital Green Certificate (CovidPass), and the Recommendations on mandatory employee testing. ■

# THE GREAT AMENDMENT TO CORPORATE LAW IN THE CZECH REPUBLIC

By Ondrej Florian, Partner, and Radek Wejmelka, Associate, Havel & Partners



On January 1, 2021, an amendment to the Czech Companies Act came into effect, which brought many minor and major changes to the current life of business companies in the Czech Republic.

The amendment gives companies an opportunity to revise their memoranda and articles of association to comply with the new regulations, within one year of the effective date. Nevertheless, some changes are applicable to companies immediately upon the amendment coming into force.

Besides correcting some ambiguities and inaccuracies in the law applicable until the end of 2020, the amendment introduced some new concepts of corporate law, while changing and amending others already firmly fixed in practice today. In this respect, we would like to introduce you to the major changes affecting corporate life, that companies operating in the Czech Republic must be aware of.

## Distribution of Profit and Other Equity Funds

On the distribution of profit and other equity funds, the legislature has granted the requirements stemming from legal practice and reflected some conclusions from judicial decisions. As a result, the amendment permits the distribution of profit and other equity funds throughout the entire accounting period. At the same time, the rules governing the limits on the distribution of profit and equity funds payments have been unified and tightened.

## One-Tier Joint-Stock Companies

The most visible changes include those affecting joint-stock companies with a one-tier corporate governance structure. Under the new rules, the management board is the only mandatorily established body, combining the powers of the statutory director and the management board. In this context, as of January 1, 2021, the function of statutory director ceased to exist, and all executive powers were passed to the management board. If there is no relevant provision in the company's articles of association, each member of the management board is, therefore, entitled to represent the company on their own.

## Changes in the Concept of a Business

Until the end of 2020, the transfer of a business enterprise or a part thereof, that would constitute a change in the current structure of the business or the company's scope of business or activities, required the approval of the general meeting. At the same time, a concept has recently prevailed in court practice that such a part of a company's business must be deemed to mean a branch. The amendment has diverted from these conclusions and expressly requires consent to be granted for the transfer of a material part of a company's assets and liabilities, irrespective of whether or not these formally constitute a branch.

## Restrictions on the Transferability of Shares and Interests

The amendment permits creating a pre-emptive right, a buyback right, and other rights with similar effects to rights in rem – these should be of a similar nature to easements made in the case of immovable assets.

## Status of Members of Elected Bodies and Other Persons in a Similar Position

The changes also affect the rules governing the execution of service agreements and resignations. The amendment has expanded the liability for a breach of the duty of due care and diligence to apply to persons acting as members of an elected body, without being appointed as such – shadow directors. Material changes have been made to the rules governing executive body members' exclusion from office by the court.

## Legal Entity as a Member of the Executive Body

The amendment also imposes an obligation on legal entities that are members of a company's elected body to appoint a specific individual as their representative to perform the function. Otherwise, the legal entity cannot be entered in the Commercial Register as a member of the elected body or, alternatively, the office of the member will cease to exist if a representative fails to be appointed within 3 months of the appointment or expiry of the office of the previous representative. ■



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## EXPAT ON THE MARKET: AN INTERVIEW WITH TRISTAN O'CONNOR OF CMS

By Radu Neag

**CEELM:** Run us through your background, and how you ended up in the Czech Republic.

**O'Connor:** I'm an Australian qualified lawyer. Before coming to Europe, I worked at a boutique law firm in Sydney for three years doing transactional work. I wanted to get some international experience so I contacted a recruiter who came back with a suggestion to work in the Czech Republic. My younger brother had previously done some medical training in Prague and was very positive about his time here. I did some background research on the position and the firm and came across Helen Rodwell, our Managing Partner, who struck me as being very impressive woman with an impressive profile. I was lucky enough to meet Helen in Australia and after completing a few interviews and an exam I decided to accept the position and move to Europe in August 2019.

I had never travelled to Central and Eastern Europe before landing here. My first impressions were great, it was a rush. Part of the reason I came to Europe was to work on some of the bigger transactions and this happened almost immediately. Within the first week or so we started working on a large acquisition in the pharma space with a high enterprise value, much bigger than anything I had previously worked on.

I also spent some time working in our Kyiv office and travelled between the Czech Republic and Ukraine. It was an exciting time for me, getting exposure to two different cultures in two countries and I found it all very interesting. At the time I didn't know anyone who had travelled to Ukraine before. I'm really happy to be working in Prague now. I'm in a good team and it's a fantastic city.

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

**O'Connor:** I was always interested in other cultures and working in different countries. I had lived in Japan and Thailand before and really enjoyed the experience. For a transactional lawyer, Australia is a great market with a lot of interesting work. But the deal sizes are smaller and, as you might expect, cross-jurisdictional work can be a bit harder to come by. Here,



I've had a chance to work on deals across multiple jurisdictions, from Germany to Russia and everything in between. It would be difficult to replicate that experience in the Australian market.

**CEELM:** How would clients describe your working style? What about management style? How do you think it varies from the “common” Czech one, if at all?

**O'Connor:** I think, and it's true of CMS in general, that we're attentive and responsive to our client's needs. So I hope our clients describe our working style in this way. I find it easy to chat and get along with people, so I guess clients might find me friendly and conversational.

An important part of my role here is project coordination. We work with specialised local teams in different countries and try and harness their expertise to achieve a result. Australians are generally pretty outgoing and proactive communicators. Because a lot of our work takes place across multiple jurisdictions, I think this approach really helps. Being a good communicator, being able to work with different personalities and get along with people from different countries, that's an important part of what I do here. I guess Australians can be pretty relaxed too, so maybe this helps dealing with some of the pressure that comes with M&A work.

**CEELM:** Are there any significant differences between the Australian and Czech judicial systems and legal markets? Which stand out the most?

**O'Connor:** I guess because Australia has a common law system and the Czech Republic's is civil law based, you would expect to find significant differences. And sometimes there are differences. It's a relatively minor one, but it took some time getting used to the different document formalities and certification processes over here, which changes with each jurisdiction. But actually the transactional law concepts are surprisingly similar between Australia and the Czech Republic. Conceptually I think if you can do a transaction in Australia or the UK, you can do it in the Czech Republic. Of course it helps if you have a really good team of Czech lawyers, which we do. Being familiar with common law principles can be handy because a lot of the transaction documents we work with are governed by English law.

As for the legal market differences, there is a cross-border flavour to the work we do here. I find that compelling and, given the Czech Republic is a key regional jurisdiction, we get quite a lot of this kind of work. Enterprise values are larger and the deals are bigger here, which comes with added pres-

sure and complexity.

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

**O'Connor:** I think in Australia we're a little bit more laid back. It might be easier to strike up a conversation with someone in a café or bar in Australia. Here, sometimes you need a degree of familiarity before you engage someone in conversation. On the other hand, Czechs have a quirky sense of humour which I really like and an outstanding work ethic, whether it's at work or on the sporting field. And at the end of the day, we both enjoy having a beer and a chat. So we might have more in common than not.

**CEELM:** Do you have any plans to move back to Australia?

**O'Connor:** I do. I will always think of Australia as my home. But I don't have any current plans of moving back, so I guess you could call it an indefinite arrangement. Covid has made it a bit more difficult to travel back home, with Australia essentially shutting its borders, and I haven't been back since moving here. I'm sure my nieces and nephews have grown a head taller since I've last seen them. But Prague is a beautiful city; visually it's amazing, it's just the right size for me, and it's generally just an easy place to live. So that helps.

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

**O'Connor:** That's a tough one. I really enjoyed being in Kyiv. I'm interested in World War Two history, and there's quite a bit of that in CEE. They're some great museums in Kyiv and I really liked Lviv, which is a little town in the west near the Polish border. I've been to Poland to see some historical sites as well, which was great. And I've just returned from Budapest. I really enjoyed the vibe of the Seventh District in Budapest, with all the cafes and pubs. It reminded me of Berlin. And I liked the House of Terror museum there too. So, if I had to pick, I'd say Ukraine as a country, but probably Budapest as a city. Prague is still my favourite though. That's an easy one.

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

**O'Connor:** If you're doing just the one thing in Prague, then you'd have to go across the Charles Bridge and make your way up to the castle. But if you're just going out for a few drinks, you can't go wrong with Naplavka – it's a trendy bar district, with boats moored on the river so you can move from one boat to the next. It always makes for a great evening out in Prague. ■

# EXPERTS REVIEW: ENERGY / OIL & GAS

The theme of Experts Review this time around is **Energy / Oil & Gas**, and the articles are presented ranked by electricity production in gigawatt-hours, according to the BP Statistical Review of World Energy, July 2021. Unsurprisingly, Russia is first with over 1 million gigawatt-hours produced. The article from Montenegro will feature in the last spot.

Country	GWh	
■ Russia	1,085,400	Page 66
■ Turkey	305,400	Page 67
■ Poland	157,800	Page 68
■ Ukraine	149,000	Page 69
■ Czech Republic	81,400	Page 70
■ Austria	71,700	Page 72
■ Romania	56,200	Page 73
■ Greece	42,600	Page 74
■ Bulgaria	40,900	Page 76
■ Serbia*	36,540	Page 77
■ Hungary	34,600	Page 78
■ Slovakia	28,400	Page 79
■ Bosnia and Herzegovina*	16,990	Page 80
■ Croatia	13,400	Page 83
■ Albania*	7,140	Page 85
■ Kosovo*	5,640	Page 86
■ Latvia	5,700	Page 87
■ Moldova*	5,490	Page 89
■ North Macedonia	5,300	Page 90
■ Lithuania	4,200	Page 91
■ Montenegro*	3,050	Page 92

\* 2020 source data not available – latest [www.worlddata.info](http://www.worlddata.info) data used instead.







## RUSSIA: UPDATED GREEN AGENDA IN RUSSIAN ENERGY SECTOR

By Georgy Kovalenko, Partner, and Natalia Aristova, Director, EY Law Russia



The 26th UN Climate Change Conference, taking place in November 2021, and the recently published EU proposals on the Carbon Border Adjustment Mechanism have been at the top of the agenda, this summer, for the majority of Russian energy and other industrial corporations. The green agenda has never been so acute in Russia, the current level of business engagement

in the preparations for negotiations on the implementation of Article 6 of the *Paris Agreement* cannot compare to the one during the *Kyoto Protocol* period.

The green agenda in Russia used to be rather vague and usually overlooked with the prevailing approach to undertake simple or even superficial measures, which was reflected in the legal framework. Until 2021 there was almost no climate change related legislation. The existing laws provided for basic energy-efficiency measures, like meter installation and energy efficiency labeling, as well as general air emissions control and air quality rules. However, in the past few years, the need for modernization of the industrial facilities and implementation of modern technologies has become the key driver for policy and legislation development. Since most modern technologies tend to be more sustainable and climate-friendly, their implementation could help to meet both the goals of industrial modernization and climate change mitigation.

Modernization and localization are now the focus of all state programs and are backed by various state support measures, including tax incentives and subsidies. Some of the economic instruments that could be used for promoting green technologies in Russia include mandatory implementation of the best available technologies (BAT) at the most polluting production facilities, including those of oil and gas majors, use of special investment agreements with the state, granting incentives in return for technological or infrastructure investments, green financing, and some others.

In the past several years, Russian environmental legislation underwent a deep transformation in the attempt to simultaneously simplify the complex existing permit regulation and get the polluters to modernize or pay more for pollution. These changes include the replacement, by 2025, of all types of environmental permits by a single integrated environmental permit, without which no new industrial facilities could be put into operation. To get this single permit, the

most polluting facilities have to implement BATs applicable to their industry, or at least prepare a roadmap for implementation. Failure to meet those obligations could result in 100 times larger environmental fees. The lists of BATs per industry, including oil, gas, and petrochemicals, are approved by the Ministry of Natural Resources and Environment. As transferring to BATs requires substantial funds and resources, there are certain state incentives in place.



The newest instrument is the green financing subsidy. The subsidy mechanism allows for recovery of certain costs of corporate bonds and payments under credit facilities issued for BAT implementation projects, until 2024. Currently available funds amount to USD 60-70 million. The mechanism could be extended, if successful.

Another general investment support instrument that could be used for promoting green technology projects is the special investment contract (SPIC). Under a SPIC, the investor agrees to implement, or develop and implement, modern technology in the mass production of industrial goods and the state agrees to grant various benefits, including guaranteed stability of business conditions and tax incentives. According to SPIC rules, modern technology is the one that is environmentally friendly and has a beneficial social impact. So far, the instrument has been rather popular among companies producing high-end industrial equipment and mining, chemicals, and automotive companies.

A similar instrument, but with broader sector coverage and initially designated for major capital-intensive investment projects, is the capital investment protection and promotion agreement, under which the project entity can have access to state infrastructure subsidies and similarly apply for a stabilization clause. The infrastructure subsidy can cover costs for the creation, modernization, and/or reconstruction of the project-associated infrastructure, as well as the costs of financing for project infrastructure.

The array of available state-support measures in Russia applicable to energy companies and the current attention to the green agenda gives hope that many of the BAT projects will be implemented, thus helping to achieve both the national goal of industrial infrastructure modernization and the global goal of climate change mitigation. ■

## TURKEY: REORIENTATION OF OIL AND GAS SECTOR UPSTREAM INVESTMENTS

By Nigar Gokmen, Head of Energy, Mining and Infrastructure at Esin Attorney Partnership



All countries have had to deal with the intensifying effects of climate change in recent years. As a direct response, we are in the process of moving toward a low-carbon future. The *Paris Agreement* and the EU's *Green Deal* have already urged all sectors to take measures to reduce carbon emission levels, and the energy transition movement is rapidly growing. COVID-19 has also hastened this global movement.

The main plan for reducing carbon emissions is to increase electrification and decarbonize the electricity sector through renewables. This is a great plan, as far as it goes, but electrification of all industries is not an easy target, and renewables have their own struggles. Unlike fossil fuels, which are available at any time, wind and solar power plants generate electricity only when the sun is shining and the wind is blowing. A huge challenge arises as electricity is, in principle, generated and consumed simultaneously. Additionally, renewables cannot replicate certain qualities of fossil fuels, such as high heat.

Cutting-edge technologies help increase the share of renewables in the energy sector. Storage technology, which was previously only employed in niche markets, can now be broadly used since the average cost of batteries has fallen drastically. This will allow renewable-based power plants to increase reliability and balance. Smart grid technologies and grid digitization, on the other hand, will reduce losses incurred through grid operation.

Based on these latest developments, increases in the share of renewables in the electricity generation mix are expected to push to 30% in 2021 globally, according to the International Energy Agency, the highest rate ever achieved. A strong drive by governments toward de-carbonization also helps to increase the share of renewables and causes a downward shift in oil and gas demand. Therefore, it is not surprising that upstream investments have slowed. The share of renewables in Turkey is also increasing, in line with global trends, and is expected to reach at least 30% of the electricity generation mix by 2023. Heavy dependence on oil and gas imports also compelled Turkey to prioritize renewable energy resources.

Although technology and governmental acts help the move away from fossil fuels, achieving climate change targets based only on electrification and renewables will be a long plateau. We still need oil and gas in the energy transition process. According to BP's *Statistical Review of World Energy 2021*, oil continues to hold the largest share of the energy mix with 31.2%, while natural gas holds a share of 24.7%, among all primary sources in the world. Regarding the regions, natural gas dominates in the CIS and the Middle East, while oil remains the dominant energy resource in Africa, Europe, and the Americas. If energy transition trends lead to a shortfall in investments, they could cause future supply shortages risks. Therefore, we can expect to see regulations that continue to support the oil and gas market, in parallel with regulations supporting renewables. Turkey also continues to invest in domestic oil and gas exploration and production activities. Especially for natural gas, transmission and distribution networks and storage facility capacities have been increased of late, and new international pipelines have been implemented. The Turkish Natural Gas Futures Market will also open on October 1, 2021.

In any case, the oil and gas sector now rapidly needs to reorient investments based on the energy transition trends. Future investments should be environmentally friendly and impact-focused, and they should adopt new strategies accordingly. The first priority of oil and gas companies should be to maintain a low cost and lower carbon emissions. Indeed, it has become increasingly common for oil and gas companies to provide commitments to reduce emissions and move to supply a diverse range of fuels and electricity for that purpose. They are working on alternatives such as (1) biofuels, which when burned release the same amount of carbon the plant captured when growing, provided that the process of turning plant matter into usable fuels runs on zero-carbon energy; (2) green hydrogen, to be produced based on renewable energy; and (3) carbon capture, storage, and use.

The oil and gas sector appears trapped between electrification and decarbonization strategies and the trends to replace fossil fuels with renewable resources. Although we will need oil and gas in the energy mix for years to come, the future of the sector depends on how successfully it can adapt to a sustainable low-carbon structure. ■

## POLAND: THE EVOLVING ROLE OF OIL & GAS COMPANIES IN A NET-ZERO FUTURE – THE VIEW FROM POLAND

By Lukasz Szatkowski, Partner, and Piotr Prawda, Senior Associate, CMS Poland



After a year of unprecedented health and economic challenges, the global economy is trying to recover, and the energy transition needs to be at the heart of this. As a lifeline out of the COVID-19 pandemic, the European Union

has proposed the *Green Deal*, which focuses on achieving zero net emissions by 2050. Can oil and gas companies also lead the transition to a net-zero future in more traditional and heavily carbonized economies, such as Poland?

These companies are, however, well aware of the climate challenges and both the need for, and benefits of, the energy transition. Key Polish oil and gas players PKN Orlen, Grupa Lotos, and PGNiG have all pledged to facilitate Poland's route to a net-zero future. These entities may take various paths in the energy transition, but the key pillars seem to be the same: low-emission power generation, alternative fuels, and energy efficiency in production.

### Power Generation

In the field of electricity generation, Polish oil and gas companies focus on renewable energy sources and natural gas. By 2030, PKN Orlen plans to operate renewable energy sources with a total capacity of 2.5 gigawatts, including a 1.2-gigawatt offshore wind project. PGNiG aims to achieve a combined installed capacity from wind and photovoltaic assets of 900 megawatts beyond 2022.

Currently, over 70% of electricity in Poland is generated from coal. The existing coal-fired power plants need to be replaced with other stable, but cleaner energy sources. Natural gas plants fit this purpose and PKN Orlen already operates two combined-cycle-gas-turbine gas-fired cogeneration plants with a total capacity exceeding 1,000 megawatts and is aiming to increase natural gas power generation capacity to 2,000 megawatts by 2030. PGNiG, the country's biggest natural gas supplier, is also targeting further investment in gas-fired power plants, including a 500-megawatt CCGT unit already under construction. In November 2020, Grupa Lotos, PKN Orlen, and its subsidiary Energa signed the letter of intent concerning another

CCGT project, to be deployed in northern Poland.

Interestingly, PKN Orlen is also turning to nuclear power development. The company has recently agreed to cooperate with Synthos, a Polish private chemical company, on the development of micro modular reactors and small modular reactors.

The two companies will jointly carry out research and explore the feasibility of deploying such nuclear reactors at PKN Orlen's production plants in Poland.

### Alternative Fuels

PKN Orlen's alternative fuels strategy focuses on diversified biofuel production as well as a hydrogen production and distribution network.

Grupa Lotos, on the other hand, is pursuing the development of selected prototypes of low-carbon transport and energy-storage equipment. It has signed agreements with the Polish Universities of Technology in Gdansk and Warsaw to launch joint research and development. Another key focus for Grupa Lotos is hydrogen and green hydrogen production.

PGNiG has a pipeline of energy efficiency projects and plans to develop its commercial offerings of compressed and liquefied natural gas. Long-term, the company plans to increasingly feed biomethane and hydrogen into its gas grid.

Poland is still in the early stages of its energy transition and there is still a long road ahead for Polish oil and gas companies. However, it is good to see that Polish oil & gas players recognize the inevitability of a net-zero future and the direction they need to take to achieve this target. ■



## UKRAINE: IS UKRAINE THE FUTURE HYDROGEN VALLEY?

By Glib Bondar, Senior Partner, and Anna Mykhalova, Associate, Avellum



Over the past years, Ukraine expressed its intention to step on the energy transition pathway, develop energy efficiency measures, phase out fossil fuels, and switch to renewable energy sources (RES). The development of green hydrogen production (based on electrolysis of water using renewable electricity) is part of the chosen direction. Therefore, the Ministry of Energy

of Ukraine and more than 20 Ukrainian companies have joined the European Clean Hydrogen Alliance to coordinate efforts to develop hydrogen energy.

According to estimates, Ukraine could establish at least 10 gigawatts of electrolyzed hydrogen capacity by 2030. There is no demand yet in Ukraine for such volumes of hydrogen, so production is mainly being considered for export to the EU. Hydrogen produced in Ukraine could cover one-eighth of the capacity required by the EU to reduce greenhouse gas emissions. Germany has been particularly interested in supporting hydrogen production in Ukraine. According to Germany's Hydrogen Strategy, Berlin designated EUR 2 billion for hydrogen projects in Ukraine and North Africa, specifically Morocco. Moreover, developing a green hydrogen industry to replace gas could also be a good solution for Ukraine, mitigating the forecasted negative impact of the Nord Stream 2 export pipeline completion.

### What Has to Be Done, and Where Do We Stand Now?

Firstly, Ukraine has to clearly outline its strategy in developing green hydrogen projects and establish the relevant regulatory framework. The Ministry of Energy and the National Energy and Utilities Regulation Commission are responsible for regulating the usage of hydrogen in the spheres of electricity and gas and establishing the relevant policy. The Ministry of Environmental Protection and Natural Resources is responsible for the state environmental protection policy, including the preservation of the ozone layer, ecological safety, waste treatment, hazardous chemicals, and carry out state ecological inspections. Ukraine is currently working on its National Hydrogen Strategy and expects to adopt it in the coming months. As of the date of this article, there is no unified statutory act regulating hydrogen in Ukraine. The State Standard of Ukraine DSTU 2655-94 Hydrogen establishes general requirements that apply to hydrogen as a "chemical substance." Potentially, hydrogen production in Ukraine would require obtaining a generation license, environmental permits (for

water usage, air pollution, or in the context of waste treatment), and construction permits – permits for hazardous works and usage of hazardous equipment – and the undertaking of an environmental impact assessment and compliance with its conditions.

Moreover, neither the Gas Transmission System Code nor the Code of Distribution Networks provides the possibility to connect hydrogen projects to the Ukrainian gas transmission or distribution networks and transport hydrogen through the existing gas pipelines. Therefore, certain amendments to the legislation and technical standards regulating production, transportation, storage, and use of hydrogen would be required.

Secondly, technical modernization of the existing gas pipelines could be required to transport hydrogen to the EU. Part of the existing gas pipelines can be used for the transport of blended-in hydrogen. Physical blending up to 2% is already achievable with minor adjustments, and with further adjustments, the percentage could gradually be increased to approximately 10-20%. Studies are still underway to determine the optimal hydrogen share in the mix that can be used in Ukraine's Gas Transmission System.

Thirdly, rebooting renewables investments and resolving the current issues in this sector is essential for developing green hydrogen projects in Ukraine. RES projects still face some obstacles caused by liquidity issues within the Ukrainian electricity market, such as a retroactive feed-in tariffs reduction, new tax duties initiated, debts to RES producers for generated electricity, gaps in regulatory framework on curtailments, and delays with implementing the new support auctions mechanism.

As of the date of this article, there are several hydrogen pilot projects in Ukraine. The most significant one is the construction of a renewable hydrogen production plant as part of the international Danube Hydrogen Valley project. Ukraine's largest energy group, DTEK, plans to launch the first pilot project to produce green hydrogen in Ukraine by the end of 2021.

Overall, developing Ukraine into an exporter of green hydrogen to the EU could bring new investments in Ukraine, fundamentally changing the nature of its strategic importance and help it reach the decarbonization goals. ■



# CZECH REPUBLIC: LEX DUKOVANY – A STEP TOWARDS BUILDING A NEW NUCLEAR REACTOR IN THE CZECH REPUBLIC

By Vaclav Rovensky, Partner, and Tomas Sequens, Counsel, Kocian Solc Balastik



As the Czech government signed off on the EU “Green Deal”, which aims to cut carbon dioxide emissions to zero by 2050, the Czech Republic needs to find ways to achieve this goal, or at least to get close to it. Even though certain legislative and other supporting

measures are currently being undertaken towards transitioning to low carbon energy – changes to the Czech Act on supported sources of energy, state subsidies for the (re)construction of power plants – given its geographical specifics and historical background, nuclear power is likely to play a key role in replacing coal-burning power plants. Under current state policy, construction of new nuclear reactors is to begin shortly. The first new reactors, to be located at the current Dukovany power plant, should begin operations by 2037. The Dukovany project took precedence over the construction of new nuclear blocks at the Temelin power plant, a priority at the beginning of the 21st century.

The government has taken the view that the Czech private sector would probably not be able to bear the full costs of the new Dukovany nuclear reactor. Following this conclusion, it drafted a bill (Lex Dukovany) that would enable the state to co-finance the project. Lex Dukovany was passed by the Czech Parliament’s lower chamber in June 2021. Although the bill is not yet legally binding, with a set of pre-agreed changes to be made by the upper chamber, it provides a clearer view of how the government intends to co-finance the EUR 6 billion project.

## Power Purchase Agreement Under Lex Dukovany

According to the law’s current draft, the construction and operation of the nuclear reactor are to be comprehensively secured by the eligible investor. The investor, likely an SPV established by CEZ, which owns and operates both existing Czech nuclear power plants, will need to obtain state authorization. Subsequently, the Czech Republic, acting through the Ministry of Industry and Trade, will enter into a specific power purchase agreement with the eligible investor. The power purchase agreement will specify: (1) the state’s obligation

to ensure that the generated electricity is purchased at a preset price for a certain period; (2) the investor’s obligation to ensure the production and supply of electricity to the network for a set period.

The goal of these obligations is to set a predictable price for electricity generated by the nuclear reactor and a predictable return on investment. The Lex Dukovany draft stipulates the purchase agreement is to be concluded for a period of at least 30 years, with the possibility of a 10-year extension. As a result, any additional prolongation of the agreement under Lex Dukovany is effectively limited only by the nuclear reactor’s service life.

## Provision of State Loans

Judging by the current draft, the government has acknowledged that the eligible investor would not be willing or able to finance the project from external resources under standard commercial terms. Under Lex Dukovany the Ministry of Industry and Trade would be entitled to provide the investor with a loan under favorable conditions. For example, the interest would likely be lower than the standard. Until construction completes, the Czech Republic would not be entitled to any interest. In this respect, it is worth noting that the loan would likely take the form of a state subsidy. Thus, Lex Dukovany would also have to comply with EU regulation on state aid – especially with respect to the new “EU green taxonomy”.

## Conclusion

Although Lex Dukovany is not yet legally binding and remains subject to changes by the upper chamber of the Czech Parliament and Presidential approval, the government’s vision of financing the construction of a new Dukovany nuclear reactor is likely to remain the same. It is necessary to emphasize that, even if new nuclear reactors in Dukovany are constructed (following Lex Dukovany’s provisions), those new reactors would only help to maintain production at the site, after the old reactors are retired around 2037. The real transition towards low carbon energy in the Czech Republic will thus need to be driven by means of other measures and projects. ■



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CHAMBERS GLOBAL

# AUSTRIA: COORDINATED NETWORK DEVELOPMENT PLAN 2020

By Bernd Rajal, Partner, and Arian Paul Farahmand, Associate, Schoenherr



Gas is of particular economic importance for Austria. In addition to production, infrastructure (including the Baumgarten gas hub), transportation, trade, and supply-secure coverage of gas demand play a major role. Yearly demand of roughly 80 to 90 terawatt-hours, constant over the last ten years, is generated by the manufacturing and energy sectors, non-energy consumption, agriculture, private households, power

plants as conversion applications, transport, and the service sector. With a share of about 15%, gas also plays an important role in Austria's electricity generation, primarily by providing flexible capacities that can be utilized at short notice to stabilize the power grid.

Due to its geographical location, Austria is a transit country for gas, and due to its relatively low domestic production (approximately 11% of domestic consumption), it is heavily dependent on imports.

The 2020 *Coordinated Network Development Plan* (KNEP) for the gas transmission infrastructure in Austria for 2021 – 2030 was approved by the regulatory authority on March 24, 2021. When preparing the KNEP, coherence with the *European Ten-Year Network Development Plan 2020* (TYNDP) must be considered.

## Infrastructure Standard

According to the KNEP, the infrastructure standard for Austria in the Market Area East, determined using a standardized method, is currently 140%, significantly above the target of 100% (according to Art 5 *Regulation (EU) 2017/1938* concerning measures to safeguard the security of gas supply). Nevertheless, especially when international dependencies are considered, situations may arise where full gas supply can only be ensured by expanding capacities.

## Cross-Border Projects

Some of the projects included in the KNEP are cross-border projects which were reported within the framework of the European TYNDP and have Project of Common Interest (PCI) status. PCIs are important, mainly cross-border infrastructure projects (gas, electricity, oil, SmartGrid) in the European Union with the aim to make affordable, safer, and sustainable energy available to all citizens in line with the Paris climate change targets. These projects are eligible to receive public funds. The 4th PCI list includes only the Gas Connect

Austria GmbH (TSO) project 2015/08 at the Murfeld entry/exit point, already approved to continue without any changes. In the past ten years, more than 90% of Slovenia's domestic consumption and exports to Croatia were supplied via the Murfeld/Cersak cross-border transfer point. The project serves to cover the additional notified demand at the Murfeld entry/exit point.



A new GCA 2020/01 Czech-Austrian-Interconnector (CZATI) project for additional capacities was submitted. This project is required to support the North-South corridor, reduce market isolation, increase the security of supply for the Czech Republic and Austria, and provide transport routes for alternative gas sources. The planned investment costs amount to EUR 114 million. The implementation period was estimated at four-and-a-half years.

Regarding the economic efficiency of the investments included in the KNEP, it should be noted that the costs associated with the implementation of approved measures are included in the cost basis for setting the system charges pursuant to *69 GWG 2011*, which is determined periodically by the regulatory authority. A final assessment of the reasonable costs associated with the implementation of measures envisaged in the network development plan will be made by the authority after the investment in the course of the cost determination.

## Hydrogen

In the Hydrogen Map project, a vision for a possible dedicated hydrogen transmission network is being developed, in cooperation between the transmission system operators Gas Connect Austria and Trans Austria Gasleitung and the market area manager AGGM, based on the existing transmission network. The object of the study is to divide the existing gas network into separate networks for methane and hydrogen, in the case of a correspondingly changing capacity demand over time. Modifications will be necessary when gas pipelines are converted to pure hydrogen pipelines. The basic idea behind the development of a hydrogen pipeline network is to establish a hydrogen supply infrastructure that is as cost-effective as possible while continuing to operate an existing methane infrastructure in parallel. ■



## ROMANIA: HYDROGEN – ENERGY TRANSITION INSTRUMENT EMERGING AS A SUBAREA OF ENERGY LAW PRACTICE

By Anca Mihailescu, Partner, and Adrian Manolache, Associate, Ijdelea Mihailescu



In 1874, a French writer, forerunner of science-fiction literature, named Jules Verne (1828-1905) wrote in his famous novel *The Mysterious Island* about a world where “water will one day be used as a fuel, that hydrogen and oxygen, which constitute it, used alone or simultaneously will provide an inexhaustible source of heat and light of an intensity that coal cannot have.” More than 110 years after his death, hydrogen is a hot topic in the global energy

industry.

Hydrogen is the most widespread chemical element in the universe, making up approximately 73% of the mass of the universe. On Earth, it is rarely found in its pure state, putting humanity in a position to produce it in order to benefit from its properties. Depending on the producing technology (and its greenhouse gas emissions as well as its competitiveness), hydrogen is called green, blue, pink, turquoise, or grey.

In Europe, hydrogen is a key priority to achieve the European Green Deal and Europe’s clean energy transition, considering that it can have various uses such as fuel, feedstock, energy carrier, and storage, as well as many possible applications across the industry, transportation, power, and building sectors. In simple terms, hydrogen can store and deliver a tremendous amount of energy, it can be used to generate electricity, can replace fossil fuels in sectors that prove to be difficult to electrify (such as aviation, shipping, steel), and can even be mixed with natural gas and transported through gas pipelines directly into our homes.

Although green hydrogen, made from renewable electricity sources, will be crucial in meeting the EU’s climate neutrality goal, it does not seem sufficient to meet all future hydrogen demand. Therefore, blue hydrogen, made from natural gas with subsequent carbon capture and storage, is also currently promoted at a European level.

Energy transition implies a gradual regulation. To this end, we mention the following steps: first – July 2020, the publication of the *EU Hydrogen Strategy*; second – June 2021, the enactment of the *EU Climate Law*, proposing a legally binding target by 2030 of reducing greenhouse gas emissions by at least 55% compared to levels in 1990, and net-zero greenhouse gas emissions by 2050; third – July 2021, the

*Fit for 55 package* for revising European legislation including, *inter alia*, the creation of a hydrogen cross-border infrastructure and the revision of connected legislation on matters such as greenhouse gas emission allowance trading, alternative fuel infrastructure, and renewable energy; and fourth – end of 2021, the envisaged amendment of the *Gas Directive 2009/73/EC* and *Gas Regulation 715/2019* in such a way as to regulate for a new hydrogen and gas markets decarbonization package.



Furthermore, there is significant EU legislation incidentally applicable to hydrogen, such as the *SEVESO Directive*, *ATEX Directive*, *SEA and ELA Directives*, or *Industrial Emissions Directive*. Considering that such legislation was not enacted having in mind the new envisaged hydrogen projects nor the importance thereof to the energy market, we expect for the legislation to be amended and for the EU to have proper hydrogen legislation.

At a national level, the *National Recovery and Resilience Plan* mentions that a functional hydrogen strategy will be ready by the end of next year and proposes the development of two new combined natural gas, renewable energy sources, and hydrogen energy projects.

In terms of legislation, the Romanian energy law has been adapted in the summer of 2020, in order to accommodate energy projects, although the respective amendments are not perfect. By way of example, we mention that the issuance by the Ministry of Energy of authorization for new hydrogen production projects is required simultaneously with the issuance of the National Energy Regulator of a set-up permit as well as a license for the operation of hydrogen production installations.

Although the performance of hydrogen projects in Romania on the basis of the existing legislation is not excluded, new legislation enabling hydrogen projects and implementing EU law is necessary. Such regulation of hydrogen may either be addressed by a revision of the existing normative acts or by new legal instruments, or both.

Will Earth become a mysterious climate-neutral island? Yes, it surely will. *Chapeau bas*, Jules Verne! For us, professionals in the legal energy practice, it is an exciting time. ■

# GREECE: LEGISLATIVE INTERVENTIONS TO BOOST PENETRATION OF RES PROJECTS ON GREEK ELECTRICITY MARKET

By Spyros Alexandris, Partner, and Irene Economou, Senior Associate, Bahas Gramatidis & Partners



The end of 2020 saw landmark legislative interventions in Greece, mainly aiming to create the prerequisites for the widest possible adoption of the EU Target Model (the creation of a single EU energy market) and boost the penetration of renewable energy sources,

in a regulated and rational way. According to the government, these interventions “establish the framework for a more rational operation of the sector, on more competitive terms, to the benefit of the consumers and of the Greek economy in general.”

In particular, *Law 4685/2020* has transposed into Greek national law *European Directives 2018/844* and *2019/692*, updating and streamlining environmental licensing procedures for RES projects, while *Law 4579/2020* has amended the *Greek Law on Strategic Investments*, providing a fast-track licensing procedure for RES power generation plants. These may now be qualified as strategic investments and claim grid connection priority if they meet certain criteria, including: (1) being innovative applications and technologies projects; (2) having a budget of at least EUR 50 million; and (3) having a connection point to the National Electric Power Transmission System.

Innovative projects, within the scope of this law, are those using any of the following technologies: electric power storage systems, green hydrogen production, offshore wind farms and floating photovoltaic farms, RES projects connecting areas of the national territory to the NEPTS through an undersea cable, fully regulated renewable electricity production projects (using biomass, biogas, geothermal stations, and solar thermal stations), and RES hybrid projects on non-inter-connected islands.

Projects would qualify as innovative and gain strategic investment status through a request by the investor to Enterprise Greece SA, a state-owned company. The actual qualification of the project as innovative is issued by the Ministry for the Environment and Energy, within five days of receiving the related request from Enterprise Greece. It is estimated that each licensing step will be completed within 45 days of the relevant dossier’s submission, with the

Environmental Terms Approval Decision to be issued within 30 working days. The complete licensing procedure is expected to last three years.

Additionally, non-innovative RES projects with a budget of at least EUR 100 million may become strategic investments, without being able to claim grid priority.



The above changes came at a time when domestic and foreign investment interest for onshore RES projects in Greece had grown tremendously. While the Greek National Plan on Energy and Climate aimed for RES stations with a capacity of 19 gigawatts by 2030, that target was surpassed four times over, with applications for a total capacity of 75 gigawatts having been submitted. The Government also announced it expects new regulations regarding offshore wind farms to enter into force by December 2021. Offshore wind has a huge investment appeal, with Greece placing third among EU states (including the UK) in the ranking of available offshore wind potential, with an estimated 263 gigawatts.

To date, the Greek Government has granted only two licenses for offshore wind farms, both in 2007. Floating offshore wind farms, in particular, are currently the focus of investor interest since bottom-fixed ones are harder to develop, due to the deep waters of the Greek Seas. The Greek Ministry for the Environment and Energy intends to implement, by 2022, a program for the delimitation of special offshore planning. Interventions in the fields of navigation, fishing, environmental protection measures, and others are expected, all needed to ensure that licensing and implementation of the relevant investments occur in a framework of legal certainty.

According to the announcements of the competent department within the Ministry for the Environment, the global regulation of offshore wind farms, as elaborated by the Greek Government, shall take into consideration the report regarding the European Strategy on the issue of offshore RES. The global regulation shall be based on three axes: siting and licensing regulation, terms of interconnection to the Continental Electricity System, and definition of the way in which the relevant investments will be compensated. ■



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## BULGARIA: LIBERALIZATION OF THE BULGARIAN ENERGY MARKET – AT THE END OF THE LONG ROAD

By Kostadinka Deleva, Head of Energy, Capital Markets, and Foreign Investments, Gugushev & Partners



Bulgaria is just a stone's throw away from completing the electricity market liberalization that has been in progress in recent years. The main goal of the Bulgarian Government is to gradually eliminate regulated electricity prices by the end of 2025 and to fully transition to market conditions by promoting market competition.

As a result of the legislative amendments adopted in early 2018, the electricity generated for the free market is now traded exclusively via IBEX (Independent Bulgarian Energy Exchange) segments. In 2018, access to the organized free electricity market was granted to renewable energy and hydropower producers with a total installed capacity in the range of one to four megawatts.

As of July 1, 2021, RES producers and cogeneration facilities with an installed capacity in the range of 500 to 1000 kilowatts are also integrated into the wholesale market, at freely negotiated prices. As a result, the liquidity of the organized free electricity market has increased, as have its stability and transparency.

The liberalization process also encompasses all types of business consumers. This step was launched in 2020, in two phases.

The first phase, or “grace period”, of their free-market entry provided that business customers had to conclude a contract with an electricity trader by October 1, 2020. They would otherwise stay with their current supplier, also acting in an electricity trader capacity, but no later than June 2021. This first phase was expected to encourage business consumers to select a free-market supplier, which would accelerate the liberalization. In practice, most of the businesses stayed with their original supplier, and electricity supply diversification did not occur.

The second phase of business customer integration on the free market has expired at the end of June 2021. Those who had not entered into an individual contract with a free market trader by that time were automatically transferred to a “Supplier of Last Resort”, which will, however, supply them with electricity at significantly above the market prices. The higher and non-market prices should have served as an incentive for business consumers to join the free market sooner,

but as this reorganization is fairly recent the aftermath is yet to be seen.

The other aspect of the liberalization process is the integration of the Bulgarian electricity market with the regional and pan-European electricity markets. The first step was completed in November 2019, with the pilot market coupling on the Intraday segment with Romania. The Bulgarian-Greek Day Ahead segment market coupling was launched in May 2021, with a significant impact on the national electricity market, as it provides interconnection to the Italian electricity market. The focus is now firmly set on other coupling projects with Romania, Serbia, and North Macedonia, though these are expected to be implemented at a later stage. The Bulgarian-Romanian Day Ahead segment market coupling is expected to launch at the end of September 2021, following the successful implementation of the Interim Coupling Project for the connection of the regional 4MMC coupling (Czech Republic, Hungary, Romania, and Slovakia) to the common European electricity trading system, in June this year.

The immediate effect of the market coupling will be a significant decrease in market concentration, especially on supply. Another crucial effect will be the increase in competition, as the adjacent market areas will bring additional participants to the national market. Those would act as sellers in case of higher prices, and buyers in case of lower prices. The market coupling will also act as a serious buffer to tackle electricity oversupply and deficits. The increasingly good integration and correlation between the markets shall introduce global factors as decisive for the national markets, with a view to stabilizing prices and balancing them on a long-term basis.

In line with the Third Liberalization Package of the EU, Bulgaria will continue to accelerate the liberalization of its energy market. The end of the liberalization process and the signing of electricity purchase-sale transactions on entirely market-driven principles will contribute to the achievement of fair prices and equal treatment of all market participants.

The Bulgarian electricity market will become fully integrated with the European markets, with the advantages of this market coupling, including automatic real-time direct access to supply offers and purchasing from market participants from all EU members, benefitting all Bulgarian producers, consumers, and traders. ■

# SERBIA: IMPLEMENTATION OF EU ELECTRICITY AND NATURAL GAS NETWORK CODES BY SERBIAN TRANSMISSION OPERATORS

By Jelena Gazivoda, Senior Partner, and Nikola Djordjevic, Partner, JPM Jankovic Popovic Mitic



The amendments to the *Serbian Energy Law*, enacted in late April 2021, prescribed the obligation for transmission system operators in the electricity and natural gas sector to implement the EU electricity and natural gas network codes. The obligation refers to the following acts in the electricity sector: *Regulation (EU) 2016/631*, establishing a network code on requirements for grid connection of generators, and *Regulation (EU) 2016/1447*, establishing a network code on requirements for grid connection of high-voltage direct-current systems and direct current-connected power park modules. In the natural gas sector the following acts should be implemented: Annex 1 to the *Regulation (EC) 715/2009*, on conditions for access to the natural gas transmission networks, repealing *Regulation (EC) 1775/2005*; *Regulation (EU) 312/2014*, establishing a network code on gas balancing of transmission networks; *Regulation (EU) 703/2015*, establishing a network code on interoperability and data exchange rules; *Commission Regulation (EU) 2017/459*, establishing a network code on capacity allocation mechanisms in gas transmission systems, repealing *Regulation (EU) 984/2013*; and *Commission Regulation (EU) 2017/460*, establishing a network code on harmonized transmission tariff structures for gas.

## The Procedure and Stakeholders

The procedure of implementation of the EU electricity and natural gas network codes requires close cooperation of transmission system operators, the Energy Agency of the Republic of Serbia (AERS), and the Ministry of Mining and Energy of the Republic of Serbia. The deadline for subject implementation is August 30, 2021, by which date the transmission system operators should provide the Ministry with the harmonized acts implementing the applicable network codes, whereas the harmonized acts should have been previously approved by the AERS. Finally, the harmonized acts transposing the EU electricity and natural gas network codes shall be submitted for adoption by the Government of the Republic of Serbia as a set of decrees.

The implementation of the EU electricity network codes falls to two transmission system operators, Elektromreza Srbije and Elektrodistribucija Srbije. On the other hand, the implementation of the EU

natural gas network codes is the obligation of three natural gas transmission system operators, Transportgas Srbija, Gas-trans, and Jugorosgaz-Transport.

## Benefits for the Electricity and Natural Gas Market in the Republic of Serbia

The implementation of the EU electricity and natural gas network codes is relevant for several reasons. Firstly, it represents one of the crucial steps in the formal fulfillment of the international obligations of the Republic of Serbia, deriving from the Energy Community Treaty. Secondly, it substantially contributes to the harmonization of procedures of Serbian transmission system operators with the adjoining transmission system operators. Namely, despite the fact that the adjoining transmission system operators are operationally required to act in the agreed manner, such harmonization will be considered as a firm legal ground for the Serbian transmission system operators to act in the same manner as any other EU transmission system operator. Thirdly, the implementation of the EU electricity and natural gas network codes would foster competition on the electricity and natural gas market in Serbia, through free and non-discriminatory access to the transmission systems, and would contribute to further opening the Serbian market. This is especially relevant for the natural gas market, which has been perceived by the Energy Community Secretariat and the EU Commission as closed, restricted, and competition unfriendly. Upon completion of the required harmonization initiative and adoption of the relevant decrees by the Government of the Republic of Serbia, it is further expected that the network codes of each transmission system operator will be harmonized with the adopted decrees, and that the transmission system operators will organize their daily operations in compliance with EU best practices. Finally, the harmonization with the EU electricity and natural gas network codes would ultimately be beneficial to the transmission systems' users, and those users should become acquainted with the introduced updates to fully utilize the rights, options, and prospects granted by the new legislation. ■



# HUNGARY: THE ENERGY MIX IN HUNGARY – AN OVERVIEW

By Adam Mattyus, Partner/Head of Energy, and Viktoria Szilagyi, Counsel, Lakatos, Kovacs & Partners



Hungary has adopted the integrated energy policy guidelines of the EU, which aim to decrease greenhouse gas emissions by at least 40% compared to the '90s level, increase the proportion of renewable energy in energy consumption to 32%, increase energy efficiency by 32.5%, and further the increased interconnection of the EU electric energy system. In that context, renewable energy is currently a hot topic.

**Solar.** Since the conclusion of the favorable KAT (feed-in-tariff based mandatory off-take system) state support scheme at the end of 2016, photovoltaic projects cannot provide a secured profit based on a fixed off-take electricity price. However, the new METAR state support scheme, under which subsidies can be awarded at tenders, is increasingly popular. Projects with successful METAR tender applications are exempted from the *Robin Hood Tax*, which has been imposed since January 1, 2017, on the pre-tax profit of electricity generators. PV projects with long-term power purchase agreements can be profitable and are still quite popular, in light of the constantly increasing consumer electricity price.

**Wind.** In the early years of renewable energy investments in Hungary, from 2000 to 2010, wind seemed to be an attractive sector for investors. Despite local weather conditions and relatively ideal circumstances, in 2016 the law was changed to prohibit the installation of wind farms within 12 kilometers of built-up areas. That practically means there are few potential locations for wind farms in Hungary.

**Thermal.** Geothermal power generation requires a relatively high initial investment but is not dependent on weather conditions and can feed a stable volume of energy into the network. Hungary's geological profile is ideal for geothermal projects. The reservoir under the country covers a large area, provides high water flow in many places, and is relatively close to ground level. The significantly greater costs involved in deeper drilling and the need for a time-consuming and costly concession can thus be avoided. KS Orka, a majority Chinese-owned company, is pioneering the first geothermal power plant in CEE, commissioned in 2019. In June 2021, the first state subsidy tenders issued specifically for geothermal projects were announced. We expect geothermal to be a significant renewable source in Hungary in the long term.



**Hydrogen.** In the last few years, hydrogen has been increasingly considered a viable renewable energy source. In February 2021, state-owned Hungarian Gas Storage announced Project Aquamarine, to transform excess electricity into hydrogen and store it in this form, and to experiment with different types of hydrogen use. Given Hungary's focus on the automotive industry and the development of new automotive-related technologies, hydrogen can become one of the hottest sectors in the next decade.

**Green transportation.** Hungary has, for many years now, been an integral part of the CEE automotive production chain. The shift to electric vehicle production is taking place, with most of the OEM plants now producing electric motors and vehicles, and with significant investment in battery technology and production. SK Battery (in Komárom) and Samsung (in God) are among the major battery-manufacturing investment projects. We anticipate attracting more in the coming years.

**Nuclear.** Notwithstanding the significant increase and investment in renewables, traditional energy sources, including nuclear, continue to play an important role. The four currently operating blocks of the Paks Nuclear Power Plant provide 40% of Hungary's energy supply, and they produce the cheapest electricity among all Hungarian power plants. The implementation of the Paks II Expansion Project is currently underway, through a Russian main contractor, under an Engineering, Procurement, and Construction contract.

**Oil & Gas.** Mainly imported oil and gas remain vital in the Hungarian energy scene. There have been press reports that an American-Hungarian joint venture, the Hungarian Horizon Energy group, has found the largest oil reservoir in the last 30 years, located in South-Eastern Hungary. The project did not attract much attention but, if these reports are correct, this discovery has the capacity to become a significant factor in the overall energy mix in Hungary.

There is no doubt that energy will continue to be a vital and strategic sector in Hungary, with a variety of resources and a need, as well as opportunities, for investment. ■

## SLOVAKIA: NEW DEVELOPMENTS IN RENEWABLE ENERGY LEGISLATION IN SLOVAKIA – FOCUS ON PHOTOVOLTAICS, WIND, AND HYDROGEN

By Oliver Werner, Partner, and Pavel Straka, Junior Associate, CMS Slovakia



The year 2021 has seen several major developments in the field of green energy in Slovakia.

The stop-status for photovoltaics and wind energy, which prevented existing sources' capacity from being increased and new power generation sources from being connected to the grid, was lifted. The available installed capacity earmarked for photovoltaics and wind power plants totals 407 megawatts for the entire

Slovak Republic. It is divided equally among the individual operators of the regional distribution systems – the West Slovak, Central Slovak, and East Slovak distribution companies. Currently, 50 megawatts of installed capacity are allocated to each region. This limit will be increased, when necessary, up to a total combined capacity of 407 megawatts. Any restrictions will be announced three years in advance.

According to current data made available by the Slovak Electricity Transmission System, capacity in Western Slovakia is currently approaching the allocated 50 megawatts. Guidelines published on the SETS website provide detailed information on the release procedures, as well as information on exhausting the allocated capacity and available installed capacities.

In addition, an amendment to the *Act on the Promotion of Renewable Energy Sources and High Efficiency Combined Generation* has been adopted. The major change introduced is an extension of the support provided to the production of energy from renewable sources over five years, combined with a reduction in the payments provided. Thus, the original amount of aid will be granted to the affected operators of renewable energy sources, but in the form of lower individual grants over a longer period.

The amendment has been adopted by the National Council of the Slovak Republic and became effective on August 1, 2021. Affected operators of photovoltaic and wind energy sources awaited its implementation apprehensively, as the introduced change will likely cause many of them operational difficulties and adversely impact their business plans.

The Slovak Association of Photovoltaic and RES Industry (SAPI) strongly criticized the final wording of the amendment and pointed

to its unconstitutionality. The operators concerned also emphasized they were prepared to seek compensation through the courts for any damage caused by the adoption of the amendment.

There has been an increased interest in hydrogen in Slovakia, and the Slovak Ministry of Economy recently presented the National Hydrogen Strategy. The strategy provides an outlook on the intended actions of the state and opportunities for investors and businesses in the field of renewable energy. It aims to be the basis for increasing the utilization of hydrogen in Slovakia as part of the efforts on the path to carbon neutrality. Although this is a non-legislative document, it has been authorized by the Government.

The strategy considers a wide range of areas for hydrogen utilization, including in the chemical and petrochemical industry, metallurgy, and gas industry. Some of the most ambitious plans include the production of hydrogen by utilizing surplus energy from Slovak nuclear power plants or from the existing natural gas infrastructure.

Plans presented by the strategy do not lack ambition and, while their implementation may require a longer timeframe, the first tangible results can be expected as soon as the second half of 2021. Bratislava and Kosice are to get their first two hydrogen fueling stations, supporting the development of hydrogen solutions for the automotive market. The Slovak Innovation and Energy Agency has already announced a public tender for the two hydrogen stations. Both stations will be designed to supply hydrogen to both cars and hydrogen-powered buses.

In response to the strategy, the Public Transport Company Bratislava, through its CEO, announced its intention to purchase 40 hydrogen buses. The main competitive advantage of hydrogen buses is their range, which doubles the range of comparable electric buses. In general, the efforts and the announced support of the Ministry of Finance for hydrogen utilization are likely to positively incentivize similar projects.

We are closely monitoring changes in this rapidly developing field: green energy is here to grow. ■



## BOSNIA & HERZEGOVINA: CONSTRUCTION OF NEW SMALL HYDROELECTRIC POWER PLANTS UNDER QUESTION IN BOSNIA & HERZEGOVINA

By Slaven Dizdar, Head of Real Estate and Energy, Maric & Co



On June 23, 2021, the lower chamber of the Parliament of the Federation of Bosnia & Herzegovina, the House of Representatives, passed a decision instructing the Government to “*analyze the existing legal framework in relation to the construction of small hydroelectric power plants and to initiate the parliamentary procedure of amending the existing laws in order to protect the rivers and the environment.*” Such a broad and generic decision comes after months of campaigning by several NGOs, supported by local and Hollywood celebrities, aimed against the construction of SHPPs on Bosnian rivers, citing environmental concerns.

In the years after the war, the construction and commissioning of SHPP became one of the most attractive and lucrative investment opportunities. The principal reason for this is the rich hydrological potential of rivers in Bosnia & Herzegovina, supported by significant incentives granted by the authorities. As a result, dozens of SHPPs have been constructed and commissioned across the country, with dozens more foreseen by executed concession agreements. However, in recent years, the SHPPs went from a praised symbol of renewable energy to the focus of environmental protection issues.

Nonetheless, the parliamentary decision is not only vague in its contents, but also of questionable legal potential. Namely, the legal competence for granting concessions in the Federation of Bosnia & Herzegovina is divided between the Federation and ten of its Cantons, whereby the Cantons are competent for facilities with a production capacity of up to five megawatts, while the Federation is in charge of those exceeding this threshold. In practice, not a single concession has been granted by the Federation, under its Law on Concessions, in the 25 years of its history, and all of the concessions, including those for the construction of SHPPs, have been granted by the Cantons. As a result, the Government and the Parliament of the Federation of Bosnia & Herzegovina cannot formally prevent the implementation of the concession agreements already concluded between investors and Cantonal governments, and it is highly questionable if they can

affect the granting of new concessions by the Cantons.

However, all SHPPs, as well as other energy production facilities, must be constructed in compliance with the general physical planning documents. The general physical plan of the Federation of Bosnia & Herzegovina is prepared by the Federal Ministry of Physical Planning and must be adopted by the Federal Parliament. Unfortunately, no such physical plan has yet been adopted by the Federation, resulting in a legal vacuum in which previous and/or temporary physical planning documents are used for construction permits. Furthermore, all energy production facilities must obtain an energy production license, issued by the Federal Ministry of Energy, Mining and Industry, regardless of who granted the concession.

Mostly due to the fact that concession fees are a significant source of income for the Cantons, and that any breach of concession rights could potentially expose them to legal disputes with investors, the Cantons don't share the view of the Federal Parliament and so far show no signs of changing their attitude towards SHPPs. All of this could result in a constitutional dispute between the two levels of governance in the Federation, potentially placing investors and their projects right between them.

So far, the Government of the Federation did not show any intention of abusing the aforementioned authority in order to prevent the construction and commissioning of new SHPPs or to otherwise violate the existing legal framework. Instead, as the Federal Minister of Environment and Tourism stated in the aftermath of the parliamentary decision, the Government will undertake activities on amending the existing legal framework, as well as push for the adoption of the general physical plan of the Federation. According to the Minister, the aims of the Government are environmental protection, respecting the principles of the Aarhus Convention, and sustainable development of the energy sector. However, it remains to be seen what measures, if any, will be taken and how the rights of investors will be protected. ■



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## CROATIA: REFORMING ENERGY IN CROATIA – ELECTRIFYING TIMES AHEAD

By Marina Kovac Krka, Partner, and Tea Misbrener, Trainee, Divjak, Topic, Bahtijarevic & Krka



These are dynamic times for the Croatian energy sector, as the legislative framework is expected to undergo major changes very soon.

Among others, Croatia is preparing a new energy reform by making amendments to the current *Electricity Market Act*. The version currently in force was a part of the third package of energy laws of the European Union and has made significant contributions to the development of the internal electricity market, the growth of new business opportunities, more competitive prices, and sending clear and effective signals to attract investment and apply higher standards of service on the sustainability and security of electricity supply.

The new regulatory provisions are to more clearly define the overall framework related to consumer protection and strengthen the customer's position, as well as better define supplier-consumer terms of contract. Namely, electricity bills would include additional information, enabling the customers to compare their current contract with the other offers available on the energy market. The suppliers will also be expected to prepare a free tool for comparing the pricing of services available on the market, allowing customers to make better-informed decisions.

Other important updates include electromobility, an important element of energy transition not only in Croatia but worldwide, and the introduction of an advanced metering system providing accurate feedback on energy consumption in real-time, resulting in improved energy management. All these changes are intended to cause significant reductions in electricity bills for the customer.

Additionally, there is an obvious need to adjust the existing electricity trading rules and market roles, to better reflect the reality of energy production shifting from large, centralized generation plants to decentralized, renewable sources and decarbonized markets. Investments and modernization of distribution networks and the introduction of advanced network systems will make this possible. The introduction of an advanced metering system will empower consumers to

have a better insight into the consumption and production of electricity. With this in mind, special emphasis is to be placed on new unified provisions for all types of market participants, which would create a more flexible organization of the electricity market, with full integration of all market participants – including renewable energy producers, new energy service providers, energy storage – and support flexible demand.

Sufficient physical connectivity within the national territory and with neighboring countries is also important to enable a higher level of security and offer increased market stability.

The biggest news is likely to be Croatian households being able to buy electricity from suppliers in other EU Member States, as well as Croatian suppliers offering Croatian-produced electricity to other EU households. This would enable cross-border access to new electricity suppliers, different energy sources, as well as new generation, energy storage, and demand service providers. It goes without saying that public service providers will be available to the customers as well.

Another convenient change will be allowing customers to enter into just one contract for several metering points with the same supplier: the customer will be able to have only one contract serving several of their properties.

To conclude, the ultimate goal of energy reform is to introduce new business opportunities and increase cross-border trade, in order to achieve greater efficiency, more competitive prices, and higher service standards, as well as contribute to the security of supply and sustainability. Although the current internal electricity market has already resulted in increased competition, especially at the wholesale level and cross-season trade, this is an area that will need to be further developed by the new legislation.

The final version of the new legislative framework is yet to be published, however, and one should not ignore the possibility that its practical implementation may be less ambitious than the letter of the law itself. ■





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## ALBANIA: THE FISCAL REGIME OF OIL & GAS INDUSTRY SUB-CONTRACTORS IS TAKING SHAPE

By Sabina Lalaj, Local Legal Partner, and Erlind Kodhelaj, Senior Legal Manager, Deloitte Legal



The fiscal regime of companies and contractors operating onshore in the exploration & production segment of the oil and gas industry in Albania was fundamentally changed by *Law no. 153/2020 On the Fiscal Regime in the Hydrocarbon Sector* (the Hydrocarbon Fiscal Law or HFL), that came into effect on February 2, 2021.

According to the accompanying report of the HFL, one of the main purposes of the law is to mitigate tax avoidance and evasion in the sector, by subjecting to the fiscal regime (e.g. the application of a specific profit tax rate of 50%) certain sub-contractors, which directly or indirectly perform hydrocarbon-related operations and fall under one of the following circumstances: (a) the sub-contractor is an *associated party* with the operating company; (b) the sub-contractor performs essential activities for the hydrocarbon-related operations, constituting at least 25% of the contractor's operation costs; and (c) the sub-contractor has entered into an agreement with the contractor, the main purpose of which is to avoid the application of the HFL's specific tax rate.

Whereas the HFL provides the foundational principles and rules, the clarification and implementation of this measure has been recently detailed by a normative act of the Council of Ministers, namely *Decision no. 397 dated 30.06.2021 On the approval of detailed rules for the subcontracted legal persons that perform hydrocarbon-related operations* (the Decision), published with the Official Gazette no. 108, dated 07.06.2021.

Regarding the first criterion, the Decision does not actually provide further details, but merely reiterates the reference to the definition of the *associated parties* in the *Law no. 8438/1998 On the income tax*, as amended (the Income Tax Law). Although the definition of the Income Tax Law provides certain illustrative cases, such as a 50% threshold of ownership/voting rights, it still remains quite broad and open to interpretation case-by-case.

As regards the second criterion, the Decision provides that the assessment of whether the activities constitute essential activities will be carried out on a quantitative basis, by considering the total amount in *all* invoices (excluding VAT) issued by the sub-contractor to the contractor. In other words, if the total amount of the invoices account for at least 25% of the total costs of the hydrocarbon-related operations performed by the contractor, then the sub-contractor's profits for this part of their activity will be subject to the 50% tax rate established by the Hydrocarbon Fiscal Law. It should be noted that there is no specification of the period for which such assessments will be made. It can be implied that, since the profit tax is declared and paid annually, the assessment and classification will happen on an annual basis as well.



Regarding the third criterion, on the improper use of agreements, the tax administration in collaboration with the National Agency of Natural Resources will investigate and scrutinize the compliance of the agreements and arrangements between contractor and sub-contractor with the HFL and the Income Tax Law, looking for any potential case of tax avoidance or evasion.

Where evidence is found of transactions or actions carried out by the contractor and the sub-contractor with the aim to evade or reduce the tax rate, the tax administration is entitled to adjust and re-assess the tax liability of the sub-contractor, in accordance with current legislation and procedures. The final decision on the applicable profit tax rate for the offending sub-contractor will be taken by the General Tax Director.

Albeit with a certain delay from the 3-month deadline provided in the HFL, the recently enacted rules on the regime of sub-contractors clarify the law's implementation and constitute a milestone that will considerably affect the actors in the industry. Nevertheless, the Decision still falls short from being an exhaustive rulebook and requires further clarification with time, through the practice and interpretation of the authorities. ■

## KOSOVO: NATURAL GAS SECTOR IN KOSOVO – CHALLENGES AHEAD

By Fisnik Salihu, Partner, and Jehona Gjergji, Associate, RPHS Law



In 2016, Kosovo adopted *Law No. 05/L-082 on Natural Gas* (the Natural Gas Law). The purpose of the law was to lay down a legal basis for the establishment of a legal framework that will govern the transmission, distribution, supply, usage, and storage of natural gas. The Natural Gas Law is deemed to be aligned with EU law, including *Directive No. 2009/73/EC on*

*common rules of the internal European natural gas market and Regulation No. 715/2009/EC on conditions of access to natural gas transmission networks.*

When the Natural Gas Law was adopted, the gas sector in Kosovo was not developed, including, but not limited to, the absence of any gas infrastructure. Subsequently, Kosovo's Government adopted its *Energy Strategy for 2017 – 2026*, prioritizing the development of the natural gas sector, highlighted as *Objective Number Four*. In short, this objective stressed three main sub-objectives that the Government should follow: to establish a gas transport system operator and a gas distribution system operator, to prepare feasibility studies, and to construct adequate natural gas infrastructure.

All these sub-objectives require, among others, heavy public spending, as their attainment usually entails capital-intensive projects. To that end, the Government embarked on a journey to seek financiers that will facilitate the implementation of *Objective Four* of the *Energy Strategy*.

Kosovo's Government, like those of most other countries, primarily relies on two debt instruments to finance its investment projects: either domestic debt through the issuance of government securities, or external debt through loans from international financial institutions (IFIs).

For the gas sector it may be said that, to date, the Government followed the second path, seeking financing from IFIs. A EUR 1.5 million grant from the EBRD was approved under the *Western Balkans Investment Framework* (WBIF), a blending facility that allows the target countries to seek financing for their projects, usually ones eligible under the WBIF agenda, and which fosters closer integration with the European Union.

The approved project would allow Kosovo to draft a master plan examining the development of transmission and distribution system

operators, along with other relevant implementation arrangement factors. In turn, the master plan will highlight and identify the key investment projects that are necessary for the overall development of the natural gas sector in Kosovo. Based on this master plan the Government is going to target investment projects that will advance the proper implementation and development of the natural gas sector.



The European Investment Bank, one of the IFIs financing a portion of the investment projects in Kosovo, has, however, recently announced that natural gas and other fossil fuel projects are no longer eligible under its lending policies. This decision was taken as a response to climate change and for alignment of its lending policies with the *Paris Agreement*.

The EIB's move poses a threat to external financing for Kosovo's undeveloped natural gas sector. Additionally, the EBRD also announced that it will fully align its operations with the *Paris Agreement* by the end of 2022. In a similar fashion, the World Bank announced its withdrawal from a fossil fuel project in Kosovo, namely financing a coal-fired thermal power plant, deciding the project was not in accordance with the recently adopted climate rules.

Financial uncertainties may jeopardize Kosovo's objectives under the *Energy Strategy*, for the development of the natural gas sector. If other IFIs follow suit, Kosovo's primary means for raising capital will remain private investors, through government securities. The amount of money that could be raised would, however, remain a different question.

Consequently, if Kosovo's Government does not resolve the funding uncertainties identified above, the Natural Gas Law will be deemed to be inoperative and inapplicable, in absence of a natural gas sector in Kosovo.

The caveat here is that we do not suggest nor prefer any specific mechanism over others, between fossil fuel projects and energy renewables. This article merely seeks to address the difficulties Kosovo is experiencing in implementing its *Energy Strategy*, its natural gas objectives specifically, and the Natural Gas Law. If these are not addressed in short order, Kosovo will continue lagging behind in the natural gas sector. ■

## LATVIA: TRENDS AND PROSPECTS FOR ENERGY IN LATVIA

By Gatis Flinters, Partner, and Martins Tarlaps, Senior Associate, Cobalt



The energy market in Latvia is in a constant process of development, on both the regulatory and business sides. The following highlights suggest the energy sector will remain active in the foreseeable future, providing new opportunities for potential investors.

Firstly, over the last couple of years, the Public Utilities Commission (PUC) has put a lot of effort into the improved efficiency of the electricity and natural gas tariff system. This has resulted in a new tariff methodology for transmission and distribution networks, which ensures that grids are used effectively and each consumer, whether industrial or household, pays its fair share for expended electricity and natural gas. While initially this change was not supported by energy producers, who were largely exempt from tariffs, the PUC maintained a very firm position, to ensure that grid maintenance costs are shared among all users of the grid.

Secondly, the Latvian district heating ownership is becoming more diverse, as international investors are entering a market once dominated by municipal companies. We expect this trend will incentivize further investments in this industry. A landmark deal in this regard has been Partners Group's acquisition of Fortum's district heating platform in the Baltic States, including Latvia. Fortum has been one of the largest and longest-standing foreign investors operating in the energy sector in Latvia. The acquisition of Fortum's business in the Baltics by Partners Group confirms the strong interest from equity investors in the local district heating and renewable electricity business, notwithstanding the fact that the support period for most renewable electricity generators, via the EU approved feed-in tariff and capacity payment scheme, is approaching its expiry towards the end of 2020s.

Thirdly, for many years, the Latvian wind energy sector has been underdeveloped, in spite of Latvian wind conditions being comparable to many of the leading European wind energy forerunners. Now the decrease in technology costs and the availability of land have fueled an inflow of investments in wind energy projects. In 2020 the development of new onshore wind energy projects became even

more accessible, due to revised planning requirements. Regulatory enactments were amended by relaxing some of the too-stringent restrictions and requirements for wind farm development projects. Several planning restrictions were substituted with the ability to evaluate and possibly mitigate the effect of such restrictions within environmental impact assessment. Another novelty was the possibility to construct wind farms in forests, which improves the available space for the development of new projects.



Latvia, with its long coastline and beneficial wind resources, provides for a significant, yet unexplored, potential for offshore wind farm development. The country's National Energy and Climate Plan aims to increase its total offshore wind power capacity to at least 800 megawatts, over the next ten years. A possible catalyst for future offshore projects might be the ELWIND project – a joint effort by the Latvian and Estonian governments to develop a common offshore wind farm. The intention is to set the location, ensure access to the transmission grid, and then auction the respective area to private developers for the construction of a wind farm. Both governments have entered into the respective Memorandum of Understanding, and a designated working group, including transmission system operators of both countries, is actively working on this project, set to materialize in an operating large-scale offshore wind farm in 2030. This move has been successful in attracting international investor interest for the Baltic offshore wind market. In April 2021 Orsted A/S announced a plan to become the leading offshore wind developer in the Baltic countries, with an aim to deliver the first offshore wind farm in the Gulf of Riga, in the Baltic Sea, before 2030.

While there are still situations where the Latvian regulatory environment is not able to keep up with the needs of the industry, the above trends contribute to a generally positive market outlook for future energy transactions in Latvia. ■



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## MOLDOVA: THE LONG-AWAITED TURNING POINT

By Emil Gutu, Competition Manager, ACI Partners



The year 2021 is expected to be a long-awaited turning point for the Moldovan electric energy market.

The wholesale electricity market rules, developed with the support of the Energy Community Secretariat, will enter into force on October 2, 2021. According to the *Electric Energy Market Rules*, approved by the Moldovan National Agency for Energy Regulation (NAER), the new design of the energy market will include the bilateral market, day-after and intra-day markets, and markets for balancing and ancillary services.

Traditionally, the transportation and distribution systems' operators and universal service suppliers organize their acquisition tenders before April 1, when the annual contracts expire. This year, the tenders were organized according to the new acquisition rules, adapted by the NAER according to the new market design. As several features of this new design are not in place before October, the tenders ran into numerous hurdles, revealing the weaknesses of the Moldovan electricity market. In this respect, the Energy Community Secretariat characterized the Moldovan electricity market as a sector with minimal sources of electricity, few market players, state-owned companies supported by the government, parallel negotiations and dealings, uncompetitive behavior, and lacking in transparency.

Moldova's electricity sector is characterized by the dependence on one source, a gas-fired power plant (MGRES) in the breakaway eastern region, while not being interconnected with the European Network of Transmission System Operators (ENTSO-E). MGRES holds 84% of the total installed electric energy production capacity in Moldova, making it the only local producer capable of balancing the system.

On the other hand, although Moldovan and Ukrainian transmission infrastructures were originally constructed as parts of a single interconnected system and operate synchronously, differing legislation and the lack of adequate cross-border mechanisms have prevented their full integration. In July 2019, Ukraine launched a new electricity market model, similar to the one to come into force in Moldova in October, as scheduled under the new Ukrainian Electricity Market Law of 2017.

To allow for the market entrance of plentiful baseload energy from Ukrainian nuclear power plants, the leading Moldovan energy supplier, Premier Energy, made use of new rules and invited separate offers for baseload and peak-load (including balancing) power. Unfortunately, the absence of the balancing power market in Moldova and of the metering solutions for it led to the commercial impossibility to import balancing power, without laying unreasonable commercial burden and risks on market operators. NAER not addressing this issue in due time left MGRES as the only competitor able to balance the system.

At the same time, the market rules do not allow the energy suppliers to sell electric energy to customers without having a balancing power arrangement in place. Consequently, MGRES's dominant position on the balancing energy market automatically gave it a strong bargaining position on the bilateral contracts market. In some observers' opinion, MGRES abused that bargaining power to strongarm Premier Energy and other market participants into buying energy from it.

The Moldovan competition authority will undoubtedly look into what happened during the tender, and whether the flawed regulation or anticompetitive behavior is to blame. But what is increasingly clear is that no competition policy can be more efficient than actual physical access to the grid for electric energy producers and suppliers.

What is also clear is that significant market access problems will persist beyond 2021. For the reliability of supply and for effective competition to exist on the market, the Moldovan energy grid needs stable infrastructure connections with the European one. An asynchronous interconnection with Romania is planned, as an interim solution, before the final synchronization. From a strategic point of view, considering a common setup, a joint Moldovan-Ukrainian integration into ENTSO-E would be the most desirable outcome for both energy markets.

In the short run, specific urgent transitional mechanisms are needed to enable a smooth transition towards the new market rules and ensure that all local and Ukrainian suppliers of electric energy, including balancing energy, have legal and physical access to the market. Particularly, common rules for managing cross-border flows with Ukraine, that would allow for commercially viable balancing power imports, should be agreed upon. Finally, the national energy market regulator may wish to look into the *Procedures for Electric Energy Acquisitions*, including lessons learned from the Premier Energy acquisition tender and others. ■

## NORTH MACEDONIA: STRATEGY FOR A RENEWABLE ENERGY FUTURE – TOO AMBITIOUS OR AMBITIOUSLY REALISTIC?

By Marija Filipovska, Partner, and Zlatko Kujundjiski, Attorney-at-law, CMS Skopje



The year 2020 proved to be positive for renewable energy in the EU. Data published by Eurostat shows an overall increase in the share of energy produced from renewable sources, and the share of renewable electricity exceeded that of electricity produced from fossil fuels.

North Macedonia relies on fossil fuels, mostly coal, and hydropower. The data for 2020 also confirms this trend, as 63.4% of the energy was produced by thermal power plants. To date, 2020 could be known as the year in which electricity production from fossil fuels reached its historically lowest point: 1.02 million gigawatt-hours from TPPs in 2020, compared to a peak of 1.58 million gigawatt-hours in 2007. At the same time, the overall share of energy produced from renewable sources has been increasing over the years. Last year, renewable energy production in North Macedonia increased by 10.1%.

That said, and bearing in mind the EU expectations, the Government of North Macedonia adopted the *Energy Development Strategy 2020-2040*. The strategy sets three different scenarios – reference, moderate transition, and green. The Government has recently confirmed that it plans to implement the most ambitious, green scenario. This scenario envisages the total phasing out of coal by 2040, and 45% of total energy production coming from renewable sources. It foresees phasing out coal by 2025, which would make North Macedonia the first country in the Western Balkans to set a concrete goal to eliminate coal power before 2030. According to the strategy, solar and wind power plants are also expected to be the fastest-growing technologies for electricity production.

Along with other Western Balkans states, North Macedonia has signed the *Sofia Declaration* on the *Green Agenda*, which commits to pursuing the target of a carbon-neutral continent by 2050, along with the rest of the EU. Both the strategy and the *Sofia Declaration* set the goals quite high.

At the moment, the statistics do not appear to be in favor of the government's ambitious plan. The share of solar energy in total energy production is only 0.6%, the share of wind energy is 2.3%, and biogas stands at 1.3%. North Macedonia only has one 36.8-meg-



awatt state-owned wind park in Bogdanci (planned to increase to 50 megawatts), with other privately-owned ones under construction. Surprisingly, the solar potential in North Macedonia is barely tapped. Additionally, electricity losses in the grid range from 14 to 16 percent of gross national electricity consumption, and practices such as electric heating have contributed to increasing energy costs for many households, on one hand, and alarming levels of pollution, on the other. On a separate note, North Macedonia (together with Croatia and Slovakia) has one of the highest shares of imported electricity. In 2019, the total annual production of electricity was 5,447 gigawatt-hours, with 2,297 gigawatt-hours being additionally imported.

However, the latest tenders of state-owned energy production company ESM, in cooperation with the EBRD, are promising. In June 2021, PPP agreements were signed with companies from Turkey and Bulgaria for the construction of two solar 50-megawatt plants. Private greenfield projects are also on the rise.

As part of the EU harmonization process, North Macedonia adopted the new *Energy Law* in May 2018, which harmonized the energy legislation with the *EU Third Energy Package* in the electricity and natural gas sector, as well as with the *RES Directive*. However, the legal framework is still incomplete, as further laws and bylaws need to be enacted. For the Strategy not to be deemed too ambitious, besides an appropriate legal base, professional personnel and a unified practice are also of crucial importance.

Finally, some of the most recent news is that the Government has introduced a new “environmental” tax, which is expected to be used to support investments in renewable energy production (wind, solar, and gas plants), as well as to strengthen the state's institutional and financial capacities. The government intends to collect an additional EUR 48 million from this tax, annually.

All the above should also have a positive impact on regional economic growth. It is safe to say that renewable energy production will be the industry with the best growth potential in North Macedonia, for years to come. ■

## LITHUANIA: CURRENT REALITIES AND FUTURE PERSPECTIVES OF THE OIL & GAS SECTOR

By Simona Oliskeviciute-Ciceniene, Partner, and Ignas Jurkynas, Senior Associate, Cobalt Lithuania



Although Lithuania cannot boast rich oil resources lying beneath its territory, a number of large oil industry facilities are successfully operating in the country. This suggests that Lithuania has sufficient technical capacity to import oil and petroleum products from various countries, as well as diverse and technically ensured possibilities of supplying petroleum products. Moreover, the country has secured the required amount of petroleum product state reserves, which affords protection against disruptions in their supply.

Based on the legal framework applicable in Lithuania, the oil sector operates under market conditions: there are no legal restrictions on the transport of fuel from EU Member States or import of fuel from third countries; the prices are not state-regulated (except for liquefied petroleum gas supplied to group facilities) aside from excise tariffs and value-added tax; mandatory quality indicators are set for relevant petroleum products; and no transport or import quotas have been fixed.

Despite these oil supply and refinery facilities and business-friendly regulation of trade in petroleum products, seeing the trends in the transport system and global changes, Lithuania is gradually switching to consumption of less polluting fuels and electricity, flexibly and efficiently combining the existing infrastructure of the petroleum sector with the local potential offered by renewable energy resources.

As regards the gas sector, the situation on infrastructure capacity and regulatory framework is like that in the oil sector. At the end of 2014, with the construction of the liquefied natural gas terminal in Klaipeda, the implementation of the provisions of the *EU Third Energy Package*, and the construction of the second line of the Klaipeda–Kursenai gas pipeline in 2015 the situation in the natural gas market substantially improved. Lithuania gained access to natural gas on international markets, the monopoly of eastern market players in this field was abolished, and competition was created. Lithuania became self-sufficient in natural gas supply (and able to supply significant quantities to countries in the Baltic region) through the

liquefied natural gas terminal alone, in case of disruption of supply from Russia, or a lack of competition in supply.



However, despite this positive progress in the development of infrastructure, the Lithuanian natural gas market remains isolated from the EU's single market for natural gas. This problem will soon be resolved by the Gas Interconnection Poland-Lithuania project, which is approaching its final stages. This project will allow Lithuania to become an important gas transit and trading hub for the Baltic States and Finland.

It can be anticipated that additional revenue generated from the transmission of natural gas and regasification of liquefied natural gas will reduce the share of costs for the maintenance of the liquefied natural gas terminal and the natural gas transmission infrastructure to Lithuanian consumers. This has never been more relevant for Lithuanian consumers as, due to the increase in gas prices in the raw materials markets, a very sharp rise in the price of gas has been observed in Lithuania. In July, for instance, the price of natural gas for household consumers increased by 26 to 46 percent.

In relation to both gas and oil, it needs to be recognized and understood that, although today our economy heavily relies on these types of energy, these all are *already* past technologies, and, in our view, we will be seeing a decline in their popularity over time. As mentioned above, the *Green Deal* initiative in Lithuania and Europe has already led regulators and market participants to focus on the development of clean and green technologies. One of these is pure hydrogen technology. Notably, this technology and its market are in the development phase, so the market and regulators should already start preparing for the application of these technologies. Hopefully, the actors involved in the development, both national and EU institutions, as well as the market participants, will have a unified approach and coordinate their actions to create an environment conducive to the realization of the potential of new technologies, covering both investment and harmonious legal regulation, for the creation of an efficient market, research, and innovation. ■

## MONTENEGRO: A NEW DECADE FOR MONTENEGRO'S ENERGY SECTOR

By Igor Zivkovski, Partner, Zivkovic Samardzic



Change is brewing in Montenegro.

The country finds itself exposed to both unprecedented internal and external factors, turning the gears and taking Montenegro in an uncharted direction. The COVID-19 pandemic has, for the last eighteen months, been putting pressure on economies, health systems, and the people themselves, forcing

humanity to combat a deadly adversary through measures unseen in modern history. Montenegro was no exception and had to adjust to the new situation adopting preventive measures in order to mitigate the negative effects of the pandemic. An external factor, the virus, was not the only thing that shook things up for the Montenegrin people. There has been a large upset in the political scene, with the parliamentary election being narrowly won by the opposition, removing the Democratic Party of Socialists from power. The new government is faced with many challenges, including continuing the development of the energy sector through innovative and appropriate legislative, regulatory, and strategic action.

The previous Government had adopted the third socio-economic package, as the means of reducing the negative effects of the pandemic, ensuring that energy companies in Montenegro are willing to invest over EUR 1 billion, of which EUR 734.6 million within the next four years, in order to improve the state of the energy sector. Three state-owned companies, Elektroprivreda Crne Gore, Crnogorski Elektrodistributivni Sistem, and Crnogorski Elektroprenosni Sistem, will be the largest investors in the following period. Investments, such as new photovoltaic panels on the roofs of households, increasing the amount of solar energy harvested, and reducing other, less efficient and environmentally harmful, ways of producing energy have been announced. Additionally, the construction of new solar (Briska Gora), wind (Gvozd), and hydro (Komarnica) power plants have been planned and announced.

Another topic of high importance is the construction of small hydropower plants. In December 2020, the procedure of approving the construction of these plants has been halted, while the previously concluded concession contracts are under revision. For example, the approval process for the construction of the Slatina hydropower plant, in the Kolasin municipality, has been stopped until the contract

can be reviewed. The Government established a task group with the sole purpose of reviewing said contracts. On December 29, 2020, just twelve days after the group was formed, concession contracts for seven small hydropower plants have been terminated. The construction of small hydropower plants remains a burning topic not just in Montenegro but in neighboring countries as well, especially in Serbia.

The European Union has adopted a policy of reducing and hopefully eliminating carbon dioxide emissions. Montenegro, a country seeking EU membership, has to adapt its coal-dependent energy-producing facilities. A new energy strategy is underway, which will focus on renewable energy sources and look to achieve a complete coal phase-out. The Montenegrin National Energy and Climate Plan (NECP), once completed, will prescribe a deadline by which the coal phase-out will have to be achieved. The legal basis for the development and adoption of the NECP was included in the Law on Energy in July 2020. However, this will be a difficult task to accomplish. One of the largest power plants and thus largest producers of electricity is the thermal power plant in Pljevlja, which is coal-fired. This makes TTP Pljevlja, consequentially, a major carbon dioxide emitter. Shutting down TTP Pljevlja would mean a significant strain on the state's budget, as many people would lose their jobs, prices would go up for both citizens and companies, and the stability of the entire system would be endangered, at least until new, climate-neutral, capacities have been constructed (the previously mentioned solar and hydropower plants and wind farms). As a token of its commitment, Montenegro joined the Powering Past Coal Alliance (PPCA), which promotes coal phase-out and the transition to clean energy, and announced it would stop using coal by 2035 at the latest.

However, things are not going smoothly, as TTP Pljevlja has breached the 20,000 operating hours allowed under the coal opt-out mechanism, which resulted in the conduction of an infringement procedure against Montenegro. Innovative new projects, designed to further improve the energy sector, such as the construction of the first floating solar power plant, have attracted attention from foreign investors.

Entering the new decade, Montenegro has shown serious dedication to improving its energy sector and participating in the global attempt to reduce harmful emissions by transitioning to clean and renewable energy sources in the future. Hopefully, the planned changes will actually be implemented, and Montenegro will serve as a shining example for the other regional countries. ■

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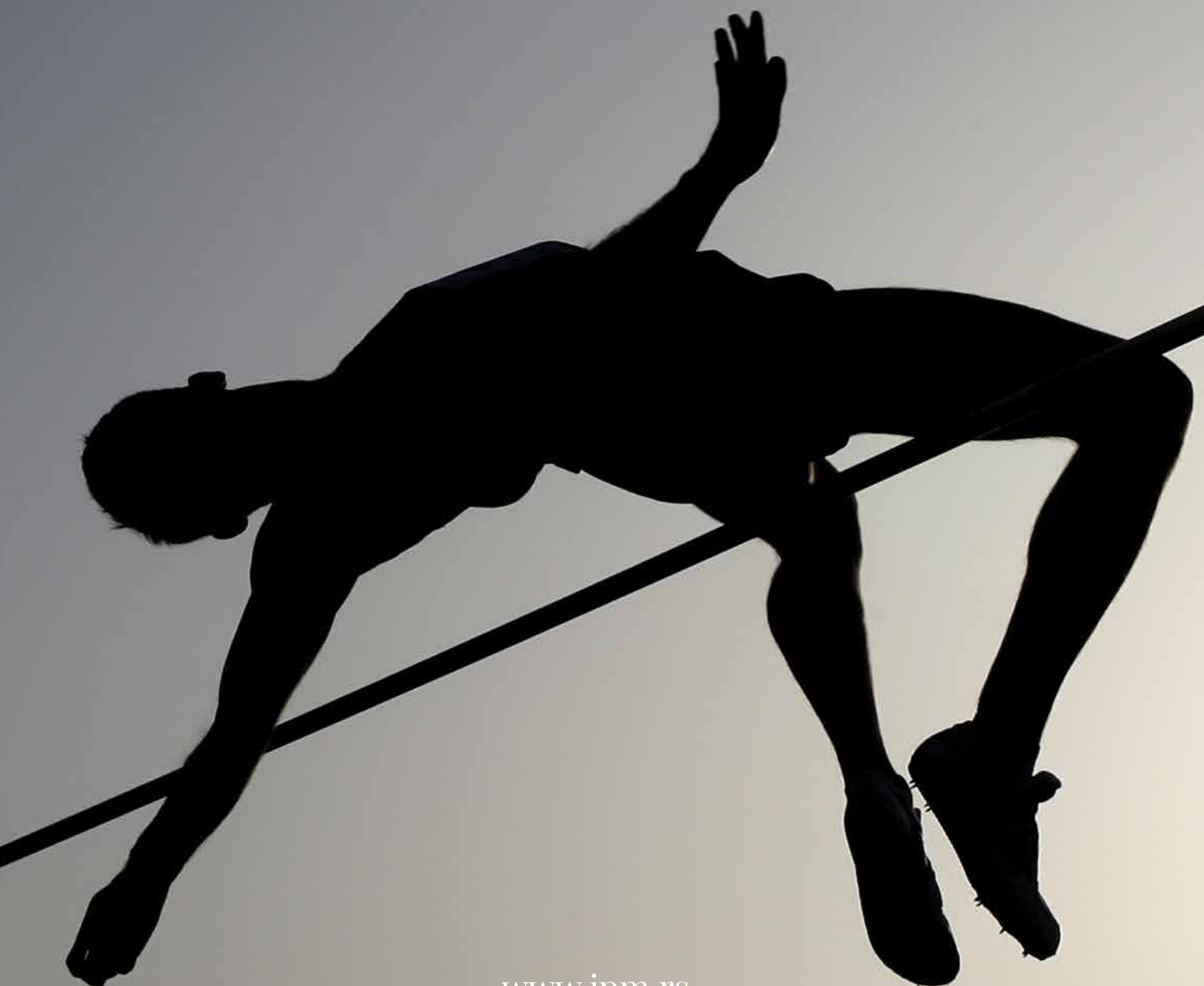
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