



CEE

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LEGAL MATTERS

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



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EDITORIAL: LEADING LEADERS LEAD THE LEADABLE

By Radu Cotarcea

Did you just glaze over the headline without even registering it? I would have. Of the 30 press releases that last hit my inbox, 26 included – in either the opening paragraph or the last one describing the emitting firm – the phrase “leading law firm.” Indeed, it is such a common trope in the industry that I barely even register it when a firm self-identifies as such.

I point this out because I recently received an e-mail in which I was told that a firm (we’ll call them Firm X) read our news item covering their launch “with great disappointment,” and described our coverage as “biased and discriminatory.” Why? Because their press release included descriptions of how amazing their lawyers were which we left out of our coverage – to their credit, being the wordsmiths that they are, they didn’t describe their lawyers as “leaders” but as “preeminent figures.”

I get it though – and no, I don’t believe it’s a matter of “fake it ‘till you make it” – especially in the case of a *new* firm. I think there are two phenomena at play:

First, as with professional services in general, the legal industry’s main marketing tool is to put forward the capabilities – skills, knowledge, experience – of its lawyers (that is ultimately what clients buy). Habits of talking up your lawyers are not only reinforced by the fact that you are constantly doing that to pitch for work, but are also distorted by the countless rankings submissions you put forward, where there is a feel that words like *leading* distinguish your expert from the dozens, if not hundreds of peers assessed and ranked.

Second, I blame *my* peers. I believe there are a lot of what I would describe as *lazy* journalists or publications out there. I know that PR reps are taught and told over and over again that a press release should be written in a manner that makes journalists’ job easy: if possible, it should really only come down to a copy/paste to publish. And – may it be out of a rush to simply process news items, or out of simply not caring about the content put forward – I do see that happening *a lot*. Against that setting, congratulations, if you were *smart* enough to describe yourself as a “leading law firm” in your press release, you just got a leading-or-not publication to describe you

as such in print – win!

I don’t mind it – more power to all who employ the trick and benefit from it. I like to believe our readers are smart enough to read between the lines of marketing-speak. If not for that, out of simple habituation, I suspect most of them simply glaze over such phrases to get to the facts of the news item.



It is this thinking that shaped our publication’s style in terms of processing news items. We focus on “X advised Y in the acquisition of Z” or on “X moved from Y to Z.” Ultimately, we believe that is the value in what we write – in the facts – and of what we are as a result – an aggregator of all deals and moves in the region.

Not understanding this, Law Firm X wrote to me that “it would be regrettable for CEE Legal [Matters] to have acted on any improper or illegal incentive in portraying such biased and discriminatory behavior, which would also contradict CEE Legal [Matters]’ reputation.” What exactly that illegal incentive would have been is something I have yet to wrap my head around, but what I find fascinating is the extent to which this dynamic has become warped in our niche: Somehow, along the way, it is no longer a matter of a PR representative inserting marketing plugs and lazy publications copying that in, thus benefiting a firm’s image. It is now, apparently, a matter of all being *leaders* in their press releases and publications discriminating against them if they don’t call them that in print as well.

Now I’ll go off and update our company’s presentation from “CEE Legal Matters is a print and online publication for and about lawyers interested and working in Europe’s emerging legal markets” to “CEE Legal Matters is *the leading* print and online publication for and about lawyers interested and working in Europe’s emerging legal markets.” As far as I know we’re the only one, so I can’t imagine anyone can challenge that description. Maybe there’s some marketing voodoo I’ve been oblivious to and have been missing out on all these years! ■



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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

GUEST EDITORIAL: THE NEW NEED FOR TRUE BELIEVERS

By Eszter Kamocsay-Berta, Managing Partner, KCG Partners



As legal professionals and human beings with empathy, we keep reflecting on recent developments in Ukraine. Our heart goes out to our fellow people, and we trust that history will show us again: an imagined order cannot be sustained by violence. “You can do many things with bayonets, but it is rather uncomfortable to sit on them,” Charles Maurice de Talleyrand-Perigord insightfully pointed out. I’d like to believe

that violent actions in Ukraine will come to an end or will have already ended by the time of the publication of this issue. Will, however, the impact of this war simultaneously also come to an end? As a result, how will the legal practice in CEE evolve and what developments should we expect?

Economic Prospects in CEE

Analysts forecast that the economy could shrink by more than 10% this year due to rising inflation, caused primarily by rising input energy prices, but also by supply-chain disruptions and tighter financial conditions. Repercussions of the war in Ukraine will result in a much deeper recession than during the COVID-19 pandemic. The region’s economy reflects a dramatic reversal from the economic outlook before the war when a rebound from the COVID-19 crisis underscored expectations for growth. Growth is likely to falter on rising financial instability, diminished institutional credibility in certain countries, as well as deteriorating investment conditions. Government and private enterprises must face severely curtailed access to foreign capital and financial markets, capital outflows, and tighter domestic financial conditions, in addition to a weakened financial system.

A Global Perspective

As countries all around the world, including Europe, work to address global climate change, no effort is more front-and-center than the global energy transition. We are in the midst of an unprecedented transition toward zero and low carbon energy, on the cusp of breakthrough technologies, and addressing the impacts on economies that have been built around generations of fossil fuel development. At the same time, the focus on ensuring that everyone has access to reliable, affordable, and sustainable energy has never been more important.

Extreme weather events have become both more frequent and

more severe, while events such as the COVID-19 pandemic represent a global threat to public health with huge economic effects that recovery packages have tried to address. These disruptive events, either alone or in combination, have had dramatic consequences on nature, human life, and the economy, calling for urgent action to mitigate their causes and adapt to their impacts.

Focus Areas for Law Firms

While it is true that Europe overall and especially Central and Eastern Europe remain highly localized — making it difficult to find common conclusions across each of the individual countries — there are trends that are worth noting, with special respect to the current geopolitical and economic environment. It goes without saying that safeguarding business from risk in the most efficient and value-adding way is, and will remain, the main focus for most of our clients. M&A transactions may be postponed and dividends paid out now, as no dividend payments may be justified in the upcoming phase of unavoidable restructuring, including setting up new, alternative supply chains, managing increasing energy prices, volatile exchange rates, and dried-up sources of financing. Much has been learned during the COVID-19 pandemic, and even before it, and a robust set of skills have been accumulating in the legal practices in terms of counseling during the unforeseen global disruption. The past two years have demonstrated a dominant preoccupation, revolving around transactions that had succumbed to material changes, significantly questioning the original meeting of wills that had led to the signing of these contracts. Based on this experience, keeping a close relationship with clients and asking about their imminent or predicted needs remains more critical than ever before.

The New Need for True Believers

We do believe that violent actions in Ukraine will come to an end but the impact of this war will stay with us. This, coupled with global trends, will certainly reshape legal practices in CEE as well. Some trends may not be envisaged yet. However, understanding the economics in general and the business of the client within this context, in particular, will certainly help in delivering value-added services to our clients. Finally, in such distressing times, it is worth recalling that believing in the core values of our profession, such as integrity and fairness, enables us to cooperate effectively and forge a better society. ■

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ACROSS THE WIRE: DEALS AND CASES

Date Covered	Firms Involved	Deal/Litigation	Value	Country
5-Apr	Boyanov & Co; CMS; Dentons; Kalo & Associates	Boyanov & Co, Kalo and Associates, and Dentons advised the sellers on the sale of One Telecommunications to 4iG. CMS reportedly advised 4iG.	N/A	Albania; Bulgaria; Hungary
17-Mar	FWP	Fellner Wratzfeld & Partner advised the State of Vorarlberg and the City of Feldkirch in approval proceedings for the Feldkirch city tunnel.	N/A	Austria
24-Mar	Bird & Bird; Brandl Talos; Shardul Amarchand Mangaldas & Co; Taylor Wessing	Brandl Talos advised Think & Learn Private, operating under the Byju's brand, on its acquisition of GeoGebra. Reportedly, Taylor Wessing advised the shareholders of GeoGebra on the sale with Bird & Bird's London office and India-based Shardul Amarchand Mangaldas & Co advising Think & Learn Private as well.	N/A	Austria
1-Apr	Binder Groesswang	Binder Groesswang advised Venionaire Capital on establishing the Tigris Web3 investment fund, "the first Austrian investment fund that invests solely in digital assets."	N/A	Austria
5-Apr	Cerha Hempel	Cerha Hempel advised Austrian healthcare start-up Tech2people on its EUR 3.7 million financing round.	EUR 3.7 million	Austria
7-Apr	Binder Groesswang; CMS; Hengeler Mueller; Prchal Anwaltsburo	Binder Groesswang, Prchal Anwaltsburo, and Hengeler Mueller advised Apleona on the acquisition of Austria's Siemens Gebäudemanagement & Services. CMS advised Siemens.	N/A	Austria
14-Apr	Cerha Hempel; Reidlinger Schatzmann	Cerha Hempel advised Caljan on the acquisition of all the shares in PHS Logistiktechnik from Austrian Post and two founders. Reidlinger Schatzmann reportedly advised the sellers.	N/A	Austria
6-Apr	CMS; Dentons	Dentons advised the Vienna Insurance Group on the sale of 45% stakes in the Hungarian Aegon Group and Union Insurance Company to Hungarian state-owned Corvinus Nemzetkozi Befektetesi. CMS advised the Hungarian state.	N/A	Austria; Hungary
24-Mar	Freshfields; Wardynski & Partners	Freshfields Bruckhaus Deringer advised AUTO1 Group Operations on the amendment and upsizing of its asset-backed securitization in eight European jurisdictions. Wardynski & Partners reportedly also advised AUTO1.	N/A	Austria; Poland
17-Mar	Kinstellar	Kinstellar advised Earlybird Digital East on participating in an additional Series B USD 100 million investment into Payhawk.	USD 100 million	Bulgaria
29-Mar	Kinstellar	Kinstellar advised Remix Global on long-term leases of office space in Business Garden Office X and a warehouse close to Sofia.	N/A	Bulgaria
30-Mar	CMS	CMS successfully represented ASM-BG Investicii and Consult Solar before the Sofia Court of Appeal in a renewable energy sources (RES) recovery procedure.	N/A	Bulgaria
30-Mar	Herbert Smith Freehills; Tsvetkova Bebov & Partners	Tsvetkova Bebov & Partners, working with Herbert Smith Freehills, advised the First Investment Bank on establishing its EUR 100 million debt issuance program and issuing two tranches of AT1-qualifying notes under it.	EUR 100 million	Bulgaria
31-Mar	CMS	CMS advised Toki Power on drafting a sleeving power purchase agreement with a telecommunications company in Bulgaria.	N/A	Bulgaria

Date Covered	Firms Involved	Deal/Litigation	Value	Country
12-Apr	Schoenherr; Wolf Theiss	Schoenherr advised BlackPeak Capital on its EUR 7.5 million equity investment into EUShipments.com and its subsidiary InOut Trade. Wolf Theiss advised the founders of EUShipments.com and InOut Trade.	EUR 7.5 million	Bulgaria
21-Mar	BDK Advokati; Mamic Peric Reberski Rimac	BDK Advokati advised Convex Holding on the sale of a 47% stake in Trizma to M Plus Croatia. Mamic Peric Reberski Rimac reportedly advised the buyer.	N/A	Croatia; Serbia
17-Mar	Havel & Partners; Novalia	Havel & Partners advised lead investor Euroventures on a EUR 6.14 million series A investment round into Daytrip. Novalia reportedly advised Daytrip.	EUR 6.14 million	Czech Republic
22-Mar	JSK; PPS Advokati	JSK advised Genesis Growth Equity Fund I on the acquisition of a majority stake in HC Electronics. The sellers were advised by PPS Advokati.	N/A	Czech Republic
24-Mar	AllBright Law Offices; PRK Partners	PRK Partners, working with AllBright Law Offices, advised Shaangu Power (Luxembourg) on Czech law-related aspects of its acquisition of Ekol.	N/A	Czech Republic
28-Mar	Havel & Partners; VGD Legal	Havel & Partners advised the Czech owners on their sale of Sensa Food to Mocca Holding. VGD Legal advised Mocca on the transaction and an acquisition financing deal with Raiffeisenbank.	N/A	Czech Republic
14-Apr	Havel & Partners; White & Case	Havel & Partners advised Lighthouse Ventures on its CZK 400 million sale of Pekat Vision to Datalogic. White & Case advised the buyer.	CZK 400 million	Czech Republic
13-Apr	BDK Advokati; Freshfields; PRK Partners	BDK Advokati and PRK Partners, working with Freshfields Bruckhaus Deringer, advised Yokohama Rubber on the acquisition of Trelleborg Wheel Systems Holding from Sweden's Trelleborg AB.	N/A	Czech Republic; Serbia
6-Apr	Freshfields; PRK Partners	PRK Partners, working with Freshfields Bruckhaus Deringer, advised CVC Capital Partners Fund VIII on Czech and Slovak law aspects of its GBP 767 million takeover of the Stock Spirits Group.	GBP 767 million	Czech Republic; Slovakia
24-Mar	Ellex (Raidla); Fort	Ellex advised the LHV Group on its EUR 8 million acquisition of the shares in EveryPay. Fort Legal advised the seller.	EUR 8 million	Estonia
24-Mar	Ellex (Raidla)	Ellex advised Coop Pank on its EUR 10 million public offering of subordinated bonds.	EUR 10 million	Estonia
4-Apr	TGS Baltic	TGS Baltic advised Eesti Post/Omniva on its acquisition of Express Post from Ekspress Grupp and Postimees Grupp.	N/A	Estonia
11-Apr	TGS Baltic	TGS Baltic advised Cybernetica on selling its digital air traffic management tower technology to Adacel.	N/A	Estonia
11-Apr	Sorainen	Sorainen advised Rail Baltic Estonia on the procurement procedure for the construction of the Rail Baltica Ulemiste joint terminal.	N/A	Estonia
13-Apr	Sorainen	Sorainen successfully represented the Tallinn Education Department in public procurement disputes before the Public Procurement Review Committee, Tallinn Administrative Court, and Tallinn Circuit Court.	N/A	Estonia
1-Apr	Akin Gump; Lambadarios Law Firm; Papapolitis & Papapolitis	The Lambadarios law firm, working with Akin Gump, advised Piraeus Bank on the carve-out and EUR 300 million sale of its merchant acquiring business unit to Euronet Worldwide and on their long-term sales and distribution partnership. Papapolitis & Papapolitis advised Euronet.	EUR 300 million	Greece
11-Apr	KLC	The KLC Law Firm advised Teva on the divestment of its Greek manufacturing site to PharmaPath.	N/A	Greece
24-Mar	Schoenherr	Schoenherr advised Solus Advanced Materials subsidiary Volta Energy Solutions Hungary on its acquisition of a 120,000 square-meter land plot from Ipari Projekt Hungaria. Solo practitioner Miklos Miszkuly reportedly advised the seller.	N/A	Hungary
15-Apr	D'Ornano Partners; DLA Piper; Szecskay	DLA Piper advised Indotek on its acquisition of a 47% stake in Auchan Holdings. Szecskay and, reportedly, D'Ornano Partners advised Auchan on the deal.	N/A	Hungary

Date Covered	Firms Involved	Deal/Litigation	Value	Country
7-Apr	Kinstellar; Zdravkovic & Partners	Kinstellar advised the MVM Group on its acquisition of 33.4% stakes in Energotehnika Juzna Backa and Elektromontaza Kraljevo from the Maneks Group. Zdravkovic & Partners advised Maneks.	N/A	Hungary; Serbia
23-Mar	Ellex (Klavins)	Ellex successfully defended the Domina shopping mall in Riga and Valleta shopping mall in Valmiera before the Latvian Constitutional Court against a claim brought by SIA Jysk Linnen'n Furniture.	N/A	Latvia
29-Mar	Cobalt; Delphi; Sorainen	Cobalt advised the Baltic Green Fund on its acquisition of a 7,000-hectare forest area from Isnaudas Forest Holding's Latvian subsidiaries. Sorainen reportedly advised the seller. Delphi reportedly advised Baltic Green on the Swedish law-related aspects of the transaction.	N/A	Latvia
18-Mar	Sorainen	Sorainen advised asset management group Invalda INV'L's subsidiary INV'L Life on obtaining a license to conduct life insurance activities in Lithuania.	N/A	Lithuania
1-Apr	Ellex (Valiunas); SPC Legal	SPC Legal advised the Panevezys free economic zone on concluding an investment agreement with Arginta Engineering. Ellex advised the investor.	N/A	Lithuania
5-Apr	TGS Baltic	TGS Baltic advised Maxima Grupe on structuring its Commercial Paper Program and a EUR 35 million issuance of notes under the program.	EUR 35 million	Lithuania
11-Apr	TGS Baltic	TGS Baltic successfully represented ten former Ryanair employees in an unlawful dismissal dispute before a Lithuanian court of first instance.	N/A	Lithuania
12-Apr	Walless	Walless advised the Vilnius City Municipality on the National Stadium tender procedure, concession agreement, related procurement disputes, and on clearing the state aid scheme for the project with the European Commission.	N/A	Lithuania
13-Apr	Cobalt; TGS Baltic	TGS Baltic advised InMedica and its shareholders INV'L Baltic Sea Growth Fund and Litgaja on the merger with the MediCA Group. Cobalt advised MediCA.	N/A	Lithuania
5-Apr	Ellex (Valiunas); White & Case	White & Case and Ellex advised Polenergia on an investment agreement with Green Genius to develop offshore wind energy projects in Lithuania.	N/A	Lithuania; Poland
14-Apr	Efrim Rosca & Associates; Popovici Nitu Stoica & Asociatii; Zlate & Partners	Popovici Nitu Stoica & Asociatii and Efrim Rosca & Asociatii advised Bico Industries on its acquisition of the Terra Impex Group. Zlate & Partners reportedly advised the seller, Mihai Vaida.	N/A	Moldova; Romania
16-Mar	Kochanski & Partners	Kochanski & Partners advised the shareholders of Hemp Juice on the sale of their company to Hemply Balance Holding.	N/A	Poland
17-Mar	CMS; DWF	CMS advised Sonnedix Power Holdings on the acquisition of solar project developer Sun Power Energy. DWF advised Sun Power Energy.	N/A	Poland
18-Mar	CMS; DWF	DWF advised a company from the Europejskie Centrum Inwestycyjne Group on the sale of the NC3 office building in Warsaw to MNK Partners through a share deal. CMS reportedly advised the buyers.	N/A	Poland
21-Mar	Baker McKenzie; Dentons; Rymarz Zdort	Dentons and Rymarz Zdort advised Ghelamco on the sale of the office and commercial component of The Warsaw Hub complex to Google Poland. Baker McKenzie advised Google.	EUR 583 million	Poland
22-Mar	Rymarz Zdort	Rymarz Zdort advised Bank BPH on an outsourcing agreement for servicing a portfolio of mortgage receivables and the provision of IT services with IBM Polska Business Services.	N/A	Poland
25-Mar	Crido Legal; DZP Domanski Zakrzewski Palinka	Crido advised shareholders of Alfa Brokers on the sale of a majority stake to Renomia. Domanski Zakrzewski Palinka advised the buyer.	N/A	Poland
29-Mar	CMS; Dentons	CMS advised AFI Europe on the acquisition of a 70% stake in the Towarowa 22 project from EPP and the related joint-development agreements with Echo Investment. Dentons advised EPP on the deal.	N/A	Poland

Date Covered	Firms Involved	Deal/Litigation	Value	Country
31-Mar	Bird & Bird; SMM Legal	SMM Legal advised PKN Orlen on merger clearance proceedings before the President of the Office of Competition and Consumer Protection related to its merger with PGNiG. Bird & Bird advised PGNiG on competition law aspects of the planned merger.	N/A	Poland
1-Apr	Clifford Chance; DLA Piper	Clifford Chance advised Total Specific Solutions on concluding an investment agreement with Sygnity and the subsequent tender offer for the purchase of Sygnity's shares. DLA Piper advised Sygnity and its shareholders.	N/A	Poland
1-Apr	Clifford Chance; Kancelaria Kurek Wojcik	Clifford Chance advised Sibelco on a tender offer for the purchase of all shares in Krynicki Recykling. Kancelaria Kurek Wojcik i Partnerzy advised Krynicki Recykling.	N/A	Poland
5-Apr	Balicki Czekanski Gryglewski Lewczuk; Paul Hastings	Balicki Czekanski Gryglewski Lewczuk advised the sellers on the sale of Omeko Papier to Harbour Investment. Paul Hastings reportedly advised the buyer.	N/A	Poland
11-Apr	CMS; SSW Pragmatic Solutions	CMS advised the Recaro Group on its acquisition of a majority stake in the Grodzisk-based Fabryka Wyposazenia Wagonow Growag. SSW Pragmatic Solutions advised Growag's shareholders on the deal.	N/A	Poland
13-Apr	Clifford Chance	Clifford Chance advised mBank on the synthetic securitization transaction for an PLN 8.9 billion portfolio of corporate loans. UniCredit Bank was the arranger and placement agent for the transaction.	N/A	Poland
13-Apr	B2RLaw; Fieldfisher	B2RLaw advised Billtrust on its acquisition of Order2Cash. Reportedly, Fieldfisher advised Billtrust as well.	N/A	Poland
13-Apr	Domanski Zakrzewski Palinka; Moskwa Jarmul Haladyj i Wspolnicy	Moskwa Jarmul Haladyj advised MW Trade on the acquisition of its own shares under a tender offer announced by MWT and shareholder Beyondream Investments Limited. Domanski Zakrzewski Palinka advised Getin Holding on selling its shares.	N/A	Poland
14-Apr	Clifford Chance; Rymarz Zdort	Rymarz Zdort advised a consortium of banks including Bank Slaski, Bank Polska Kasa Opieki, and BNP Paribas Bank Polska on their PLN 428 million financing for Famur Group's photovoltaic portfolio. Clifford Chance advised the borrowers.	PLN 428 million	Poland
15-Apr	Greenberg Traurig	Greenberg Traurig advised Capital Park on the acquisition of two plots of land in Gdansk, with a total area of 1.3 hectares, situated at the confluence of the Motlawa river and the Martwa Wisla from ECO-Classic.	N/A	Poland
12-Apr	Jadek & Pensa; Prica & Partners; Rymarz Zdort	Rymarz Zdort, Jadek & Pensa, and Prica & Partners advised Innova Capital on its EUR 164 million sale of Trimo to Recticel.	EUR 164 million	Poland; Slovenia; Serbia
22-Mar	PeliPartners	PeliPartners advised the Anchor Grup on receiving an EUR 80 million loan from Banca Transilvania.	EUR 80 million	Romania
25-Mar	Nestor Nestor Diculescu Kingston Petersen; Tuca Zbarcea & Asociatii	Tuca Zbarcea & Asociatii advised a club of local banks led by arranger, facility agent, and security agent OTP Bank Romania on a RON 431 million syndicated facility agreement for the financing of the Aaylex One group. Nestor Nestor Diculescu Kingston Petersen advised Aaylex One.	RON 431 million	Romania
25-Mar	Buzescu Ca	Buzescu Ca advised Kautex Textron on leasing an office and plant building from Colbus.	N/A	Romania
25-Mar	DLA Piper; Vlasceanu, Nyerges & Partners	DLA Piper advised the PNE Group on the sale of a solar project in Romania to Econergy. Vlasceanu, Nyerges & Partners advised the buyer.	N/A	Romania
31-Mar	Deloitte Legal (Reff & Associates)	Deloitte Legal affiliated firm Reff & Associates provided both sell-side and buy-side assistance on Elrond Network's acquisition of Twispay.	N/A	Romania

Date Covered	Firms Involved	Deal/Litigation	Value	Country
6-Apr	Nestor Diculescu Kingston Petersen	Nestor Diculescu Kingston Petersen successfully represented Societatea Nationala a Apelor Minerale in a mining royalty dispute before the High Court of Cassation and Justice of Romania.	N/A	Romania
11-Apr	Filip & Company; Latham & Watkins; Linklaters; Michael Kyprianou & Co; Prolaw Abogados	Filip & Company advised the Tiriac Group on its sale of rights in and operations of the Mutua Madrid Open tennis tournament and the Acciona Open de Espana golf tournament to Endeavor Group's IMG UK. Linklaters, Prolaw Abogados, and Michael Kyprianou & Co reportedly advised the Tiriac Group as well. Latham & Watkins reportedly advised IMG UK and Endeavor.	N/A	Romania
13-Apr	Dentons	Dentons advised a consortium of banks consisting of Raiffeisen Bank, Alpha Bank Romania, Raiffeisen Bank International, and Alpha Bank on a EUR 125 million green loan facility for Prime Kapital's six commercial real estate assets.	EUR 125 million	Romania
14-Apr	DLA Piper	DLA Piper advised Publicis Groupe on the takeover of IT consultancy and software development company Tremend Software Consulting.	N/A	Romania
14-Apr	Musat & Asociatii	Musat & Asociatii advised Catted on the sale of logistics park Business Park Chitila and a further 45,000 square meters of land to real estate developer Globalworth.	N/A	Romania
15-Apr	Dentons; Wolf Theiss	Wolf Theiss advised Raiffeisen Bank on a EUR 325 million credit facility granted to SNGN Romgaz. Dentons advised Romgaz.	EUR 325 million	Romania
28-Mar	NKO Partners	NKO Partners advised the Dr. Max Group on its acquisition of the Vojvodina-based pharmacy chain Janja.	N/A	Serbia
11-Apr	BDK Advokati; CMS; Jankovic Popovic Mitic; Pillsbury Winthrop Shaw Pittman	Jankovic Popovic Mitic, working with CMS in London, advised sellers Goran Kovacevic and the Seaf South Balkan Fund on the sale of Gomex to Ceecat Capital. BDK Advokati, working with Pillsbury Winthrop Shaw Pittman, advised Ceecat.	N/A	Serbia
30-Mar	Boels Zanders; Delissen Martens; Fabiani, Petrovic, Jeraj, Rejc Attorneys at Law; Selih & Partners; Zaman and Partners	Selih & Partners, working alongside Dutch Delissen Martens, advised Ingersoll Rand on its EUR 27 million acquisition of Houdstermaatschappij Jorc. Fabiani, Petrovic, Jeraj, Rejc Attorneys-at-Law, working alongside Dutch Boels Zanders, advised Jorc while Law Office Zaman and Partners represented its Slovenian management.	EUR 27 million	Slovenia
4-Apr	Fabiani, Petrovic, Jeraj, Rejc Attorneys at Law; Karanovic & Partners (Ketler & Partners); Latham & Watkins	Fabiani, Petrovic, Jeraj, Rejc Attorneys-at-Law advised the Pipistrel Group on its sale to Textron. Ketler & Partners, a member of Karanovic, advised Textron on the deal. Solo practitioner Matija Premrl reportedly advised the Pipistrel Group as well, with Latham & Watkins reportedly advising Textron.	N/A	Slovenia
21-Mar	Bech Bruun; DLA Piper; Mayer Brown; Paksoy	Paksoy, working with Mayer Brown, advised Gexpro Services on the acquisition of Resolux. Bech-Bruun reportedly advised Gexpro Services. DLA Piper reportedly advised Resolux.	N/A	Turkey
21-Mar	Turunc	Turunc advised Bogazici Ventures on its investment in Producter.	N/A	Turkey
24-Mar	BTS & Partners; Latham & Watkins	BTS & Partners advised Revel Games on its USD 4.5 million fundraising from Garena as the lead investor. Latham & Watkins' London office reportedly advised Garena.	USD 4.5 million	Turkey
13-Apr	Clifford Chance; Clifford Chance (Ciftci Attorney Partnership); White & Case; White & Case (GKC Partners)	Clifford Chance and its Turkish associated firm Ciftci Attorney Partnership advised the joint venture of airport operators TAV Airports Holding and Fraport on a EUR 1.255 billion bridge financing towards the renewal of operational rights for Antalya Airport in Turkey. White & Case and its Turkish associated firm GKC Partners advised the financing banks.	EUR 1.25 billion	Turkey

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ON THE MOVE: NEW HOMES AND FRIENDS

Romania: Suciu Opens Office in Dubai

By Andrija Djonovic (March 18, 2022)

Suciu – Employment and Data Protection Lawyers has recently announced the opening of the firm’s new office in Dubai.

The firm, founded in 2018 by Andrea Suciu, is a Romanian boutique law firm focusing on employment and data protection issues. According to Suciu, this move is in line with the firm’s aim to strengthen its “position in the UAE market due to the increased demand for labor law and data protection advisory services in the region.”

“We are very excited about starting this new chapter in our journey of international expansion,” Managing Partner Andreea Suciu said. “We hope that our creative, practical, and tailored approach along with our expertise will help us reach the peak of success in the UAE.” ■

Croatia: Batarelo Dvojkovic Vuchetich Joins SELA

By Teona Gelashvili (March 22, 2022)

Croatian law firm Batarelo Dvojkovic Vuchetich has joined the South East Legal Alliance on March 9, 2022.

According to SELA, “great care was taken in the selection process, and we were honored for the opportunity to choose from the very best law firms in the country. After much careful consideration, BDV was selected as it shares the same values and goals

as SELA and will therefore add significant value to the network while allowing us to maintain our guarantee for seamless legal service across southeast Europe.”

SELA is a regional network of law firms advising clients on their operations across South-East Europe from eight jurisdictions. The alliance members include law firms from Albania, Bosnia and Herzegovina, Bulgaria, Croatia, Montenegro, North Macedonia, Serbia, and Slovenia.

BDV Legal is a Croatian law firm with a key focus on corporate, M&A, banking and finance, dispute resolution, tax, real estate, competition, IP, and data protection. ■

Romania: Vertis Legal Team Spins Off To Launch IPA Legal

By Radu Cotarcea (March 28, 2022)

Former Partners of Cluj-Napoca-based Vertis Legal Dan Irimie, Grigore Pop, and Madalina Andrei-Bunea have left the firm to set up Irimie-Pop-Andrei – IPA Legal.

The three first founded the Irimie-Pop-Andrei law firm in January 2016, with the firm merging into Vertis Legal in June 2019. Prior to that, both Pop and Andrei-Bunea worked for Lapusan Moscovits Steopan si Asociatii, between 2009 and 2015 and between 2011 and 2015, respectively.

Vertis Legal announced it is continuing its activity with the team coordinated by founders Alexandru Basarab, Denisa Todor, and Andra Gaga. ■



PARTNER MOVES

Date	Name	Practice(s)	Moving From	Moving To	Country
29-Mar	Tomasz Prokurat	Tax	TheLawyers	KDCP Rutkowski & Wspolnicy	Poland
15-Apr	Piotr Szelenbaum	Capital Markets/ Corporate/M&A	Krzysztof Rozko i Wspolnicy	B2RLaw	Poland
28-Mar	Dan Irimie	Corporate/M&A; Tax	Vertis Legal	Irimie-Pop-Andrei – IPA Legal	Romania
28-Mar	Grigore Pop	Litigation/Disputes	Vertis Legal	Irimie-Pop-Andrei – IPA Legal	Romania
28-Mar	Madalina Andrei-Bunea	Tax; Insolvency/ Restructuring	Vertis Legal	Irimie-Pop-Andrei – IPA Legal	Romania
30-Mar	Cagdas Umut Vardar	Banking/Finance; Corporate/M&A	Gokce Attorney Partnership	Vardar Sanli	Turkey

PARTNER APPOINTMENTS

Date	Name	Practice(s)	Firm	Country
24-Mar	Nikola Stoychev	TMT/IP	Dimitrov, Petrov & Co	Bulgaria
30-Mar	Borislav Notovsky	Corporate/M&A; Real Estate	Boyanov & Co	Bulgaria
30-Mar	Stela Sabeva	TMT/IP	Boyanov & Co	Bulgaria
6-Apr	Nina Tsifudina	Corporate/M&A; Labor	Kinstellar	Bulgaria
24-Mar	Filip Lesniak	Corporate/M&A	Rymarz Zdort	Poland
5-Apr	Aleksandra Ryzkowska	Corporate/M&A	Kochanski & Partners	Poland
21-Mar	Iurie Cojocar	Data Protection	Nestor Nestor Diculescu Kingston Petersen	Romania
21-Mar	Anca Diaconu	Competition	Nestor Nestor Diculescu Kingston Petersen	Romania
31-Mar	Ancuta Pop	Litigation/Disputes	Ijdelea & Associates	Romania
31-Mar	Siranus Hahamian	Real Estate	Ijdelea & Associates	Romania
15-Apr	Georgeta Gavriloiu	Competition	Filip & Company	Romania
16-Apr	George Trantea	Litigation/Disputes	Filip & Company	Romania

IN-HOUSE MOVES AND APPOINTMENTS

Date	Name	Moving From	Company/Firm	Country
16-Mar	Felix Kernbichler	Herbst Kinsky	GoStudent	Austria
16-Mar	Evelina Agota Vitkute	Revolut	Adon Legal	Lithuania
16-Mar	Jakub Moson	GTC	Hoogells	Poland
17-Mar	Filip Rybolowik	Santander Bank Polska	mBank	Poland
14-Apr	Andrzej Motyka	Soltysinski Kawecki & Szlezak	Kulczyk Investments S.A.	Poland

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.

Bulgaria

e-Government and e-Problems: A Buzz Interview with Irena Georgieva of PPG Lawyers

By Teona Gelashvili (April 19, 2022)



Recent cyber-attacks, the emergence of AI services, and a new Ministry of e-Government are among the widely discussed issues in Bulgaria, according to PPG Lawyers Managing Partner Irena Georgieva.

“The war in Ukraine had implications for Bulgaria and led to some data protection and cybersecurity issues,” Georgieva explains. “Offline conflicts have invaded the online world very quickly. Recently, we witnessed cyber-attacks from Russia, China, and North Korea.” According to her, the effect will be even more visible once the war is over. “Considering globalization, a set of issues, such as information security and the safety of online transactions, will be difficult to ensure.”

“We have a new parliament elected not long ago,” Georgieva adds, noting that the parliament has established a new Ministry of e-Government. “This update raises hopes that the new ministry administration will take positive steps with regards to cybersecurity and facilitate procedures related to state institutions as well,” she says.

“Another interesting area is the emergence of artificial intelligence services in Bulgaria. However, it is not always possible to implement reforms without taking into account the risk of ransomware gangs,” Georgieva notes. According to her, this process should not be hasty and all legal requirements and obligations regarding privacy should be considered at the design level. “Also, businesses should focus not only on complying with purely legal requirements but on the moral aspects of using AI as well,” she adds.

According to Georgieva, the recent cyber-attacks have had an impact on the private sector as well. “C-suites in Bulgaria need to adjust to these new perspectives and finally take information security very seriously, not only from a technical but also from a legal perspective,” she points out. “New data protection regulations are yet to come into force. Bulgaria and other member states should center on the EU directives and regulations and implement them into national legislation as well.”

Georgieva highlights that the war has made it evident that many legal regulations related to public procurement, data protection, and competition do not work efficiently during extreme situations. “We need to find a way to fine-tune these very complicated regulations in order to preserve the EU principles, which has proved to be quite challenging during the past few weeks,” she says. “It would be useful if the EU member states cooperated and came up with solutions for this unusual status quo as, otherwise, the law will become an obstacle rather than an instrument for fair and timely decisions.”

“In addition, similarly to other EU states, high inflation rates seem to have a lasting effect in Bulgaria, even after the war’s end,” she adds. “Due to it, the business sector does not feel secure. At the moment, inflation primarily affects food and essential commodity prices, but it will also harm other business sectors quite soon,” Georgieva concludes. ■

Poland

A Unified Atmosphere: A Buzz Interview with Michal Pawlowski of DWF

By Teona Gelashvili (April 20, 2022)

The refugee crisis and related organizational adjustments are the major challenges faced by Poland, according to DWF Country Managing Partner Michal Pawlowski.

“Times are extremely challenging and turbulent,” Pawlowski begins. “The COVID-19-related situation was finally becoming normalized, after different strains, restrictions, and vaccination-related public discourse. However, since late February, we are facing an even more extreme situation, that is, the Russian invasion in Ukraine.”

“The war has resulted in the biggest refugee crisis post World War II, with millions of innocent people forced to flee their country,” he explains. “After 47 days of the war, we already had 2.5 million refugees in Poland, with some of them transiting to other countries. Looking at the numbers, we see that, only in Warsaw, there are 20% more inhabitants compared to the past.”

“This has created a big challenge for cities as well,” Pawlowski adds. “Accommodating several million people required not only providing apartments to live in but overcoming a number of organizational challenges. For instance, we had to adapt schooling systems very quickly, to make sure that children are receiving an adequate education and hire Ukrainian teachers for that purpose.”

According to Pawlowski, the challenges are being faced together. “The overall atmosphere in the country is quite unified as, while Poland is heavily affected by the ongoing events, we are still extremely privileged to not be experiencing war atrocities. This has to remain as the number one topic, and we should never normalize what’s happening in Ukraine,” he says.

“I know a good number of lawyers who are engaged, from the very beginning of the war in Ukraine, in a number of initiatives to support refugees,” Pawlowski points out. “We help in various ways, from offering accommodation in our homes, through assistance with onward travel to western countries, purchase of medical kits and bandages, legal assistance with legalizing their stay in Poland, to provisional, financial, and pro bono legal support.”

“It is also interesting to see how these exceptional circumstances are affecting businesses,” Pawlowski notes. “Right now, whereas they impact our living hood materially, they have not had any negative impact on our business and performance indicators. We have been growing significantly and profitably during the pandemic and continue stable growth even now.” According to him, sectors such as renewable energy and real estate remain very active. “I expect that the market will keep growing in the coming months, and there won’t be a particular slowdown either in Poland or the CEE.” ■



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Slovakia

Looking for Parts: A Buzz Interview with Bernhard Hager of Eversheds Sutherland

By Teona Gelashvili (April 20, 2022)



Slovakia's biggest challenges, in light of the ongoing war in the neighboring country, are dealing with sanctions and seeking alternative sources of supplies for its automotive industry, and implementing renewable energy projects, according to Eversheds Sutherland Managing Partner Bernhard Hager.

"The recent war has created different challenges for Slovakia," Hager explains. "First of all, we are dealing with the sanctions-related implications. In addition, the country recently adopted new labor regulations, authorizing refugees to work here. Both the state and companies are trying to adapt to the new reality."

According to Hager, a recent major change is related to renewable energy. "Slovakia recently amended the law, which might lead to renewable energy projects being finished in seven to eight years," he says. "The law lifted the limitation on the size of projects, creating a new wave of renewable energy. We already had a proposal, before the war, as we witnessed increased electricity prices all over Europe, which led to the canceling of many contracts. However, the recent developments accelerated the process."

"Another recurring issue is companies' inability to undertake contractual obligations under the agreed price," Hager points out. "The increase in prices, for instance due to suppliers' inability or unwillingness to deliver products at the agreed price, leads to disputes. Companies frequently opt to declare bankruptcy or pay the penalty, rather than comply with the terms of the original contracts. As a result, we see many cases of contracts being renegotiated or tenders being reopened by public bodies."

"This affects real estate as well," he adds. "Construction companies are frequently not able to finish the construction of a property and, as a result, that affects developers, who have already sold the house."

Hager says that the automotive sector is also suffering, due to recent developments. "Slovakia remains a champion in the automotive sector per capita," he points out. "While the automotive industry is still operating as usual, the recent sanctions have raised the question of whether this will be sustainable. The automotive industry traditionally purchased raw materials like steel and metals from Russia. Starting from June, buying steel from Russia is prohibited, which means we'll have to find an alternative market. Adapting to this might be a challenge considering the fact that, in the past, we have always depended on Russia."

The law lifted the limitation on the size of projects, creating a new wave of renewable energy. We already had a proposal, before the war, as we witnessed increased electricity prices all over Europe, which led to the canceling of many contracts. However, the recent developments accelerated the process.

"Another major topic of discussion is the Recovery and Resilience Facility," he adds. "These projects are now starting, and public bodies and companies are seeking assistance for getting state aid."

Overall, Hager highlights that, at the moment, M&A remains busy. "There are a number of M&A projects in the pipeline, as clients are still interested in investing here. However, it seems that global investors are looking for a safer market in Europe. We suspect that interest in the Slovakian market will decrease with time if the war is not resolved soon," he concludes. ■

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Montenegro

Drawing In Digital Nomads: A Buzz Interview with Milena Roncevic Pejovic of Karanovic & Partners

By Teona Gelashvili (April 21, 2022)



Montenegro's new economic plan, together with tax and insurance-related reforms, aligns with the country's aspiration to become an attractive destination for foreign investors and digital nomads, according to Milena Roncevic Pejovic, Attorney at Law in cooperation with Karanovic & Partners.

"Focusing on attracting investors, the government of Montenegro is in the process of implementing a number of reforms," begins Roncevic Pejovic. "In general, one of the major recent developments was the introduction of a new economic plan, referred to as the 'Europe Now!' project," she says. "The plan focuses on tax reform. According to the plan, the corporate income tax will remain at 9% for companies whose profit does not exceed EUR 100,000. It will be beneficial for both new and existing investors to enter and operate on the local market." Roncevic Pejovic points out that Montenegro has the lowest corporate income tax in the region, and the new law should contribute to the country having a unique position in the regional market.

Another major update, according to Roncevic Pejovic, is the adoption of the new Law on Innovation. "This law will enable innovative companies to be exempted from paying profit tax for the last five years," she notes. "This is an additional way for the government to attract investments in the field of innovation. It also sends a good signal for young people to enter our market. Additionally, the minimum employee salary is increased to EUR 450, which might not be a significant number for many countries but is a big step locally."

"Recently, health insurance payments became the responsibility of the state," Roncevic Pejovic adds. "Previously, it was the employers' responsibility to provide such insurance." According to her, this news will have a positive impact on the business sector, as their obligations will be relaxed on a monthly basis.

Overall, Montenegro is a touristic destination, and ensuring reforms in this area remains the priority of the government, Roncevic Pejovic says. "Investments in renewable energy, in particular wind and solar energy, are becoming increasingly popular," she adds, noting that "the government also aims to promote Montenegro as a destination for digital nomads. That would be a great novelty, contributing to our country's economy."

"While the business environment is becoming more attractive, there is a great need for further reforms to promote the rule of law and to fight against corruption and the grey economy," Roncevic Pejovic explains. "Definitely, those factors, in addition to the COVID-19 pandemic, the war in Ukraine, and the local government crisis, have a major influence on the development of the market and attracting new investors." ■

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While the business environment is becoming more attractive, there is a great need for further reforms to promote the rule of law and to fight against corruption and the grey economy.

Romania

Fighting the Inflation Fight: A Buzz Interview with Dana Radulescu of MPR Partners

By Andrija Djonovic (April 21, 2022)

With inflation making its way through Europe, Romania was hit as well but the economy is still developing steadily, with energy, real estate, and infrastructure the sectors to look out for, according to MPR Partners Partner Dana Radulescu.

“The government has enacted measures to protect the people from surging prices, especially in the energy sector,” Radulescu begins. “With the inflation wave sweeping through Europe, some stopgaps had to be placed in order to protect citizens, so the Romanian government defined certain consumption thresholds to moderate the usage of energy and to prevent the high energy prices fallout.”

Furthermore, Radulescu shares that the government has begun with “the implementation of certain programs aimed at helping low-income citizens, like issuing vouchers for food.” She reports that people are discontented because of the overall surge in prices due to inflation. “Still, the social democrats and the liberals have a strong coalition in place and the political climate is stable and safe, irrespective of all other goings-on.”

Taking a sidestep and assessing other parts of the Romanian economy, Radulescu reports that “things are not that much different to other European countries. The economy seems to be developing steadily, despite the rising inflation, and M&A transactions are abundant, especially in the energy sector.” She reports that, as the pandemic is dying down, the pace is picking up. “With COVID-19 becoming less of a burden on business, the war in Ukraine has been the major source of investor concern – but it remains to be seen if and by what margin it ends up slowing things as the pandemic did,” she explains.

The most active business sectors are, according to Radulescu, energy and real estate. “Real estate is heading in a new direction, in terms of what projects are being developed. As people return to office work, it will be interesting to see what kinds of development projects get targeted first,” she says. As for energy, Radulescu stresses that “wind and solar are the hottest tickets right now.”

Finally, Radulescu reports that the infrastructure sector is poised to boom as well. “With EU fund money coming in, it would appear that these projects will be picking up. It is no secret that an infrastructure overhaul is needed, and I expect that resources will be directed towards these kinds of projects,” Radulescu concludes. ■



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With the inflation wave sweeping through Europe, some stopgaps had to be placed in order to protect citizens, so the Romanian government defined certain consumption thresholds to moderate the usage of energy and to prevent the high energy prices fallout.

Lithuania

A Record Year: A Buzz Interview with Dalia Tamasauskaite-Ziliene of TGS Baltic

By Teona Gelashvili (April 21, 2022)



The record year for M&A transactions, the emergence of new startups, and a new draft on company law get lawyers talking in Lithuania, according to TGS Baltic Partner Dalia Tamasauskaite-Ziliene.

“Last year, in terms of general M&A, has been very busy,” says Tamasauskaite-Ziliene. “In 2021, there was a significant increase both in numbers and the size of the transactions, making 2021 a record year. Overall, the beginning of this year also looked very optimistic, however, the war in Ukraine has made the business sector more cautious.” According to her, while transactions have not stopped entirely and the market remains quite active, the upcoming months may not look as promising.

“In addition to traditional M&A, for the past few years we have also seen significant growth in the number of startups,” she adds. “There are new unicorns in the market across the entire Baltic region, including Lithuania. We hope investors remain interested in our market, despite the war.”

As for the legislative updates, Tamasauskaite-Ziliene points out that Lithuania’s major upcoming reform is related to company law. “The current legal framework does not meet the market requirements anymore,” she explains. “The existing companies, as well as startups, have been pointing out certain issues related to it for several years already. Accordingly, we have a draft law aiming at making the corporate regulations more flexible and attractive, for instance, by enabling using different classes of shares. The introduced changes will hopefully contribute to attracting foreign investors.” The draft law is being discussed, she says. “We still have to see if the changes are sufficient or if further updates are needed, based on their effect on the market.”

Another major change in Lithuania, according to Tamasauskaite-Ziliene, is related to implementing ultimate beneficial owner regulations. “We have finally implemented the EU directive on UBO disclosure in practice,” she says.

“In terms of the economy, some sectors are a bit more concerned than others,” Tamasauskaite-Ziliene points out. “The year already started with significant inflation in Lithuania. The geopolitical situation and sanctions had, and will definitely continue to have, an impact on the economy. We already see that projects are taken more cautiously, calculating the potential impact of the war, sanctions, and their effect on supply chains.” According to her, some investors – private equity, for example – remain active. However, “when it comes to construction or similar other projects that are about to start, they are a bit more hesitant. On top of that, certain other sectors, such as transportation, will definitely be more deeply affected.”

In 2021, there was a significant increase both in numbers and the size of the transactions, making 2021 a record year. Overall, the beginning of this year also looked very optimistic, however, the war in Ukraine has made the business sector more cautious.

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Finally, Tamasauskaite-Ziliene says that market developments in the infrastructure and green energy sectors look very positive. “Deals related to green energy, wind, and solar parks were already very common, and will be active further, owing to the need to refocus the whole energy market and be independent of Russian energy supplies,” she concludes. ■

Serbia

Stepping Up to the Plate: A Buzz Interview with Milos Vulic of Vulic Law

By Teona Gelashvili (April 21, 2022)

The major challenge faced by Serbia's recently elected parliament is dealing with the war-related crisis, in particular, in the field of energy, according to Vulic Law Managing Partner Milos Vulic.

"In Serbia, general elections were held on April 3, to elect both the president and the members of the legislative body," Vulic begins. "We have not witnessed any big reforms or legal updates, due to the pre-election-related stagnation. Usually, during the election period, there are rather few legislative developments in the country."

According to Vulic, due to the political situation caused by the war-related crisis, the major issue in Serbia, in terms of impact on business activities, is energy. "Nevertheless," he explains, "the Government of the Republic of Serbia passed a decree on limiting the price of oil derivatives and limiting the retail price of fuel in Serbia, in order to protect domestic consumers from the major price disturbances in the global market of oil and derivatives."

"At the moment, Serbia is facing difficulties in carrying out trade and conducting business with Ukraine, the Russian Federation, and Belarus." He points out "it is not possible to continue business activities in the same manner, especially since we are not sure how long the crisis will last. This creates challenges from the perspective of entrepreneurs, legal entities, employees, etc."

In addition, Vulic notes that "sanctions imposed by the EU on the Russian Federation now have an effect on every country, including non-member states. It is estimated that the energy crisis, primarily in terms of gas – which balances electricity production in most EU member states, including Germany – could seriously contribute to a recession and decline in production, as recently stated by the Chairman of the Chamber of Commerce and Industry of Serbia." He adds that, "bearing all this in mind, it seems that this also could have an impact on Serbia since the German market is the market to which Serbia exports the most." Furthermore, he indicates that inflation in Serbia increased by 0.8% in the month of March, compared to the month of February, thus now amounting to 9.1%, according to the Republic's Bureau of Statistics.

Vulic adds that, "with the fourth package of sanctions that EU member states imposed on the Russian Federation, 12 large Russian companies are facing termination of all transactions. Keeping in mind that one of those companies is Gazpromneft – the majority owner of NIS (Petroleum Industry of Serbia) – it gave rise to questions as to whether Serbia would be able to import oil, which arrives in Serbia via Croatia and the Adriatic oil pipeline (JANAF)." He concludes that, in the end, "this was avoided since the EU sanctions currently do not include the subsidiary of Gazprom in Serbia, nor are there plans for it to be included." ■



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The Government of the Republic of Serbia passed a decree on limiting the price of oil derivatives and limiting the retail price of fuel in Serbia, in order to protect domestic consumers from the major price disturbances in the global market of oil and derivatives.

Albania

A Safe Harbor To Weather the Storm: A Buzz Interview with Reshard Kellici of Frost & Fire Consulting

By Andrija Djonovic (April 21, 2022)



Political uncertainties, surging inflation and energy prices, and, despite it all, a vibrant and diversified economy are the key points of current events in Albania, according to Frost & Fire Consulting Partner Reshard Kellici.

“The political climate in Albania continues to be one of uncertainty,” Kellici begins.

“Although the governing socialist majority received its third mandate in April last year, the main focus has been on the opposition and the developments within its organization.” Kellici reports that the former chairman of the opposition Democratic Party was removed from his position, following a vote, after the “public was made aware of his actions that had a direct and indirect impact in the destabilization of the opposition and in enabling the governing socialists to maintain power.”

A fiscal amnesty proposal has come to the table again, after a two-year hiatus, which the government is supporting as a mechanism for immigrants to bring their money back to Albania without being subject to taxation.

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Turning away from politics, Kellici reports that the main legislative focus, of late, has been on the emergent measures “that have been taken in response to the conflict in Ukraine and its domino effect on energy, oil, and food prices.” Kellici says that legislation was passed to halt all government energy agencies’ investments for a period of time. “That normative act has expired but a new one is expected,” he notes.

Additionally, Kellici reports that a “Transparency Board has been created, which is tasked with setting prices for oil and

other commodities on a weekly basis. Furthermore, legislation is currently being considered to mandate all hydropower project owners to sell their energy at a particular price, assuming that such projects are not already under concessionary obligations,” he continues. Finally, “a fiscal amnesty proposal has come to the table again, after a two-year hiatus, which the government is supporting as a mechanism for immigrants to bring their money back to Albania without being subject to taxation,” Kellici says. He also reports that both the IMF and the US Embassy in Albania have “opposed this proposal due to concerns with facilitating money laundering.”

When it comes to the economy, Kellici reports that the hottest topics are the “Dures Harbor development, the Vlora Harbor development, the potential development of Skavica hydro project, and the Vlora LNG terminal and the development associated with it.” He explains that both harbor development projects have entered a negotiation stage with potential investors, while the Skavica hydro project is still some way off from being realized, “because the feasibility studies and the associated relocation of more than a thousand families are exposing the project to both economic and political opposition.”

Tackling developments in the business sector, Kellici says “banks continue to be very rigid and not offer the levels of liquidity that businesses need to support their operations.” Also, he reports that the construction industry continues to increase “at an exponential pace, and no other industry is currently matching or on track to match it. Allegations have been made by international publications and investigations that this is the result of dirty money being used to fuel the investments,” he adds. However, this has not stopped the sector from booming.

Further, Kellici shares that the energy sector has been active as well, with “a number of solar energy projects being implemented or projected to start relatively soon.” On the other hand, the commodities sector has shrunk due to inflation and declining citizen revenues. Finally, Kellici reports that the “financial institution industry saw another consolidation step, through OTP bank acquiring Alpha Bank,” and that the “telecommunication industry has officially become a duopoly, through the acquisition of One Telecommunications and Albtelecom by 4iG.” ■

Austria

Holding Breath for Q2: A Buzz Interview with Martin Ebner of Schoenherr

By Andrija Djonovic (April 22, 2022)

With the effects of the war in Ukraine remaining difficult to predict, there is ample work generated by the sanctions alone, according to Schoenherr Partner Martin Ebner.

“The mid-to-long-term effects of the war in Ukraine on the market remain yet to be seen. What is certain, though, is that in the short term, aside from pro bono work, the sanctions have certainly generated a lot of immediate need for legal work,” Ebner begins. He anticipates that, in addition to regulatory advice that will be sorely needed, especially with the “potential supply chain issues, energy supply disruptions, and sky-rocketing energy prices,” financial restructurings will likely occur.

“So far, the economy has been handling things reasonably well, but I think that the second quarter ought to be telling of what could happen by the end of the year,” Ebner continues. “The expectation is that corporations will have to approach lenders more and that financial restructurings will be on an uptick. The Russian aggression in Ukraine and, also, the recent spike in restrictions in China, following the enforcement of its zero-COVID policies, are likely to disrupt businesses more as the year progresses,” he explains.

Still, Ebner reports that “large energy companies that have secured long term contracts have been doing well. Real estate is booming even now, and there is ample banking & finance work and M&A activity in the market,” he reports. In particular, Ebner points to financial institutions (distressed) M&A, including around Austrian-based Sberbank Europe and some others, which “could generate a lot of associated legal work.”

Speaking about legislative updates, Ebner highlights a few items of note. “After the COVID-19 support scheme comes to an end, we will see just how the economy manages to get along without it. This also means changes to the way of doing corporate work – for example, holding virtual shareholder meetings – it will be interesting to see how this moves along.”

Furthermore, Ebner reports that the Ministry of the Economy has been “pretty active” when it comes to FDI controls. “There have been some deals which were blocked, so investors should be on the lookout.” Ebner also believes that “regulation will continue to be a major driver for businesses, especially so in terms of the energy, financial services, healthcare, medical, and tech sectors.” Finally, he reports that there are “ongoing discussions about certain corporate law nuances, such as new start-up organizational forms, although nothing has materialized yet.” ■



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The expectation is that corporations will have to approach lenders more and that financial restructurings will be on an uptick. The Russian aggression in Ukraine and, also, the recent spike in restrictions in China, following the enforcement of its zero-COVID policies, are likely to disrupt businesses more as the year progresses.

Czech Republic

Yet Another Test: A Buzz Interview with Jan Frey of Rowan Legal

By Andrija Djonovic (April 22, 2022)



The Russian aggression in Ukraine, raging for more than two months now, has affected the Czech Republic to a significant extent, impacting the prices of energy across all sectors. Coupled with the rising levels of inflation, the country finds itself out of balance, according to Rowan Legal Partner Jan Frey, who says it is quite hard to predict what the rest of the year will bring.

“The political situation in the Czech Republic is quite difficult due to the Russian aggression in Ukraine,” Frey begins. Following two very tough COVID-19-ridden years, Frey reports that the markets and the economy are once again being tested.

“We’re experiencing high inflation as a consequence of the anti-COVID-19 steps adopted by the former government and the energy crisis the country found itself in at the end of 2021,” Frey continues.

The energy situation is by no means easier now, following the start of the war in Ukraine, with “energy prices soaring as a consequence.” Another consequence of the war, he points out, is that the country is currently facing “an onslaught of Russian nationals attempting to divest their assets away from the Czech Republic.”

Compounding the problem, Frey reports that “new legislation entered into force, concerning FDI, which posted more barriers with respect to investments and acquisitions of strategic assets in key sectors of the economy.” He notes that foreign investments are more strictly monitored. “Also, with the rising inflation, we can expect to see more government measures aimed at stifling its negative effects. The situation is changing quite rapidly, however, so it’s difficult to make an accurate prediction.”

Finally, speaking of particular business sectors, Frey reports that IT, telecommunications, and e-commerce have been “less affected by the energy crisis and rising inflation, on the one hand. On the other hand, the lack of stable energy sources and the surging oil and gas prices are impacting the food industry and the agricultural sector,” he says. “The prices of consumer goods are increasing, and this might be something that will mark the whole year,” Frey concludes. ■

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We’re experiencing high inflation as a consequence of the anti-COVID-19 steps adopted by the former government and the energy crisis the country found itself in at the end of 2021.

Slovenia

Elections Photo Finish: A Buzz Interview with Janja Ovsenik of Senica & Partners

By Andrija Djonovic (April 22, 2022)



Imminent elections, tax framework overhauls, and potential shortages in an otherwise solid economy are the immediate concerns in Slovenia, according to Senica & Partners Partner Janja Ovsenik.

“The current front runner for the upcoming elections is Robert Golob, a businessman with limited political experience,” Ovsenik begins. “He has a very tight lead over Janez Jansa, who has quite a loyal and disciplined voter base and a very concrete political program. I think this could make the elections very, very close.” Ovsenik explains that the “parties on the left side of the political spectrum have been quite vocal about not wanting to be a part of any coalition including Jansa. With over 25% of voters left undecided – it’s hard to predict the outcome – I believe that four or more parties will have to work out an agreement in order to form a government,” she says.

Focusing on recent legislative updates of note, Ovsenik mentions an overhaul of a part of the tax framework. “In addition to corporate income tax changes, which started to be applied as of this year, there have been strong additional incentives put into play for stimulating green economy investments,” she reports. “Also, there have been changes to the personal income tax, which were passed just recently and apply retroactively, from January 1, 2022. The long-awaited updates have led to a higher net salary for every citizen, given that they cut some taxes down,” Ovsenik explains. “Additionally, Slovenia has introduced a number of performance-related payments and other options schemes, in order to attract high-quality specialists from abroad,” she adds. Assessing the tax updates,

Ovsenik reports that these were all “very welcome,” although expectations were higher. “Slovenia still has one of the highest levels of social security contributions in all of Europe – there were hopes of introducing a potential cap on these, but it hasn’t happened,” she says.

Further, Ovsenik reports that a “draft law regulating digital currencies is being discussed right now. It is supposed to become effective in 2023, which means that even with the current slowdown of all legislative processes due to the upcoming elections, it is likely we will see it passed this year,” she says.

There have been changes to the personal income tax, which were passed just recently and apply retroactively, from January 1, 2022. The long-awaited updates have led to a higher net salary for every citizen, given that they cut some taxes down.

Speaking of the economy in general, Ovsenik says that the effects of the war in Ukraine are being felt. “There have been some five thousand refugees already registered in Slovenia, and the country is hard at work at integrating them and giving them a safe harbor. The war is impacting agriculture and food products, with the main concern being the potential shortage of energy and mineral fertilizers,” she explains. With the country experiencing 8.1% GDP growth in 2021, it remains to be seen how the war impacts growth in 2022.

Finally, touching on important deals of late, Ovsenik points to the recent sale of Pipistrel, an “aviation pioneer in Europe. Pipistrel has been producing electrically powered airplanes for a while now, and its sale to Textron is a strong indication of the quality and further growth,” she explains. “It is also a good sign that its R&D department will stay in Slovenia, meaning that the economy will only benefit,” Ovsenik concludes. ■

Hungary

Hungarian Government Out Shopping: A Buzz Interview with Milan Kohlrusz of Bittera Kohlrusz & Toth

By Teona Gelashvili (April 22, 2022)



The prospective tax and retail business nationalization-related reforms, together with war-related sanctions, are the major discussion topics in Hungary, according to Bittera Kohlrusz & Toth Partner Milan Kohlrusz.

“A couple of weeks ago we had general elections in Hungary,”

Kohlrusz begins, noting that the ruling party received majority votes again. “However, this is a challenging period, as the Hungarian government has to deal with budget issues,” he explains. “There are expectations that a special tax regime will be introduced, for instance, in relation to banks and retail stores, to cover gaps between spending and the available budgetary resources.”

The EU wants to stop using Russian gas and oil but, considering the Hungarian economy and the extent of its dependence on Russian energy, the country now faces serious challenges. We are not as wealthy as Western European countries and, on top of that, only Mol – a Hungarian oil and gas company – can refine Russian oil. Even if we follow the EU recommendations, it might take fifteen years until we can fully substitute Russian energy.

“Following the elections, the Hungarian government also wants to nationalize the retail business, meaning that at least 50% of each retail company will be owned by Hungarian entities or individuals,” Kohlrusz adds. “A couple of years ago, a similar policy was adopted with regard to banks and energy companies. This might potentially give rise to disputes

between the investors and the government and may lead to arbitration procedures on the international level.”

Kohlrusz highlights that, as a result of the war, Hungarian lawyers are dealing with various immigration, employment, and corporate issues. “For instance, Ukraine and Belarus are known as hubs for IT and technology company startups,” he points out. “These companies are still operating to a great extent but, considering sanctions and uncertainty, there are questions on how to relocate them to another country. Clients are asking whether it is possible to set up a new company, outside of these countries, to bring employees over, etc.”

“It affects the energy sector as well,” he says. “The EU wants to stop using Russian gas and oil but, considering the Hungarian economy and the extent of its dependence on Russian energy, the country now faces serious challenges. We are not as wealthy as Western European countries and, on top of that, only Mol – a Hungarian oil and gas company – can refine Russian oil. Even if we follow the EU recommendations, it might take fifteen years until we can fully substitute Russian energy,” Kohlrusz explains.

The war in Ukraine and the related sanctions on Russian companies and individuals have created a lot of ambiguity on the international level, according to Kohlrusz. “We now have to track down these sanctions on a daily basis,” he says. “Recently, we advised an airplane company that was producing and manufacturing products under a license, where an assessment was needed on whether the company and its executives and/or owners were on the sanctions list.”

According to him, long-term relationships may end on a contractual level, which could also easily result in a breach of contract. “In the past, many law firms had Russian state-owned companies as clients, however, out of solidarity, many law firms have terminated those relationships.” Finally, Kohlrusz points out that “another major topic is dealing with a sanctioned person’s assets. It brings up some very interesting legal questions, with regards to the legality and grounds for freezing their assets.” ■



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Croatia

The Unavoidable Topic of Sanctions: A Buzz Interview with Vjekoslav Ivancic of Ostermann & Partners

By Andrija Djonovic (April 22, 2022)



The EU-imposed sanctions on Russia have generated significant movements throughout Europe, and Croatia has felt the ramifications as well – leading to a lot of work and some economic uncertainty, according to Ostermann & Partners Partner Vjekoslav Ivancic.

“The unavoidable topic these days are the EU-Russia sanctions and the consequent blowback on almost all sectors of the economy in Croatia,” Ivancic begins. “This has spurred M&A transactions on, with a lot of Russian nationals looking to divest their assets in Croatia.” Ivancic points to the example of the recent sale of Sberbank to the Croatian HPB bank. “This transaction took place immediately following the latest round of sanctions and was very, very quick,” he reports.

Furthermore, the sanctions have impacted the financial sector as well. “The banks are more cautious, which resulted in a number of financings slowing down due to constant check-ups and verifications – is everything in order from a sanctions perspective? – the rules not always being perfectly clear.” Ivancic also explains that the sanctions led to a number of “grey areas, especially with companies owned by Russian entities, when such companies do business exclusively in Croatia and the EU and with no additional Russian elements. We’ve had an example of such a company in Croatia – which has a superb operation in Croatia and the entire EU – and closing it would have had great ramifications on the people working there,” he reports.

“There is also a marked increase of gas prices,” Ivancic continues. “There was a major problem with a Zagreb-based gas supplier that was impacted by the price hike while hav-

ing to honor its commitments to corporate clients that had pre-arranged for a fixed gas price.” He explains that, while the company had to sell the gas to its clients at the pre-crisis price, it ended up being quite exposed for the price difference. “This, in turn, led to some spin-off dispute resolution work for the legal market,” he reports.

Additionally, Ivancic reports of major movements for Croatia on the foreign politics front. “There is a lot of talk about Croatia finally joining the OECD. Coupled with us joining the Eurozone and, hopefully, the Schengen area soon, this is a major move forward for the country,” he says. “Our politicians stress that these three key advances would also improve the investment climate, as well as aid with battling corruption and improving the corporate governance of state-owned companies,” he adds.

“In terms of legislative updates,” according to Ivancic, “there have been recent amendments to the Bankruptcy Act, implementing the EU’s Restructuring and Insolvency Directive 2019/1023 of June 20, 2019, as well as changes to the Companies Act, aimed at the further modernization of Croatian company law.”

Also, Ivancic reports that the country is exiting the COVID-19-related economic regime. “The end of COVID-19 schemes will likely lead to economic instability, after their being in place for two years. This, together with the war in Ukraine, makes it difficult to predict in which direction the economy will go,” he explains.

Finally, speaking of the key drivers of the economy, Ivancic points to construction and IT. “On the one hand, the IT sector has been very, very active in the past few months, riding the wave of a most successful 2021,” he reports. “On the other hand, the construction sector has also been doing great. There are talks about finally engaging in the reconstruction of earthquake-hit areas in Zagreb, following the 2020 quake, which would make it even more active,” Ivancic concludes. ■

Turkey

Competition Look at Tech: A Buzz Interview with Nilay Duran of Nazali

By Andrija Djonovic (April 22, 2022)



A vibrant technological ecosystem, driving massive amounts of M&A transactions in Turkey and continuing the trend of 2021 well into this year, is the most important recent takeaway, according to Nazali M&A Partner Nilay Duran.

“Turkish M&A activity continues its momentum, both in terms of the number of deals and in terms of their value,” begins Duran. “We’ve seen a dramatic increase in M&A activity recently, with both inbound and outbound acquisitions.” She reports a high level of dynamism in the domestic market, with “e-commerce, and tech in general, leading the pack.”

2021 was extremely busy in this regard, with start-ups operating in gaming, proptech, fintech, and blockchain garnering immense investor attention. Hopefully, this investor appetite continues for 2022 as well.

“

The primary drivers of these activities are VC investments in Turkish tech start-ups, which ended up leading to a “big debate about the tech M&A sector in the country, with respect to competition law issues. Turkey is amending its competition legal framework and is calling for more powers for the competition authority,” Duran reports, sharing that a change in merger thresholds is to be expected. “These changes are aiming at the tech sector specifically, following the competition authority’s stance that the current threshold of TRY 250 million is not applicable to most such transactions,” she explains.

“Furthermore, the definition of a tech undertaking is con-

cretized as an undertaking operating in the field of digital platforms, software, gaming software, financial technologies, biotechnologies, agricultural technologies, as well as chemical and pharma technologies and related assets,” Duran reports. “Such acquisitions are now subject to competition board approval, regardless of previously existing merger thresholds. Also, if the acquisition of a technology undertaking by any acquirers were to pass the total threshold of TRY 750 million it would be subject to mandatory filing,” she explains.

The reasoning behind such changes, according to Duran, is that the lawmakers wanted to more closely define the ambit within which the definition of a ‘tech undertaking’ is used. “Companies that do not fall under the definition need not adhere to these changes,” she says. Furthermore, Duran reports that the lawmakers wanted to “cover both acquisitions of start-ups that are maybe not yet commercialized, as well as major tech transactions that do not generate a lot of revenue but lead to huge market power.” According to her, the competition authority is aiming to monitor both positive and negative competition levels more closely in this context.

“These changes are coming into force starting May 2022,” Duran reports. “This means that if a deal is not closed beforehand, and it falls within the scope of the changes, new regulatory steps must be considered.” She explains that this “insertion of a regulatory step could impact deal specifics and affect considerations, transaction timelines, as well as interim period restrictions.”

However, even with such legislative updates on the horizon, Duran reports that M&A activity in the country continues to boom. “2021 was extremely busy in this regard, with start-ups operating in gaming, proptech, fintech, and blockchain garnering immense investor attention. Hopefully, this investor appetite continues for 2022 as well,” she says.

She believes that Turkey could, thus, become an important start-up hub and that this also “lends an explanation as to the increased competition authority activity. Also, following the beginning of the war in Ukraine, Turkey has come onto many an investors’ radars – meaning that the tech sector will likely continue to grow,” Duran concludes. ■



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Competition Law and Antitrust



Occupational Health and Safety



RECOVERY AND RESILIENCE PLANS IN CEE: OVERVIEW AND IMPLEMENTATION

By Teona Gelashvili

Entering into force on February 19, 2021, the EU Recovery and Resilience Facility aimed, according to the European Commission, “to mitigate the economic and social impact of the coronavirus pandemic and make European economies and societies more sustainable, resilient, and better prepared for the challenges and opportunities of the green and digital transitions.” CEE Legal Matters spoke with lawyers from Bulgaria, Greece, Hungary, Latvia, Poland, and Romania to learn what each country focused on, with its Recovery and Resilience Plan (RRP), and what difficulties lie ahead, now that these plans have been submitted to the EC.

A World of Promise

Broadly speaking, the potential impacts of the National RRP cannot be overstated – for example, Nagy & Trocsanyi Partner Peter Berethalmi says “the nine areas of the plan will fundamentally contribute to ensuring the future social and economic well-being of Hungary.” Penteris Partner Daniel Klementewicz also believes that the RRP “would massively contribute to the country’s economy.”

National RRP identify the priorities and aim to implement measures related to achieving specific goals in each country. Their key pillars are the green transition, digital transition, and economic and social resilience.

Green Transition

One of the common pillars included by the Bulgarian, Greek, Hungarian, Latvian, Polish, and Romanian RRP is related to the green transition. In several countries, it is related to both promoting renewable energy production and investing in green transport solutions.

Tuca Zbarcea & Asociatii Partner Levana Zigmund highlights that Romania’s RRP allocates 41% of the funds for the green transition, with investments in sectors such as modernizing railway infrastructure, providing infrastructure for green and secure urban transport, deployment of renewables, and the renovation of buildings to reduce carbon dioxide emissions.

According to Lextal Partner Janis Esenvalds, the Latvian plan includes creating a multimodal public transport network, “investing in clean transport infrastructure, including railways, trams, electric buses, and cycle lanes, [...] financing a large-

scale renovation initiative to increase the energy efficiency of residential buildings, public buildings, and businesses,” as well as investments “in the green and digital transformation of electricity grids.”

The Hungarian RRP, according to Berethalmi, aims “to decarbonize and digitalize the energy sector” and, specifically, “to increase the flexibility of the electricity system and promote the integration of weather-dependent renewable electricity production, introduce energy efficiency measures, and promote residential renewable energy investment.”

Regarding the Greek green transition pillar, Drakopoulos Partner Michalis Kosmopoulos says “the plan’s investments include an extensive energy class upgrade program” as well as “the energy interconnection of the Greek islands.”

Schoenherr Attorney-at-Law Elena Todorova explains that the war in Ukraine led to the amendment of “the originally foreseen combined-cycle power plants and infrastructure for hydrogen and natural gas transmission,” because of sanctions against Russia – Bulgaria’s main gas supplier. On the other hand, she says, “the creation of battery storage facilities, the deployment of smart grids for energy system operators, and the exploration and development of geothermal energy sources are envisaged.”

Digital Transition

Another major pillar included in all six RRP is the one related to digital transformation. According to Zigmund, “21% of the total funds are allocated for digital transition” in Romania, with projects related to the digitalization of public administration, the health sector, and education.

LEGAL MATTERS

According to Esenvalds, key measures to advance Latvia's digital transition include "supporting businesses in introducing digital technologies, supporting the introduction of e-commerce solutions, innovation, and new products." Improving basic and advanced digital skills "with the aim of increasing the share of people with at least basic digital skills to 54% in 2025," is also a priority, as is the "deployment of 5G corridor infrastructure along the Via Baltica highway, to promote connected automated driving, sustainable mobility, and improve road safety through innovation."

Kosmopoulos says that, for the Greek digital transition pillar, "the plan envisages pre-installation of fiber optic infrastructure in buildings, emphasis on AI and remote working, and will provide approximately 600,000 school pupils and students in low-income families with vouchers for the purchase of tablets and laptops."

Social and Economic Cohesion

While all six RRP include a social and economic cohesion pillar, the content of each seems to vary. With a primary focus on healthcare, education, and employment, the RRP also have some country-specific characteristics.

Esenvalds reports that measures to reinforce Latvia's economic and social resilience include modernizing healthcare by "investing in hospitals and healthcare service providers, to strengthen the resilience of the health sector." Berethalmi says the Hungarian RRP aims "to build a modern, efficient healthcare system, strengthen primary healthcare, and increase doctors' and healthcare workers' salaries." In Bulgaria, according to Todorova, the main measures in that regard include the "modernization of emergency medical care, aiming at effective and sustainable disaster and emergency management [...], the creation of a digital platform for medical diagnostics, the establishment of centers for cerebrovascular diseases, as well as the prevention of socially significant diseases." Healthcare-related measures are also included in the Polish, Greek, and Romanian plans.

Looking at education and employment, Berethalmi highlights that the Hungarian RRP has a focus on "demography and public education," as well as creating a "highly educated, competitive workforce." According to him, "the key to social and economic sustainability is education." In Greece, "the social pillar program aims to increase employment with particular emphasis on and development of digital skills and creating employment positions," according to Kosmopoulos.



Daniel Klementewicz,
Partner,
Penteris



Elena Todorova,
Attorney-at-Law,
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Janis Esenvalds,
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Tuca Zbarcea & Asociatii



Michalis Kosmopoulos,
Partner,
Drakopoulos



Peter Berethalmi,
Partner,
Nagy & Trocsanyi

And, focusing on employment directly, according to Esenvalds, Latvia's plan also includes a minimum income reform, "strengthening the basic social safety net through setting the minimum income level (including for pensions) at 20% of median income and introducing annual positive indexation, to adjust for changes in the cost of living."

Transport Connectivity

In terms of infrastructure, the Romanian RRP targets reducing "territorial disparities at regional, intra-regional, and intra-county levels," Zigmund reports. "A total of 434 kilometers of new highways, most of them located in underdeveloped areas, will be financed from the RRP funds."

In contrast, Todorova highlights that the transport program in Bulgaria is strongly linked to the modernization of the country's rail transport. "It includes the construction of an intermodal rail terminal in Northern Bulgaria, close to one of the Danube port terminals, and the completion of stage three of the Sofia Metro network," she says.

Public Administration and Private Investment

In Latvia, Greece, Romania, and Hungary, the RRP's also specifically address the improvement and modernization of public administration. In Latvia, according to Esenvalds, it includes "centralizing administrative support functions and investing in the training of staff in public administration."

Additionally, in Greece, a significant amount of the grant is allocated to the "private investment pillar," Kosmopoulos reports, with the program including "major infrastructure projects and investments in culture, tourism, and the health system."

Our plan was submitted to the EC last year. However, approval of funding is strongly linked to the democracy and rule of law issues in the country.

Great on Paper

While these pillars and their promises sound great, not all are convinced they are enough. Esenvalds, for example, believes that the amount of the RRP grant is quite modest, saying "things will improve a little, but not dramatically." According to him, the RRP's main weakness is its fragmented character. "The two major priorities that are set for Europe," he explains, which will be "particularly important for the future"

are the green course and digitalization. He says "Latvia has targeted only the minimum requirements on these counts and has invested heavily in various other activities."

Those would be good problems to have in Poland and Hungary, which have yet to receive their RRP green light. "Poland, together with Hungary, has a unique position with regard to the RRP, as the procedure is on hold," Klementewicz notes. "Our plan was submitted to the EC last year. However, approval of funding is strongly linked to the democracy and rule of law issues in the country. Therefore, while we have our priorities on paper, the plan is still to be approved."

Ultimately, all believe that implementation is key. For some, that requires a focus on building up capabilities with Zigmund saying that "a major challenge for the Romanian government is implementing a series of reforms in the public sector, to increase its capacity to develop or assess projects, monitor implementation, and attract available EU funds," and with Klementewicz suggesting that "it is also crucial to cooperate with the business community."

Several countries are concerned with the timeframes at play. Zigmund points out that, taking into consideration the short period of time allocated for the implementation of the plan, "the Romanian authorities must urgently adopt a series of legislative measures in order to accelerate the approval procedures for projects to be funded from the RRP." Berethalmi too noted that the implementation of the RRP by Hungary might be challenging but added that "the Hungarian Government has already issued the Government Decree," to set out "the legal framework of allocation of the RRP and implementation of the required measures."

Still others raise concerns over potential corruption in rolling out these programs with Kosmopoulos believing that, while the plan is challenging, it includes "control systems that will protect against serious irregularities such as fraud, corruption, and double funding." This is echoed by Esenvalds who puts it simply: "procurement procedures must be followed so that the state does not run into any obstacles."

Should the above be kept in mind, the lawyers we spoke with were positive about the potential impact of the RRP's, with Kosmopoulos concluding that – with the necessary resources and national policies in place – "we can be reasonably optimistic that Greece 2.0 will contribute decisively to the achievement of sustainable and dynamic growth and the promotion of prosperity for all Greek citizens." ■

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SLOVAKIA'S NEW FDI SCREENING MECHANISM – STUCK IN LIMBO

By Andrija Djonovic

In 2021 the Slovakian legal framework was set to be updated with a new FDI screening mechanism, echoing the wave of similar legislative updates throughout the European Union. However, after almost a full year, the proposed draft act has not yet come to pass. CEE Legal Matters spoke with **Ruzicka and Partners** Banking & Finance Partner **Jan Hanko** about the process, the draft itself, and its potential consequences on the Slovakian market.



Strong Reactions

“Generally speaking, the process has been quite slow,” Hanko begins. The draft of the legislative act which is poised to overhaul the foreign direct investment screening procedures in Slovakia has been stuck in the public comments and consultation phase since June 2021. “The draft act received many comments – more than 300 – including from the general public, business associations, as well as other regulatory bodies and authorities.” He points to the fact that “top companies in Slovakia, those at the very summit of the business world in the country, top employers – most of whom are usually silent when it comes proposed legislation – were quite vocal now.” At the same time, “some of the comments came from other ministries, so there’s the extra weight of that as well, meaning we could see a redraft eventually.”

“If you take a closer look at the comments themselves,” Hanko highlights, “you notice that a lot of them don’t relate to specific provisions but focus more on the philosophical approach the act takes.” For example, “the American Chamber of Commerce in Slovakia was quite critical of the proposed draft, indicating that far too many investments could be targeted – which was not the *raison d’être* of the mechanism, to begin with.”

To Protect or Impede Business?

However, such gatekeeping has not been, at its core, perceived as a bad idea. “Don’t get me wrong, it is not that the idea of such a screening mechanism is frowned upon. Indeed, the need to defend strategic industry sectors from predatory investments is felt as very real in Slovakia,” Hanko says.

Much like in other EU member states – especially amidst the COVID-19 pandemic-induced economic crisis – “there was a palpable desire among the citizens of Slovakia to defend against potentially malign and predatory investments from Russia and China. Even more in the current tense geopolitical situation,” Hanko adds.

Additionally, Hanko clarifies the types of investments susceptible to being screened, per the new draft act. “Firstly, there are critical infrastructure sectors where such screening will be mandatory. This is a good take, seeing as how it is prudent, of course, to keep sensitive sectors secure and protected,” he says.

“The main concern,” Hanko says “is that the proposed act goes far beyond what the EU legislation proposes. The general standards that the draft act sets are quite wide and seek to establish a mechanism that would have a huge reach.” He believes this regulatory approach could impede the normal flow of business.

Reversing Gears?

Hanko says that the initial proposal came as a surprise, given the “background of the liberal party SaS, which spearheaded the effort. For the past 15 years that it has been in politics, it has been trying to create a rather liberal environment for businesses, getting rid of unnecessary bureaucratic procedures and excess paperwork – the draft act proposal goes against the grain on that front.” He feels that “the proposed draft, in a way, undermines efforts made by the government in 2021 to attract more FDI.”

The draft act, Hanko explains, would establish an environment in which it would be too easy to seek the initiation of screening and control procedures. “The draft act would establish an international investment threshold of a 10% equivalent of the registered capital of the target company as the limit that would allow for screening and control procedures to occur,” he says. “This is quite low and would mean that even minor foreign investors would be susceptible to screening – which would, ultimately, give too much power to state authorities, especially the Ministry of the Economy as the body that would be in control of the process.”

Hanko believes that such a low threshold would present a significant obstacle to foreign investments, with “the regulatory authorities and the Ministry being in the position of sole gate-

keepers to FDI in Slovakia.” Additionally, he highlights that “failure to cooperate and provide all information and data required – be it from the target or from the investor – is sanctioned with fines as steep as 1% of global turnover. Substantial fines, coupled with a far reach – this could be another impediment to smooth business operations on the market.”



Jan Hanko

Ultimately, “the draft act is constructed in such a way that it allows for almost anybody to submit a request for control,” Hanko explains. “This means that, for example, it would not be unimaginable for market competitors to wish to use the screening regime to impede each other’s business transactions.”

Please Tread Softly

Hanko ultimately feels that, when it does get enacted, the FDI screening mechanism should not be used frequently. “Honestly, it shouldn’t be used more than once or twice a year, regarding specific investments, from specific investors, in specific sectors – it should not be a daily occurrence by any measure,” he says.

He predicts the FDI screening mechanism would make legal work all the more complicated. “As a lawyer, I believe that in its current form the draft act would present a significant obstacle for investment deals – it’s a whole new aspect we would all have to take into account at every turn,” he says. Not only would it make it more complicated for lawyers to give a green light on the legality of a deal, but Hanko believes that the investors themselves could alter their behavior in such a way as to lead to a slowdown. “It is not at all difficult for me to imagine a diligent investor seeking to do everything by the book and opting to have the investment *cleared* in this aspect as well,” he says.

It remains to be seen in which direction the FDI screening mechanism implementation goes since “authorities have been silent regarding the draft for a while now – which is not a surprise given the overall situation of the pandemic. At present, all we can do is watch and wait,” Hanko concludes. ■

TURNING A CHALLENGING EC DECISION INTO AN OPPORTUNITY: THE PKN ORLEN AND GRUPA LOTOS MERGER

By **Andrija Djonovic**

While the deal looked almost impossible at first, with European Commission officials hawkish about its competition implications, PKN Orlen's acquisition of Grupa Lotos eventually came to pass. For the two Polish energy leviathans the path towards unification was not an easy one, but that goal became a lot nearer following the EC's 2020 approval. To learn more about the merger and how it managed to beat the odds we spoke to **SMM Legal** Managing Partner **Maciej Mataczynski** and **Rymarz Zdort** Managing Partner **Pawel Rymarz**.

The Setting

"The PKN Orlen-Lotos merger has been a constant subject of debate in the Polish business community for the past 20 years," Mataczynski says. SMM Legal helped PKN Orlen obtain merger clearance from the EC – but it was not easy.



Maciej Mataczynski

According to Mataczynski, having two large companies competing in Poland's wholesale and retail fuel business, while both being ultimately state-owned, has always been "suboptimal, from an economic and business standpoint. Especially so in times of mounting business challenges and rising competitive pressure from both OMV and Mol, with increasing capital expenditure

demands." Mataczynski says that for this merger to become a reality, however, a change in leadership needed to happen. "To drive this topic home, it was necessary to have a determined and thorough leadership in place. Finally, that all converged in point with the change of PKN Orlen's CEO – and so the merger process started to take shape five years ago, in 2018."

What It Took

As Mataczynski puts it, there are two broad legal work perspectives that required consideration. "Firstly, there is the competition perspective. This was a 2-to-1 merger, meaning

that the EC had a major concern it would result in a market monopoly." He notes that even the EC itself highlighted how this was one of the most difficult cases placed before it, in the past two decades. "Secondly, there is the corporate perspective. Following EC clearance, PKN Orlen had to engage in a comprehensive stream of remedy transactions in order to have the merger happen," Mataczynski says. "The remedy set was one of the biggest we have ever seen, with a number of major investors from outside Poland, including Saudi Aramco," he stresses.

"To put it simply, when you have a 2-to-1 merger, there is an overlap of competing activity," Mataczynski explains. "In these instances, the EC requires divestiture of one of the competing activities. In this case, that meant a whole heap of business operations." Convincing the EC that there would be enough competition on the market – coming in from neighboring countries and imports – following the merger required tough negotiations. "The EC was insisting on divestments, so we agreed on a 50/50 approach: to divest 30% of the Lotos refinery in Gdansk while also including contracts that would guarantee up to a 50% approach to the output of important products, like diesel and gasoline. The other half would come in via imports, which would be enhanced and secured by swaths of logistics commitments," Mataczynski adds.

"This wasn't a painless compromise," Mataczynski notes, as it involved "30% of the refinery business, including 417 Lotos stations and eight logistic storage assets!" An additional layer of problems resulted from the fact that "the refinery was owned by a company that owned a lot of other assets –

meaning that we had to repackage the refinery business,” he says.

In the end, the final remedy tally included the sale of 30% of the refinery business in Gdansk and the wholesale Lotos business, which Saudi Aramco acquired; the sale of Lotos Paliwa – the retail corporation of Lotos – which included 417 stations, following carve-outs; the sale of bitumen assets in the south of Poland, as well as eight storage businesses, to Unimot, a local independent fuel wholesaler; and, finally, the sale of the Lotos biofuel business to Rossi, a Czech Republic-based company that is partly-owned by Mol. This final list included “a number of supply contracts as well,” Mataczynski adds.

The principal legal advisor to Grupa Lotos for this massive merger was Rymarz Zdort. With the firm working on the due diligence procedures back in 2017, they also worked on the merger itself. “This portion of our engagement was from 2018 until 2020, when satisfaction of the conditions necessary for the EC’s approval was eventually achieved,” Rymarz says. “Given that Lotos was the owner of many assets for which the EC had prescribed remedies, we were engaged to handle the negotiation aspects of their sale.”

According to Rymarz, the most complex part of their work had to do with the sale of 30% of the Gdansk refinery to Aramco. “This was the first time that Saudi Aramco came to the European markets, which meant that we had to engage in intense negotiations. Now, they are the owners of 30% of the assets and have undertaken crude oil processing obligations as well.” On top of this, he says they had to balance all the other transactional streams at the same time, which included the one involving Mol and concerning the 417 fuel stations; the sale of the bitumen and logistics businesses to Unimot; the sale of Lotos Biopaliwa; and the sale of a 50% interest in the Lotos-Air BP jet fuel business. “All in all, we had to execute the signing of six SPAs within the span of 48 hours,” Rymarz says. “We had a small team of six people, and, honestly, sleep deprivation helped a lot with getting this done in time,” he adds with a smile.

“This process was quite long and started all the way back at the earliest stages of EC discussions,” Mataczynski says. “It was all the more challenging given that it was not a prime time for refinery investments – a lot of investors were looking for exit opportunities following the rising tide of stringent environmental regulations. It was more difficult than we initially hoped it would be.” Still, he notes, “we managed to complete

the processes with a number of top-tier investors – all of whom, of course, will have to be cleared as adequate buyers by the EC.”

Once the Dust Settles

At the end of the day, “simply speaking, it was always better to have a company that’s consolidated – leading to cut costs and the streamlining of operations,” Mataczynski says. And Rymarz agrees: “This should have happened years ago, decades even. From a business perspective, it made no sense to have two state-owned companies operating in the same industry and existing separately.”

“There is still work to be done to fully implement all of the remedies and, of course, to complete the post-merger integration – though this is more operational work rather than legal,” Mataczynski says. Still, PKN Orlen does not rest, and, at the moment, there is an ongoing merger with PGNiG. “Once completed, this deal would lead to PKN Orlen growing two-and-a-half to three times in size,” he points out. The Polish regulatory authorities have given clearance quite recently, in 2022, meaning that “the intense work on the actual merger can begin. While it’s tough to predict when it will be completed, I feel that we could see it done this year,” Mataczynski says.

“The timing of the transaction turned out to be impeccable,” Rymarz adds. “With the war in Ukraine and the consequent oil and gas market problems, Poland has made a step in the right direction to diversify away from Russia-sourced oil.” This is echoed by Mataczynski: “the Polish energy structure is not quite healthy, with a high dependency on coal.” To move away from coal and Russian-based oil and gas, PKN Orlen would have to further pursue upstream integration, he says, “which is what the PGNiG merger is seeking to achieve – targeting gas extraction locations all the way up to Norway.”

Rymarz feels that going forward, PKN Orlen will only solidify its presence outside of Poland and continue to grow in an efficient manner. “PKN Orlen did a smashing job – faced with a challenging EC decision, it made the best of it and turned it into an opportunity!” ■



MARKET SPOTLIGHT: ROMANIA



ACTIVITY OVERVIEW: ROMANIA

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

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



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Silviu Stratulat



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Ileana Glodeanu



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Alexandru Birsan



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Bogdan Stoica



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Perry Zizzi



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ANYONE'S BET: ROMANIA'S M&A OUTLOOK

By **Andrija Djonovic**

By most counts, 2021 was a successful year for the Romanian M&A market. **Tuca Zbarcea & Asociatii** Deputy Managing Partner **Stefan Damian**, **Nestor Nestor Diculescu Kingston Petersen** Partner **Gabriela Cacerea**, **Dentons** Managing Partner **Perry Zizzi**, and **Wolf Theiss** M&A Partner **Ileana Glodeanu** have many reasons to believe 2022 could be a good year as well, but also quite a few to expect a slowdown in activity.



Placing Initial Bets

“2022 surely started on a very optimistic note with many predicting a buoyant year for M&A,” Damian says. This optimism was encouraged by 2021, which, according to Cacerea, “has been a very intense year in terms of M&A deals

reported (be those completed, pending, or aborted), with a relevant share of major transactions across industry sectors,” furthered by Zizzi’s note that 2022 started out in vibrant fashion: “it has been quite busy, since November of last year until now, with green energy and agriculture M&A leading the pack.”

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“While I cannot say that all these predictions are gone now,” Damian says, “I do believe that the current events in Ukraine, the ensuing economic sanctions against Russia, and the slowdown of the EU economy will have a ripple effect on global markets on multiple counts, including from an M&A perspective.” But what that effect will be, for the market, is unclear for now.

On one hand, Damian believes “there is an opportunity in the sense that certain investors will seek to relocate their business from Russia or Ukraine and, hopefully, Romania will be their first choice. This type of investments could be conducive to M&As – purchase of land, buildings, or even takeover of smaller companies, etc.” Zizzi adds that, “given the Ukrainian crisis and the fact that the agricultural exports of Ukraine and both Belarus and Russia are in question now, Romania is becoming interesting to a lot of investors these days.” On the other hand, Damian is wary that Romania could be perceived as a *higher-risk* country given that it is neighboring Ukraine.

Still, Cacerea reports that “the pace has been kept for 2022, too, both regarding new transactions and transactions started back in 2021.” Glodeanu agrees, sharing that her perception is the market continues to do better, “both in terms of the number of deals and their volume – numbers are booming, despite the appearance of a global slowdown.”

Fewer Big Pots

Speaking about the size of the deals, all agree that there haven't been many larger deals, but rather a number of smaller ones. “Last year, there have been only very few deals exceeding the EUR 100 million threshold, and many smaller transactions. However, the total deal value was higher than in 2020,” Damian says. Cacerea agrees, explaining that this is, to her, indicative of “the entrepreneurial market reaching a certain degree of maturity,” while Glodeanu adds: “Last year, which was very good, missed megadeals. We initiated a survey in which 23 local offices and Romanian law firms participated. Looking at answers on the average deal size on the market, it turns out that some 90% of deals were under EUR 50 million, with roughly 45% of deals below EUR 10 million.”

Damian points out that the pattern of having numerous smaller deals has been present for a while. “This is already a trend for Romania – a high number of deals and a steady stream of small-value transactions. There have been some exceptions, of course – such as the EUR 1 billion CEZ–MIRA deal – but, generally speaking, the Romanian M&A market



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Stefan Damian,
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means fewer large deals and many smaller ones.” As to why that is, Damian feels that “one of the explanations is that there are few fully owned Romanian big companies and lots of small and medium-sized ones, hence the reduced value of the potential individual transactions.” Glodeanu, on the other hand, indicates that there could also be a trend due to “global market segmentation, geopolitical tensions, dramatic rotation from growth to value, and supply chain disruptions.”

A Look at the Spread

When asked what the most active sectors have been, Glodeanu says that there has been quite a lot of activity in “energy, tech, industrial/manufacturing sectors, and healthcare. These are what we feel to be the key areas and, of course, we’ll see a lot of cross-sector investments.” With cash balances at record highs, more and more ESG proficiency targets, or the *European Green Deal* providing ample incentives to many markets, she believes that these trends will only continue.

“Additionally, when it comes to the energy sector, for example, the technology has improved, making renewable and green energy more cost-efficient and, thus, lucrative for investors. In the industrial/manufacturing sectors, but not only, high returns and – most importantly – securing supply and distribution chains are drivers of both upstream and downstream integration deals. Last but not least, cyber security or digital transformation place a big focus on tech deals,” she explains.

“The star sectors in 2021 were real estate, technology/IT&C, energy/utilities, retail, health and medical, as well as agriculture,” Damian says. “This year, the Romanian National Recovery and Resilience Plan’s strong focus on energy efficiency, digitalization of road and rail transport, deployment of electric charging infrastructures, climate change adaptation, and circular economy may contribute to increasing the country’s energy independence, especially in the current context, and also facilitate the green transition in all sectors of the economy,” he explains.

Cacerea agrees that the renewables sector is booming while adding that e-commerce and remote operations, TMT, and healthcare and pharma have been quite active too. As for the main drivers behind sector growth, she stresses “the accelerated adoption of new technologies having a significant footprint in most products and services, the expansion of remote operations, significant growth in healthcare demand, and the need to implement the transition to clean energy.”

For Zizzi, the renewables sector’s main areas of interest have been wind power and solar energy. “2021 has brought a flood of client requests for green energy deals. There is a palpable need of international investors to place funds in green energy projects in Romania, even without incentives – and the war in Ukraine only exacerbated this and put it all in hyperdrive,” he says.

Holding Out for the River

Looking ahead at the rest of 2022, the horizon for M&A deals does not spell out a clear path. “All things considered, it is difficult for me to make any smart guesses as to the prospects of the M&A market in Romania,” Damian says. “All we can do is hope for the best, hope the war ends soon and that the ensuing recession will still leave some room for future growth.”

Zizzi and Glodeanu agree that 2022, while showing reasons for hope, could turn out to be somewhat less successful than 2021, which had already expended some deal opportunities. “Current predictions for the growth of the economy were down to but a few percentage points when I last checked, and they might end up going down to zero or hitting recession numbers,” Zizzi says. “I don’t have a lot of hope that there is going to be a broad advance on M&A, however, there is investor interest and I do hope that investors see that Romania, as a NATO country, is safe. I think there is a lot of dry powder in equity looking to be used and I hope we see some action by the end of 2022,” he concludes.

Glodeanu adds that most of the concerns stem from international macroeconomic developments. “With inflation levels on the rise, there is always the fear of adverse market impacts, as equity and debt market volatility impacts deal supply. Nevertheless, the cost of money is still low and – with investors seeking to place their funds so as to not get hit by inflation – we could be looking at negative drivers spurring deals onward.”

Cacerea, on the other hand, remains optimistic for the months to come. “The beginning of 2022 has been similarly promising as 2021. Considering the high number of deals in preparation, as well as the available liquidities and the dynamics and increased demand in certain industry sectors, I hope that 2022 will match the highs of 2021 in terms of M&A deals,” she says, while adding that a close eye should be kept on energy prices, supply chain disruptions, and capital costs to be prepared for any potential bumps in the road. ■

HOT PRACTICE: MIHAI MARES ON MARES & MARES' WHITE COLLAR CRIME PRACTICE

By Andrija Djonovic (April 19, 2022)

Mares & Mares' hot practice over the last 12 months has been their white-collar crime one, according to Managing Partner Mihai Mares. Trigger-happy authorities have been the main driver of work, with Mares expecting the levels of activity to continue to increase in light of the upcoming Whistleblowing Directive.

“Our white-collar crime practice has been our flagship department since the get-go,” begins Mares. To reflect the level of activity over the past 12 months, he says they’ve increased their headcount “having added two Senior Associates over the past year.”

Speaking of the most representative work that the firm has focused on in 2021, Mares highlights a number of cases. “We have quite a diverse pool of clients, ranging from corporate executives to large multinationals. Right now, we are dealing with a very large case of anticorruption involving a former executive of a French multinational IT company,” Mares says. He reports that the case is currently being investigated by Romania’s anti-corruption authority.

“Furthermore, we’ve had a rather interesting money laundering case concerning a German entrepreneur venture capitalist,” which Mares reports was quite “geographically diverse” and involved a large number of jurisdictions, including Germany and the UK. “Moreover, we’ve helped an American executive clear his name in a case involving embezzlement charges from his former company,” Mares says.

“In Romania, right now, one of the most important topics is the application of EU law and CJEU jurisprudence,” Mares continues. “We were part of a case before the CJEU, concerning Euro Box,” which Mares argues “is of great importance to Romania,” as it will affect the way the High Court of Cassation works.

Finally, Mares reports that tax fraud cases have also been prominent. “We were involved in tax fraud cases and have cooperated with a number of tax consultants and fiscal experts to deal with these complex matters. We even worked on a cigarette smuggling case involving a Romanian transport company that was accused of cross-border cigarette smuggling,” Mares says.

In terms of what’s been driving business, aside from the firm’s positioning as a white-collar crime boutique, Mares explains that “the status of the business environment in Romania is such that the prosecutors are now more likely than ever before to tackle big economic cases – there is less reluctance from officials to act, which, in turn, generates work for us.”

Looking ahead, Mares predicts the practice to perform even better. “I do expect that our caseload will increase – we are a firm of action, so to speak, meaning that we have to act in order to stay among the leaders in the business.” Mares concludes by saying that he expects internal investigations, largely as a consequence of whistleblowing activities, to be the first thing to ramp up as 2022 goes on. ■



“

The status of the business environment in Romania is such that the prosecutors are now more likely than ever before to tackle big economic cases – there is less reluctance from officials to act, which, in turn, generates work for us.

TALKING ABOUT UNHEALTHY PUBLIC PROCUREMENT IN ROMANIA

By **Andrija Djonovic**

A quick look at the CEE Legal Matters Index 2021 reveals a considerable number of public procurement (PP) disputes in the Romanian healthcare sector. We spoke with **Popovici Nitu Stoica & Asociatii** Partner **Ramona Pentilescu**, who was involved in challenging several such projects, to learn more about the trend.

III-Timed Problems

“The first thing one ought to understand is that these problems with medical PP tender procedures became all the more evident in the past two years,” Pentilescu begins. She explains that this is because the healthcare sector in Romania has experienced an uptick in investments, with more complex projects being implemented. “Before that, in 2019 and earlier, this was far less visible,” she says.

In terms of specific issues, Pentilescu first points to the tender books and tender specifications themselves in which, she explains, uncertainty abounds without proper and detailed technical specifications for each tender. “While this may be easier in other industries, it is not as much in the healthcare sector,” Pentilescu says, also pointing out that authorities are quick to draw judgment, oftentimes “imposing restrictions instead of defining needs first.”

The second issue is that of the framework agreements, which she describes as “a handy instrument – but often used quite inadequately.” She explains: “By trying to avoid firm contractual engagements – and sometimes choosing to avoid framework agreements in order to sidestep the responsibilities having to do with purchase quantities – authorities impose disproportionate risks on the tenderer, with long-term framework agreements becoming non-profitable. Thus, in the long term, either the quality of tenders decreases, or the prices significantly increase.” Pentilescu feels that this can also have a chilling effect on others when it comes to applying to tenders.

Third, Pentilescu says “deadlines throughout are very, very short – I cannot attest to all European jurisdictions, but I

am pretty sure that Romania is among the ones with the shortest deadlines.” The window of time during which an appeal can be filed with the relevant authorities following a tender decision is but ten days. Additionally, the appeal has to be resolved within a period of just 20 days. “The median time for these procedures was around 29 days in 2021, as per the statistics published by the National Agency for Public Procurement, from start to finish,” Pentilescu says. “Within this period, you need to file the counterclaim, study all of the relevant (and very specific) documentation – all the while not having enough time to use the full set of probation rules you normally would, because of the short deadlines,” she explains, “not to mention that no new evidence may be submitted after the initial ten-day period to file the appeal.”

Fourth, Pentilescu highlights issues with the way tenders are evaluated. “The authorities do not always have personnel with the requisite skill set to be able to see all the nuances and different technical solutions in the healthcare sector,” she says. “There is a lot of highly-specialized technical equipment in this sector, and it is not easy to navigate it.”

Capabilities Building Time (With Some Help from the Market)

And this last point is somewhat linked to Pentilescu’s final issue to be highlighted – a more systemic one: “there is either an insufficient or an inappropriate use of market consultation procedures,” she says. “These consultations are a prior procedure that exists to help the relevant authorities understand what solutions are available on the market, how to best formulate their needs in order to engage competition, and ultimately obtain the best offer from the

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suitable available solutions. Most of the time, though, these consultations are performed almost pro forma and are reduced to mere market price comparisons.”

Pentilescu feels that this derives primarily from inadequate administrative capacity, more specifically insufficient personnel training. “The inadequate level of personnel qualification and management – including overload or improper disbursement of PP tasks – is the primary cause of the problems mentioned above,” she explains.

“I believe that the best way to remedy this is to focus on improving the way administrative tasks are tackled – this is, ultimately, all about refining the PP process and making it a goal to continuously improve it,” Pentilescu says. There is no single, fast solution, she notes. “Of course, other, more minor changes – like having standards for certain specification types when it comes to medical equipment – would be well received,” Pentilescu says. “This would allow the authorities to better navigate different medical equipment types and, essentially, handle these cases better.”

Still, it’s not a matter of simply extending the deadlines or tweaking legislation, according to Pentilescu. “The current legal framework, though improvable, works, provided it is applied correctly. A comprehensive approach should be taken, and investments made in educating the personnel handling these tender procedures.” She says that better use of the market consultation procedure would also lead to significant benefits. “Establishing a dialogue with the market – which all of the market players want – would be the best solution in the long term, seeing as how it would improve the very foundations of the tender framework.” ■



EMPLOYMENT CONSIDERATIONS ON THE ROMANIAN GIG ECONOMY

By Teona Gelashvili

With the fast-paced development of applications in nearly every sector of the service industry and the advent of virtual services, Romania witnessed a rise in the number of people employed in the gig economy. CEE Legal Matters sat down with DLA Piper Head of Employment **Monica Georgiadis** and Schoenherr Head of Employment **Mara Moga-Paler** in Romania to discuss the legislative framework regulating gig workers, the labor risks and challenges they face, and the ways in which these might be addressed.



Big and Getting Bigger

The gig economy in Romania is relatively advanced, compared to other CEE jurisdictions, according to Moga-Paler and Georgiadis. “Before the COVID-19 pandemic, Romania was ranking high among regional countries in this respect,” says Moga-Paler, noting that Romanian IT freelancers’ activity on international markets was especially high and constantly growing, ever since the mid-2000s. On top of that, “the pandemic gave a boost to the gig economy in the entire region, and Romania saw a growing number of platform workers in all areas,” she adds.

“The pandemic and recent regional context have definitely accelerated the process,” Georgiadis agrees, noting that “what differentiates Romania from other CEE jurisdictions is its much sought-after IT talent.” After all, she says, “Romania had been dubbed the EU’s Silicon Valley as early as 2018.” According to her, the main two parts of the gig economy, that is, peer-to-peer in-person services, such as delivery, ride-hailing, etc., and virtual services have seen significant growth in the recent period.

Lagging Labor Legislation

Moga-Paler and Georgiadis believe that, taking into account the fast-paced development of the gig economy, the legislation has not been keeping up. “In 2019, specific legislation

was enacted to regulate the ride-hailing sectors, however, there was no general legislative response to the gig economy boom,” says Moga-Paler, noting that labor authorities are “still making use of the traditional assessment tools to distinguish between employment and independent relationships.”

“Romanian legislation, like in other EU countries, lags behind the rapidly moving gig economy,” Georgiadis adds, saying that Romania’s “labor legislation is quite restrictive and slowly updated, being one step behind the business and practical needs.” At the same time, she considers the ride-hailing legislation a positive development. There was “the practical need to deal with a newly emerging reality – in absence of any regulation, ride-hailing host applications risked being challenged under obsolete legislation.” In addition, Georgiadis highlights another positive development – though not directly linked to the gig economy – “the Romanian employment law on teleworking, in force since 2018 and updated in 2021, to reflect changes in the pandemic context.”



Mara Moga-Paler

Running the Risks

In the absence of specific legislation, Moga-Paler and Georgiadis highlight the existing challenges, from a labor perspective. While acknowledging the benefits with regard to customer service and experience, Georgiadis says that the gig economy “also paves the way for several challenges in the traditional employment framework.” Moga-Paler agrees, pointing out that “unless new legislation is adopted that would address the specificities of the gig economy, gig workers will continue to be subject to the same assessment criteria as the employees on the black market who are working without any type of contract.”

Georgiadis outlines the inherent risks for misclassification of gig workers’ employment relationships. “The misclassification-related risks can take the form of undeclared work, i.e., no documentation or no employment documentation despite an employment relationship, or, more recently, underdeclared work, where there is an employment agreement in place, but the salary level is set at a lower than the actual level/the minimum wage level, not reflecting reality.” According to her, “for example, if the gig-worker receives instructions and directives from the *employer* and has little to no freedom in choosing how and when to perform the activity, that would mean they are used to replace an employee covering substantially similar activities.” In this context, Georgiadis says, if a services agreement is used where an employment agreement would be more appropriate, the employer faces a misclassification or undeclared work risk.”

If labor inspectors reclassify a relationship into employment, the beneficiary may be sanctioned for undocumented employment, according to Moga-Paler. “This represents a minor offense and is sanctioned with a fine of RON 20,000 (about EUR 4,000) for each individual working without an employment agreement.” Romanian labor legislation “does not set clear criteria to define an employment relationship,” she explains. “Labor inspectors have the authority to classify a relationship as employment, and this is based on criteria that are neither transparent nor predictable.” According to her, “the gig-worker who provides the services may in their turn also be sanctioned with a fine of up to RON 1,000 (about EUR 200).”

Moga-Paler and Georgiadis point out that the existing legal status for gig-workers varies between authorized persons and limited liability companies, which does not seem to be sufficient to avoid the misclassification risks. “Although LLCs may seem more suitable and less risk-prone, in fact, their activities

are scrutinized by authorities similarly to those of authorized individuals, especially when the sole shareholder of the LLC is also the person who actually provides the services,” Moga-Paler explains.

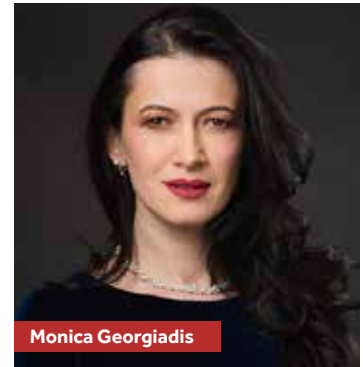
“There is no generally applicable answer to this,” Georgiadis agrees, pointing out that it is always an assessment of substance – what the relationship looks like and how the activity is performed – over form, as in what type of corporate *vehicle* is used. According to her, “there are also practical aspects to be considered – from the accounting system applied to the frequency of submitting tax returns.” As a general rule, she says, “if the individual is providing the activity themselves, using a company to do so (where the individual is the sole shareholder and also director) is not necessarily sufficient to entirely avoid the misclassification risk.”

In addition, Georgiadis points out that, in the absence of regulations, such arrangements pose threats to employers as well. For example, she says, it would be crucial “to ensure that employers also have the right tools to check potential breaches of their working schedules and fidelity / in-employment non-competition rules.”

Swift yet Balanced Response Needed

Looking to the future, Moga-Paler and Georgiadis believe that issues such as employment classification criteria and employee rights – in terms of annual leave, minimum salary, and working time – need to be addressed, and quickly. This, according to Georgiadis, could much more efficiently be facilitated at the EU level. “EU law is slowly catching up with the developments and adjustments. To that timeline, one can add the expected delayed implementation of such directives in Romania. Which is not necessarily just a Romanian issue, but a broader issue at the CEE level,” she says.

In addition, Georgiadis highlights the need for comprehensive legislation, also taking into account the challenges of the employer. “As we look forward to the upcoming legislation to address these complexities, we also hold hope it will strike the right balance between securing a realistic level of protection for digital platform workers and the prevention of any foreseeable abuse of rights from their side,” she concludes. ■



Monica Georgiadis

MARKET SNAPSHOT: ROMANIA

DEALMAKING ON SHIFTING SANDS

By Markus Piuk, Madalina Neagu, and Monica Cojocaru, Partners, Schoenherr



Change and *unpredictability*, among the top keywords that could best describe the past couple of years, did little to affect the overall Romanian M&A market. Publicly available figures show that dealmaking saw a strong rebound in 2021 in terms of deal numbers.



The main sectors on investors' radar were real estate and construction, IT&C, energy (with a growing focus on renewables), manufacturing and industrials, pharmaceuticals, and healthcare.



The previous year brought high hopes for 2022, which started strong, fueled by abundant capital investment and affordable debt. The COVID-19 pandemic was showing signs of abating, which further contributed to the sense of optimism.

And then came the war in Ukraine, bringing unpredictability into the spotlight again.

Although ongoing transactions seem to be following their path, for now, the new geopolitical context and its many economic implications will certainly impact M&A activity in Romania, the region, and beyond.

We expect in this new context some markets could attract accelerated M&A activity. Romania's bustling renewable energy sector, which in the past couple of years has seen a second wave of investments, is one of them. Green energy will continue to attract interest from investors, fueled by both spiking energy prices and the country's energy self-sufficiency goals. In addition, sectors such as emerging tech-driven technologies, cybersecurity capabilities, cloud services, or data centers are set to dominate dealmaking.

On the other hand, M&A activity in certain segments could be slowing. Investors may regard industries that rely heavily on utilities (mainly production facilities) more cautiously, as they will

need to adjust their budgets to the volatility of the markets. Irrespective of the sector, rising inflation and its impact on interest rates cannot be overlooked when forecasting M&A trends.

Moreover, a certain level of cautiousness is to be expected from both strategic and financial investors. Looking at the wider region where we operate, the M&A market continues to be bullish in Central and Eastern Europe. Still, we do feel a certain hesitance on the side of debt providers to fund acquisitions in the region. This may discourage global private equity funds from looking at opportunities in CEE, which would change the dynamics of ongoing and upcoming sales processes.

Another gamechanger is the FDI screening legislation that has come into effect in many EU countries. Against the background of disallowed transactions in a number of EU countries, non-EU-based contenders may be reluctant to participate in M&A processes involving an EU jurisdiction in the relevant industries. For sellers, this means that to ensure deal security, a careful selection of bidders ahead of any M&A process is not required only from a merger control perspective but also from an FDI screening one.

Not least, the current turmoil is also expected to accelerate talks on ESG and its increasing roles in dealmaking, as the business community was called to actively exercise its responsibilities in these areas.

As *change* continues to be the word of the day, it remains to be seen how much the lessons learned and resilience built over the past couple of years still apply. And, more importantly, if and how they could be used now to prop investment decisions going forward. ■

TRANSFER OF UNDERTAKING – A SIMPLE CONCEPT, LOTS OF QUESTIONS

By Mihai Anghel, Partner and Co-Head of Employment, Tuca Zbarcea & Asociatii



Although the Romanian law on transfers of undertakings has no more than two pages, it is notorious for its complexity, while the relevant case law is constantly developing.

Briefly, if an undertaking is taken over by, or is transferred to, a new entity, the relevant employees are automatically transferred to the new employer, together with their existing rights provided under the individual employment agreements and the applicable collective bargaining agreement.

The application of this simple concept has proved to be extremely problematic in practice. Out of the multiple questions arising on this matter, there are at least two which have regularly troubled both practitioners and courts:

Can the Transferee Change the Terms of Employment of the Transferred Employees?

The new employer may be interested in changing the terms and conditions of the incoming employees, either to save costs or to harmonize their employment terms with those of the employer's existing workforce. One of the main protection measures set out under the relevant legislation is the takeover by the transferee of all the rights and obligations incumbent upon the transferor at the transfer date, based on the employment relationships with the transferred employees or arising from an employment agreement applicable to those employees. This rule refers to both the individual employment agreements and the collective bargaining agreement existing at the transfer date.

The transferee's obligation to observe the employment agreements existing at the transfer date is valid until they are terminated or expire. Since individual employment agreements are usually concluded for an indefinite term, the transferee shall be bound by the terms and conditions thereof for the entire employment duration unless the employees consent to their amendment.

As for the transferor's collective bargaining agreement, the transferee is only allowed to change its terms after one year following the date of transfer and only based on negotiations with employees' representatives.

How Can the Employees' Refusal To Be Transferred Be Addressed?

The transfer of employees is supposed to occur by virtue of law, not based on the employees' consent, on the date when the undertaking itself is transferred.

However, there are practical situations when the employees refuse to be transferred; the relevant legislation does not provide for a straightforward solution in this particular case. Practitioners and courts have a single provision in the Romanian law to rely on, i.e., *"if the transfer involves a substantial change in working conditions to the detriment of the employees, the employer shall be regarded as being responsible for the termination of the individual employment agreement"*. However, this provision raises another question, as it is unclear whether *"the employer responsible for the termination of the individual employment agreement"* is the transferor or the transferee.

Two scenarios are possible – the employee refuses the transfer (1) although the transfer does not involve a substantial change in their working conditions; or (2) because the transfer involves a significant change in their working conditions.

Under the first scenario, it may be construed that the employee is automatically transferred to the transferee. The employee's refusal to work for their new employer should be treated as disciplinary misconduct that enables the transferee to take disciplinary measures. Nevertheless, the transfer to the transferee is a social protection measure beneficial to the employees. So, it may be claimed that the employees could waive such a benefit and therefore refuse the transfer. However, according to this interpretation, the employee's refusal to be transferred might be regarded as their resignation.

Under the second scenario, there are strong arguments to support that – since the transfer of undertaking involves significant changes in working conditions to the detriment of the affected employees – the transfer of employees does not occur by virtue of law. Consequently, the employees refusing to be transferred on these grounds will remain employed by the transferor, and the latter is the employer responsible for the termination of their employment contracts. Dismissing the employees under this scenario would entail following the procedure for redundancy dismissals. ■

CHALLENGING THE ASCERTAINING DOCUMENT – RECENT DEVELOPMENTS

By Iuliana Iacob, Partner, and Ana Maria Abrudan, Managing Associate, Musat & Asociatii



A key institution enshrined by the Romanian legal provisions governing public procurement, the ascertaining document is issued by contracting authorities upon the finalization of a public contract and indicates whether contractors failed to fulfill their contractual obligations or have fulfilled them in a defective manner.

The Ascertaining Document's Role

In practice, when issued a negative ascertaining document (AD), a party may suffer significant consequences. By way of example, relying on such a negative AD published in the Electronic System for Public Procurement and, therefore, available to the public, a contracting authority may exclude the party against which such a document was issued from taking part in a public procurement procedure as a candidate/bidder.

While prior to excluding an economic operator from a public procurement procedure the contracting authority should perform its own review – if the economic operator has seriously or, as applicable, repeatedly infringed its main obligations under the previous public procurement contract, and if the said infringement led to the early termination of that contract or the payment of damages – the risk remains significant.

Against this backdrop, in practice, dissatisfied parties often file challenges against the ascertaining documents, seeking their annulment. To avoid the risk of a negative AD detrimentally impacting their activity while the litigation is ongoing, parties may also submit an application to stay the AD's effects until the challenge against it is finalized.

Recent Amendments – Intermediary Ascertaining Documents

On March 22, 2022, a government decision (i.e., *GD 375/2022*) introduced fresh amendments to the Methodological Norms approved by *GD 395/2016* and those approved by *GD 394/2016*.

Notably, the amended provisions expressly enshrine the possibility of the contracting authority to also issue ADs throughout the performance of the contract, specifically every 90 days during the execution of the contract. Such documents should mention at least the stage of the contract and, as the case may be, delays or deficiencies in the implementation of the contract, as well as

potential losses generated through the co-contractor's fault.

Impact

The introduction of such intermediary ascertaining documents may trigger far-reaching consequences on the activity of economic operators, as well as generate an increase in the number of disputes between contracting authorities and operators, even during the early contractual stages. By way of example, a negative intermediary AD may lead to blockages in the activity of an operator, with them being sanctioned in a more drastic way – taking into account the potential repercussions in other tenders – for even minor contractual breaches, e.g., small delays that could have easily been recovered at a later stage during the execution of the contract.

Wary of the risk of being potentially excluded from future public procurement procedures, the party referenced by one or more such intermediary ADs throughout the life of the contract may deem it necessary, and indeed essential, to initiate distinct proceedings challenging each such document. In this scenario, contracting authorities and their contractual partners may become embroiled in prolonged and successive litigations, even as the contractual performance is ongoing, involving extensive efforts and substantial costs.

Multiple practical and legal issues may also arise including, *inter alia*, joinder of claims, the potential *res judicata* effects of earlier judgments on subsequent disputes, or the impact of a judgment dismissing a challenge against an AD if corrective measures have subsequently been undertaken.

In the Balance

At this preliminary stage, the long-term effects of the new provisions are difficult to anticipate, and their impact will likely also depend on the scale on which intermediary ADs will be issued throughout the life of the contract.

If the issuance of such documents will become widespread, it may give rise to a wave of new disputes focused on challenging ascertaining documents and a complex debate regarding the interplay between successive intermediary ADs, i.e., the effects of prior judgments issued in challenges against an AD in the context of subsequent disputes. ■



FOR THE FUTURE – ROMANIA'S NEW CYBERSECURITY STRATEGY (2022 – 2027)

By Cristina Cretu, Co-Head of TMT and Data Protection, and Sonia Benga, Associate, MPR Partners



The last few years have brought incredible leaps in technology, all fields seeing new and impressive heights that could only be imagined twenty years ago. But the rapid developments in technology came with greater risks in terms of cybersecurity. Romania plays an important role in terms of resources and capabilities in the cybersecurity field and makes ensuring a safe cyberspace a top priority for the country.

For these reasons, Bucharest has been chosen to host the European Cybersecurity Competence Centre, cementing its role as a cybersecurity hotspot. Given the technological developments and challenges and the need to ensure the safety of cyberspace, a new, updated Cybersecurity Strategy for 2022 - 2027 (Strategy) was needed. The Strategy and its implementation Action Plan were adopted in December 2021.

A New Vision for Cybersecurity

The Strategy envisions several focus points that are of utmost importance in the current cybersecurity climate. These include the promotion of an up-to-date vision meant to help the whole of society, including authorities, public administration institutions, private entities, academia, and citizens, while also fulfilling national security objectives and commitments assumed within NATO and the European Union. The Strategy aims to create the necessary premises for the development of the business environment, the national economy, and the educational and research area. These actions are meant to counteract threats arising from various sources, such as entities associated with state agents, cybercrime groups, or ideological groups.

Strategy Goals

The Strategy foresees several steps leading to five goals aimed at ensuring cybersecurity. These cover the entire spectrum connected to cybersecurity, starting from the very root of the problem.

The safety and resilience of networks and systems is the first goal, only being achieved by implementing both policies and measures aimed toward increased cybersecurity and working towards the improvement of national capabilities for tackling threats. Financial, technological, and human resources will be provided for reaching such a goal. However, no improvement and no step towards the proper security of cyberspace can be achieved without a proper legislative framework. As technology is

one of the fastest evolving fields, the Romanian legislative framework cannot afford to fall one step behind. A fluid and modern framework must be backed up by institutional cooperation, especially with the emergence of new institutions. A proper institutional framework would include cementing the purpose of the Operative Council for Cybersecurity as well as safeguarding the activity of the newly created National Directorate for Cybersecurity.



Additionally, strengthening the partnership between the public and private sectors is of the utmost importance. The need for programs to raise awareness and educate citizens on the importance of cybersecurity is stringent, and such information must become common knowledge. Furthermore, consolidating the knowledge and preparation of those directly working in the field of cybersecurity and broadening their competences is vital. Lastly, the entire cybersecurity industry needs a refresh. Thus, investing in development, research, and innovation could provide for additional opportunities, for talents to remain within the country, and for generally better cybersecurity. Converting a reactive fight for cybersecurity into a proactive one is another goal of the Strategy. Preventing cyberattacks altogether is much easier than having to do damage control. This can be achieved by developing national computer emergency response teams as well as security operations centers, in both the public and private sectors.

Lastly, being part of international organizations plays a key role in the Strategy, Romania's position within various international organizations offering a great number of opportunities. Establishing common strategies, increasing state collaborations, furthering the cybersecurity policies promoted by NATO, exchanging best practices, and expanding the role that cyber diplomacy plays are all key ingredients.

A Collective Challenge

As the Strategy was set as a milestone of the National Recovery and Resilience Plan, adopting it was of the utmost importance for Romania. Following the principles and goals set within will, however, prove to be a challenge. In the context of technological evolution, the Strategy represents more than a plan on paper, but its aim must be squarely on bringing together authorities, institutions, academia, and the private sector in a concerted effort to ensure a safe and secure cyberspace in Romania. ■

HOW MOBILE IS THE MOBILITY PACKAGE IN THE TRANSPORT SECTOR?

By Alina Iozsa, Partner and Real Estate and PPP Leader, and Alexandra Burdulea, Associate, Hategan Attorneys



The new *Mobility Package* adopted at the European level represents a significant shift in the transport sector. Its effects have been long anticipated since the Commission's proposal in 2017, as the new regulations intended to *level the playing field* for transport operators from different member states. Additionally, they aim to provide equal social protection to all drivers, reduce negative competition, and standardize different administrative procedures. Considering the new procedures, transport operators are faced with a multitude of challenges to adapt their business models to the current requirements.

Main Concerns

There has been significant pushback from Eastern European countries voicing concerns regarding the regulations with the greatest impact including: (1) drivers needing to return to their place of residence or operational center every four weeks; (2) trucks needing to return to the operational center of the company every eight weeks; (3) the interdiction for drivers to spend their regular rest period in the truck cabin; transport operators having to pay drivers the minimum wage applicable in the countries of transit; registration of the cross-border posting in the Internal Market Information (IMI) system.

Impact

The Romanian transport sector ranks eighth in the European Union, with an industry evaluated at EUR 6 billion in 2019. However, the adopted national legislation on the *Mobility Package* is not clear enough, which makes the task of implementing a new business strategy complying with these obligations even more difficult.

Romanian transport operators will feel the greatest impact of these regulations in their turnovers. There are greater financial costs, as transport from countries on the outskirts of Europe, like Romania, bears a higher cost and a longer time burden. The obligation to arrange the return of the vehicle every eight weeks will see a 10% cut in the annual turnover of a company, according to industry experts. The percentage is significantly higher when aggregating the economic outcomes of all the changes. This adds to the financial burden generated by the interdiction to spend the resting period in the cabin, the minimum wage, and

the fiscal treatment of the daily allowance. The new regulations are even more damaging, considering the transport sector has already been severely affected by the COVID-19 pandemic and the recent rise in fuel prices.



What Causes the System to Limp?

The Package falls short on many other considerations. Firstly, it does not deal with the potential refusal of the driver to return at such short intervals, leaving it up to national authorities to analyze how a company has discharged this obligation. The Romanian Transport Authority, in line with the guidelines of the Commission, has offered some insight stating that documents such as CMR or return tickets and proof of written communication to the drivers related to their return are deemed conclusive.

Secondly, the IMI registration system poses significant challenges when it comes to the registration of transnational posting, especially if the transport operation takes place on the territory of more member states. For each of these states, even if the driver spends a limited amount of time on their territory, the company must register the posting in the IMI system.

CJEU Litigation

The Package was challenged before the CJEU by several countries including Romania, Lithuania, Poland, Cyprus, and Bulgaria. However, the ETF, a federation representing 5 million transport workers and their 250 trade unions, is calling upon these countries to withdraw their claim before the CJEU, stating that "it is not the time to question the new rules."

No Alternative

For countries like Romania, located on the outskirts of the European market and not part of the Schengen agreement, the implementation of the Package appears to have a significant negative impact – translated into the rise of migration of both workforce and capital, the rise of transport prices, and decreasing GDP. What the CJEU will decide concerning the complaints brought forward, which should be analyzed given the alleged breach of the four freedoms that represent core pillars of the EU single market, remains to be seen. Until then, the industry has no choice but to move forward. ■

PROGRESS (OR LACK THEREOF) IN ROMANIA'S TRANSPOSITION OF THE EU WHISTLEBLOWING DIRECTIVE

By Mihai Mares, Founding Partner, and Raluca-Andreea Mocanu, Associate, Mares & Mares



Although the first draft law transposing EU Directive 2019/1937 (*Whistleblowing Directive*) into national law has been launched in public debate by the Ministry of Justice in April 2021, the Whistleblowing Directive has not yet been implemented in Romania.

This first draft law was registered with the Chamber of Deputies to be debated and adopted as early as autumn 2021, but it was not debated during the parliamentary session since it had not received all the opinions of the committees (e.g., the Legal, Disciplinary, and Immunity committees).

However, as the bill was not automatically carried forward for the next year, on March 9, 2022, the government endorsed a second draft law which is expected to be registered with the Chamber of Deputies soon. Furthermore, it is also important to point out that the absence of an adopted transposition act, as a rule, should lead to the direct application of the directive.

The Recent Version of the Draft Law

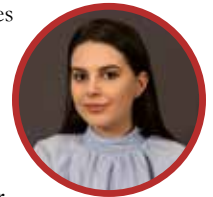
From a first reading, it is notable that the government's draft law no longer provides the option for whistleblowers who do not wish to disclose their names to be represented by their lawyers. Article 6(3) of the first draft law allowed whistleblowing reports to be filed by a whistleblower's lawyer, without the latter being required to state the whistleblower's name, provided that the legal representation agreement concluded in this regard explicitly contains an appropriate provision.

The first draft law differs from the government's draft law in that it establishes a hierarchy of channels that a whistleblower can use. This national provision was an intensely discussed issue in the public debates launched by the Ministry of Justice, with many of the participants considering it unjustified. Based on this first draft, the reporting was mainly done through existing internal reporting channels and, exceptionally, the whistleblower would be able to use the external channels, only in particular situations.

Now, based on Article 5 of the government's draft law, it seems that the whistleblower who reports a violation of the law may choose between the internal and external reporting channels.

Differences Between the Directive and the Draft Law

In terms of the deviations, the government's draft law widens the



scope of the directive regarding what breaches are subject to reporting. The directive indeed left the door open for member states to enhance protections under national law, yet the Romanian approach is extremely wide. Whistleblower protection is extended to any breach of law, any rules of conduct, or professional ethics. This is not exactly good news for companies, as it can lead to numerous reports on any subject, which will need to be registered and followed up on.

As it results from the directive, the regulations on mandatory registration and follow-up on anonymous reports are a decision for each member state, probably considering that the legal protections granted for anonymous reports can increase the chances of discovering compliance breaches early on. The Romanian approach is, once again, permissive about it.

The government's draft law mentions anonymous whistleblowing reports in Article 2(2), according to which the law also applies to persons filing a report (internally or externally), including an anonymous report, or publicly disclosing information on breaches. In addition, Article 6(2) states that reports that do not include the whistleblower's name, contact details, or signature are to be examined and resolved in the same manner as reports that do provide those details.

Therefore, the bad news for companies is that omitted information about a whistleblower's name or contact details does not entitle a company to close the report – considering that future national legislation seems to allow anonymous whistleblower reports – as these should be registered and followed up on, similarly to any other reports.

The Ultimate Goal

In view of the above, we can conclude that, at first sight, this new version of the draft law does not appear favorable to companies. Yet, if we refer to the ultimate purpose of these legal provisions – to identify and remedy internal infringements early – we consider that there can be major benefits for companies.

As regards whether Romania has made any progress in the transposition procedure of the directive, there does not seem to be any substantial or significant advance, at least from a time perspective. ■

NEW AGE OF FDI SCREENING – STRICTER RULES FOR NON-EU INVESTORS IN ROMANIA

By Anca Jurcovan, Partner and Head of Competition & Antitrust, Wolf Theiss Bucharest



Following the wave in Europe on the enforcement of foreign direct investment screening, Romania has just shifted to new rules for non-EU investors. The new regime entered into force on April 18, 2022, and is expected to be fully operational by June 18, 2022, when the new FDI Screening Commission is to be set up.

By design, the new law is not anticipated to significantly restrict foreign investments compared to the status quo. However, it will still have an impact on the number and duration of FDI screenings under national law, which may add time and regulatory complexity to the screening process.

As a stand-still obligation with associated fines of up to 10% of the investor's worldwide turnover has been introduced, it is key that investors take into account any potential gun-jumping practices as well as the impact the new law may have, inter alia, on the transaction timetable, conditions precedent, remedies, and closing. While transaction unwinding could be ordered in case risks to national security are identified, the new regime also provides for a conditional authorization decision which may be issued by the FDI Screening Commission. For example, the following behavioral or structural remedies may be offered: certain participation rights offered to the government (i.e., minority stake with veto rights), protection of sensitive information/know-how/patents, restriction of governance rights or access to information for the acquirer post-transaction.

The scope of the law is broad: any greenfield investment or acquisition of control (in the sense of the EU merger regulation) over a local target active in sensitive sectors, with an investment value above EUR 2 million will be subject to the mandatory filing.

The focus of the new regime is aligned with the criteria listed in the EU Regulation on FDI, which target the protection of critical infrastructure, critical inputs such as energy or raw materials, as

well as food security, access to sensitive information, including personal data, or the ability to control such information, and the freedom and pluralism of the media.

Still, as the list of sensitive sectors is broadly defined under national law and the de minimis threshold is set at a low level, it is expected that a broad range of investments will be notified for the purpose of FDI screening.

The review timeline for non-problematic investments has been extended to 135 days, which is triple the average duration of merger review procedures and could significantly impact the calendar of transactions. In that respect, investors should be able to resort to a fast-track procedure similar to the 30-day non-intervention procedure available in merger control, to rule out risk for borderline cases where it is unclear whether they fall within the ambit of the law, considering the sector or investment value.

Portfolio investments are exempted from screening as long as they do not lead to control being exercised by a non-EU investor. Control is defined in the sense of the EU Merger Regulation, encompassing control derived from any rights, contracts, or any other elements which confer decisive influence over an undertaking.

Non-EU investors which are already implanted and conduct business in Romania should pay particular attention to new investments, encompassing the creation of new units independent from existing facilities but, also, capacity extensions in existing units, diversification of output to new products, or a fundamental change in the overall production process of an existing establishment. In practice, such provisions may lead to a multitude of cases where existing investors will have to feed in FDI screening when they plan internal production reorganization. The new law's application guidelines should provide more clarity on the type of operations falling within the scope of screening, to preserve an investor-friendly system. ■

RENEWED EFFORTS TO DEVELOP PPPS IN ROMANIA

By Andreea Toma, Partner, and Mihnea-Ioan Ratiu, Associate, Leroy si Asociatii



Although Romania's history with public-private partnerships (PPPs) spans over two decades, the legal framework in force until 2018 did not attract sufficient private partner interest for the development of such projects. As a result, to date, the number of successful PPPs remains rather low.

The 2018 overhaul of the legal framework was part of a push to promote PPPs as a catalyst for investment in strategic infrastructure in the transport, healthcare, and energy sectors. The 2018 PPP law (*Government Emergency Ordinance no. 39/2018*) is widely considered to be a clear improvement over the previous attempts and generally compliant with international best practice. Nevertheless, its integration into the wider legal framework is not completely settled yet. Therefore, a number of clarifications at the infra-law level – for example, as regards the relationship between the PPP law and secondary legislation designed for traditional procurement projects, such as that governing pre-feasibility and feasibility studies for publicly funded projects – might be welcome in order to ensure that PPP projects can be structured and prepared in line with international best practice.

The lack of an adequate institutional framework, capable of ensuring the cooperation between the various public authorities involved in the implementation of projects as complex as PPPs, has been an issue with many former PPP projects. Notably, the 2018 designation of a non-specialized body within the Romanian Government to handle *strategic* PPPs proved to be an ineffective approach, which further delayed the use of PPPs.

It is in this context that the Romanian Government has taken a new approach by setting up the Public Investment and Management Unit (PIMU), a body functioning within the Romanian Ministry of Finance, tasked with elaborating policies, strategies, and recommendations, as well as with promoting good practices in the field of PPPs.

PIMU is expected to act as the focal point for the accumulation of knowledge and information in the field of PPPs and to devel-

op into a body of experts capable of disseminating its know-how – notably, by means of guidelines, tools, and methodologies, as well as through standardized contractual clauses – to public authorities involved in the structuring, preparation, award, and implementation of PPPs. This top-down approach aims at ensuring that the principles which are set forth in the PPP law, e.g., the value for money assessment, the affordability assessment, and the long-term budgeting of PPPs, are adequately understood and reflected in practice.



An essential condition for successful PPPs is a coherent national strategy and PIMU is very well positioned to prepare such a document. The strategy should be expected to identify the key public bodies involved in PPP projects, clarify the institutional framework in which they exercise their respective competencies, and establish a list of priority sectors and projects (e.g., those deemed to have the highest chance at a successful implementation) capable of serving as pilot programs and practical learning opportunities.

The PPP model is an opportunity for Romania to not only take advantage of the experience that the private sector has already accumulated in delivering successful and cost-effective projects – an experience which is especially useful when structuring large infrastructure investments – but also to address financing needs that may not be covered by EU funds, including those available under Romania's *National Plan for Recovery and Resilience*.

The PPP model is particularly useful in structuring government payment PPPs, where payments are made by the public partner (rather than the end-users) to the project company in the form of *availability payments* (such as for the development of hospital infrastructure – one of Romania's sorely needed investments). For this type of government payment PPPs, the use of available EU funds would optimize the affordability of projects for the contracting authorities.

As Romania's new approach to PPPs is gradually implemented, the decades-long negative trend has a very good chance of finally being turned around. ■

THE UNTAPPED POTENTIAL OF THE ESCO FINANCING MODEL

By Claudia Chiper, Partner and Head of Banking and Finance, Wolf Theiss Bucharest



An Energy Service Company (ESCO) provides energy services and/or other energy efficiency improvement measures to consumers and, as a result of providing such services and/or measures, accepts a degree of financial risk. Payment for the services provided by an ESCO is based, in whole or in part, on the energy efficiency improvement and the fulfillment of other performance criteria agreed upon by the parties. As a rule, the ESCO is paid out of the cost reductions achieved following the energy upgrades and/or efficiency measures. Because payment is made from the energy savings, the costs of financing and implementing such an efficiency project may, based on the financing structure applied, be treated as an off-balance sheet asset.

Energy efficiency is at the forefront of the European energy and climate policy whose main goal is to make Europe the first climate-neutral continent in the world by 2050. In practical terms, the initiative translates ultimately into reduced prices and cost savings. In this context, ESCOs play an essential role.

Financing options for energy efficiency improvements may be classified, in a broad sense, under two options: (1) the ESCO borrows the funds necessary for project implementation or uses its own funds; or (2) the energy-user/customer takes a loan from a financial institution, which is secured by an energy savings guarantee undertaken by the ESCO.

The savings guarantee serves to prove to the bank that the project will generate a positive cash flow and, therefore, the debt service will be covered. In turn, the bank will be able to offer a more competitive interest rate given the lower risk of default.

From a bank's perspective, different financing mechanisms may be applied, ranging from investment loans, leasing, or sales of receivables (without recourse). Out of the available options, a sale of receivables may be better suited for ESCOs mainly because the credit risk is with the final beneficiary rather than with the ESCO, the energy performance risk is not a concern for the lender because the ESCO guarantees the savings towards the final beneficiary who, in turn, pays the bills to the lender and

the ESCO is 100% financed and does not have an impact on its balance sheet. Multiple options and variations may be considered depending on the project, whether there is a grant component, and the bankability of the borrower (either the ESCO or the beneficiary).

To put things into perspective, in 2015, the total EU market was estimated at EUR 2.4 billion ESCO revenues with a forecasted growth to EUR 2.8 billion by 2024, according to the Report on Energy Service Companies in the EU from 2017.

Out of the EU member states, Germany stands out in terms of maturity and market development showcasing all the essential ingredients, such as institutional context, legal framework, dedicated associations, and facilitators. The same report found that Italy, Belgium, and Denmark were medium-size markets while other EU member states were small markets or had no market at all for this industry segment.

In Romania, according to the same report, in 2016 the volume of ESCO activity was low. Moving forward to 2022, the status does not seem to be much different. The first piece of legislation defining ESCOs in Romania dates back to 2008. In 2014, the specific legislation regulating ESCOs, among others, was recast and the EU directive on energy efficiency was transposed.

However, legal barriers remained, especially in relation to the mismatches in the legislation governing the procurement process and the rules regarding the budgetary allocations of municipalities and other territorial administrative units, as well as the statistical treatment of the energy performance contracts (EPCs). In addition to the legal hurdles, the lack of information and awareness, as well as the difficult access to finance by ESCOs, translated into further practical obstacles to implementing energy efficiency projects on a large scale in Romania.

Perhaps a key to boosting this industry segment in Romania and scaling energy efficiency projects based on the ESCO model is to standardize the relevant documentation (EPCs, energy supply contracts, and build-own-operate-transfer contracts) coupled with tailored banking products to take into account the specifics of this sector. ■

HOT PRACTICE: OCTAVIAN POPESCU ON POPESCU & ASOCIATII'S DISPUTE RESOLUTION PRACTICE

By Andrija Djonovic (April 27, 2022)



The hot practice for Popescu & Asociatii over the past year has been Dispute Resolution, with the pandemic crisis as a primary driver of work, according to Partner Octavian Popescu, who reports about a vibrant 2021 and looks ahead to a similar 2022.

“While we did have a number of practices that were very active in 2021, I have to say that dispute resolution saw the biggest surge in terms of workload,” begins Popescu. “We have been active in litigation cases across the board: commercial, administrative, intellectual property, banking & finance, tax, insolvency, employment, real estate, securities, or transportation” he reports.

...the pandemic crisis somehow influencing the appetite of companies to pursue litigation and dispute resolution. While the levels of activity are still not as high as they were during the 2008/2009 crisis, the cases are more complex and diverse now.

Popescu says that 2021 was a good year for dispute resolution, in part, because of several “large market players deciding to take to cleaning up strenuous relationships and contested situations” which were obstructing their business. “More so than in 2020, I have to say, we’ve seen big companies deciding to pursue litigation in such a decisive manner,” he notes.

As an example, Popescu points to the case in which the firm is representing the largest company in Eastern Europe producing more than 140 assortments of beverages and food products, “in one of the most significant cases pending before

the courts for several years now. After a long journey, this case is finally reaching its highest point in resolution,” he says.

The file, according to Popescu, has “great importance for Romania because it sets a precedent with respect to how bilateral investment treaties are to be treated. Following Romania’s accession to the EU, all intra-union BITs should have been dissolved; however, the client sought damages from the Romanian state, based on a BIT still in force at the moment of starting the legal procedure, to the tune of several million euros.” After obtaining a favorable decision in front of an investment tribunal, Popescu says the European Commission requalified the awarded damages as alleged state-aid, impeding the Romanian state’s ability to pay the damages. The client is currently challenging the European Commission decision before the European Court of Justice in “the largest state aid commercial procedure that Romania has seen in the past 30 years,” according to Popescu.

Another example of the firm’s Dispute Resolution practice activity Popescu points to is the ongoing work for Banca Transilvania, the bank with the highest market share in Romania. “We’ve been working hard on helping the bank with a number of dilatory disputes, both domestically and abroad,” he says.

Popescu feels that the firm’s practice experienced such a surge due to the “pandemic crisis somehow influencing the appetite of companies to pursue litigation and dispute resolution. While the levels of activity are still not as high as they were during the 2008/2009 crisis, the cases are more complex and diverse now,” he reports. “The backlog that 2020 created, when the pandemic first hit, had unclogged last year which made way for more dispute resolution activity.”

Finally, looking ahead, Popescu believes that 2022 holds a similarly bright future for the firm’s Dispute Resolution practice. “With a number of ongoing crisis situations in Europe, the war in Ukraine, Russian sanctions, and the pandemic, to name a few, I expect there will be a lot of fallout, litigation-wise,” he says. “The fulfilling of contractual obligations will get tested and I think that many companies will face challenges in defending the way in which they chose to adapt to the new market realities,” Popescu concludes. ■



**KNOW YOUR LAWYER:
IOANA HRISAFI-JOSAN OF
TUCA ZBARCEA & ASOCIATII**

Career:

- Tuca Zbarcea & Asociatii, Co-Head of Litigation and Arbitration, 2008-present
- Tuca Zbarcea & Asociatii, Partner, 2008-present
- Tuca Zbarcea & Asociatii, Senior Associate, 2005-2007
- Musat & Asociatii, Senior Associate, 2002-2005
- Bucharest 5th District Court, Court President/Vice-President, 1999-2002
- Bucharest 5th District Court, Judge, 1995-2002

Favorites:

- **Out of office activity:** Spending time with my children
- **Quote:** Opposing “believe and don’t doubt” – except for religious matters
- **Book:** *The Master and Margarita* by Mikhail Bulgakov
- **Movie:** *Sieranevada* by Cristi Puiu

Education:

- University of Bucharest, Faculty of Law, Law Degree, 2005
- National Institute of Magistracy, 2005-2007

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

Hrisafi-Josan: I had many challenging cases, especially competition cases and arbitrations, but the one I would name here is a civil law case that has become a real saga. The case concerned the restitution of a property confiscated by the communist regime in 1949 under dramatic circumstances. The litigation kicked off in 1999, with our team of lawyers getting involved in 2005 and obtaining a favorable decision of restitution in 2014. During this time, we fought many battles in court, with five rounds of appeals out of which four resulted in the case being remanded for a new trial. The sheer range of arguments, both procedural and substantive, was stupendous, ranging from expropriation and private versus public property to the protection of historical monuments. Our team presented four separate expert reports of great complexity, while our opponents repeatedly discovered new documents in the archives and submitted them in court. Several parallel cases were opened seeking to block public works threatening to reshape and transform the property during the trial. As their rights continued to be restricted after the decision of restitution was finally obtained in 2014, the clients have directed us to open a new court case, which is still pending.

And what was your main takeaway from it?

Hrisafi-Josan: I have learned that courts are more and more heavily influenced by public opinion, whichever that may be at a certain moment in the life of a community, but also that one should never cease to rely on and reaffirm long-established principles of law when seeking protection in court for universally recognized individual rights.

Top 5 Projects:

- Representing Gedeon Richter, one of the leading regional players in the pharma industry, in a multi-million tax dispute against local authorities;
- Representing Telekom Romania Mobile Communications in a dispute where Romania’s regulatory authority for communications sanctioned the company for having placed data services on the market. The dispute involved issues of internet neutrality;
- Representing the Romanian National Lottery Company in challenging a decision taken by the Romanian Competition Council following investigations into accusations of cartel by market share fixing;
- Representing Allianz in a multi-million-euro damage litigation which raised important legal issues regarding aviation law, among which the possibility to claim damages exceeding the insurance indemnity;
- Representing Uber BV in several litigation cases initiated by taxi companies and drivers seeking a ban on the alleged unfair commercial practice of ride-sharing services delivered in three Romanian cities through the Uber online platform.

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

Hrisafi-Josan: That, even though I was coming from a seven-year career as a sitting judge, in my first year as an attorney I was afraid of speaking in public.

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

Hrisafi-Josan: The law firm I joined in my first year as an attorney was a young organization, most of my colleagues being of the same age and professional experience as me, so I cannot really relate to any of them as a mentor. I would mention, though, my colleague Cornel Popa, who is an eminent arbitration lawyer and who already had several years of practice ahead of me when I first got involved in arbitration cases. Up to that point, I was used to looking at a case from the perspective of a judge, a perspective more theoretical than practical. Cornel showed me how to approach and build a case as a lawyer, while also guiding me on the basics of international arbitration.

Name one mentee you are particularly proud of.

Hrisafi-Josan: This would be Alin Ionescu, who joined our team in 2015 as a Junior Lawyer and is now a Senior Associate in our litigation team. He is primarily focused on intellectual property and consumer protection litigation, as well as labor law litigation. He is very thorough in his legal research, on even those minor law issues raised by a case, is well organized and focused, and has already developed good litigator skills.

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

Hrisafi-Josan: To look for the emerging areas of law in a continuously changing world. To search for satisfaction in finding new paths and unexplored fields.

MARKET SPOTLIGHT: NORTH MACEDONIA



ACTIVITY OVERVIEW: NORTH MACEDONIA

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

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



11



6

Gjorgji Georgievski



6



5

Tatjana Shishkovska



6



3

Kristijan Polenak



4



2

Ana Stojanovska



3



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PRACTICE CHECK-IN: NORTH MACEDONIA

By Teona Gelashvili

ODI Law Partner Gjorgji Georgievski, EY Law North Macedonia Manager Jana Nikodinovska, CMS Partner Marija Filipovska, Popovski & Partners Partner Ognen Martinov, and Lalicic & Boskoski Partner Vedran Lalicic talk about what practices have been keeping their firms busy and their outlook.

The Champ: Corporate/M&A

In Corporate/M&A seems to have been the busiest practice in North Macedonia, throughout the year, with Georgievski and Lalicic believing this trend is strongly connected to the COVID-19 pandemic. According to Georgievski, “post-pandemic attractive valuation levels and tax considerations” were the primary reasons for the increase in M&A. ODI Law advised on a few M&A deals in that regard, he says, including “the owner of retail chain operator Kit-Go on the sale of the company to Viva Fresh,” as well as “Kin and Carta on the Macedonian law aspects of the acquisition of software development company Melon Group.”

Lalicic, on the other hand, explains that the dynamic growth of M&A was related to the easing of the COVID-19 measures. As a result of it, he says, “many new investors were encouraged to start their business in North Macedonia. Also, many existing businesses were encouraged to expand their business activities.” According to him, in 2021, Lalicic & Boskoski “had numerous cases of founding new companies, especially in the IT sector.” As for the specific deals, he says the firm was involved in the sale of City Connect to Transcom, as well as in the acquisition of the shares of Eltek Explosives by Mashinokop.

Martinov believes that foreign investments played a crucial role in North Macedonian M&A. “Increase in foreign investments locally gave a boost in legal business from a corporate/M&A perspective,” he says. As an example of that, he points to Fortenova Grupa’s EUR 615 million sale of its frozen food business to Nomad Foods, in which Popovski & Partners represented the seller. EY Law’s Nikodinovska also points to North Macedonia as an attractive destination for foreign investors due to “the stabilization coming from NATO membership in 2020,” but also highlights “legis-

lative developments with new regulations and regulatory compliance requirements imposed on Macedonian companies” pushing the market to develop in this direction.

Lastly, Filipovska explains the M&A pipeline has been fueled by leapfrogging in renewable energy projects. “In the past decades, North Macedonia was not developing renewables when compared to the region and the EU countries,” she says, but “it is my pleasure to see that the government has seen the need for more sustainable and green energy.” The CMS Partner reports that “North Macedonia adopted a strategy for energy development until 2030, which introduces the ambitious plans to go green in a very short span.”

The Runner-Up: Data Protection

Several lawyers also pointed to a spike in data protection work in North Macedonia. “Our practice in the GDPR area was driven by the changes in Macedonian legislation,” Lalicic says, explaining that “the new data protection law was adopted in February 2020 (effective from August 2021) in order to align the national data protection legislation with EU legislation.”

Nikodinovska agrees, adding that “the regulatory landscape in North Macedonia set forth regulatory compliance challenges for Macedonian companies coming from the alignment of Macedonian laws with the EU regulations within the EU accession process, in particular, GDPR and AML regulations. Accordingly, a portion of our services during 2021 was focused on helping Macedonian companies meet data privacy requirements.”

The input follows Georgievski’s Hot Practice interview with CEE Legal Matters in 2021, in which he highlighted

NORTH MACEDONIA

that data protection was the firm's busiest practice, "primarily as a result of the looming end of the transition period of the new data protection law in the country."

Time to Refocus?

Martinov expects that their corporate practice will "still be one of the busiest practices," with Filipovska being equally confident since she expects the "positive trend of numerous energy projects will continue, and that sustainability and renewables projects will be increased and well supported by the authorities and the local market." Similarly, while acknowledging that the practice "has slightly slowed down, due to our clients' justified fear that arose from the outbreak of the war in Ukraine," Lalicic stresses they "are very optimistic that in 2022 our practice will increase its activity compared to the past two years."

Others are more reluctant in their positive outlook with Georgievski saying that "M&A activity could be well decreased in 2022 due to several factors, including the uncertainty arising out of the war in Ukraine, high valuations, and rising inflation. Another issue for some investors might be a rise in the cost of capital and potential tax increases."

The bleakest of outlooks was offered by Nikodinovska: "the war in Ukraine at the beginning of 2022 and the associated economic crisis gave the final shock to the Macedonian economy, leading to frozen M&A deals." She does see opportunities elsewhere though. While Martinov expects a rise in litigation work, Nikodinovska believes that, in the future, they will see an increased demand for compliance and governance services, "taking into consideration the challenges companies are facing from the constant change in the economic and legal environment and the associated risks." ■



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Partner,
ODI Law



Jana Nikodinovska,
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HIGH ON CEE: EXPLORING THE POTENTIAL OF THE CBD SECTOR IN NORTH MACEDONIA

By Andrija Djonovic

In a 2020 CEE Legal Matters article, **Karanovic & Partners Partner Veton Qoku** wrote that “in 2016 the Republic of North Macedonia made changes to its Law on the Control of Narcotic Drugs and Psychotropic Substances, defining the terms ‘hemp,’ ‘hemp seed oil,’ and ‘cannabis/hemp oil’ for the first time as well as regulating the procedure for cultivation and production of hemp.” CEELM spoke with Qoku to check in on the development of this young sector in the country.

Promising Growth Opportunities

“North Macedonia is one of the few countries in the region which has legalized cannabis for medical use, together with Croatia,” Qoku says, while pointing out that Slovenia has also allowed “certain CBD drugs for medicinal use.”

The country currently has, according to him, “67 registered companies who have been granted approval for cultivation of cannabis for medical purposes, and around 35 of these companies are active.” He reports that a number of active companies use technologically advanced solutions to extract and produce medicinal cannabis. “Companies investing in the cannabis business in North Macedonia come from different countries, including but not limited to the US, Germany, Israel, Bulgaria, Australia, the Netherlands, Canada, and Poland.”

While the CBD sector is still novel, to an extent, there are ample opportunities for growth and development. The industry is “slowly, but surely growing. The number of companies which have obtained approval for the cultivation of cannabis is expected to go up,” Qoku stresses, citing the “welcoming business climate of North Macedonia and the openness to introduce changes in the existing legislation” as a reason. Cannabis has even made a list of top ten priorities in the *Action 21 – for European Standards at Home* plan, made by the previous prime minister.

“Furthermore, the previous prime minister expressed the intention to introduce a more serious debate around the topics of decriminalization and total legalization of cannabis,” Qoku continues. “In December 2020, he issued a statement predicting that North Macedonia could gain around EUR 250

million, in 2021 alone, from the export and production of medical cannabis.” However, the prediction was contingent on the passing of the proposed draft of the new law, which did not occur.

Willingness to Advance Legislation but Little Progress

The main challenge the cannabis industry is facing growth-wise is legislation, according to Qoku. “In 2016, with the amendments of the existing *Law on the Control of Narcotic Drugs and Psychotropic Substances*, the procedures for cultivation and production of hemp were regulated for the first time,” he reports. Qoku states that the law has been facing a number of challenges and that it requires “refinement and clarification,” specifically when it comes to approvals and marketing. “A better control mechanism should be introduced for other narcotic drugs and psychotropic substances, which emerge rapidly and pose a challenge to public health,” he adds.

Still, the law is yet to be amended or substantially updated, with Qoku reporting that, after attempted amendments to it in 2018, it was determined that an entirely new law was needed. The draft for the new law “entered into parliamentary procedure twice, in 2019 and 2020. However, both attempts to adopt this legislation ended unsuccessfully.” The proposed draft aimed, among other novelties, to enable dry flower exports, which would allow local companies to access the global markets. It also sought to establish an “Agency for Cannabis for Medical and Scientific Purposes of the Republic of North Macedonia, as a special body intended to conduct the administrative and expert works related to the control of cannabis cultivation, extraction, and production for medical and scientific purposes.”



“While major stakeholders, including the government, have expressed their willingness to further regulate this matter and thus provide new opportunities for the industry, little has been achieved in adopting the necessary legislation,” Qoku says. A working group was formed in 2021, with the purpose of preparing suggestions for legislative updates and changes, yet “even after several held meetings, nothing came to fruition in terms of passing the relevant legislation.”

A Need to Develop Capabilities

Furthermore, Qoku reports challenges with the “institutional workforce, especially within public institutions,” where there is a clear need for a higher number of trained employees that could be “keeping up with international and domestic practices in the field of cannabis cultivation and production.” He says that public institutions lack the requisite resources to enable the efficient monitoring of the cannabis industry.

Additionally, he reports that the personnel issues extend to cannabis producers as well. According to applicable legislation, these producers must “employ expert employees in the field of pharmacy with a specialization in pharmaceutical technology and specialists for examination and control of medicines. Qualified candidates are few on the local workforce market and some of them are close to retirement,” he explains. If the number of prescribed expert employees is not met, approvals and permits could easily be revoked.

Finally, Qoku reports that one of the biggest threats to the cannabis industry in the country is a “lack of general knowledge about this industry and the benefits which it might offer. This includes, among others, the health benefits and the economic benefits, considering that the cultivation and production of cannabis for medical purposes has become a lucrative business in recent years.” He feels that educating the public and introducing more debates between the government and the private sector would be beneficial for the further prosperous development of the cannabis industry in North Macedonia.

Worth the Trip

Ultimately, “the medical cannabis market has proven to be a fertile ground for companies looking to invest in the business,” Qoku reports. Despite being strictly regulated, the market is expected to grow in the years to come, “especially since the government is eager to encourage investors to settle down in North Macedonia with their cannabis cultivation and production businesses.” And this is compounded by the fact that, as Qoku explains, growth opportunities are not related solely to the cultivation of cannabis for medical purposes and the production and trade of cannabis extracts. They “also extend to entities involved in the sector dealing with industry equipment and facilities and the services sector providing technical, legal, commercial, and other services to licensed companies working with cannabis for medical purposes in the country.” ■

MARKET SNAPSHOT: NORTH MACEDONIA

FINTECH IN NORTH MACEDONIA

By Gjorgji Georgievski, Partner, and Fani Dimoska, Associate, ODI Law



Financial technology is in its early stages in North Macedonia. The ability of alternative finance companies to utilize technology and provide products and services to underserved individuals enabled them to successfully penetrate the retail lending market and become the most embedded subsector in the fintech space. Incumbent banks, aware of the

growing competition, are developing fintech solutions such as better credit scoring solutions, the digitalization of products and services, and facilitating peer-to-peer payments. Fintech players and incumbent banks alike are also experimenting with big data analytics, cloud computing, and artificial intelligence. There are no initiatives in blockchain and distributed ledger technology.

The focus of the fintech space is currently on payment services following the adoption of the highly anticipated *Payment Services and Payment Systems Act* (PSPA) in April 2022. The previous payment services regulations did not allow fintech players to access payment systems that banks could exclusively access. The PSPA, modeled on EU legislation, including the *Second EU Payment Services Directive*, will change this. Indeed, the principal objective of the PSPA is to open up the payment services market, currently dominated by complex pricing structures, difficulties in comparing products and consumer switching, and disproportionately high charges for consumers. To that end, the PSPA envisages liberalization of the market for payment services, the introduction of new forms of payment services, greater security of electronic payments, enhancement of consumer rights, and a basic payment account. The liberalization of the payment services market will present a myriad of challenges for both incumbent banks and fintech players.

Incumbent banks will need to re-think their pricing models and devise strategies to respond to the competition in the market. They will be faced with the challenge to provide a better customer experience at lower prices. Their principal advantages are their well-developed IT financial services infrastructure and a network of physical points of sales (branches) throughout the country. Under the PSPA, they will be required to allow access to their IT financial services infrastructure for fintech players, which will open many issues. There is a consensus among all stakeholders

in the fintech space that fintech will expose the financial system to higher levels of cybersecurity threats, financial crime, money laundering, and, potentially, terrorism financing. Another concern is that, if fintech players do not comply with the regulations, they might expose the financial system to loss of trust by consumers.



Fintech players will look to break the banks' hegemony in the payment services market by providing greater access to the financial system at lower prices. They will focus on the new millennial and generation Z customers who demand new technology channels to carry out their financial services transactions. These customers will expect competitive pricing, increased responsiveness, and the ability to purchase products and services on a pay-as-you-go basis. However, a less sophisticated or more traditional customer base will still expect old physical channels to be available. They will not trust online transactions carried out solely by machines. Fintech players will have to decide whether to rely on the incumbent banks' IT financial services infrastructure or develop their own, for example, by deploying distributed ledger technology. Most of them will likely choose to rely on the incumbent banks' infrastructure, as that will be more cost-efficient than developing their own.

Ensuring compliance with the applicable regulatory framework will be challenging for new fintech players. They will have to ensure compliance with competition, data protection, cybersecurity, money laundering, consumer protection, and other relevant regulations which apply to them. They might find it challenging to operate in an environment where enforcement of the applicable regulations by regulators is inconsistent – which might be the case here, as Macedonian state agencies and authorities have little to no experience in fintech.

The liberalization of payment services will provide an impulse to the growing fintech space in North Macedonia. The market will likely welcome many new fintech players, particularly in peer-to-peer lending, peer-to-peer payments, cryptocurrency, e-wallets, robo-advice, and regtech. Whether the increased competition will drive innovation and efficiencies in the market to the benefit of consumers remains to be seen. ■



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Career:

- Polenak Law Firm, Managing Partner, 2007-present
- Polenak Law Firm, Partner, 2001-2007
- Polenak Law Firm, Associate, 1997-2001
- Polenak Law Firm, Trainee, 1995-1997

Education:

- Ministry of Justice of the Republic of North Macedonia, Certificate for Passed Judicial Exam, 1997
- St. Cyril and Methodius University, Iustinianus Primus Faculty of Law, LLB Degree, 1991-1994

Favorites:

- **Out of office activity:** Spending time with friends, Social clubs' humanitarian activities, Walking and hiking
- **Quote:** "It's better to be safe than sorry"
- **Favorite book:** *Quo Vadis* by Henryk Sienkiewicz
- **Movie:** *Empire of the Sun* by Steven Spielberg

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

Polenak: Many of the projects in the last 25 years may be considered challenging, but I believe the privatization of Stopanska Banka AD Skopje takes the lead. It was a very complex privatization of the country's largest bank at that time. We worked for the International Finance Corporation and the European Bank for Reconstruction and Development which, along with the National Bank of Greece, acquired 85% of the shares from the Bank Rehabilitation Agency. The government was pursuing a policy to restructure the financial sector and considered the restructuring and privatization of the bank as an important national goal and prerequisite to strengthening the financial sector and the national economy. It had, therefore, agreed to take certain steps with regard to this bank, by way of an act of Parliament, and the Central Bank agreed to take additional actions. We worked alongside the Ministry of Finance in drafting the guarantee law of this strategic investment, along with the local bank in collecting and grouping the shareholding in the Bank Rehabilitation Agency, as well as together with our clients on the transactional documents.

And what was your main takeaway from it?

Polenak: My main takeaway was regarding the capacity and ability of the State to carry out painful projects, to achieve the

Top 5 Projects:

- Advising the EBRD in the pre-privatization of the Macedonian Power Company.
- Advising TAV in the build–operate–transfer structured concession of Macedonian airports, which is one of the largest effective concession agreements;
- Advising the M6 group in the sale of Skopje Brewery shares to Coca-Cola and Brau Union. The most compelling parts were managing the client's interests prior to the transaction and the very challenging negotiations;
- Advising Hyprop Investments Limited in the acquisition of the Skopje City Mall, at that time the largest mall in North Macedonia. This is still one of the largest M&A transactions on the market;
- Advising GSOL in the acquisition through reorganization of a large ferro-nickel production plant, in a court-governed insolvency procedure. A huge legal challenge, representing the largest restructuring process on the market.

targets set in its existing policies and political agenda, while the main benefit for me was the amount of experience collected during the process. Following the passage of time, this transaction may now seem obscure but, back then, it was immensely important to stabilize the banking sector and reduce the risks of high NPLs within the largest bank of the country.

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

Polenak: My love for music. There is hardly a moment when I do not have a nice, smooth jazz tune playing in the background when I work on documents.

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

Polenak: Clearly, being a third-generation lawyer, the role of my father as my mentor has the most significant place in my professional growth. I rarely worked with him, as he was a litigator and criminal lawyer, his moral code and dedication to excellence were embedded into my psychological profile.

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

Polenak: Go and complete another master's in economics or IT. The combination would give you a distinct edge and competitive advantage.



EXPERTS REVIEW: INFRASTRUCTURE/PPP

This issue's Experts Review section focuses on **Infrastructure/PPP**. The articles are presented ranked by the density of the railway network in each country, according to 2019 data from the Transport Statistics Database of the United Nations Economic Commission for Europe. The Austrian article goes first, ahead of Poland and Slovenia, while the articles from Greece and Turkey wrap up the issue.

Country	Home Ownership Rate (%)	
■ Austria	67	Page 74
■ Poland	62	Page 75
■ Slovenia	59.7	Page 76
■ Romania	45.1	Page 77
■ Serbia	42.6	Page 78
■ Bulgaria	36.3	Page 79
■ Ukraine	32.8	Page 80
■ North Macedonia	26.6	Page 81
■ Montenegro	18.1	Page 82
■ Greece	17.3	Page 83
■ Turkey	13.4	Page 84



AUSTRIA: PPP & INFRASTRUCTURE PROJECTS GOING DIGITAL AND GREEN

By Thomas Hamerl, Partner, CMS



Public infrastructure projects in Austria and in particular PPPs are undergoing several changes. In the last few years, the focus of PPPs was on social infrastructure like schools, hospitals, and other clinics. Many of them have been structured as so-called *Betreibermodelle*, i.e., a form of build, finance, and operate models. However, the focus is clearly shifting towards infrastructure for digitalization and climate change.

The federal government in Austria is hardly using project models like PPP or other forms of co-operative implementation (like alliancing contracts) but has rather returned to traditional general contractor contracts. However, apart from such projects and providing the legal framework, the federal government is increasingly using subsidy schemes and tax advantages to support the needed infrastructure in Austria.

Digital Infrastructure

Broadband networks for high-speed internet access are supported via the BBA2030 scheme (*Broad Band Austria 2030*), providing in total EUR 1.4 billion of investment subsidies to cover all areas with fiber optic networks by 2030 which commercial investors would otherwise leave out. Four different subsidy schemes are available. The first call commenced in March 2022, after receiving Commission approval under the Recovery and Resilience Facility. The call will remain open until May 2022. Three of these schemes are available to public and private applicants but are, above all, indispensable components of public projects at the level of the provincial states and municipalities.

New project models have been developed for public broadband projects, namely the three-layer-open-access models, joint-venture, and joint operation models. In JV models, public and private entities jointly invest in infrastructure and operate it by a joint vehicle. In joint operation models, the public and the private sides invest separately, where the private partner invests in the commercially feasible parts of the infrastructure and the public partner finances the rest; however, the partners set up a joint vehicle to operate both parts of the network. The operation tasks can be structured as a lease or an operation and maintenance contract. Some broadband projects have been structured as concessions.

Most of those models are exempt from public procurement law due to an exemption for telecom projects under the EU procurement Directives. So, fair selection procedures and careful contract drafting are

required. Contractual clauses on delay and cost increases because of epidemics, supply-chain disruptions, sanctions, and/or situations of war became a major issue. These include force majeure and hardship clauses or contract variations. Finally, other digital infrastructure, like data centers, is mainly deployed via private initiatives.

Energy and Climate Change

The infrastructure for energy transition or mitigating the effects of climate change will become even more important. The federal government is, again, tackling these issues with subsidy programs. In June 2021, the law on deployment of electricity generation from renewable sources entered into force. It foresees both investment grants and capacity auctions. Investors looking for photovoltaic, wind, small hydropower, hydrogen, biomass, etc. projects should get advice on the available investment grants. In January and March 2022, the federal government initiated two further subsidy schemes for investment grants aiming at fostering the shift from oil and gas to climate-friendly technologies for industrial plants and households. However, the law favors existing commercial premises and households in their switch from gas heating to electricity, biomass, and heat pumps.

There is political resistance against photovoltaic and wind energy, as well as the strengthening of the electricity grid, because such infrastructure is considered to disfigure the landscape. Even if the federal government grants subsidies and the required permits could be obtained, investors struggle to find the required land for their projects, because the zoning plans do not contain sufficient space for wind or PV parks.

Honoring ESG in Infrastructure Tenders

However, the public procurement law does offer efficient tools to authorities awarding contracts for public infrastructure to honor ESG aspects. These tools are increasingly being used. So, suppliers and construction contractors would be well advised to inform public authorities, before a tender is commenced, which technical solutions they can offer and what is available on the market.

Aspects of environmentally friendly supplies, works, and services must be considered, mainly when determining the object of the tender, the contractual conditions, and the selection and award criteria. Moreover, ecological (energy efficiency; production, installation, and operation aspects of materials; life-cycle costs; recycling of waste; protection of green soil) and social criteria (gender equality; protections for the young, elderly, or disabled in the workforce) should be used. For awarding concessions there is even more flexibility. ■

POLAND: GENERAL TRENDS IN THE PPP MARKET

By Tomasz Korczynski, Head of PPP/Infrastructure, Jakub Kot, Senior Associate, and Jacek Siwczyk, Associate, Dentons



While Polish public entities continue to express an ever-increasing interest in public-private partnerships (PPP) as a method of discharging public tasks, PPP activity has remained disappointingly slow in recent years. As can be seen from the *2009-2021 PPP Market Report* by the Ministry of Regional Funds and Policies, just 24 procedures to select a private partner were launched in 2021, with PLN 627 million on the table,

resulting in a paltry ten PPP contracts signed, worth PLN 172 million all told.

Nevertheless, PPP sector growth seems inevitable in Poland, if only because of the increasingly precarious financial standing of local governments across the country. Furthermore, we are seeing an uptick in the activity of public entities at the central government level, which bodes extremely well in terms of the scope and scale of future projects. This involvement of higher-level players is great publicity for the PPP formula and could galvanize local authorities into further action. This could prove to be the stimulus that will finally propel Poland's PPP market onto a path of intensive development.

So, what are the sectors likely to stand out in the coming years? A look at some of the projects in the pipeline offers a pretty good idea of the current situation in Poland's PPP market. What is immediately apparent is just how multifaceted and interesting this market is, despite its still-unimpressive scale.

Energy Modernization of Public Buildings in the Municipality of Koszalin

The energy efficiency sector has long been a favorite of public entities in Poland, with 25 PPP contracts already signed to date. The City of Koszalin took this path with a sizable project to modernize 32 buildings at an estimated cost of PLN 45 million. Further PPP initiatives in this sector are to be expected following the recent amendment of the *Energy Efficiency Act*, adopted on April 20, 2021, which opens the way for wider use of PPPs in pursuit of improved energy performance.

Construction and Maintenance of the State Archives

This is a government-sponsored venture and one of the biggest public infrastructure projects involving the construction and maintenance of five buildings to house state archives in three provinces. With an

estimated cost of PLN 280 million and a projected term of contract of 28 or 29 years, its implementation will require the commitment of significant resources by both public and private partners.



Construction and Maintenance of Municipal Roads in the Municipality of Marki

This project is notable in that the Municipality of Marki, on the outskirts of Warsaw, is one of the very few local government units which has opted for a PPP solution to develop its road system. The government appears unphased by the failure of many previous large road construction projects using this formula. As part of this project, the Municipality of Marki wants to put in a storm drainage system, resurface several public roads, and build sidewalks and bicycle paths alongside them.

Construction of the Outer Harbor in the Port of Gdynia

This would be the first PPP project of this scale in the Polish maritime sector. It certainly ranks among the most interesting PPP projects currently under consideration in Europe. The envisioned wharf will be big enough to take in container ships of over 400 meters in length, with a draft of up to 16 meters, and is expected to have an annual handling capacity of 2.5 million TEU. The private partner will need to shoulder the demand risk, which means that its earnings will come from users of the newly developed infrastructure. One thorny issue here is Article 7(5) of the Polish *Public-Private Partnership Act* of December 19, 2008, which provides that where the private partner is to collect fees from the project users, the PPP contract must set out the maximum fees and the conditions for their variation – something that private partners are definitely not comfortable with.

Full Steam Ahead

There is no doubt that there is great PPP growth potential in many sectors in Poland. It is high time to realize this potential by introducing new procedures for selecting private partners and signing new PPP contracts. There is nothing that can boost the development of this market more than high-profile success stories, addressing the ever-growing needs of public authorities and users of public infrastructure and, not least, the expectations of potential private partners eyeing public projects. ■

SLOVENIA: WORKING HARD TO AVOID PPPS

By Maja Subic and Ales Lunder, Partners, Senica & Partners



In contrast to the previous financial crisis, when many construction companies in Slovenia declared bankruptcy, the current pandemic crisis has not affected the infrastructure sector to the same extent as other sectors. In fact, public infrastructure projects in Slovenia

are currently on the rise. The focus of the current investment cycle is on the rail and road infrastructure for international and domestic use.

Although there are many ongoing projects, they are not implemented through public-private partnerships but through public procurements or concessions, both being time-consuming procedures under mandatory Slovenian laws. Even though there are some, public-private partnerships (PPP) do not play any significant role in Slovenia.

Major Infrastructure Projects

Major projects currently in the construction phase include the second railway line between Koper and Sezana, the third development axis (road), and the second pipe of the Karavanke tunnel, which play an important role in the Trans-European Transport Network.

The second track is a 27.1-kilometer railway line between Divaca and Koper, managed by the state-owned company 2TDK and financed by the state, bank loans, and EU grants. The project is of international importance as it connects the main Slovenian port of Koper with the interior. The port of Koper plays an important regional role as it covers an area from Bavaria to Slovakia and Hungary. The project foresees first upgrading the existing line and then building an additional line.

The Karavanke Tunnel's second pipe project, which is being built in parallel to the existing tunnel, will improve on an already successful previous project. The first Karavanke Tunnel, almost eight kilometers long, was a major investment that facilitated the connection and improved road transport between Austria and Slovenia by linking two major motorways. The projects are co-funded by the EU as part of a wider European transport network.

The third development axis will improve internal links and facilitate connectivity between neighboring countries. The northern route will link Austrian Carinthia with the interior of Slovenia, while the south-

ern route will continue from the interior to the Croatian border. The route is divided into several sections which are put out to tender individually. The overall project value at constant prices is estimated at EUR 1.3 billion, of which EUR 937.62 million are allocated for the northern part and EUR 406.54 million for the southern part. The first section awarded in the north had a value of EUR 45.86 million, while the other sections have not been tendered yet.



Other projects in the pipeline, such as upgrading the existing Maribor-Sentilj-state border railway line and the railway line connecting the capital with the Austrian border, are mainly improving the internal movement of people, but also the connection and cooperation with neighboring countries.

In addition to the above-mentioned projects, several other projects are planned, such as the construction of a new railway and bus station in Ljubljana, the capital of Slovenia, which was rumored to be a PPP project, whereas for the time being Hungarian companies seem to be most active on this project.

Legislation

Due to the deficient legal basis and the lack of political will to make necessary legislative changes, the absolute majority of all economic cooperation between the public and the private sector is carried out either through public tenders or by means of concessions.

In Europe, public-private partnerships are quite common, and their key advantages and disadvantages are well known. In Slovenia, more than 20 years have passed since the first PPP projects were realized, but since then there has been no significant progress like in other EU countries.

The first specific PPP law was adopted in 2006 but, in practice, the law never had a real practical relevance as it has several shortcomings. Among other critical voices, the Court of Auditors in Slovenia cited the lack of adequate organizational support and lack of adequate implementation support for PPP operators from the competent state authorities, along with various other problems.

With elections to the National Assembly due in April, it remains to be seen whether the new government will take a different approach toward public-private partnerships. ■

ROMANIA: HOW TO CREATE AND DEVELOP A ROBUST AND LONG-LASTING PPP CULTURE

By Vlad Cercel, Partner and Co-Head of PPP/Infrastructure, Tuca Zbarcea & Asociatii



In Romania, the first legal enactment specifically addressing PPP projects was adopted in early 2002. In the 20 years that followed, four primary pieces of legislation on this topic have been passed, with the declared objective to provide a sound legal basis for the implementation of PPP projects. Nevertheless, each of these successive enactments was adopted not to keep pace with the practical developments in PPP matters, but rather to respond to criticism of the absence of a proper legal basis to structure and implement PPP projects.

Getting There

After numerous attempts, the current legal framework applicable to PPP projects in Romania – *Government Emergency Ordinance No. 39/2018* – may be considered to create the proper legal basis for PPP projects. First, the GEO properly identifies the main criterion for a project to be classified as PPP: the largest part of the revenues collected by the SPV should originate from the public sector. Secondly, to enhance the attractiveness of PPP projects, the GEO clearly allows contributions from the public sector to finance the investment effort. Thirdly, it properly regulates sensitive concepts which have, at times, hampered the implementation of PPP projects, such as the step-in rights of the lenders and the replacement of the SPV during the contract term. Fourthly, to avoid any doubts as to the transparency and competitiveness of the procurement procedure for the award of PPP contracts, it provides that the award procedures to be used will be those generally applied for the award of public procurement contracts or concession contracts, as relevant. In other words, PPP contracts may take the form of public procurement contracts or concession contracts, depending on the allocation of risks among the parties, and they cannot take a different form that would be subject to special award provisions.

Still, despite the above and the various attempts made from time to time to implement PPP projects, no significant PPP project is currently being deployed in Romania. This naturally raises the question of what else is required to enable the carrying out of PPP projects and to create and develop a PPP culture.

The Missing Ingredients

The answer is not straightforward. The existence of a proper legal framework would indeed be necessary, but many other prerequisites should be in place. Experience has shown that PPP projects may be structured and implemented even in the absence of a specific PPP legal enactment, but this would not be feasible without significant administrative capacities and converging efforts from the public and private sectors.

To contribute to the creation of a PPP culture, the PPP concept and its benefits and downsides should be well understood. PPP projects bring value for money. They are not necessarily inexpensive, nor can they always be used to provide financing from the private sector without being qualified as on-balance from the perspective of public accounting treatment.

The roles and the various interests and concerns of the parties involved in a PPP project should be carefully considered. Making sure that financing is available is key to the success of a PPP project. Closer involvement of potential lenders before and during the award procedure is, therefore, required for proper project structuring and a balanced approach to parties' rights and obligations. The suitable preparation of a PPP project is of the essence. Lenders would carefully scrutinize the technical surveys on which the project relies, and the hasty start of a project may actually be to its detriment. The appointment of specialized consultants to assist the public sector in the preparation and structuring of PPP projects is another key element.

Achievable Goals

The careful selection of future PPP projects is also important. At first, medium-sized projects could be selected. On the one hand, there might be an appetite for providing financing for projects of this size and, on the other hand, a successful outcome may create opportunities to develop larger PPP projects.

Therefore, the existence of a sound legal framework is only the first step toward the creation and development of a robust and long-lasting PPP culture in Romania. If matched by administrative efforts, it may pave the way for the implementation of a successful pool of PPP projects that will, in turn, contribute to the development of the infrastructure sectors and the entire Romanian economy. ■

SERBIA: CURRENT OVERVIEW OF PUBLIC-PRIVATE PARTNERSHIPS

By Igor Zivkovski, Partner, Zivkovic Samardzic



The *Law on Public-Private Partnership and Concessions of the Republic of Serbia* (Law) defines public-private partnership as a dynamic and developmental process of financing infrastructure projects, which represents a form of cooperation between government bodies and the private sector, intending to modernize the infrastructure and improve the provision of public services.

The key elements of the public-private partnership concept are an allocation of responsibilities, risk-sharing, and a long-term, stable, and sustainable partnership between public and private partners, who find their basis in the mutual and complementary benefits. Risk-sharing allows each of the partners to take the risk that they can manage most adequately, thus achieving greater efficiency in these projects. The concept of public-private partnership frees the public partner from a good part of the costs that they would otherwise have to bear and reduces the problem of fiscal pressure.

Another clear advantage of a public-private partnership is the fact that the public sector typically lacks the appropriate level of expertise, knowledge, and know-how to tackle and implement complex infrastructure projects itself, so involving a private partner is usually a more practical solution that allows the utilization of the managerial, technical, financial, and innovative capabilities of the private partner.

The growing need to build new public infrastructure, invest in projects of general interest, and provide services of public interest in Serbia has required the creation of a legal and institutional framework for attracting private investment. The Law was adopted in 2011, by which a concept of public-private partnership was introduced into the legal system of Serbia.

Aware that investments in infrastructure can impact the economic growth and living standards of the population, the Government of Serbia has focused its strategic choices in the past years on infrastructure projects. As a developing country with limited resources, Serbia is inclined to use public-private partnerships as a more innovative form of providing public services and a suitable mechanism for ensuring sound and quicker delivery of infrastructure projects.

The existing legal framework enables various types of cooperation between the public and private sectors. According to the Law, a public-private partnership may be contractual or institutional, which may

or may not include elements of concession.

A public contract that solely regulates all the rights and obligations of the parties is the legal base for the contractual public-private partnership establishment. On the other hand, an institutional public-private partnership is based on the relationship between the public and private partners being the shareholders of a legal entity, which leads to the public-private partnership's project.

The Law includes concessions, which represent a contractual or institutional public-private partnership with elements of concession, governing the commercial use of a natural resource or assets in general use owned by the public partner. Through a public agreement, the public partner assigns to the private partner the right to use the subject of the concession for an agreed period. For the utilization of the subject of the concession, the private partner shall pay a concession fee.

Practice shows that the challenging phase of a public-private partnership project in Serbia is its implementation and contract management, which presupposes that both public and private partners have dedicated teams that will cover all aspects of the delivery of the PPP project, i.e., operational, technical, legal, and financial aspects. Progress should be made in this regard and the public sector's capacity in this respect overall should be strengthened.

Although popular in many European countries, the concept of public-private partnership had relatively little application in Serbia until amendments were adopted in 2016. According to the European Investment Bank, in 2016, Serbia implemented only one project worth more than EUR 10 million based on public-private partnerships. However, its practical implementation has mostly been seen in the past several years, in relation to which it is noted that the Public-Private Partnership Commission has approved 217 public-private partnerships to date.

Despite the COVID-19 pandemic, the dynamic growth of public-private partnership projects is evident in 2020 and 2021, which has been confirmed by several major ongoing infrastructure projects at a national and local level. In addition, several large-scale projects currently in the preparation phase seem to be a constructive step forward toward the full exploitation of the public-private market potential.

Overall, it appears that the rules now in place for the successful realization of public-private partnership projects are adequate, but their potential has not yet been fully used. ■

BULGARIA: MORE CLARITY IN THE FIELD OF IN-HOUSE PUBLIC PROCUREMENT CONTRACTS

By Antoniya Markova, Partner, and Tihomir Rachev, Associate, Gugushev & Partners



As a result of standard monitoring of public procurement procedures contracts, in July 2021, the Bulgarian government announced that in the past two-and-a-half years, roughly BGN 8.6 billion (EUR 4.4 billion) were spent on in-house awards of public procurement contracts in Bulgaria.

In addition to this announcement, the Public Procurement Agency (PPA) issued an official guideline for the application of the in-house exceptions under Article 14(1)(5) – (7) of the *Public Procurement Act*. Since the in-house exceptions of the Bulgarian *Public Procurement Act* have been adopted in compliance with *Directive 2014/24/EU* of the European Parliament and of the Council of February 26, 2014, on public procurement and repealing *Directive 2004/18/EC*, the PPA relied heavily on European legislation and European Court of Justice (ECJ) case law.

First, the PPA provided valuable insight into the application of Art. 14(1)(5)(a) of the *Public Procurement Act*. According to this provision, public contracting authorities are allowed to carry out tasks to perform their functions by directly entrusting activities to a legal entity that they control. The PPA pointed out that the contracting authority must be able to exercise both structural and functional control over the legal entity. In this respect, the fact that the contracting authority is the sole owner of the economic entity's capital indicates the existence of such control. However, this is not sufficient to exclude the application of the *Public Procurement Act*. To find that control falls within the scope of the PPA, the contracting authority must prove that it participates in the company's management – for example, in decisions relating to the election of the management bodies, determining the business plan, reducing and increasing the capital, etc.

Secondly, the PPA also brought special attention to the exception under Art. 14(1)(7) of the *Public Procurement Act*, which refers to in-house awards in case of joint control by two or more contracting entities over a legal entity contractor. The guidelines underpin that the contractor must have the capacity to carry out the relevant activities itself (to provide the service, carry out the works, etc.). If the contractor transfers the performance of the activities covered by the

contract to another person, this is considered hidden subcontracting of the public contract. The PPA explained that such subcontracting is not permissible as it is contrary to the basic idea pursued by the case law of the ECJ that the contract should be executed with the contractor's own resources. At the same time, this might have the effect of circumventing the application of the *Public Procurement Act*, as well as restricting competition.



In its guidelines, the PPA highlighted that to ensure publicity of the contracts to which legislative exceptions apply, the *Public Procurement Act* introduces an obligation for contracting authorities to publish a contract award notice (Article 26, paragraph 1, item 3). For certain contracts, e.g., those of significant value, of strategic importance, or in which there is a serious public interest, the PPA advised that contracting authorities should announce their intention to conclude such a contract in advance by publishing a voluntary transparency notice in the Public Procurement Register, even though they are not legally required to do so. This approach is supposed to provide additional certainty as to the legality and stability of the contract after the expiry of the period for appealing the notice.

The PPA's guidelines are a step in the right direction for the Bulgarian government in implementing the relevant European legislation effectively in force. There is no doubt that in-house awards are beneficial to society as the rules on public procurement should not affect the freedom of public authorities to implement the tasks entrusted to them to provide public services by using their own resources.

However, in these cases, higher scrutiny would also be in the best interest of society as the implementation of preventive mechanisms against potential abuse of the exceptions to public procurement legislation is a highly recommended good practice within the EU. By setting rules for interpreting the legislative exception, the Bulgarian government provides clarity and legal security to persons who might wish to benefit from it legitimately. ■

UKRAINE: THE PROSPECTS OF ROAD PPP PROJECTS

By Maksym Maksymenko, Partner, and Rostyslav Mushka, Associate, Avellum



On February 15, 2022, the Ukrainian Parliament adopted draft *Law No. 5090 on Amendments to the Budget Code of Ukraine on the Regulation of Budgetary Relations in the Implementation of Contracts Concluded within the Framework of Public-Private Partnerships, Including Concession Contracts* (Law 5090). The law

is vital for the functioning of public-private partnerships (PPP) in the road and highway reconstruction sector since it enables public partners to provide guarantees of fulfillment of their long-term obligations under relevant PPP projects.

Law 5090 is yet to be signed by the President of Ukraine, but there is no doubt that it will be enacted. The destruction brought on by the Russian forces during their invasion of Ukraine made it clear that rapid restoration of the infrastructure will be necessary. And PPPs will be used as one of the key instruments of Ukraine's infrastructure reconstruction. To elaborate on the importance of Law 5090, firstly, we should identify the problem it solves.

One of the major characteristics of a PPP project is the long-term nature of the relationship between the public and private partners. Both the Ukrainian *Law on Concession* (Concession Law) and *Law on Public-Private Partnership* (PPP Law) follow this principle and state that the PPP project should be 5-50 years long. Any short-term projects are not considered PPP projects and, thus, are not regulated by the mentioned laws.

At the same time, both the Concession Law and PPP Law provide for the state support of projects, including payments made by the state to private partners, for example, availability payments. Previously, the Ukrainian Government planned to carry out six concession projects for six segments of highways, by the end of 2023, using the availability payments instead of tolls.

However, the effective *Budget Code of Ukraine* lacks budget instruments to provide such state support as availability payments to the long-term road PPP projects. This issue is considered a material risk by investors, especially foreign ones, who would otherwise participate in these PPP projects. Additionally, investors saw a bad example set by the *green tariff crisis* in the renewable energy market – when the Ukrainian Government declared that it had become too burdensome financially and initiated a discussion of a potential tariff decrease

with investors.

Law 5090 solves this risk by amending the *Budget Code of Ukraine* and providing public partners with a right to undertake long-term obligations under PPP projects, including availability payments, for the term of the respective PPP or concession agreement.

Respectively, all payments to be made by a public partner under such agreements will be funded by the special fund of the state budget annually, during the relevant project's term.

For this purpose, Law 5090 also specifies the funding sources for road PPP projects. Notably, it limits the annual payments that should be made to private partners under state road PPP projects to 30% of the revenues earned by the special fund of the state budget – the State Road Fund of Ukraine (Road Fund). The Ukrainian Government will determine the procedure for distributing revenues of the Road Fund. At the same time, the annual payments under the municipal roads PPP projects are limited to 30% of the local budget's revenue.

Additionally, Law 5090 expands the list of funding sources of the Road Fund by adding a toll for trucks weighing more than 12 tons using the state roads. Since the relevant draft laws No. 6087 and No. 6089 have not been voted in the first reading as of now, this new source of funding is yet to be implemented.

At the same time, state support for road PPP projects is not the only issue that impedes Ukraine from effective implementation of road PPP projects. Rapid post-war reconstruction requires the facilitation of certain procedures, including allotment, changing the designated use of land plots, and simplification of construction-related procedures. Optimizing these procedures beforehand will significantly increase the efficiency of the post-war reconstruction.

The adoption of Law 5090 is indeed a major step toward the expansion of successful PPP projects in Ukraine's track record. However, the reconstruction may only begin after the hostilities have ceased and there is sufficient financing to cover the expenses. After that, we believe that Ukraine will welcome all investors willing to participate in the restoration of the infrastructure under the PPP framework. ■



NORTH MACEDONIA: LEGISLATIVE UPDATES ON INFRASTRUCTURE PROJECTS

By Marija Filipovska, Partner, and Aleksandar Josimovski, Attorney-at-Law, CMS Skopje



The development of road infrastructure is important for the Macedonian authorities. The Government of the Republic of North Macedonia (RoNM) analyzed and undertook different approaches for the realization of infrastructure projects in the past.

During the last few years, the Assembly of the RoNM (Assembly) has adopted two

laws that stipulated additional regimes for the realization of infrastructure projects.

The *Law on Strategic Investments* (LSI) entered into force on January 20, 2020, and it stipulates criteria, conditions, and procedure application for obtaining the status, selection, preparation, and the realization of strategic investment projects (SIP).

The LSI prescribes that a project would be considered a SIP if it fulfills one or more of the goals defined in the LSI and would be realized with an investment amounting to: at least EUR 100 million if the investment would be made by two or more municipalities; at least EUR 50 million if the investment is made in municipalities with a seat registered in any city and the City of Skopje; and at least EUR 30 million if the investment is made in a municipality organized in a village.

Additionally, projects would also be considered as SIP if realized based on agreements between countries, realized and financed in cooperation with the EU, the Ministerial Council of the Energy Community, and international financial institutions, if those projects are led by a state body, public enterprise, trade company, or other entity incorporated or fully owned by RoNM or its municipalities. In such cases, the amount of the investment is not a criterion.

The LSI explicitly stipulates that the realization of strategic projects is a public interest. SIPs may be private, public-private, or completely public projects. We understand that infrastructure projects in which RoNM or an entity established by RoNM is usually a project leader may be realized as a public-private SIP, in accordance with the legislation for public-private partnerships, or as a public SIP, when led by any of the state bodies and institutions in the above paragraph.

Furthermore, the LSI stipulates that a special regime for obtaining

the necessary documents would be applicable for the realization of each SIP, which may put projects on a *fast track*. Namely, the necessary approvals, permits, consents, licenses, authorizations, certificates, and other documents which need to be issued in accordance with applicable laws would be issued within deadlines provided in the law for the realization of SIPs.



The status of SIP would be granted through a government decision. The government should also provide consent for the SIP's draft agreement (which would be prepared by a special Commission for SIPs) and prepare the draft law for that particular SIP's realization. The LSI stipulates detailed rules and deadlines for the issuance of a decision granting SIP status, however, the deadlines for concluding the SIP's agreement and the adoption of the law for its realization are not prescribed. Hence, the period needed for completing the necessary statutory steps and obtaining effective SIP status cannot be determined.

Additionally, the Assembly adopted a special law for the realization of an infrastructure project in 2021 (Infrastructure Project Law), with which the public interest was determined and a contractor, i.e., strategic partner was nominated for the construction of certain routes along Corridors 8 and 10D. Based on the Infrastructure Project Law, the realization of this project would be supported by a special regime for: the working hours of employees, employment of foreigners, obtaining licenses for exploration and exploitation of minerals necessary for the construction of state roads, exemption from VAT legislation, and exemption from legislation for public procurement. For the needs of managing the projecting, construction works, and preparation of necessary project documentation, separate construction agreements would be concluded between the strategic partner, the Public Enterprise of State Roads (as an investor), and the Ministry of Transport and Communications, after successful negotiations.

Clearly, the above laws are a result of the Macedonian Government's dedication to increasing capital investments in infrastructure projects. Nonetheless, noting that there is no infrastructure project yet realized under these laws, the effects of this new legislation should be assessed over the following years. ■

MONTENEGRO: THE USE OF PPPS IN THE DEVELOPMENT OF INFRASTRUCTURE

By Igor Zivkovski, Partner, Zivkovic Samardzic



Aware of the fact that an effective system of infrastructure creates the preconditions for the normal and undisturbed functioning of the wider social system, Montenegro has made significant efforts in recent years, both in terms of the normative definition of the sector and in finding optimal mechanisms for national infrastructure. In many European countries, a public-private partnership represents the optimal mechanism for national infrastructure, which has considerable advantages and is being ever more used.

Having an effective legal framework is a precondition for creating an environment that supports private investment in infrastructure. Based on this premise, the long-awaited law regulating public-private partnerships in Montenegro was adopted at the end of 2019 and has been applicable as of July 2020. Along with this new legislation, the amended Law on Concessions also began to apply in mid-2020 with a large portion of its subject matter being transposed into the *Law on Public-Private Partnership (Law)*. In addition, the ensuing months marked the adoption of a set of by-laws that set the Law in motion.

The Law has created a new framework for investment policy in Montenegro based on the model of public-private partnerships. In this way, a synergy between the authority of public institutions and the expertise and knowledge of the private sector is achieved to build and reconstruct public infrastructure, as well as perform public works and provide public services.

According to this Law, a public-private partnership is based on the principles of protection of the public interest, free management which ensures a high degree of quality, safety, affordability, transparency, protection of competition, and protection of the environment.

The Law covers contractual and institutional public-private partnerships and elaborates in detail on the procedure for concluding a public-private partnership contract, which regulates the public and private partners' respective rights and obligations with respect to the public-private project. Moreover, key contractual terms such as those

related to subcontracting, the liability of a private partner, financing, taking security, and termination have all found their place in the Law.

In addition, it is important to note that the Law brings novelties to the institutional framework in the entire Montenegrin investment policy. This primarily refers to the formation of a new body – the Montenegrin Investment Agency, established to promote and monitor the realization of public-private partnerships and investments. In addition, the Agency and the Ministry of Finance and Social Welfare give an opinion on public-private project proposals. At the same time, all public-private partnership contracts shall be registered before the Contracts Register of the agency and published on its web page.

The Law also precisely defines the issues related to the preparation of tender documentation and justification analysis and regulates the entire procedure through which the proposal of one project passes to the final adoption. It is also important that the legislator especially emphasized the importance of the public interest, since the analysis of justification that accompanies each public-private partnership project is its important segment.

The public-private partnership concept represents an established systematic approach of many governments and local self-governments around the world when it comes to financing public infrastructure. Over the past few years, the Government of Montenegro as well as municipalities in Montenegro have made the first tentative steps towards the introduction of public-private partnerships.

Therefore, it will be important to monitor the appetite of the business community for seeking alternative means of private sector involvement in public infrastructure/service projects. It remains to be seen whether the potential of the cooperation between governmental bodies and the public sector through the public-private partnership concept will be fully used in Montenegro.

However, it could be concluded that further reforms are needed in infrastructure, especially for roads and certain municipal and environmental sectors. These sectors could benefit from greater commercialization, especially through public-private partnership projects. ■

GREECE: PPP PROJECTS STILL ON THE RISE

By Alexandros Katsantonis, Head of Public Procurement and PPP, Drakopoulos



The growth rate of public-private partnerships (PPPs) in Greece, which commenced almost four years ago and retained the same dynamics throughout the COVID-19 era despite the internationally unfavorable economic environment, remains undoubtedly impressive.

As of early March 2022, the Interministerial PPP Committee has approved five additional regional infrastructure projects with a total value of EUR 425.2 million, including the construction and operation of an integrated waste management system in Santorini, one of the most popular tourist destinations in Greece. This adds to a tally of more than 60 currently active PPP projects with an estimated value of EUR 5 billion, spanning almost all sectors of infrastructure from judicial buildings and university campuses to broadband networks and smart city projects, to highways and dams.

Nevertheless, there are certainly challenging objectives that the market is currently called to fulfill, such as the avoidance of lengthy tender procedures, bridging the maturity gap – which occurs as many projects have not reached yet a satisfactory maturity level – as well as limited human resources, taking into account that the successful implementation of the PPP model presupposes the existence and utilization of specialized human resources both in the public and private sectors.

PPPs in Greece are governed by *Law No. 3389/2005* (the PPP Law), which sets out a concise and comprehensive legal framework for awarding, contracting, and implementing PPPs. Since its implementation, the PPP Law has significantly simplified and clarified the procedures and rules applicable to PPPs and thus enhanced legal security for private investors.

The PPP Law establishes two administrative state bodies, the Interministerial PPP Committee, which approves or rejects PPP projects, and the Special Secretariat for PPPs, which plays a key role in the overall centralized process, serving as a specialized and market-oriented task force and providing support to the Interministerial PPP Committee and to public entities. In practice, the Special Secretariat coordinates all the PPP projects that are promoted or planned by public entities, evaluates new proposals, supports contracting authorities in preparing the award of contracts, and monitors the overall projects' implementations.

Construction projects fall within the scope of the PPP Law if they involve building public infrastructure of a value not exceeding EUR 500 million, by using capital and resources mainly secured by private entities, which, at the same time, assume key risks associated with the financing, construction, availability of, or demand for the project. Private entities are eligible to participate in PPP projects only through special purpose vehicles, i.e., limited liability companies set up solely for the purposes of implementing the project. The PPP Law sets minimum content requirements for the PPP contract to ensure that the contracts include all terms outlined by the public authority in the tender documents published during the contract award procedure and, at the same time, resolves several legal issues which would otherwise require special regulation (e.g., expropriation, environmental and archaeological permits, connection to public utility networks).

Tender processes are essentially governed by the rules set out in *EU Directive 2004/17* (on coordinating the procurement procedures of entities operating in water, energy, transport, and postal services) and *EU Directive 2004/18* (on coordination of procedures for the award of public work contracts, public supply contracts, and public services contracts), which provide safeguards of transparency, and fair and equal treatment during all stages of public procurement. Practice has confirmed that most contracting authorities opt for open procedures via a “competitive dialogue” in two phases. Consequently, according to the PPP Law, the criterion of the lowest price is not applicable, and the contracts are awarded on the basis of the most beneficial financial offer. Most projects present a contractual term of 30-32 years, including a two-three year construction period.

Practice has also shown that tender procedures can often prove time-consuming, especially when lengthy legal disputes arise between the bidders during the pre-award phase of the procurement process. PPPs have been heavily criticized due to time inefficiency and certain cases of misimplementation. Several ongoing PPP projects are yet to be awarded and enter the construction period.

Another much discussed and vital factor for the further growth of the market is the funding of the private contractors by the European Investment Bank, as was the case back in February with the projects for building student campuses for three regional universities (Crete, Thrace, and Thessaly).

In any case, it is evident that PPPs will remain key to Greece's economic development ambitions for the years to follow and that the need for specialized and high-quality professionals will keep increasing. ■

TURKEY: INFRASTRUCTURE AND PPP IN TURKEY – WHAT'S NEXT?

By Dogan Eymirlioglu, Partner, and Ece Cakirel, Senior Associate, Balcioglu Selcuk Ardiyok Keki Attorney Partnership



For the past decade, to boost its long-term economic outlook and service the needs of the growing population, Turkey has used the public-private partnership model extensively in the infrastructure sector.

Whilst the country has, to some extent, cut back on its regionally leading pipeline of mega-projects, there are ongoing plans to commission two new major schemes: Canal Istanbul and the Gebze-Halkali

Railroad, along with a part of its investment plan legislation foreseeing municipalities' water, wastewater, and solid waste facilities being operated by the private sector on a PPP basis.

Currency Crisis, Pandemic, and Everything After – The Perfect Storm

Whereas PPPs significantly contributed to Turkey's economy and infrastructure, stability was adversely impacted for all parties by wider economic events in recent times. Just a few years after multiple megaprojects' commencement, based on state volume and demand guarantees, calculated with forex assumptions, the Turkish lira faced a currency crisis, followed by the pandemic, and now the Russia-Ukraine war. The social results of the crises unavoidably impact the future of the projects and financing.

The market has expectations of adopting new regulations to apply to future projects for increased certainty in PPP investments. We will soon see whether the government will work on it or instead let the precedents and contracts manage the terms. In terms of current projects, what we anticipate next are contractual changes to adapt them better to the new economic and social realities.

Changes in Project Duration

Term extension will be an important tool for existing projects to balance the economics to account for force majeure and other time and cost impacts of COVID-19. Usually, an extension is discussed and determined towards the end of the contract period for any event, to extend the operational period on a mutually beneficial basis but, in terms of project management, determination of such an extension at an earlier stage would be advantageous. There is opportunity for a win-win for both the public and private sectors in this respect.

Volume-Based Changes

On the impact of COVID-19 on end-user demand in live projects, given that many Turkish projects include demand guarantees from

the government that sponsors and lenders can benefit from, changes in the level at which the demand guarantee takes effect may become more common.

Would such changes be needed short, medium, or long term? For roads, for example, there may be some limited aversion to using public transport for a period and increased long-term home working could impact traffic volumes; for healthcare, the possible impacts of treating long-term consequences of COVID-19 (and other health conditions worsened by having gone untreated during the pandemic) may result in further increased demand in the future.

The recalibration of project economics or employing more radical changes, such as using pure availability and performance rather than demand-based payment going forward, may be among the solutions. That would generate valuable certainty for the market, as a perception emerged during the crisis that purely or primarily availability-based contractual arrangements for energy, transport, and infrastructure assets have proven more robust.

Changes in Scope

On completed projects, design and O&M specifications and even national regulatory standards may need to be changed – to account for social distancing requirements in project delivery or consumer use of project assets – and the increased capacity likely needed would have to be accounted for through a contractual change process on those projects.

Any Change in Services?

These changes are likely to be an issue in healthcare projects, including changes in functionality, capacity, or service specification, and will be a test of how flexibly PPP facilities have been designed to cope with large-scale systemic health problems. But it seems clear that the Turkish health infrastructure – including a massive recent program of project-financed major hospitals – has proven robust and vindicated the focus over many years on those projects.

PPPs, which have played a major role in Turkey for many years, will remain important due to the country's pressing development needs, but we are likely to see changes in how such projects are delivered. Nevertheless, the Turkish model remains an influential one regionally, with particular benefits to Turkish project developers who honed their approaches in their domestic environment and are now positioned to export those skills regionally. ■





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